

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1241

By: Quinn

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2021, Sections 1683, 1684, 1685, and 1686, which relate to the Insurance Business Transfer Act; modifying definitions; conforming language; requiring certain notice be provided by receiver of certain insurer; updating statutory language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2021, Section 1683, is amended to read as follows:

Section 1683. 1. "Affiliate" has the meaning ascribed to such term in Section 1631 of ~~Title 36 of the Oklahoma Statutes~~ this title.

2. "Applicant" means an assuming insurer or a transferring insurer or reinsurer applying under Section 1686 of this title.

3. "Assuming insurer" means an insurer domiciled in ~~the State of Oklahoma~~ this state that assumes or seeks to assume policies from a transferring insurer pursuant to this act. An assuming insurer may be a company established pursuant to the Oklahoma Captive Insurance Company Act.

1 4. "Court" means the ~~District Court~~ district court of ~~Oklahoma~~
2 ~~County, Oklahoma~~ a county in Oklahoma with a population of more than
3 Two Hundred and Fifty Thousand (250,000).

4 5. "Department" means the ~~Oklahoma~~ Insurance Department.

5 6. "Commissioner" means the ~~Oklahoma~~ Insurance Commissioner.

6 7. "Implementation order" means an order issued by the ~~Court~~
7 court under Section 1686 of this title.

8 8. "Insurance Business Transfer" means a transfer and novation
9 in accordance with this act. Insurance Business Transfers will
10 transfer insurance obligations or risks, or both, of existing or in-
11 force contracts of insurance or reinsurance from a transferring
12 insurer to an assuming insurer. Once approved pursuant to this act,
13 the Insurance Business Transfer will effect a novation of the
14 transferred contracts of insurance or reinsurance with the result
15 that the assuming insurer becomes directly liable to the
16 policyholders of the transferring insurer and the transferring
17 insurer's insurance obligations or risks, or both, under the
18 contracts are extinguished.

19 9. "Insurance Business Transfer Plan" or "Plan" means the plan
20 submitted to the Department to accomplish the transfer and novation
21 pursuant to an Insurance Business Transfer, including any associated
22 transfer of assets and rights from or on behalf of the transferring
23 insurer to the assuming insurer.

1 10. "Independent expert" means an impartial person who has no
2 financial interest in either the assuming insurer or transferring
3 insurer, has not been employed by or acted as an officer, director,
4 consultant or other independent contractor for either the assuming
5 insurer or transferring insurer within the past twelve (12) months,
6 is not appointed by the Commissioner to assist in any capacity in
7 any proceeding initiated pursuant to Article 18 or Article 19 of
8 ~~Title 36 of the Oklahoma Statutes~~ this title and is receiving no
9 compensation in connection with the transaction governed by this act
10 other than a fee based on an hourly basis that is not contingent on
11 the approval or consummation of an Insurance Business Transfer and
12 provides proof of insurance coverage that is satisfactory to the
13 Commissioner.

14 11. "Insurer" means an insurance or surety company, including a
15 reinsurance company, and shall be deemed to include a corporation,
16 company, partnership, association, society, order, individual or
17 aggregation of individuals engaging in or proposing or attempting to
18 engage in any kind of insurance or surety business, including the
19 exchanging of reciprocal or inter-insurance contracts between
20 individuals, partnerships and corporations.

21 12. "Policy" means a policy, annuity contract or certificate of
22 insurance or a contract of reinsurance pursuant to which the insurer
23 agrees to assume an obligation or risk, or both, of the policyholder
24 or to make payments on behalf of, or to, the policyholder or its

1 beneficiaries, and shall include property, casualty, life, health
2 and any other line of insurance the Commissioner finds via
3 regulation is suitable for an insurance business transfer.

4 13. "Policyholder" means an insured or a reinsured under a
5 policy that is part of the subject business.

6 14. "Subject business" means the policy or policies that are
7 the subject of the Insurance Business Transfer Plan.

