

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S4/21/21
A Bill

SENATE BILL 203

By: Senator Rapert
By: Representative Lowery

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS INSURANCE BUSINESS
TRANSFER ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS INSURANCE
BUSINESS TRANSFER ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 69, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Arkansas Insurance Business Transfer Act

23-69-501. Title.

This subchapter shall be known and may be cited as the "Arkansas Insurance Business Transfer Act".

23-69-502. Legislative findings – Purpose.

(a) The General Assembly finds that:

(1) There is not a basis or procedure for the transfer and novation of insurance policies from a transferring insurer to an assuming insurer by way of an insurance business transfer without the affirmative consent of policyholders or reinsureds; and

(2) There is a need to provide a basis and procedures for the transfer and novation of insurance policies from a transferring insurer to an assuming insurer by way of an insurance business transfer without the



affirmative consent of policyholders or reinsureds if the transfer and novation is conducted by a court order.

(b)(1) The purpose of this subchapter is to establish the requirements for notice and disclosure and standards and procedures for the approval of a transfer and novation by the Insurance Commissioner and the Pulaski County Circuit Court under an insurance business transfer plan.

(2) However, it is not the purpose of this subchapter to limit or restrict other means of effecting a transfer or novation.

23-69-503. Definitions.

As used in this subchapter:

(1) "Affiliate" means an affiliate as that term is defined in § 23-63-503;

(2) "Applicant" means a transferring insurer or reinsurer that submits an application under § 23-69-506;

(3)(A) "Assuming insurer" means an insurer domiciled in this state that assumes or seeks to assume policies from a transferring insurer under this subchapter.

(B) "Assuming insurer" may include a company established under § 23-63-1601 et seq.;

(4) "Implementation order" means an order issued by the Pulaski County Circuit Court under § 23-69-509;

(5) "Independent expert" means an impartial person who:

(A) Does not have a financial interest in either the transferring insurer or the assuming insurer;

(B) Has not been employed by or acted as an officer, director, consultant, or other independent contractor for either the transferring insurer or the assuming insurer within the past twelve (12) months;

(C) Has not been appointed by the Insurance Commissioner to assist in any capacity in any proceeding;

(D) Has not received any compensation in connection with an insurance business transfer under this subchapter other than a fee based on a fixed or hourly basis that is not contingent on the approval or consummation of the insurance business transfer; and

(E) Has proof of insurance coverage that is satisfactory

to the commissioner;

(6)(A) "Insurance business transfer" means a transfer of insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer.

(B) Once approved, the insurance business transfer shall effect a transfer and novation of the transferred contracts of insurance or reinsurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks, or both, under the contracts, are extinguished;

(7) "Insurance business transfer plan" means the plan submitted to the State Insurance Department to accomplish the transfer and novation under an insurance business transfer, including any associated transfer of assets and rights from or on behalf of the transferring insurer to the assuming insurer;

(8) "Insurer" means an insurance or surety company, including a reinsurance company, and includes a corporation, company, partnership, association, society, order, individual, or aggregation of individuals engaging in, proposing to engage in, or attempting to engage in any kind of insurance or surety business, including the exchanging of reciprocal or inter-insurance contracts between individuals, partnerships, and corporations;

(9) "Policy" means a policy, contract or certificate of insurance, or a contract of reinsurance under which the insurer agrees to assume an obligation or risk, or both, of the policyholder or to make payments on behalf of, or to, the policyholder or its beneficiaries, and includes property, casualty, life, health, and any other line of insurance the commissioner finds is suitable for an insurance business transfer;

(10) "Policyholder" means an insured or a reinsured under a policy that is part of a subject business;

(11) "Subject business" means the policy or policies that are the subject of the insurance business transfer plan;

(12) "Transfer and novation" means the transfer of insurance obligations or risks, or both, of existing or in-force policies from a transferring insurer to an assuming insurer, and is intended to effect a novation of the transferred policies with the result that:

(A) The assuming insurer becomes directly liable to the policyholders of the transferring insurer on the transferred policies; and

(B) The transferring insurer's insurance obligations or risks, or both, under the transferred policies are extinguished; and

(13) "Transferring insurer" means an insurer or reinsurer that transfers and novates or seeks to transfer and novate obligations or risks, or both, under one (1) or more policies to an assuming insurer under an insurance business transfer plan.

23-69-504. Venue.

(a) All court proceedings brought under this subchapter shall be filed in the Pulaski County Circuit Court.

(b) The court may issue any order, process, or judgment that is necessary or appropriate to carry out this subchapter.

(c) This subchapter does not preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of power.

23-69-505. Notice required.

