

## **BILL ANALYSIS**

C.S.H.B. 4498  
By: Cook  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, the most effective option for transferring a block of an insurance business is through the policy novation process, which can be inconsistent across states, cumbersome, time-consuming, and expensive. In most instances it can be nearly impossible to obtain positive consent to a novation from all policyholders, especially on older books of business. Frequently, companies use loss portfolio transfers to transfer blocks of business, meaning that liability remains with the original insurer.

C.S.H.B. 4498 seeks to provide options to address the significant limitations in current methods available to insurers to transfer or assume blocks of insurance business in an efficient and cost-effective manner. The bill establishes a process for the transfer and statutory novation of policies from a transferring insurer to an assuming insurer by way of an insurance business transfer without the affirmative consent of the policyholders or the reinsured. This process involves review by the commissioner of insurance and a district court.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 4498 amends the Insurance Code to set out a process for the transfer and statutory novation of insurance policies from a transferring insurer to an assuming insurer through an insurance business transfer plan. The bill requires an applicant under that process, after obtaining an independent expert report as provided by the bill, to file an insurance business transfer plan with the commissioner of insurance for review and approval. On receiving the commissioner's approval, the applicant must then file the plan with a court for approval. An "applicant" may be an assuming insurer, a transferring insurer, or a reinsurer.

#### **Independent Expert Report**

C.S.H.B. 4498 requires the commissioner to appoint an independent expert from a list of at least two nominees, submitted jointly by the transferring insurer and the assuming insurer, to assist the commissioner and the court in connection with their respective reviews of a proposed insurance business transfer. The bill authorizes the commissioner, in the commissioner's sole discretion, to reject the nominees and appoint another person as the independent expert. The independent expert must be an impartial person who meets the following criteria:

- has no financial interest in either the assuming insurer or transferring insurer;

- has not been employed by or acted as an officer, director, consultant, or other independent contractor for either the assuming insurer or transferring insurer during the preceding 12 months;
- is not appointed by the commissioner to assist in any capacity in an insurer rehabilitation or delinquency proceeding;
- receives no compensation in connection with the applicable transaction, other than a fee based on a fixed or hourly basis that is not contingent on the approval or completion of the insurance business transfer; and
- provides proof of insurance coverage that is satisfactory to the commissioner.

C.S.H.B. 4498 requires the independent expert to submit a report to the commissioner in the form and manner prescribed by the commissioner regarding the proposed insurance business transfer. The report must include the following:

- a summary of the terms of the insurance business transfer plan to the extent relevant to the expert's report;
- the scope of the expert's report;
- an analysis of the transferring insurer's actuarial review of reserves for the subject business to determine the reserve adequacy;
- an analysis of the financial conditions of the transferring insurer and the assuming insurer and the effect the transfer will have on the financial condition of each company;
- a review of the plans or proposals the assuming insurer has with respect to the administration of the policies subject to the transfer;
- a statement as to whether the transfer has a material adverse impact on the policyholders, reinsurers, and claimants of the transferring insurer and the assuming insurer;
- 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;
- the expert's opinion of the likely effects of the transfer on policyholders, reinsurers, and claimants, distinguishing between:
  - transferring policyholders, reinsurers, and claimants;
  - policyholders, reinsurers, and claimants of the transferring insurer whose policies will not be transferred; and
  - policyholders, reinsurers, and claimants of the assuming insurer;
- consideration of whether the security positions of policyholders that are affected by the transfer are materially adversely affected by the transfer;
- a statement of the expert's professional qualifications and a description of the experience that qualifies the expert as an expert suitable for the appointment;
- a statement of whether the expert has, or has had, a direct or indirect interest in the transferring insurer or the assuming insurer or an affiliate of either of those insurers;
- a list and summary of each document, report, and other material information the expert considered in preparing the report and whether any information requested was not provided;
- the extent to which the expert relied on information provided by or the judgment of another person;
- each person on whom the expert has relied and why, in the expert's opinion, that reliance is reasonable;
- for each opinion that the expert expresses in the report, the facts and circumstances supporting the opinion; and
- any other information the commissioner requests be included in the report for purposes of reviewing the transfer.

