

By: Cook, Oliverson

H.B. No. 4498

Substitute the following for H.B. No. 4498:

By: Oliverson

C.S.H.B. No. 4498

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the transfer and statutory novation of insurance
3 policies from a transferring insurer to an assuming insurer through
4 an insurance business transfer plan; authorizing fees.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle A, Title 6, Insurance Code, is amended
7 by adding Chapter 806 to read as follows:

8 CHAPTER 806. INSURANCE BUSINESS TRANSFERS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 806.001. DEFINITIONS. In this chapter:

11 (1) "Affiliate" means a person that directly or
12 indirectly through one or more intermediaries controls, is
13 controlled by, or is under common control with a specified person.

14 (2) "Applicant" means an assuming insurer, a
15 transferring insurer, or a reinsurer applying under Subchapter B.

16 (3) "Assuming insurer" means an insurer domiciled in
17 this state that assumes or seeks to assume policies from a
18 transferring insurer under this chapter. An assuming insurer may
19 be a captive insurance company established under Chapter 964.

20 (4) "Implementation order" means an order issued by
21 the court under Section 806.104.

22 (5) "Insurance business transfer" means a transfer and
23 novation by a transferring insurer to an assuming insurer made
24 under this chapter.

1 (6) "Insurance business transfer plan" means the plan
2 submitted to the department to accomplish an insurance business
3 transfer, including any associated transfer of assets and rights
4 from or on behalf of the transferring insurer to the assuming
5 insurer.

6 (7) "Insurer" means an insurance or surety company,
7 including a reinsurance company. The term includes a corporation,
8 company, partnership, association, society, order, individual, or
9 aggregation of individuals engaging in or proposing or attempting
10 to engage in any kind of insurance or surety business, including the
11 exchanging of reciprocal or interinsurance contracts between
12 individuals, partnerships, and corporations.

13 (8) "Policy" means a policy, annuity contract,
14 certificate of insurance, or a contract of reinsurance under which
15 the insurer agrees to assume an obligation, risk, or both of the
16 policyholder or to make payments on behalf of, or to, the
17 policyholder or the policyholder's beneficiaries. The term
18 includes property, casualty, life, health, and any other line of
19 insurance the commissioner finds is suitable for an insurance
20 business transfer.

21 (9) "Policyholder" means an insured or a reinsured
22 under a policy that is part of the subject business.

23 (10) "Subject business" means the policy or policies
24 that are the subject of the insurance business transfer plan.

25 (11) "Transfer and novation" means the transfer of
26 insurance obligations, risks, or both of existing or in-force
27 policies from a transferring insurer to an assuming insurer that is

1 intended to effect a novation of the transferred policies that
2 results in the assuming insurer becoming directly liable to the
3 policyholders of the transferring insurer on the extinguishment of
4 the transferring insurer's insurance obligations, risks, or both
5 under the transferred policies.

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

10 Sec. 806.002. CONSENT TO ONGOING COMMISSIONER OVERSIGHT.
11 An insurer subject to this chapter is considered to consent to the
12 jurisdiction of the commissioner with regard to ongoing oversight
13 of operations, management, and solvency relating to the transferred
14 business, including the authority of the commissioner to conduct
15 financial analysis and examinations.

16 Sec. 806.003. AUTHORITY OF COURT. Notwithstanding any
17 other law, a court may issue an order, process, or judgment that is
18 necessary or appropriate to carry out this chapter. This chapter
19 may not be construed to preclude a court from, on the court's own
20 motion, taking any action or making any determination necessary or
21 appropriate to enforce or implement an order or rule of the court or
22 to prevent an abuse of power.

23 Sec. 806.004. NOTICE REQUIREMENTS. (a) When notice is
24 required to be given by the applicant under this chapter and except
25 as otherwise permitted or directed by a court or the commissioner,
26 the applicant shall provide the notice not later than the 45th day
27 after the date of the event that requires notice:

1 (1) to the chief insurance regulator in each
2 jurisdiction in which:

3 (A) the applicant holds or has ever held a
4 certificate of authority; and

5 (B) policies that are part of the subject
6 business were issued or policyholders currently reside;

7 (2) to the National Conference of Insurance Guaranty
8 Funds, the National Organization of Life and Health Insurance
9 Guaranty Associations, and each state insurance guaranty
10 association for a state in which:

11 (A) the applicant holds or has ever held a
12 certificate of authority; and

13 (B) policies that are part of the subject
14 business were issued or policyholders currently reside;

15 (3) to each reinsurer of the applicant:

16 (A) under the notice provisions of each
17 reinsurance agreement applicable to the policies that are part of
18 the subject business; or

19 (B) if a reinsurance agreement does not have a
20 notice provision, by an internationally recognized delivery
21 service;

22 (4) to each policyholder holding a policy that is part
23 of the subject business, at the policyholder's last known address
24 as indicated by the records of the applicant or to the address to
25 which premium notices or other policy documents are sent, and for a
26 notice of transfer, to the transferring insurer's agents or brokers
27 of record on the subject business; and

1 (5) by publication in:

2 (A) a newspaper of general circulation in the
3 state in which the applicant has the applicant's principal place of
4 business; and

5 (B) each publication required by the
6 commissioner.

7 (b) If notice is provided in accordance with this section,
8 an intended recipient of the notice is considered to have received
9 the notice for purposes of this chapter, regardless of whether the
10 recipient received actual notice, and the intended recipient may
11 not raise notice to challenge an order issued under this chapter.

12 (c) The commissioner shall provide the required notice in
13 accordance with this section on behalf of an applicant for which the
14 commissioner has been named as receiver.

15 (d) Notice under this section may be provided by first-class
16 mail, facsimile, or electronic means.

17 Sec. 806.005. RULEMAKING AUTHORITY. The commissioner may
18 adopt rules consistent with this chapter as necessary to implement
19 this chapter.

20 Sec. 806.006. CONFIDENTIALITY. The status of any part of an
21 application for an insurance business transfer as confidential at
22 the time of application, including any documents, materials,
23 communications, or other information submitted to the commissioner
24 in contemplation of the application, is not affected by the process
25 provided by this chapter.

26 SUBCHAPTER B. INITIAL APPLICATION; COMMISSIONER REVIEW

27 Sec. 806.051. COMMISSIONER AND COURT APPROVAL REQUIRED.

1 After obtaining an independent expert report under Section 806.052,
2 an applicant shall file an insurance business transfer plan with:

3 (1) the commissioner for review and approval under
4 this subchapter; and

5 (2) a court for approval under Subchapter C on
6 receiving the commissioner's approval.

7 Sec. 806.052. INDEPENDENT EXPERT; REPORT. (a) The
8 commissioner shall appoint an independent expert from a list of at
9 least two nominees, submitted jointly by the transferring insurer
10 and the assuming insurer, to assist the commissioner and the court
11 in connection with the commissioner's and the court's review of a
12 proposed insurance business transfer. The commissioner may, in the
13 commissioner's sole discretion, reject the nominees and appoint
14 another person as the independent expert.

15 (b) The independent expert must be an impartial person who:

16 (1) has no financial interest in either the assuming
17 insurer or transferring insurer;

18 (2) has not been employed by or acted as an officer,
19 director, consultant, or other independent contractor for either
20 the assuming insurer or transferring insurer during the preceding
21 12 months;

22 (3) is not appointed by the commissioner to assist in
23 any capacity in an insurer rehabilitation or delinquency
24 proceeding;

25 (4) receives no compensation in connection with the
26 applicable transaction under this chapter, other than a fee based
27 on a fixed or hourly basis that is not contingent on the approval or

1 completion of the insurance business transfer; and

2 (5) provides proof of insurance coverage that is
3 satisfactory to the commissioner.

4 (c) The independent expert shall submit a report to the
5 commissioner in the form and manner prescribed by the commissioner
6 regarding the proposed insurance business transfer. The report
7 must include:

8 (1) a summary of the terms of the insurance business
9 transfer plan to the extent relevant to the independent expert's
10 report;

11 (2) the scope of the independent expert's report;

12 (3) an analysis of the transferring insurer's
13 actuarial review of reserves for the subject business to determine
14 the reserve adequacy;

15 (4) an analysis of the financial conditions of the
16 transferring insurer and the assuming insurer and the effect the
17 transfer will have on the financial condition of each company;

18 (5) a review of the plans or proposals the assuming
19 insurer has with respect to the administration of the policies
20 subject to the transfer;

21 (6) a statement as to whether the transfer has a
22 material adverse impact on the policyholders, reinsurers, and
23 claimants of the transferring insurer and the assuming insurer;

