

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 885

By: Paxton of the Senate

and

6 Sims of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to the Insurance Business Plan
12 Transfer Act; amending Section 2, Chapter 232, O.S.L.
13 2018 (36 O.S. Supp. 2018, Section 1682), which
14 relates to purpose of act; adding to purpose of act;
15 amending Section 3, Chapter 232, O.S.L. 2018 (36 O.S.
16 Supp. 2018, Section 1683) which relates to
17 definitions; modifying definitions; updating
18 references; amending Section 6, Chapter 232, O.S.L.
19 2018 (36 O.S. Supp. 2018, Section 1686), which
20 relates to application procedures; modifying
21 requirements of certain reporting; modifying
22 requirements of court implementation order;
23 prohibiting effect on guaranty fund coverage during
24 transfer of insurance business; classifying certain
documents, information, and persons as confidential
and not subject to certain legal action; establishing
timeline for certain documents to become open
records; amending Section 8, Chapter 232, O.S.L. 2018
(36 O.S. Supp. 2018, Section 1688), which relates to
compensation; declaring certain insurers obligated to
pay certain costs and compensation during business
transfer; prohibiting creation of certain duty for
independent expert during business transfer; and
providing an effective date.

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

2 SECTION 1. AMENDATORY Section 2, Chapter 232, O.S.L.
3 2018 (36 O.S. Supp. 2018, Section 1682), is amended to read as
4 follows:

5 Section 1682. This act is adopted to provide options to address
6 the significant limitations in the current methods available to
7 insurers to transfer or assume blocks of insurance business in an
8 efficient and cost-effective manner that provides needed legal
9 finality for such transfers in order to provide for improved
10 operational and capital efficiency for insurance companies,
11 stimulates the economy by attracting segments of the insurance
12 industry to the state, makes Oklahoma an attractive home
13 jurisdiction for insurance companies, encourages economic growth and
14 increased investment in the financial services sector and increases
15 the availability of quality insurance industry jobs in Oklahoma.
16 These purposes are accomplished by providing a basis and procedures
17 for the transfer and statutory novation of policies from a
18 transferring insurer to an assuming insurer by way of an Insurance
19 Business Transfer without the affirmative consent of policyholders
20 or reinsureds. The novation is effected by court order. This act
21 establishes the requirements for notice and disclosure and standards
22 and procedures for the approval of the transfer and novation by the
23 Oklahoma Insurance Commissioner and the District Court of Oklahoma
24 County pursuant to an Insurance Business Transfer Plan. This act

1 does not limit or restrict other means of effecting a transfer or
2 novation.

3 SECTION 2. AMENDATORY Section 3, Chapter 232, O.S.L.
4 2018 (36 O.S. Supp. 2018, Section 1683), is amended to read as
5 follows:

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

8 2. "Applicant" means a transferring insurer or reinsurer
9 applying under Section ~~6~~ 1686 of this ~~act~~ title.

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

15 4. "Court" means the District Court of Oklahoma County,
16 Oklahoma.

17 5. "Department" means the Oklahoma Insurance Department.

18 6. "Commissioner" means the Oklahoma Insurance Commissioner.

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

21 8. "Insurance Business Transfer" means a transfer and novation
22 in accordance with this act. Insurance Business Transfers will
23 transfer insurance obligations or risks, or both, of existing or in-
24 force contracts of insurance or reinsurance from a transferring

1 insurer to an assuming insurer. Once approved pursuant to this act,
2 the Insurance Business Transfer will effect a novation of the
3 transferred contracts of insurance or reinsurance with the result
4 that the assuming insurer becomes directly liable to the
5 policyholders of the transferring insurer and the transferring
6 insurer's insurance obligations or risks, or both, under the
7 contracts are extinguished.

8 9. "Insurance Business Transfer Plan" or "Plan" means the plan
9 submitted to the Department to accomplish the transfer and novation
10 pursuant to an Insurance Business Transfer, including any associated
11 transfer of assets and rights from or on behalf of the transferring
12 insurer to the assuming insurer.

13 10. "Independent expert" means an impartial person who has no
14 financial interest in either the assuming insurer or transferring
15 insurer, has not been employed by or acted as an officer, director,
16 consultant or other independent contractor for either the assuming
17 insurer or transferring insurer within the past twelve (12) months,
18 is not appointed by the Commissioner to assist in any capacity in
19 any proceeding initiated pursuant to Article 18 or Article 19 of
20 Title 36 of the Oklahoma Statutes and is receiving no compensation
21 in connection with the transaction governed by this act other than a
22 fee based on ~~a fixed or~~ an hourly basis that is not contingent on
23 the approval or consummation of an Insurance Business Transfer and
24

1 provides proof of insurance coverage that is satisfactory to the
2 Commissioner.

3 11. "Insurer" means an insurance or surety company, including a
4 reinsurance company, and shall be deemed to include a corporation,
5 company, partnership, association, society, order, individual or
6 aggregation of individuals engaging in or proposing or attempting to
7 engage in any kind of insurance or surety business, including the
8 exchanging of reciprocal or inter-insurance contracts between
9 individuals, partnerships and corporations.