8 15. "Transfer and novation" means the transfer of insurance
9 obligations or risks, or both, of existing or in-force policies from
10 a transferring insurer to an assuming insurer, and is intended to
11 effect a novation of the transferred policies with the result that
12 the assuming insurer becomes directly liable to the policyholders of
13 the transferring insurer on the transferred policies and the
14 transferring insurer's insurance obligations or risks, or both,
15 under the transferred policies are extinguished.

16 16. "Transferring insurer" means an insurer or reinsurer that
17 transfers and novates or seeks to transfer and novate obligations or
18 risks, or both, under one or more policies to an assuming insurer
19 pursuant to an Insurance Business Transfer Plan.

20 SECTION 2. AMENDATORY 36 O.S. 2021, Section 1684, is
21 amended to read as follows:

22 Section 1684. A. The court considering applications brought
23 under the Insurance Business Transfer Act shall have the same
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1 jurisdiction as a court order under Article 19 of ~~Title 36 of the~~
2 ~~Oklahoma Statutes~~ this title.

3 B. Venue for all court proceedings under this act shall lie in
4 the ~~District Court of Oklahoma County, Oklahoma~~ court as defined
5 pursuant to subsection 4 of Section 1683 of this title.

6 C. Notwithstanding any other provision of law, the court may
7 issue any order, process, or judgment that is necessary or
8 appropriate to carry out the provisions of this act. No provision
9 of this act shall be construed to preclude the court from, on its
10 own motion, taking any action or making any determination necessary
11 or appropriate to enforce or implement court orders or rules, or to
12 prevent an abuse of power.

13 SECTION 3. AMENDATORY 36 O.S. 2021, Section 1685, is
14 amended to read as follows:

15 Section 1685. A. Whenever notice is required to be given ~~by~~
16 ~~the applicant~~ under the Insurance Business Transfer Act and except
17 as otherwise permitted or directed by the court or the Insurance
18 Commissioner, ~~the applicant shall,~~ within fifteen (15) days of the
19 event triggering the requirement, ~~cause transmittal of~~ the notice
20 shall be transmitted:

21 1. By first-class mail, postage prepaid to the chief insurance
22 regulator in each jurisdiction in which the ~~applicant~~ transferring
23 insurer:

24 a. holds or has ever held a certificate of authority, and
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1 b. in which policies that are part of the subject
2 business were issued or policyholders currently
3 reside;

4 2. By certified first-class mail, postage prepaid to the
5 National Conference of Insurance Guaranty Funds, the National
6 Organization of Life and Health Insurance Guaranty Associations and
7 all state insurance guaranty associations for the states in which
8 the ~~applicant~~ transferring insurer:

9 a. holds or has ever held a certificate of authority, and
10 b. in which policies that are part of the subject
11 business were issued or policyholders currently
12 reside;

13 3. To reinsurers of the ~~applicant~~ transferring insurer pursuant
14 to the notice provisions of the reinsurance agreements applicable to
15 the policies that are part of the subject business, or where an
16 agreement has no provision for notice, by internationally recognized
17 delivery service;

18 4. By United States mail, first-class postage prepaid to all
19 policyholders holding policies that are part of the subject
20 business, at their last-known address as indicated by the records of
21 the ~~applicant~~ transferring insurer or to the address to which
22 premium notices or other policy documents are sent. A notice of
23 transfer shall also be sent to the transferring insurer's agents or
24 brokers of record on the subject business; and

1 5. By publication in a newspaper of general circulation in the
2 state in which the ~~applicant~~ transferring insurer has its principal
3 place of business and in such other publications that the
4 Commissioner requires.

5 B. If notice is given in accordance with this section, any
6 orders under this act shall be conclusive with respect to all
7 intended recipients of the notice, whether or not they receive
8 actual notice.

9 C. Where this act requires that ~~the applicant~~ an insurer
10 provide notice, ~~but the Commissioner has been named receiver of the~~
11 ~~applicant~~ a receiver of the insurer has been appointed pursuant to
12 the laws of the insurer's home jurisdiction, the ~~Commissioner~~
13 receiver shall provide the required notice.

