

1 **SENATE FLOOR VERSION**

2 February 12, 2018

3 **AS AMENDED**

4 SENATE BILL NO. 1101

5 By: Sparks

6 [ insurance - Insurance Business Transfer Act -  
7 purpose - defining terms - jurisdiction - court  
8 actions - rules and procedures - termination of  
9 application - notification - promulgate rules - fees  
10 and expenses - hire certain persons - codification -  
11 effective date ]

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

13 SECTION 1. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1681 of Title 36, unless there  
15 is created a duplication in numbering, reads as follows:

16 This act shall be known and may be cited as the "Insurance  
17 Business Transfer Act".

18 SECTION 2. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 1682 of Title 36, unless there  
20 is created a duplication in numbering, reads as follows:

21 This act is adopted to provide a basis and procedures for the  
22 transfer and statutory novation of policies from a transferring  
23 insurer to an assuming insurer by way of an Insurance Business  
24 Transfer without the affirmative consent of policyholders or  
reinsureds. The novation is effected by court order. This act

1 establishes the requirements for notice and disclosure and standards  
2 and procedures for the approval of the transfer and novation by the  
3 Oklahoma Insurance Commissioner and the District Court of Oklahoma  
4 County pursuant to an Insurance Business Transfer Plan. This act  
5 does not limit or restrict other means of effecting a transfer and  
6 novation.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1683 of Title 36, unless there  
9 is created a duplication in numbering, reads as follows:

10 1. "Affiliate" has the meaning ascribed to such term in Section  
11 1631 of Title 36 of the Oklahoma Statutes.

12 2. "Applicant" means a transferring insurer or reinsurer  
13 applying under Section 6 of this act.

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

19 4. "Court" means the District Court of Oklahoma County,  
20 Oklahoma.

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

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

23 7. "Implementation order" means an order issued by the Court  
24 under Section 6 of this act.

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

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

17           10. "Independent expert" means an impartial person who has no  
18 financial interest in either the assuming insurer or transferring  
19 insurer, has not been employed by or acted as an officer, director,  
20 consultant or other independent contractor for either the assuming  
21 insurer or transferring insurer within the past twelve (12) months  
22 and is receiving no compensation in connection with the transaction  
23 governed by this act other than a fee based on a fixed or hourly  
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1 basis and that is not contingent on the approval or consummation of  
2 an Insurance Business Transfer.

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, 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 long term care, accident, surety, title and annuity business.

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

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

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

1 the transferring insurer on the transferred policies and the  
2 transferring insurer's insurance obligations or risk, or both, under  
3 the transferred policies are extinguished.

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

8 SECTION 4. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1684 of Title 36, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. The court considering applications brought under the  
12 Insurance Business Transfer Act shall have the same jurisdiction as  
13 a court order under Article 19 of this title.

14 B. Venue for all court proceedings under this act shall lie in  
15 the District Court of Oklahoma County, Oklahoma.

16 C. Notwithstanding any other provision of law, the court may  
17 issue any order, process, or judgment that is necessary or  
18 appropriate to carry out the provisions of this act. No provision  
19 of this act shall be construed to preclude the court from, on its  
20 own motion, taking any action or making any determination necessary  
21 or appropriate to enforce or implement court orders or rules, or to  
22 prevent an abuse of power.

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1           SECTION 5.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1685 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Whenever notice is required to be given by the applicant  
5 under the Insurance Business Transfer Act and except as otherwise  
6 permitted or directed by the court or the Commissioner, the  
7 applicant shall, within fifteen (15) days of the event triggering  
8 the requirement, use reasonable efforts to cause transmittal of the  
9 notice:

10           1. By first class mail, postage prepaid to the chief insurance  
11 regulator in each jurisdiction in which the applicant:

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

16           2. By certified first class mail, postage prepaid to the  
17 National Conference of Insurance Guaranty Funds, the National  
18 Organization of Life and Health Insurance Guaranty Associations and  
19 all state insurance guaranty associations for the states in which  
20 the applicant:

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

1           3. To reinsurers of the applicant pursuant to the notice  
2 provisions of the reinsurance agreements applicable to the policies  
3 that are part of the subject business, or where an agreement has no  
4 provision for notice, by internationally recognized delivery  
5 service;

6           4. By United States mail, first class postage prepaid to all  
7 policyholders holding policies that are part of the subject  
8 business, at their last known address as indicated by the records of  
9 the applicant or to the address to which premium notices or other  
10 policy documents are sent. A notice of transfer shall also be sent  
11 to the transferring insurer's agents or brokers of record on the  
12 subject business; and

13           5. By publication in a newspaper of general circulation in the  
14 state in which the applicant has its principal place of business and  
15 in such other publications that the Commissioner requires.