(a) Except as otherwise ordered by the Pulaski County Circuit Court or the Insurance Commissioner, if notice is required to be given by the applicant under this subchapter, the applicant, within fifteen (15) days of the event triggering the requirement, shall cause transmittal of the notice:

(1) By first class mail, postage prepaid, to the chief insurance regulator in each jurisdiction in which the applicant holds or has ever held a certificate of authority, and in which policies that are part of the subject business were issued or where policyholders currently reside;

(2) By certified first class mail, postage prepaid, to the National Conference of Insurance Guaranty Funds, the National Organization of Life and Health Insurance Guaranty Associations, and all state insurance guaranty associations for the states in which the applicant holds or has ever held a certificate of authority, and in which policies that are part of the subject business were issued or where policyholders currently reside;

(3) To reinsurers of the applicant under the notice requirements of the reinsurance agreements applicable to the policies that are part of the

subject business, or if an agreement does not require notice, by an internationally recognized delivery service;

(4)(A) By United States mail, first class postage prepaid, to all policyholders holding policies that are part of the subject business, at their last known address as indicated by the records of the applicant or to the address to which premium notices or other policy documents are sent.

(B) A notice of transfer shall be sent to the transferring insurer's agents or brokers of record on the subject business; and

(5) By publication in a newspaper of general circulation in the state in which the applicant has its principal place of business and in such other publications that the commissioner requires.

(b) If notice is given under subsection (a) of this section, an order under this subchapter shall be conclusive with respect to all intended recipients of the notice, whether or not they receive actual notice.

(c) If the commissioner has been named receiver of the applicant, the commissioner shall provide the required notice under this subchapter.

23-69-506. Application – Insurance business transfer plan.

(a) An applicant shall file an insurance business transfer plan with the Insurance Commissioner for his or her review and approval.

(b) The insurance business transfer plan shall contain the following information or an explanation as to why the information is not included:

(1) The name, address, and telephone number of the transferring insurer and the assuming insurer and their respective direct and indirect controlling persons, if any;

(2) A summary of the insurance business transfer plan;

(3) The identification and description of the subject business;

(4) The most recent audited financial statements and annual and quarterly reports of the transferring insurer and assuming insurer filed with their domiciliary regulator;

(5) The most recent actuarial report and opinion that quantifies the liabilities associated with the subject business;

(6) The pro forma financial statements showing the projected balance sheet, results of operations, and cash flows of the assuming insurer for the three (3) years following the proposed transfer and novation;

(7) Officers' certificates of the transferring insurer and the

assuming insurer attesting that each has obtained all required internal approvals and authorizations regarding the insurance business transfer plan and completed all necessary and appropriate actions as required;

(8) A proposal for implementation and administration of the insurance business transfer plan, including the form of notice to be provided under the insurance business transfer plan to any policyholder whose policy is part of the subject business;

(9) A full description of how the notice described in subdivision (b)(8) of this section shall be provided;

(10) A description of all reinsurance arrangements that would pass to the assuming insurer under the insurance business transfer plan;

(11) A description of any guarantees or additional reinsurance that will cover the subject business following the transfer and novation;

(12) A statement describing the assuming insurer's proposed investment policies and any contemplated third party claims management and administration arrangements;

(13) Evidence of approval or nonobjection of the transfer from the chief insurance regulator of the state of the transferring insurer's domicile;

(14)(A) An opinion report from an independent expert, selected by the commissioner from a list of at least two (2) nominees submitted jointly by the transferring insurer and the assuming insurer, to assist the commissioner and the Pulaski County Circuit Court in the review of the proposed transaction.

(B) If the commissioner, in his or her sole discretion, rejects the nominees described in subdivision (b)(14)(A) of this section, the commissioner may appoint an independent expert; and

(15) Any other information the commissioner deems necessary.

23-69-507. Opinion report – Review requirements.

(a) The opinion report required under § 23-69-506(b)(14) shall provide the following:

(1) A statement of the independent expert's professional qualifications, including a description of the experience that qualifies him or her as an expert suitable for the engagement;

(2) A statement indicating whether or not the independent expert

has, or has had, direct or indirect interest in the transferring insurer or the assuming insurer or any affiliate of the transferring insurer or assuming insurer;

(3) A statement as to the scope of the opinion report;

(4) A summary of the terms of the insurance business transfer plan to the extent relevant to the opinion report;

(5) Documents, reports, and other material information the independent expert has considered in preparing the opinion report and if any information requested has not been provided;

(6) A statement indicating the extent to which the independent expert has relied on the information and judgment of others;

(7) The identities of the individuals on whom the independent expert has relied and a statement as to why, in the opinion of the independent expert, such reliance is reasonable;

(8) A statement of the independent expert's opinion of the likely effects of the insurance business transfer plan on policyholders and claimants, distinguishing between the following:

(A) Transferring policyholders and claimants;

(B) Policyholders and claimants of the transferring insurer whose policies will not be transferred; and

(C) Policyholders and claimants of the assuming insurer;

(9) For each opinion that the independent expert expresses in the opinion report, a statement of the facts and circumstances supporting the opinion; and

(10) A statement as to whether the security position of policyholders that are affected by the insurance business transfer are adversely materially affected by the insurance business transfer.