14 SECTION 4. AMENDATORY 36 O.S. 2021, Section 1686, is
15 amended to read as follows:

16 Section 1686. A. Application Procedure. 1. An Insurance
17 Business Transfer Plan must be filed by the applicant with the
18 Insurance Commissioner for his or her review and approval. The Plan
19 must contain the information set forth below or an explanation as to
20 why the information is not included. The Plan may be supplemented
21 by other information deemed necessary by the Commissioner:

- 22 a. the name, address and telephone number of the
23 transferring insurer and the assuming insurer and
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1 their respective direct and indirect controlling
2 persons, if any,

3 b. summary of the Insurance Business Transfer Plan,

4 c. identification and description of the subject
5 business,

6 d. most recent audited financial statements and statutory
7 annual and quarterly reports of the transferring
8 insurer and assuming insurer filed with their
9 domiciliary regulator,

10 e. the most recent actuarial report and opinion that
11 quantify the liabilities associated with the subject
12 business,

13 f. pro-forma financial statements showing the projected
14 statutory balance sheet, results of operations and
15 cash flows of the assuming insurer for the three (3)
16 years following the proposed transfer and novation,

17 g. officers' certificates of the transferring insurer and
18 the assuming insurer attesting that each has obtained
19 all required internal approvals and authorizations
20 regarding the Insurance Business Transfer Plan and
21 completed all necessary and appropriate actions
22 relating thereto,

23 h. proposal for Plan implementation and administration,
24 including the form of notice to be provided under the

1 Insurance Business Transfer Plan to any policyholder
2 whose policy is part of the subject business,

3 i. full description as to how such notice shall be
4 provided,

5 j. description of any reinsurance arrangements that would
6 pass to the assuming insurer under the Insurance
7 Business Transfer Plan,

8 k. description of any guarantees or additional
9 reinsurance that will cover the subject business
10 following the transfer and novation,

11 l. a statement describing the assuming insurer's proposed
12 investment policies and any contemplated third-party
13 claims management and administration arrangements,

14 m. evidence of approval or nonobjection of the transfer
15 from the chief insurance regulator of the state of the
16 transferring insurer's domicile, and

17 n. an opinion report from an independent expert, selected
18 by the Commissioner from a list of at least two
19 nominees submitted jointly by the transferring insurer
20 and the assuming insurer, to assist the Commissioner
21 and the court in connection with their review of the
22 proposed transaction. Should the Commissioner, in his
23 or her sole discretion, reject the nominees, he or she

1 may appoint the independent expert. The report shall
2 provide the following:

- 3 (1) a statement of the independent expert's
4 professional qualifications and descriptions of
5 the experience that qualifies him or her as an
6 expert suitable for the engagement,
7 (2) whether the independent expert has, or has had,
8 direct or indirect interest in the transferring
9 or assuming insurer or any of their respective
10 affiliates,
11 (3) the scope of the report,
12 (4) a summary of the terms of the Insurance Business
13 Transfer Plan to the extent relevant to the
14 report,
15 (5) a listing and summaries of documents, reports and
16 other material information the independent expert
17 has considered in preparing the report and
18 whether any information requested was not
19 provided,
20 (6) the extent to which the independent expert has
21 relied on information provided by and the
22 judgment of others,
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- 1 (7) the people on whom the independent expert has
2 relied and why, in his or her opinion, such
3 reliance is reasonable,
4 (8) the independent expert's opinion of the likely
5 effects of the Insurance Business Transfer Plan
6 on policyholders and claimants, distinguishing
7 between:
8 (a) transferring policyholders and claimants,
9 (b) policyholders and claimants of the
10 transferring insurer whose policies will not
11 be transferred, and
12 (c) policyholders and claimants of the assuming
13 insurer,
14 (9) for each opinion that the independent expert
15 expresses in the report the facts and
16 circumstances supporting the opinion, and
17 (10) consideration as to whether the security position
18 of policyholders that are affected by the
19 Insurance Business Transfer are materially
20 adversely affected by the transfer.

