

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL 885

6 By: Paxton

7 COMMITTEE SUBSTITUTE

8 An Act relating to the Insurance Business Transfer  
9 Act; amending Section 2, Chapter 232, O.S.L. 2018 (36  
10 O.S. Supp. 2018, Section 1682), which relates to the  
11 purpose of the act; adding to purpose of act;  
12 amending Section 3, Chapter 232, O.S.L. 2018 (36 O.S.  
13 Supp. 2018, Section 1683), which relates to  
14 definitions; updating statutory references; modifying  
15 definitions; amending Section 6, Chapter 232, O.S.L.  
16 2018 (36 O.S. Supp. 2018, Section 1686), which  
17 relates to application procedures; modifying  
18 information required for insurance business transfer  
19 plans; modifying information required for court  
20 implementation order of plan; retaining certain  
21 coverage in event of insurance business transfer;  
22 classifying transfer plan documents as confidential  
23 and exempt from certain legal actions for certain  
24 time period; classifying transfer plan documents as  
open records after review is complete; amending  
Section 8, Chapter 232, O.S.L. 2018 (36 O.S. Supp.  
2018, Section 1688), which relates to costs;  
assigning certain costs of insurance business  
transfer to certain persons; construing clause; and  
providing an effective date.

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

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

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

24

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

- 1           b. analysis of the financial condition of the  
2           transferring and assuming insurers and the effect the  
3           transfer will have on the financial condition of each  
4           company,  
5           c. review of the plans or proposals the assuming insurer  
6           has with respect to the administration of the policies  
7           subject to the proposed transfer,  
8           d. whether the proposed transfer has a material, adverse  
9           impact on the policyholders and claimants of the  
10          transferring and the assuming insurers,  
11          e. analysis of the assuming insurer's corporate  
12          governance structure to ensure that there is proper  
13          board and management oversight and expertise to manage  
14          the subject business, and  
15          f. any other information that the Commissioner requests  
16          in order to review the Insurance Business Transfer.

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

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

24

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.  
24

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 of~~  
12 ~~this act~~ 1685 of this title. Following the date of distribution of  
13 the 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 of this act~~ 1685 of this  
16 title, and

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

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

23 a. deny the petition, or  
24

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

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

5           D.    Implementation of Insurance Business Transfer Plan.

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

8           E.    No action taken pursuant to this section shall affect the  
9 guaranty fund coverage which existed on the transferred subject  
10 business prior to the implementation of the Insurance Business  
11 Transfer Plan.

12           F.    While an application for an Insurance Business Transfer is  
13 under review by the Commissioner pursuant to this section, all  
14 documents, materials or other information obtained by or disclosed  
15 to the Department, or any person acting on behalf of the Department,  
16 in connection with an application for an Insurance Business  
17 Transfer, shall be given confidential treatment and are not subject  
18 to subpoena or discovery and may not be made public by the  
19 Department, the Commissioner, or any other person. After the review  
20 of the application by the Commissioner is concluded and the  
21 Commissioner has provided the applicant written notice pursuant to  
22 paragraph 8 of subsection A of this section, any documents for which  
23 the applicant has requested confidential treatment or which are not  
24 otherwise confidential shall be open records.

1 SECTION 4. AMENDATORY Section 8, Chapter 232, O.S.L.  
2 2018 (36 O.S. Supp. 2018, Section 1688), is amended to read as  
3 follows:

4 Section 1688. A. At the time of filing its application with  
5 the Insurance Commissioner for review and approval of an Insurance  
6 Business Transfer Plan, the applicant shall pay a nonrefundable fee  
7 to the Insurance Department in the amount of Ten Thousand Dollars  
8 (\$10,000.00).

9 B. In the Commissioner's discretion, in connection with the  
10 Department's participation in the proceedings undertaken pursuant to  
11 the Insurance Business Transfer Act, the applicant shall reimburse  
12 the Department for any compensation and benefits paid to the  
13 personnel of the Department for time spent engaged in the  
14 proceedings, including but not limited to examiners, actuaries,  
15 attorneys, managers and paraprofessionals.

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

21 D. The applicant shall pay the expenses of the Department and  
22 its authorized consultants incurred in fulfilling their obligations  
23 under this act, including the actual expenses of the Department or  
24

1 the expenses and compensation of any consultants retained by the  
2 Department.

3 E. The transferring insurer and the assuming insurer shall  
4 jointly be obligated to pay any compensation, costs and expenses of  
5 the independent expert and any consultants retained by the  
6 independent expert and approved by the Department incurred in  
7 fulfilling the obligations of the independent expert under this act.  
8 Nothing in this act shall be construed to create any duty for the  
9 independent expert to any party other than the Department or the  
10 Court.

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

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

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21 57-1-1835 CB 2/20/2019 9:53:49 AM

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