(b) The independent expert shall include in an opinion report:

(1) An analysis of the transferring insurer's actuarial review of reserves for the subject business to determine the reserve adequacy;

(2) An analysis of the financial condition of the transferring insurer and the assuming insurer and the effect the insurance business transfer will have on the financial condition of each insurer;

(3) A review of the plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed insurance business transfer;

(4) An analysis of whether the proposed insurance business transfer will have an adverse material impact on the policyholders and claimants of the transferring insurer and the assuming insurer;

(5) An 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

(6) Any other information that the Insurance Commissioner requests in order to review the insurance business transfer.

23-69-508. Insurance business transfer plan – Review – Insurance Commissioner.

(a)(1) The Insurance Commissioner shall have sixty (60) business days from the date of receipt of a completed application for an insurance business transfer plan filed under § 23-69-506 to review the insurance business transfer plan to determine if the applicant is authorized to submit it to the Pulaski County Circuit Court.

(2) The commissioner may extend the sixty-day review period for an additional thirty (30) business days.

(b) The commissioner shall authorize the submission of the insurance business transfer plan to the court unless he or she finds that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business.

(c) The commissioner shall not authorize the submission of the insurance business transfer plan to the court unless:

(1) The assuming insurer is licensed in each line of business in each state where the transferring insurer is licensed or the assuming insurer demonstrates an extraordinary circumstance preventing the assuming insurer from obtaining the license or licenses; and

(2) The commissioner determines that the lack of the license or licenses under subdivision (c)(1) of this section would not result in an adverse material impact on the interests of policyholders, contract holders, or reinsurers.

(d) If the commissioner determines that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business, the commissioner shall notify the applicant and specify any modifications,

supplements, or amendments and any additional information or documentation with respect to the insurance business transfer plan that shall be provided to the commissioner before he or she allows the applicant to proceed with the court filing.

(e)(1) The applicant shall have thirty (30) days from the date the commissioner notifies him or her or it under subsection (d) of this section of the need to file an amended insurance business transfer plan providing the modifications, supplements, amendments, or additional information or documentation as requested by the commissioner.

(2) The applicant may request in writing an extension of time of thirty (30) days.

(3) If the applicant does not make an amended filing within the time period provided for in this subsection, including any extension of time granted by the commissioner under subdivision (e)(2) of this section, the insurance business transfer plan filing shall terminate, and a subsequent filing by the applicant shall be considered a new filing that shall require compliance with this subchapter as if the prior filing had never been made.

(f) The commissioner's review period shall recommence when the modification, supplement, amendment, or additional information or documentation is received.

(g) If the commissioner determines that the insurance business transfer plan may proceed with the court filing, the commissioner shall confirm that fact in writing to the applicant.

23-69-509. Insurance business transfer plan – Petition for court approval – Implementation order.

(a)(1) Within thirty (30) days after notice from the Insurance Commissioner that an applicant may proceed with filing the insurance business transfer plan with the Pulaski County Circuit Court, the applicant shall petition the court for approval of the insurance business transfer plan.

(2) Upon written request by the applicant, the commissioner may extend the period for filing a petition with the court for an additional thirty (30) days.

(b) An applicant shall inform the court of the reason for the applicant's petition to the court to approve the insurance business transfer plan on the basis that no adverse material impact to policyholders or

claimants affected by the proposed insurance business transfer will result.

(c)(1) A petition shall be in the form of a verified petition to the court for implementation of the insurance business transfer plan through the court.

(2) The petition shall include the insurance business transfer plan and shall identify any documents and witnesses that the applicant intends to present at a hearing regarding the petition.

(d)(1) The commissioner shall be a party to the proceedings before the court concerning the petition and shall be served with copies of all filings according to the Arkansas Rules of Civil Procedure.

(2) The position of the commissioner in the proceeding shall not be limited by his or her initial review of the insurance business transfer plan.

(e)(1) Following the filing of the petition, an applicant shall file a motion for a scheduling order setting a hearing on the petition.

(2)(A) Within fifteen (15) days after receipt of the scheduling order, the applicant shall cause notice of the hearing to be provided according to § 23-69-505.

(B) Following the date of distribution of the notice, there shall be a comment period of sixty (60) days.