21 2. The independent expert's opinion report as required by
22 subparagraph n of paragraph 1 of this subsection shall include, but
23 not be limited to, a review of the following:
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- a. analysis of the transferring insurer's actuarial review of reserves for the subject business to determine the reserve adequacy,
- b. analysis of the financial condition of the transferring and assuming insurers and the effect the transfer will have on the financial condition of each company,
- c. review of the plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer,
- d. whether the proposed transfer has a material, adverse impact on the policyholders and claimants of the transferring and the assuming insurers,
- e. analysis of the assuming insurer's corporate governance structure to ensure that there is proper board and management oversight and expertise to manage the subject business, and
- f. any other information that the Commissioner requests in order to review the Insurance Business Transfer.

3. The Commissioner shall have sixty (60) business days from the date of receipt of a complete Insurance Business Transfer Plan to review the Plan to determine if the applicant is authorized to submit it to the court. The Commissioner may extend the sixty-day review period for an additional thirty (30) business days.

1 4. The Commissioner shall authorize the submission of the Plan
2 to the court unless he or she finds that the Insurance Business
3 Transfer would have a material adverse impact on the interests of
4 policyholders or claimants that are part of the subject business.

5 5. If the Commissioner determines that the Insurance Business
6 Transfer would have a material adverse impact on the interests of
7 policyholders or claimants that are part of the subject business, he
8 or she shall notify the applicant and specify any modifications,
9 supplements or amendments and any additional information or
10 documentation with respect to the Plan that must be provided to the
11 Commissioner before he or she will allow the applicant to proceed
12 with the court filing.

13 6. The applicant shall have thirty (30) days from the date the
14 Commissioner notifies him or her, pursuant to paragraph 5 of this
15 subsection, to file an amended Insurance Business Transfer Plan
16 providing the modifications, supplements or amendments and
17 additional information or documentation as requested by the
18 Commissioner. If necessary the applicant may request in writing an
19 extension of time of thirty (30) days. If the applicant does not
20 make an amended filing within the time period provided for in this
21 paragraph, including any extension of time granted by the
22 Commissioner, the Insurance Business Transfer Plan filing will
23 terminate and a subsequent filing by the applicant will be
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1 considered a new filing which shall require compliance with all
2 provisions of this act as if the prior filing had never been made.

3 7. The Commissioner's review period in paragraph 3 of this
4 subsection shall recommence when the modification, supplement,
5 amendment or additional information requested in paragraph 5 of this
6 subsection is received.

7 8. If the Commissioner determines that the Plan may proceed
8 with the court filing, the Commissioner shall confirm that fact in
9 writing to the applicant.

10 B. Application to the court for approval of the Insurance
11 Business Transfer Plan.

12 1. Within thirty (30) days after notice from the Commissioner
13 that the applicant may proceed with the court filing, the applicant
14 shall apply to the court for approval of the Insurance Business
15 Transfer Plan. Upon written request by the applicant, the
16 Commissioner may extend the period for filing an application with
17 the court for an additional thirty (30) days.

18 2. The applicant shall inform the court of the reasons why he
19 or she petitions the court to find no material adverse impact to
20 policyholders or claimants affected by the proposed transfer.

21 3. The application shall be in the form of a verified petition
22 for implementation of the Insurance Business Transfer Plan in the
23 court. The petition shall include the Insurance Business Transfer
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1 Plan and shall identify any documents and witnesses which the
2 applicant intends to present at a hearing regarding the petition.

3 4. The Commissioner shall be a party to the proceedings before
4 the court concerning the petition and shall be served with copies of
5 all filings pursuant to the Rules for District Courts of Oklahoma.
6 The Commissioner's position in the proceeding shall not be limited
7 by his or her initial review of the Plan.

8 5. Following the filing of the petition, the applicant shall
9 file a motion for a scheduling order setting a hearing on the
10 petition.

11 6. Within fifteen (15) days after receipt of the scheduling
12 order, the ~~applicant~~ transferring insurer shall cause notice of the
13 hearing to be provided in accordance with the notice provisions of
14 Section 1685 of this title. Following the date of distribution of
15 the notice, there shall be a sixty-day comment period.