16           B. If notice is given in accordance with this Section, any  
17 orders under this act shall be conclusive with respect to all  
18 intended recipients of the notice, whether or not they receive  
19 actual notice.

20           C. Where this act requires that the applicant provide notice  
21 but the Commissioner has been named receiver of the applicant, the  
22 Commissioner shall provide the required notice.

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1           SECTION 6.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1686 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4           A.   Application Procedure.

5           1.   An Insurance Business Transfer Plan must be filed by the  
6 applicant with the Department for its review and approval. The Plan  
7 must contain the information set forth below or an explanation as to  
8 why the information is not included. The Plan may be supplemented  
9 by other information deemed necessary by the Department:

- 10           a.   the name, address and telephone number of the  
11                transferring insurer and the assuming insurer and  
12                their respective direct and indirect controlling  
13                persons, if any,
- 14           b.   summary of the Insurance Business Transfer Plan,
- 15           c.   identification and description of the subject  
16                business,
- 17           d.   most recent audited financial statements and statutory  
18                annual and quarterly reports of the transferring  
19                insurer and assuming insurer filed with their  
20                domiciliary regulator,
- 21           e.   the most recent actuarial report and opinion that  
22                quantifies the liabilities associated with the subject  
23                business,

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- 1 f. pro-forma financial statements showing the projected  
2 statutory balance sheet, results of operations and  
3 cash flows of the assuming insurer for the three years  
4 following the proposed transfer and novation,
- 5 g. officers' certificates of the transferring insurer and  
6 the assuming insurer attesting that each has obtained  
7 all required internal approvals and authorizations  
8 regarding the Insurance Business Transfer Plan and  
9 completed all necessary and appropriate actions  
10 relating thereto,
- 11 h. proposal for plan implementation and administration,  
12 including the form of notice to be provided under the  
13 Insurance Business Transfer Plan to any policyholder  
14 whose policy is part of the subject business,
- 15 i. full description as to how such notice shall be  
16 provided,
- 17 j. description of any reinsurance arrangements that would  
18 pass to the assuming insurer under the Insurance  
19 Business Transfer Plan,
- 20 k. description of any guarantees or additional  
21 reinsurance that will cover the subject business  
22 following the transfer and novation,  
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- 1           1.    a statement describing the assuming insurer's proposed  
2                   investment policies and any contemplated third-party  
3                   claims management and administration arrangements,  
4           m.    evidence of approval or non-objection of the transfer  
5                   from the chief insurance regulator of the state of the  
6                   transferring insurer's domicile, and  
7           n.    an opinion from an independent expert, engaged by the  
8                   applicant to assist the Department and the court in  
9                   connection with their review of the proposed  
10                  transaction.  The report shall provide the following:  
11                  (1)  a statement of the independent expert's  
12                        professional qualifications and descriptions of  
13                        the experience that makes him or her suitable for  
14                        the engagement,  
15                  (2)  whether the independent expert has, or has had,  
16                        direct or indirect interest in the transferring  
17                        or assuming insurer or any of their respective  
18                        affiliates,  
19                  (3)  the scope of the report,  
20                  (4)  a summary of the terms of the Insurance Business  
21                        Transfer Plan to the extent relevant to the  
22                        report,  
23                  (5)  documents, reports and other material information  
24                        the independent expert has considered in

1 preparing the report and whether any information  
2 requested was not provided,

3 (6) the extent to which the independent expert has  
4 relied on information provided by and the  
5 judgment of others,

6 (7) the people on whom the independent expert has  
7 relied and why, in his opinion, such reliance is  
8 reasonable,

9 (8) the independent expert's opinion of the likely  
10 effects of the Insurance Business Transfer Plan  
11 on policyholders and claimants, distinguishing  
12 between:

13 (a) transferring policyholders and claimants,

14 (b) policyholders and claimants of the  
15 transferring insurer whose policies will not  
16 be transferred, and

17 (c) policyholders and claimants of the assuming  
18 insurer,

19 (9) for each opinion that the independent expert  
20 expresses in the report the facts and  
21 circumstances supporting the opinion, and

22 (10) consideration as to whether the security position  
23 of policyholders that are affected by the  
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1 insurance business transfer are materially  
2 adversely affected by the transfer.