24 (7) an analysis of the assuming insurer's corporate
25 governance structure to ensure that there is proper board and
26 management oversight and expertise to manage the subject business;

27 (8) the independent expert's opinion of the likely

1 effects of the transfer on policyholders, reinsurers, and
2 claimants, distinguishing between:

3 (A) transferring policyholders, reinsurers, and
4 claimants;

5 (B) policyholders, reinsurers, and claimants of
6 the transferring insurer whose policies will not be transferred;
7 and

8 (C) policyholders, reinsurers, and claimants of
9 the assuming insurer;

10 (9) consideration of whether the security positions of
11 policyholders that are affected by the transfer are materially
12 adversely affected by the transfer;

13 (10) a statement of the independent expert's
14 professional qualifications and a description of the experience
15 that qualifies the independent expert as an expert suitable for the
16 appointment;

17 (11) a statement of whether the independent expert
18 has, or has had, a direct or indirect interest in the transferring
19 insurer or the assuming insurer or an affiliate of the transferring
20 insurer or the assuming insurer;

21 (12) a list and summary of each document, report, and
22 other material information the independent expert considered in
23 preparing the report and whether any information requested was not
24 provided;

25 (13) the extent to which the independent expert relied
26 on information provided by or the judgment of another person;

27 (14) each person on whom the independent expert has

1 relied and why, in the independent expert's opinion, that reliance
2 is reasonable;

3 (15) for each opinion that the independent expert
4 expresses in the report, the facts and circumstances supporting the
5 opinion; and

6 (16) any other information the commissioner requests
7 be included in the report for purposes of reviewing the transfer.

8 Sec. 806.053. APPLICATION REQUIREMENTS. (a) An insurance
9 business transfer plan submitted for commissioner approval must
10 include the following information or an explanation of why the
11 information is not included:

12 (1) the name, address, and telephone number and the
13 direct and indirect controlling persons, if any, of the
14 transferring insurer and the assuming insurer;

15 (2) a summary of the plan;

16 (3) identification and description of the subject
17 business;

18 (4) the most recent audited financial statements and
19 statutory annual and quarterly reports of the transferring insurer
20 and the assuming insurer filed with each insurer's domiciliary
21 regulator;

22 (5) the most recent actuarial report and opinion that
23 quantify the liabilities associated with the subject business;

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

1 (7) officers' certificates of the transferring insurer
2 and the assuming insurer attesting that each has obtained all
3 required internal approvals and authorizations regarding the plan
4 and completed all necessary and appropriate actions relating to the
5 plan;

6 (8) a proposal for plan implementation and
7 administration, including the form of notice to be provided under
8 the plan to a policyholder whose policy is part of the subject
9 business;

10 (9) a full description of how notice will be provided;

11 (10) a description of any reinsurance arrangements
12 that would pass to the assuming insurer under the plan;

13 (11) a description of any guarantee or additional
14 reinsurance that will cover the subject business following the
15 transfer and novation;

16 (12) a description of the assuming insurer's proposed
17 investment policies and any contemplated third-party claims
18 management and administration arrangements;

19 (13) a description of how the transferring insurer and
20 the assuming insurer will be licensed for guaranty association
21 coverage purposes;

22 (14) evidence of approval of or non-objection to the
23 transfer from the chief insurance regulator of the state of the
24 transferring insurer's domicile; and

25 (15) the report of the independent expert prepared
26 under Section 806.052.

27 (b) The commissioner may require an insurance business

1 transfer plan submitted under Subsection (a) to include additional
2 information the commissioner considers necessary for the plan's
3 review and approval.

4 Sec. 806.054. COMMISSIONER REVIEW. (a) Not later than the
5 60th business day after the date of receipt of a complete insurance
6 business transfer plan, the commissioner shall review the plan and
7 determine whether the applicant is authorized to submit the plan to
8 a court. The commissioner may extend the review period for an
9 additional 30 business days.

10 (b) The commissioner shall authorize the submission of the
11 insurance business transfer plan to the court unless the
12 commissioner finds that the transfer would have a material adverse
13 impact on the interests of policyholders, reinsurers, or claimants
14 that are part of the subject business.

15 (c) If the commissioner determines that the insurance
16 business transfer would have a material adverse impact on the
17 interests of policyholders, reinsurers, or claimants that are part
18 of the subject business, the commissioner shall notify the
19 applicant and specify any modifications, supplements, amendments,
20 or additional information or documentation with respect to the
21 insurance business transfer plan that the applicant must provide to
22 the commissioner before the commissioner will approve the plan's
23 submission to a court.