10 12. "Policy" means a policy, annuity contract or certificate of
11 insurance or a contract of reinsurance pursuant to which the insurer
12 agrees to assume an obligation or risk, or both, of the policyholder
13 or to make payments on behalf of, or to, the policyholder or its
14 beneficiaries, and shall include property, casualty, life, health
15 and any other line of insurance the Commissioner finds via
16 regulation is suitable for an insurance business transfer.

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

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

21 15. "Transfer and novation" means the transfer of insurance
22 obligations or risks, or both, of existing or in-force policies from
23 a transferring insurer to an assuming insurer, and is intended to
24 effect a novation of the transferred policies with the result that

1 the assuming insurer becomes directly liable to the policyholders of
2 the transferring insurer on the transferred policies and the
3 transferring insurer's insurance obligations or risks, or both,
4 under the transferred policies are extinguished.

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

9 SECTION 3. AMENDATORY Section 6, Chapter 232, O.S.L.
10 2018 (36 O.S. Supp. 2018, Section 1686), is amended to read as
11 follows:

12 Section 1686. A. Application Procedure.

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

19 a. the name, address and telephone number of the
20 transferring insurer and the assuming insurer and
21 their respective direct and indirect controlling
22 persons, if any,

23 b. summary of the Insurance Business Transfer Plan,
24

- 1 c. identification and description of the subject
2 business,
- 3 d. most recent audited financial statements and statutory
4 annual and quarterly reports of the transferring
5 insurer and assuming insurer filed with their
6 domiciliary regulator,
- 7 e. the most recent actuarial report and opinion that
8 quantify the liabilities associated with the subject
9 business,
- 10 f. pro-forma financial statements showing the projected
11 statutory balance sheet, results of operations and
12 cash flows of the assuming insurer for the three (3)
13 years following the proposed transfer and novation,
- 14 g. officers' certificates of the transferring insurer and
15 the assuming insurer attesting that each has obtained
16 all required internal approvals and authorizations
17 regarding the Insurance Business Transfer Plan and
18 completed all necessary and appropriate actions
19 relating thereto,
- 20 h. proposal for Plan implementation and administration,
21 including the form of notice to be provided under the
22 Insurance Business Transfer Plan to any policyholder
23 whose policy is part of the subject business,
24

- 1 i. full description as to how such notice shall be
2 provided,
- 3 j. description of any reinsurance arrangements that would
4 pass to the assuming insurer under the Insurance
5 Business Transfer Plan,
- 6 k. description of any guarantees or additional
7 reinsurance that will cover the subject business
8 following the transfer and novation,
- 9 l. a statement describing the assuming insurer's proposed
10 investment policies and any contemplated third-party
11 claims management and administration arrangements,
- 12 m. evidence of approval or nonobjection of the transfer
13 from the chief insurance regulator of the state of the
14 transferring insurer's domicile, and
- 15 n. an opinion report from an independent expert, selected
16 by the Commissioner from a list of at least two
17 nominees submitted jointly by the transferring insurer
18 and the assuming insurer, to assist the Commissioner
19 and the court in connection with their review of the
20 proposed transaction. Should the Commissioner, in his
21 or her sole discretion, reject the nominees, he or she
22 may appoint the independent expert. The report shall
23 provide the following:
24

- 1 (1) a statement of the independent expert's
2 professional qualifications and descriptions of
3 the experience that qualifies him or her as an
4 expert suitable for the engagement,
- 5 (2) whether the independent expert has, or has had,
6 direct or indirect interest in the transferring
7 or assuming insurer or any of their respective
8 affiliates,
- 9 (3) the scope of the report,
- 10 (4) a summary of the terms of the Insurance Business
11 Transfer Plan to the extent relevant to the
12 report,
- 13 (5) a listing and summaries of documents, reports and
14 other material information the independent expert
15 has considered in preparing the report and
16 whether any information requested was not
17 provided,
- 18 (6) the extent to which the independent expert has
19 relied on information provided by and the
20 judgment of others,
- 21 (7) the people on whom the independent expert has
22 relied and why, in his or her opinion, such
23 reliance is reasonable,
24

1 (8) the independent expert's opinion of the likely
2 effects of the Insurance Business Transfer Plan
3 on policyholders and claimants, distinguishing
4 between:

5 (a) transferring policyholders and claimants,

6 (b) policyholders and claimants of the
7 transferring insurer whose policies will not
8 be transferred, and

9 (c) policyholders and claimants of the assuming
10 insurer,

11 (9) for each opinion that the independent expert
12 expresses in the report the facts and
13 circumstances supporting the opinion, and

14 (10) consideration as to whether the security position
15 of policyholders that are affected by the
16 Insurance Business Transfer are materially
17 adversely affected by the transfer.

18 2. The independent expert's opinion report as required by
19 subparagraph n of paragraph 1 of this subsection shall include, but
20 not be limited to, a review of the following:

21 a. analysis of the transferring insurer's actuarial
22 review of reserves for the subject business to
23 determine the reserve adequacy,

24

- 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.