3 2. The Department shall have sixty (60) days from the date of  
4 receipt of the Insurance Business Transfer Plan to review the Plan  
5 to determine if the applicant is authorized to submit it to the  
6 court. The Department may extend the sixty (60) day review period  
7 for an additional thirty (30) business days upon providing written  
8 notice to the applicant prior to the expiration of the sixty (60)  
9 day review period.

10 3. The Department's review shall include, but not be limited  
11 to:

- 12 a. a review of the independent expert report, including  
13 an analysis of the transferring insurer's actuarial  
14 review of reserves for the subject business to  
15 determine the reserve adequacy,
- 16 b. analysis of the financial condition of the  
17 transferring and assuming insurers and the effect the  
18 transfer will have on the financial condition of each  
19 company,
- 20 c. review of the plans or proposals the assuming insurer  
21 has with respect to the administration of the policies  
22 subject to the proposed transfer,

- 1           d.    whether the proposed transfer has a material, adverse  
2                impact on the policyholders and claimants of the  
3                transferring and the assuming insurers,  
4           e.    analysis of the assuming insurer's corporate  
5                governance structure to ensure that there is proper  
6                board and management oversight and expertise to manage  
7                the subject business, and  
8           f.    any other examination and/or analysis that the  
9                Commissioner deems appropriate in order to monitor the  
10              financial solvency of the assuming insurer.

11           4.    The Department shall authorize the submission of the Plan to  
12           the Court unless it finds that the Insurance Business Transfer would  
13           have a material adverse impact on the interests of policyholders or  
14           claimants that are part of the subject business.

15           5.    If the Department determines that the Insurance Business  
16           Transfer would have a material adverse impact on the interests of  
17           policyholders or claimants that are part of the subject business,  
18           the Department shall notify the applicant and specify any  
19           modifications, supplements, or amendments and any additional  
20           information or documentation with respect to the Plan that must be  
21           provided to the Department before the Department will allow the  
22           applicant to proceed with the Court filing.

23           6.    The applicant shall have thirty (30) days from the date the  
24           Department notifies it pursuant to paragraph 5 of this subsection,

1 to file an amended Insurance Business Transfer Plan providing the  
2 modifications, supplements, or amendments and additional information  
3 or documentation as requested by the Department. If necessary the  
4 applicant may request in writing an extension of time of thirty (30)  
5 days. If the applicant does not make an amended filing within the  
6 time period provided for in this paragraph, including any extension  
7 of time granted by the Department, the Insurance Business Transfer  
8 Plan filing will terminate and a subsequent filing by the applicant  
9 will be considered a new filing which shall require compliance with  
10 all provisions of this Act as if the prior filing had never been  
11 made.

12 7. The Department's review period in paragraph 2 of this  
13 subsection shall recommence when the modification, supplement,  
14 amendment or additional information requested in paragraph 5 of this  
15 subsection is received.

16 8. If it determines that the Plan may proceed with the court  
17 filing, the Department shall confirm that fact in writing to the  
18 applicant.

19 B. Application to the court for approval of the Insurance  
20 Business Transfer Plan.

21 1. Within thirty (30) days after notice from the Department  
22 that the applicant may proceed with the Court filing, the applicant  
23 shall apply to the Court for approval of the Insurance Business  
24 Transfer Plan. Upon written request by the applicant, the

1 Department may extend the period for filing an application with the  
2 court for an additional thirty (30) days.

3 2. The applicant shall inform the court of the reasons why it  
4 petitions the Court to find no material adverse impact to  
5 policyholders or claimants affected by the proposed transfer.

6 3. The application shall be in the form of a verified petition  
7 for implementation of the Insurance Business Transfer Plan in the  
8 court. The petition shall include the Insurance Business Transfer  
9 Plan and shall identify documents and witnesses which the applicant  
10 intends to present at a hearing regarding the petition.

11 4. The Department shall be a party to the proceedings before  
12 the court concerning the petition and shall be served with copies of  
13 all filings pursuant to the Rules for District Courts of Oklahoma.  
14 The Department's position in the proceeding shall not be limited by  
15 its initial review of the Plan.