16 7. The notice to policyholders shall state or provide:

- 17 a. the date and time of the approval hearing,
- 18 b. the name, address and telephone number of the assuming
19 insurer and transferring insurer,
- 20 c. that a policyholder may comment on or object to the
21 transfer and novation,
- 22 d. the procedures and deadline for submitting comments or
23 objections on the Plan,

- 1 e. a summary of any effect that the transfer and novation
2 will have on the policyholder's rights,
3 f. a statement that the assuming insurer is authorized,
4 as provided in this section, to assume the subject
5 business and that court approval of the Plan shall
6 extinguish all rights of policyholders under policies
7 that are part of the subject business against the
8 transferring insurer,
9 g. that policyholders shall not have the opportunity to
10 opt out of or otherwise reject the transfer and
11 novation,
12 h. contact information for the Insurance Department where
13 the policyholder may obtain further information, and
14 i. information on how an electronic copy of the Insurance
15 Business Transfer Plan may be accessed. In the event
16 policyholders are unable to readily access electronic
17 copies, the applicant shall provide hard copies by
18 first-class mail.

19 8. Any person, including by their legal representative, who
20 considers himself, herself or itself to be adversely affected can
21 present evidence or comments to the court at the approval hearing.
22 However, such comment or evidence shall not confer standing on any
23 person. Any person participating in the approval hearing must
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1 follow the process established by the court and shall bear his or
2 her own costs and attorney fees.

3 C. Approval of the Insurance Business Transfer Plan.

4 1. After the comment period pursuant to paragraph 6 of
5 subsection B of this section has ended the Insurance Business
6 Transfer Plan shall be presented by the applicant for approval by
7 the court.

8 2. At any time before the court issues an order approving the
9 Insurance Business Transfer Plan, the applicant may withdraw the
10 Insurance Business Transfer Plan without prejudice.

11 3. If the court finds that the implementation of the Insurance
12 Business Transfer Plan would not materially adversely affect the
13 interests of policyholders or claimants that are part of the subject
14 business, the court shall enter an implementation order. The
15 implementation order shall:

16 a. order implementation of the Insurance Business
17 Transfer Plan,

18 b. order a statutory novation with respect to all
19 policyholders or reinsureds and their respective
20 policies and reinsurance agreements under the subject
21 business, including the extinguishment of all rights
22 of policyholders under policies that are part of the
23 subject business against the transferring insurer, and
24 providing that the transferring insurer shall have no
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1 further rights, obligations, or liabilities with
2 respect to such policies, and that the assuming
3 insurer shall have all such rights, obligations, and
4 liabilities as if it were the original insurer of such
5 policies,

6 c. release the transferring insurer from any and all
7 obligations or liabilities under policies that are
8 part of the subject business,

9 d. authorize and order the transfer of property or
10 liabilities, including, but not limited to, the ceded
11 reinsurance of transferred policies and contracts on
12 the subject business, notwithstanding any
13 nonassignment provisions in any such reinsurance
14 contracts. The subject business shall vest in and
15 become liabilities of the assuming insurer,

16 e. order that the applicant provide notice of the
17 transfer and novation in accordance with the notice
18 provisions in Section 1685 of this title, and

19 f. make such other provisions with respect to incidental,
20 consequential and supplementary matters as are
21 necessary to assure the Insurance Business Transfer
22 Plan is fully and effectively carried out.

23 4. If the court finds that the Insurance Business Transfer Plan
24 should not be approved, the court by its order may:

1 a. deny the petition, or

2 b. provide the applicant leave to file an amended
3 Insurance Business Transfer Plan and petition.

4 5. Nothing in this section in any way affects the right of
5 appeal of any party.

6 D. Implementation of Insurance Business Transfer Plan.

7 The Commissioner shall have the authority to promulgate rules to
8 effectuate the provisions of the Insurance Business Transfer Act.

9 E. The review of an application for an Insurance Business
10 Transfer, including any documents, materials, communications or
11 other information submitted to the Commissioner in contemplation of
12 such application, or developed by the Commissioner in connection
13 with such application, shall be treated for purposes of
14 confidentiality as an examination of the financial condition and/or
15 market conduct of the transacting companies under Sections 309.1
16 through 309.7 of this title.

17 SECTION 5. This act shall become effective November 1, 2022.

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