(f) The notice to policyholders shall provide:

(1) The date and time of the approval hearing;

(2) The name, address, and telephone number of the assuming insurer and transferring insurer;

(3) A statement that a policyholder may comment on or object to the transfer and novation;

(4) The procedures and deadline for submitting comments on or objections to the insurance business transfer plan;

(5) A summary of any effect that the transfer and novation will have on the policyholder's rights;

(6) A statement that the assuming insurer is authorized to assume the subject business and that court approval of the insurance business transfer plan shall extinguish all rights of policyholders under policies that are part of the subject business against the transferring insurer;

(7) A statement that a policyholder does not have the opportunity to opt out of or otherwise reject the transfer and novation;

(8) Contact information for the State Insurance Department for the policyholder to obtain further information; and

(9)(A) Information on how to access an electronic copy of the insurance business transfer plan.

(B) If a policyholder is unable to readily access an electronic copy of the insurance business transfer plan, the applicant shall provide a hard copy of the insurance business transfer plan to the policyholder by first class mail.

(g)(1) A person, including his, her, or its legal representative, who or that considers himself, herself, or itself to be adversely affected may present evidence or comments to the court at the approval hearing.

(2) However, the evidence or comments shall not confer standing on any person.

(3) A person participating in the approval hearing shall follow the process established by the court and shall be responsible for his, her, or its own costs and attorney's fees.

(h) After the comment period described in subdivision (e)(2)(B) of this section has ended, the insurance business transfer plan shall be presented by the applicant for approval by the court.

(i) At any time before the court issues an order approving the insurance business transfer plan, the applicant may withdraw the insurance business transfer plan without prejudice.

(j)(1) If the court finds that the implementation of the insurance business transfer plan would not have an adverse material impact on the interests of policyholders or claimants that are part of the subject business, the court shall enter an implementation order.

(2) The implementation order shall:

(A) Order implementation of the insurance business transfer plan;

(B) Order a transfer and novation with respect to all policyholders or reinsureds and their respective policies and reinsurance agreements under the subject business, including:

(i) The extinguishment of all rights of policyholders under policies that are part of the subject business against the transferring insurer;

(ii) Providing that the transferring insurer shall

have no further rights, obligations, or liabilities with respect to such policies; and

(iii) Providing that the assuming insurer shall have all such rights, obligations, and liabilities as if the assuming insurer, instead of the transferring insurer, were the original insurer of such policies;

(C) Release the transferring insurer from all obligations or liabilities under policies that are part of the subject business;

(D)(i) Authorize and order the transfer of property or liabilities, including without limitation the ceded reinsurance of transferred policies and contracts on the subject business.

(ii) The subject business shall vest in and become a liability of the assuming insurer;

(E) Order that the applicant provide notice of the transfer and novation according to § 23-69-505; and

(F) Make any orders with respect to incidental, consequential, and supplementary matters as are necessary to assure the insurance business transfer plan is fully and effectively executed.

(k) If the court finds that the insurance business transfer plan should not be approved, the court by its order may:

(1) Deny the petition; or

(2) Provide the applicant leave to file an amended insurance business transfer plan and petition.

(l) This section does not affect the right of appeal for any party.

23-69-510. Oversight of operations.

Insurers subject to this subchapter consent to the jurisdiction of the Insurance Commissioner with regard to ongoing oversight of operations, management, and solvency relating to the transferred business, including the authority of the commissioner to conduct financial analysis and examinations.

23-69-511. Fees – Reimbursements.

(a) At the time of filing its application with the Insurance Commissioner for review and approval of an insurance business transfer plan, an applicant shall pay a nonrefundable fee to the State Insurance Department in the amount of ten thousand dollars (\$10,000).

(b) In the commissioner's discretion, the department may participate in the proceedings undertaken under this subchapter, and the applicant shall reimburse the department for any compensation and benefits paid to the personnel of the department for time spent engaged in the proceedings, including without limitation examiners, actuaries, attorneys, managers, and paraprofessionals.

(c) The commissioner may retain independent attorneys, appraisers, actuaries, certified public accountants, or other professionals and specialists to assist department personnel in connection with the review required by this subchapter, and the cost shall be borne by the applicant.

(d) The applicant shall pay the expenses of the department and its authorized consultants incurred in fulfilling their obligations under this subchapter, including the actual expenses of the department or the expenses and compensation of any consultants retained by the department.

(e) Failure to pay any of the requisite fees or reimbursements within thirty (30) days of demand shall be grounds for the commissioner to request that the Pulaski County Circuit Court dismiss the petition for approval of the insurance business transfer plan before the filing of an implementation order by the court or, if after the filing of an implementation order, the commissioner may suspend or revoke the assuming insurer's certificate of authority to transact insurance business in this state.

23-69-512. Rules.

The Insurance Commissioner shall promulgate rules to implement this subchapter.

SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

(a) The Insurance Commissioner shall promulgate rules necessary to implement this act.

(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2021; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2021, as soon as practicable after approval under § 10-3-309.

(2) The commissioner shall file the proposed rule with the

Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2021, so that the Legislative Council may consider the rule for approval before January 1, 2021.

/s/Rapert