24 (d) If the commissioner determines that the insurance
25 business transfer plan may be submitted to a court, the
26 commissioner shall provide that determination in writing to the
27 applicant.

1 Sec. 806.055. CONSEQUENCES OF MATERIAL ADVERSE IMPACT
2 DETERMINATION. (a) Not later than the 30th day after the date the
3 commissioner notifies the applicant of a material adverse impact
4 under Section 806.054, the applicant may file an amended insurance
5 business transfer plan providing the modifications, supplements,
6 amendments, or additional information or documentation requested
7 by the commissioner. The applicant may request in writing an
8 extension of time of an additional 30 days.

9 (b) If the applicant does not make an amended filing within
10 the time period provided by Subsection (a), including any extension
11 of time granted by the commissioner, the insurance business
12 transfer plan filing terminates and a subsequent filing by the
13 applicant:

14 (1) is considered a new filing; and

15 (2) must comply with all provisions of this chapter as
16 if the previous filing had never been made.

17 (c) The commissioner's time for review as provided under
18 Section 806.054 for an amended insurance business transfer plan
19 received under Subsection (a) commences on the date the
20 commissioner receives all modifications, supplements, amendments,
21 or additional information or documentation requested by the
22 commissioner under Section 806.054(c).

23 SUBCHAPTER C. APPLICATION FOR COURT APPROVAL

24 Sec. 806.101. APPLICATION. (a) Not later than the 30th
25 day after the date an applicant receives notice from the
26 commissioner under Section 806.054(d) that the applicant may submit
27 the insurance business transfer plan to a court, the applicant

1 shall file a verified petition with a district court in a county
2 with a population of more than one million seeking approval of the
3 plan. On written request by the applicant, the commissioner may
4 extend the period for filing the petition for an additional 30 days.

5 (b) The applicant's petition must:

6 (1) include the insurance business transfer plan;

7 (2) identify any documents and witnesses that the
8 applicant intends to present at a hearing regarding the petition;
9 and

10 (3) state each reason the applicant asks the court to
11 find no material adverse impact to policyholders, reinsurers, or
12 claimants affected by the proposed insurance business transfer.

13 (c) Not later than the 30th day after the date of filing of
14 the petition, the applicant shall file a request for the court to
15 enter a preliminary scheduling order, which must include a date and
16 time for a status conference. The status conference must occur not
17 later than the 14th day after the date the comment period required
18 by Section 806.102 concludes.

19 (d) The commissioner must be a party to the proceedings
20 before the court concerning a petition filed under this section and
21 shall be served with copies of all filings as required by the Texas
22 Rules of Civil Procedure. The commissioner's position in the
23 proceedings is not limited by the commissioner's initial review of
24 the insurance business transfer plan that is the subject of the
25 petition.

26 Sec. 806.102. NOTICE AND COMMENT PERIOD. (a) Not later
27 than the 45th day after receipt of the preliminary scheduling order

1 under Section 806.101(c), the applicant shall provide notice of the
2 application for court approval of the insurance business transfer
3 plan. The notice commences a comment period that expires on the
4 61st day after the date the notice is provided.

5 (b) The notice provided to policyholders under this section
6 must include:

7 (1) the date and time of the status conference;

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

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

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

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

16 (6) a statement that the assuming insurer is
17 authorized, as provided by this chapter, to assume the subject
18 business and that court approval of the insurance business transfer
19 plan will extinguish all rights of policyholders under policies
20 that are part of the subject business against the transferring
21 insurer;

22 (7) a statement that policyholders will not have the
23 opportunity to opt out of or otherwise reject the transfer and
24 novation;

25 (8) contact information for the department from which
26 the policyholder may obtain additional information; and

27 (9) either:

1 (A) information on how an electronic copy of the
2 insurance business transfer plan may be accessed; or

3 (B) if policyholders are unable to readily access
4 electronic copies, hard copies by first-class mail.

5 Sec. 806.103. PARTICIPATION IN COURT PROCEEDINGS.

6 (a) Only a party to the insurance business transfer plan, or a
7 third party or other person who files a request to provide comments
8 or objections or to be heard in the matter on the basis that the
9 person believes the person will be materially adversely affected by
10 approval and implementation of the plan, may present evidence or
11 comments to the court at a hearing.