4. The Commissioner shall authorize the submission of the Plan to the court unless he or she finds that the Insurance Business

1 Transfer would have a material adverse impact on the interests of
2 policyholders or claimants that are part of the subject business.

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

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

1 7. The Commissioner's review period in paragraph ~~2~~ 3 of this
2 subsection shall recommence when the modification, supplement,
3 amendment or additional information requested in paragraph 5 of this
4 subsection is received.

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

8 B. Application to the court for approval of the Insurance
9 Business Transfer Plan.

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

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

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

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

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

9 6. Within fifteen (15) days after receipt of the scheduling
10 order, the applicant shall cause notice of the hearing to be
11 provided in accordance with the notice provisions of Section ~~5~~ 1685
12 of this ~~act~~ title. Following the date of distribution of the
13 notice, there shall be a sixty-day comment period.

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

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

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

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

24 C. Approval of the Insurance Business Transfer Plan.

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

5 2. At any time before the court issues an order approving the
6 Insurance Business Transfer Plan, the applicant may withdraw the
7 Insurance Business Transfer Plan without prejudice.

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

- 13 a. order implementation of the Insurance Business
14 Transfer Plan,
- 15 b. order a statutory novation with respect to all
16 policyholders or reinsureds and their respective
17 policies and reinsurance agreements under the subject
18 business, including the extinguishment of all rights
19 of policyholders under policies that are part of the
20 subject business against the transferring insurer, and
21 providing that the transferring insurer shall have no
22 further rights, obligations, or liabilities with
23 respect to such policies, and that the assuming
24 insurer shall have all such rights, obligations, and

- 1 liabilities as if it, ~~instead of the transferring~~
2 ~~insurer,~~ were the original insurer of such policies,
- 3 c. release the transferring insurer from any and all
4 obligations or liabilities under policies that are
5 part of the subject business,
- 6 d. authorize and order the transfer of property or
7 liabilities, including, but not limited to, the ceded
8 reinsurance of transferred policies and contracts on
9 the subject business, notwithstanding any
10 nonassignment provisions in any such reinsurance
11 contracts. The subject business shall vest in and
12 become liabilities of the assuming insurer,
- 13 e. order that the applicant provide notice of the
14 transfer and novation in accordance with the notice
15 provisions in Section ~~5~~ 1685 of this ~~act~~ title, and
- 16 f. make such other provisions with respect to incidental,
17 consequential and supplementary matters as are
18 necessary to assure the Insurance Business Transfer
19 Plan is fully and effectively carried out.

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

- 22 a. deny the petition, or
23 b. provide the applicant leave to file an amended
24 Insurance Business Transfer Plan and petition.

1 5. Nothing in this section in any way effects the right of
2 appeal of any party.

3 D. Implementation of Insurance Business Transfer Plan.

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

6 E. No action taken pursuant to this act is intended to affect
7 the guaranty association coverage which existed on the transferred
8 subject business prior to the implementation of the Insurance
9 Business Transfer Plan.

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

18 SECTION 4. AMENDATORY Section 8, Chapter 232, O.S.L.
19 2018 (36 O.S. Supp. 2018, Section 1688), is amended to read as
20 follows:

21 Section 1688. A. At the time of filing its application with
22 the Insurance Commissioner for review and approval of an Insurance
23 Business Transfer Plan, the applicant shall pay a nonrefundable fee
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1 to the Insurance Department in the amount of Ten Thousand Dollars
2 (\$10,000.00).

3 B. In the Commissioner's discretion, in connection with the
4 Department's participation in the proceedings undertaken pursuant to
5 the Insurance Business Transfer Act, the applicant shall reimburse
6 the Department for any compensation and benefits paid to the
7 personnel of the Department for time spent engaged in the
8 proceedings, including but not limited to examiners, actuaries,
9 attorneys, managers and paraprofessionals.

10 C. The Commissioner may retain independent attorneys,
11 appraisers, actuaries, certified public accountants, or other
12 professionals and specialists to assist Department personnel in
13 connection with the review required by the Insurance Business
14 Transfer Act, the cost of which shall be borne by the applicant.

15 D. The applicant shall pay the expenses of the Department and
16 its authorized consultants incurred in fulfilling their obligations
17 under this act, including the actual expenses of the Department or
18 the expenses and compensation of any consultants retained by the
19 Department.

20 E. The transferring insurer and the assuming insurer shall
21 jointly be obligated to pay any compensation, costs and expenses of
22 the independent expert and any consultants retained by the
23 independent expert and approved by the Department incurred in
24 fulfilling the obligations of the independent expert under this act.

1 Nothing in this act shall be construed to create any duty for the
2 independent expert to any party other than the Department or the
3 Court.

4 F. Failure to pay any of the requisite fees or reimbursements
5 within thirty (30) days of demand shall be grounds for the
6 Commissioner to request that the court dismiss the petition for
7 approval of the Insurance Business Transfer Plan prior to the filing
8 of an implementation order by the court or, if after the filing of
9 an implementation order, the Commissioner may suspend or revoke the
10 assuming insurer's certificate of authority to transact insurance
11 business in this state.

12 SECTION 5. This act shall become effective November 1, 2019.

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