### **Insurance Business Transfer Plan Requirements**

C.S.H.B. 4498 requires an insurance business transfer plan submitted for commissioner approval to include the following information or an explanation of why the information is not included:

- the name, address, and telephone number and the direct and indirect controlling persons, if any, of the transferring insurer and the assuming insurer;
- a summary of the plan;
- identification and description of the subject business;
- the most recent audited financial statements and statutory annual and quarterly reports of the transferring insurer and assuming insurer filed with each insurer's domiciliary regulator;
- the most recent actuarial report and opinion that quantify the liabilities associated with the subject business;
- pro forma financial statements showing the projected statutory balance sheet, results of operations, and cash flows of the assuming insurer for the three years following the proposed transfer and novation;
- officers' certificates of the transferring insurer and assuming insurer attesting that each has obtained all required internal approvals and authorizations regarding the plan and completed all necessary and appropriate actions relating to the plan;
- a proposal for plan implementation and administration, including the form of notice to be provided under the plan to a policyholder whose policy is part of the subject business;
- a full description of how such notice will be provided;
- a description of any reinsurance arrangements that would pass to the assuming insurer under the plan;
- a description of any guarantee or additional reinsurance that will cover the subject business following the transfer and novation;
- a description of the assuming insurer's proposed investment policies and any contemplated third-party claims management and administration arrangements;
- a description of how the transferring insurer and assuming insurer will be licensed for guaranty association coverage purposes;
- evidence of approval of or non-objection to the transfer from the chief insurance regulator of the state of the transferring insurer's domicile; and
- the independent expert's report.

The bill authorizes the commissioner to require a transfer plan to include additional information the commissioner considers necessary for the plan's review and approval.

### **Commissioner Review**

C.S.H.B. 4498 requires the commissioner, not later than the 60th business day after the date of receipt of a complete insurance business transfer plan, to review the plan and determine whether the applicant is authorized to submit the plan to a court. The commissioner may extend the review period for an additional 30 business days. With respect to such review, the bill provides the following:

- the commissioner must authorize the submission of the plan to the court unless the commissioner finds that the transfer would have a material adverse impact on the interests of policyholders, reinsurers, or claimants that are part of the subject business;
- if the commissioner determines that the transfer would have such an impact, the commissioner must notify the applicant and specify any modifications, supplements, amendments, or additional information or documentation with respect to the plan that the applicant must provide to the commissioner before the commissioner will approve the plan's submission to a court; and
- if the commissioner determines that the plan may be submitted to a court, the commissioner must provide that determination in writing to the applicant.

### **Consequences of Material Adverse Impact Determination**

C.S.H.B. 4498 authorizes an applicant, not later than the 30th day after the date the commissioner notifies the applicant of a material adverse impact, to file an amended insurance business transfer plan providing the modifications, supplements, amendments, or additional information or documentation requested by the commissioner. The applicant may request in

writing an extension of time of an additional 30 days. The bill establishes that, if the applicant does not make an amended filing within the prescribed time period, including any extension of time granted by the commissioner, the plan filing terminates and a subsequent filing by the applicant is considered a new filing and must comply with all of the bill's provisions as if the previous filing had never been made. The bill establishes that the commissioner's time for review for an amended plan commences on the date the commissioner receives all modifications, supplements, amendments, or additional information or documentation requested by the commissioner.

### **Court Approval**

C.S.H.B. 4498 requires an applicant, not later than the 30th day after the date the applicant receives notice from the commissioner that the applicant may submit the insurance business transfer plan to a court, to file a verified petition with a district court in a county with a population of more than one million seeking approval of the plan. The commissioner, on written request by the applicant, may extend the period for filing the petition for an additional 30 days. The bill requires the applicant's petition to include the plan, identify any documents and witnesses that the applicant intends to present at a hearing regarding the petition, and state each reason the applicant asks the court to find no material adverse impact to policyholders, reinsurers, or claimants affected by the proposed transfer.

C.S.H.B. 4498 requires the applicant, not later than the 30th day after the date of filing of the petition, to file a request for the court to enter a preliminary scheduling order, which must include a date and time for a status conference. The bill requires the status conference to occur not later than the 14th day after the date the requisite comment period concludes. The bill requires the commissioner to be a party to the proceedings before the court concerning the petition and to be served with copies of all filings as required by the Texas Rules of Civil Procedure. The bill establishes that the commissioner's position in the proceedings is not limited by the commissioner's initial review of the plan that is the subject of the petition.

C.S.H.B. 4498 requires the applicant, not later than the 45th day after receipt of the preliminary scheduling order, to provide notice of the application for court approval of the plan. The notice commences a comment period that expires on the 61st day after the date the notice is provided. The bill sets out the required content of the notice to policyholders. The bill authorizes only a party to the plan, or a third party or other person who files a request to provide comments or objections or to be heard in the matter on the basis that the person believes the person will be materially adversely affected by approval and implementation of the plan, to present evidence or comments to the court at a hearing. Participation by a third party does not confer standing as a party on that third party. The bill requires each person participating in the hearing to follow the process established by the court and pay the person's own costs and attorney fees.