12 (b) Participation by a third party does not confer standing
13 as a party on that third party.

14 (c) Each person participating in the hearing shall:

15 (1) follow the process established by the court; and

16 (2) pay the person's own costs and attorney fees.

17 Sec. 806.104. COURT APPROVAL OF PLAN. (a) The applicant
18 shall present the insurance business transfer plan for approval by
19 the court following the expiration of the comment period under
20 Section 806.102.

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

24 (c) If the court finds that the implementation of the
25 insurance business transfer plan would not materially adversely
26 affect the interests of policyholders, reinsurers, or claimants
27 that are part of the subject business, the court shall enter a

1 judgment and implementation order. The judgment and implementation
2 order must:

3 (1) order implementation of the plan;

4 (2) order a statutory novation with respect to all
5 policyholders or reinsured persons and their respective policies
6 and reinsurance agreements under the subject business:

7 (A) extinguishing all rights of policyholders
8 under policies that are part of the subject business against the
9 transferring insurer; and

10 (B) providing that:

11 (i) the transferring insurer has no further
12 rights, obligations, or liabilities with respect to those policies;
13 and

14 (ii) the assuming insurer has all rights,
15 obligations, and liabilities as if the assuming insurer were the
16 original insurer of those policies;

17 (3) release the transferring insurer from all
18 obligations or liabilities under policies that are part of the
19 subject business;

20 (4) authorize and order the transfer of property or
21 liabilities, including the ceded reinsurance of transferred
22 policies and contracts on the subject business, notwithstanding any
23 nonassignment provisions in any reinsurance contract;

24 (5) order the applicant to provide notice of the
25 transfer and novation in accordance with Section 806.004; and

26 (6) make other provisions with respect to incidental,
27 consequential, and supplementary matters as necessary to ensure the

1 plan is fully and effectively carried out.

2 (d) On filing of the court's order under Subsection (c), the
3 subject business vests in and becomes the liabilities of the
4 assuming insurer.

5 Sec. 806.105. COURT DISAPPROVAL OF PLAN. If the court finds
6 that the insurance business transfer plan should not be approved,
7 the court by order may:

8 (1) deny the petition; or

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

11 Sec. 806.106. RIGHT TO APPEAL. This chapter may not be
12 construed to affect a party's right to appeal an order of the court.

13 SUBCHAPTER D. FEES AND COSTS

14 Sec. 806.151. FILING FEE. At the time of filing an
15 application with the commissioner for review and approval of an
16 insurance business transfer plan, an applicant shall pay a
17 nonrefundable fee to the department of \$10,000.

18 Sec. 806.152. COMMISSIONER COSTS. (a) The commissioner
19 may retain independent attorneys, appraisers, actuaries, certified
20 public accountants, authorized consultants, or other professionals
21 and specialists to assist the commissioner in connection with the
22 review of an insurance business transfer plan under this chapter.

23 (b) An applicant shall reimburse the commissioner for any
24 cost incurred under Subsection (a).

25 Sec. 806.153. INDEPENDENT EXPERT COSTS AND FEES. (a) The
26 transferring insurer and the assuming insurer are jointly obligated
27 to pay any compensation, costs, and expenses of the independent

1 expert, and any consultants retained by the independent expert and
2 approved by the commissioner, incurred in fulfilling the
3 obligations of the independent expert under this chapter.

4 (b) This chapter may not be construed to create a duty of the
5 independent expert to any party other than the commissioner or the
6 court.

7 Sec. 806.154. FAILURE TO PAY COSTS OR FEES. (a) A fee or
8 cost provided by this subchapter must be paid not later than the
9 30th day after the date of demand for payment.

10 (b) If a party fails to pay a required fee or cost within the
11 time period described by Subsection (a), the commissioner may:

12 (1) if the court has not filed an implementation
13 order, request that the court dismiss the petition for approval of
14 the insurance business transfer plan; or

15 (2) if the court has filed an implementation order,
16 suspend or revoke the assuming insurer's certificate of authority
17 to transact insurance business in this state.

18 SECTION 2. The changes in law made by this Act apply only to
19 an insurance business transfer under a contract entered into or
20 agreement made on or after the effective date of this Act.

21 SECTION 3. This Act takes effect September 1, 2023.