16 5. Following the filing of the petition, the applicant shall  
17 file a motion for a scheduling order setting a hearing on the  
18 petition.

19 6. Within fifteen (15) days after receipt of the scheduling  
20 order, the applicant shall cause notice of the hearing to be  
21 provided in accordance with the notice provisions of Section 5 of  
22 this act. Following the date of distribution of the notice, there  
23 shall be a sixty (60) day comment period.

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

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

3           8. Any person, including by their legal representative, who  
4 considers himself, herself or itself to be adversely affected can  
5 present evidence or comments to the court at the approval hearing.  
6 However, such comment or evidence shall not confer standing on any  
7 person. Discovery is limited to information provided in the Plan.  
8 Any person participating in the approval hearing must follow the  
9 process established by the Court and shall bear his or her own costs  
10 and attorney's fees.

11           C. Approval of the Insurance Business Transfer Plan.

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

16           2. At any time before the court issues an order approving the  
17 Insurance Business Transfer Plan, the applicant may withdraw the  
18 Insurance Business Transfer Plan without prejudice.

19           3. If the court finds that the implementation of the Insurance  
20 Business Transfer Plan would not materially adversely affect the  
21 interests of policyholders or claimants that are part of the subject  
22 business, the court shall enter an implementation order. The  
23 implementation order shall:  
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- 1 a. order implementation of the Insurance Business  
2 Transfer Plan,
- 3 b. order a statutory novation with respect to all  
4 policyholders or reinsureds and their respective  
5 policies and reinsurance agreements under the subject  
6 business, including the extinguishment of all rights  
7 of policyholders under policies that are part of the  
8 subject business against the transferring insurer, and  
9 providing that the transferring insurer shall have no  
10 further rights, obligations, or liabilities with  
11 respect to such policies, and that the assuming  
12 insurer shall have all such rights, obligations, and  
13 liabilities as if it, instead of the transferring  
14 insurer, were the original insurer of such policies,
- 15 c. release the transferring insurer from any and all  
16 obligations or liabilities under policies that are  
17 part of the subject business,
- 18 d. authorize and order the transfer of property or  
19 liabilities, including, but not limited to the  
20 outwards reinsurance of transferred policies and  
21 contracts on the subject business, notwithstanding any  
22 non-assignment provisions in any such reinsurance  
23 contracts. The subject business shall vest in and  
24 become liabilities of the assuming insurer,

1 e. order that the applicant provide notice of the  
2 transfer and novation in accordance with the notice  
3 provisions in Section 5 of this act, and

4 f. make such other provisions with respect to incidental,  
5 consequential and supplementary matters as are  
6 necessary to assure the Insurance Business Transfer  
7 Plan is fully and effectively carried out.

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

10 a. deny the Petition, or

11 b. provide the applicant leave to file an amended  
12 Insurance Business Transfer Plan and Petition.

13 5. Nothing in this section in any way effects the right of  
14 appeal of any party.

15 D. Implementation of Insurance Business Transfer Plan.

16 The Commissioner shall have the authority to promulgate  
17 reasonable rules for the implementation of an Insurance Business  
18 Transfer Plan.

19 SECTION 7. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1687 of Title 36, unless there  
21 is created a duplication in numbering, reads as follows:

22 Insurers subject to this act consent to the jurisdiction of the  
23 Department with regard to ongoing oversight of operations,  
24 management and solvency relating to the transferred business,

1 including the authority of the Department to conduct financial  
2 analysis and examinations.

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1688 of Title 36, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. At the time of application for implementation of an  
7 Insurance Business Transfer Plan, the applicant shall pay a  
8 nonrefundable fee to the Department in the amount of Ten Thousand  
9 Dollars (\$10,000.00) or such lesser amount as the Department shall  
10 deem adequate.

11 B. The Department may retain independent attorneys, appraisers,  
12 actuaries, certified public accountants, or other professionals and  
13 specialists to assist Department personnel in connection with the  
14 review required by this act.

15 C. 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 D. Failure to pay any of these fees shall be grounds for the  
21 Department to request that the court dismiss the petition for  
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1 approval of the Insurance Business Transfer Plan prior to final  
2 order.

3 SECTION 9. This act shall become effective November 1, 2018.

4 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
5 February 12, 2018 - DO PASS AS AMENDED  
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