C.S.H.B. 4498 requires the applicant to present the plan for approval by the court following the expiration of the comment period. The bill authorizes the applicant to withdraw the plan without prejudice at any time before the court issues an order approving the plan. The bill requires the court to enter a judgment and implementation order if the court finds that implementation of the plan would not materially adversely affect the interests of policyholders, reinsurers, or claimants that are part of the subject business. The judgment and implementation order must:

- order implementation of the plan;
- order a statutory novation with respect to all policyholders or reinsured persons and their respective policies and reinsurance agreements under the subject business:
  - extinguishing all rights of policyholders under policies that are part of the subject business against the transferring insurer; and
  - providing that the transferring insurer has no further rights, obligations, or liabilities with respect to those policies and the assuming insurer has all rights, obligations, and liabilities as if the assuming insurer were the original insurer of those policies;

- release the transferring insurer from all obligations or liabilities under policies that are part of the subject business;
- authorize and order the transfer of property or liabilities, including the ceded reinsurance of transferred policies and contracts on the subject business, notwithstanding any nonassignment provisions in any reinsurance contracts;
- order the applicant to provide notice of the transfer and novation in accordance with the bill's provisions; and
- make other provisions with respect to incidental, consequential, and supplementary matters as necessary to ensure the plan is fully and effectively carried out.

The bill establishes that, on filing of the court's order, the subject business vests in and becomes the liabilities of the assuming insurer.

C.S.H.B. 4498 authorizes the court by order, if it finds that the plan should not be approved, to deny the petition or provide the applicant leave to file an amended plan and petition. The bill's provisions may not be construed to affect a party's right to appeal an order of the court.

### **Fees and Costs**

C.S.H.B. 4498 requires an applicant, at the time of filing an application with the commissioner for review and approval of an insurance business transfer plan, to pay a nonrefundable fee to the Texas Department of Insurance (TDI) of \$10,000. The bill authorizes the commissioner to retain independent attorneys, appraisers, actuaries, certified public accountants, authorized consultants, or other professionals and specialists to assist the commissioner in connection with the review of a plan. The bill requires the applicant to reimburse the commissioner for any costs incurred for retaining such professionals.

C.S.H.B. 4498 establishes that the transferring insurer and the assuming insurer are jointly obligated to pay any compensation, costs, and expenses of the independent expert, and any consultants retained by the expert and approved by the commissioner, incurred in fulfilling the obligations of the expert under the bill's provisions. The bill's provisions may not be construed to create a duty of the expert to any party other than the commissioner or the court.

C.S.H.B. 4498 requires a fee or cost provided by the bill's provisions to be paid not later than the 30th day after the date of demand for payment. The bill authorizes the commissioner, if a party fails to pay a required fee or cost within that time period, to do the following:

- if the court has not filed an implementation order, request that the court dismiss the petition for approval of the plan; or
- if the court has filed an implementation order, suspend or revoke the assuming insurer's certificate of authority to transact insurance business in Texas.

### **Ongoing Supervision; Authority of Court**

C.S.H.B. 4498 establishes that an insurer subject to the bill's provisions is considered to consent to the jurisdiction of the 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. The bill authorizes a court to issue an order, process, or judgment that is necessary or appropriate to carry out the bill's provisions, which may not be construed to preclude a court from, on the court's own motion, taking any action or making any determination necessary or appropriate to enforce or implement an order or rule of the court or to prevent an abuse of power.

### **Notice Requirements**

C.S.H.B. 4498 requires an applicant, when notice is required to be given by the applicant under the bill's provisions and except as otherwise permitted or directed by a court or the commissioner, to provide the notice not later than the 45th day after the date of the event that requires notice, as follows:

- 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 policyholders currently reside;
- to the National Conference of Insurance Guaranty Funds, the National Organization of Life and Health Insurance Guaranty Associations, and each state insurance guaranty association for a state 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 policyholders currently reside;
- to each reinsurer of the applicant under the notice provisions of each reinsurance agreement applicable to the policies that are part of the subject business or, if a reinsurance agreement does not have a notice provision, by an internationally recognized delivery service;
- to each policyholder holding a policy that is part of the subject business, at the policyholder's 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, and for a notice of transfer, to the transferring insurer's agents or brokers of record on the subject business; and
- by publication in a newspaper of general circulation in the state in which the applicant has the applicant's principal place of business and each publication required by the commissioner.

If notice is provided in accordance with these provisions, an intended recipient of the notice is considered to have received the notice, regardless of whether the recipient received actual notice, and the intended recipient may not raise notice to challenge an order issued under the bill's provisions. The bill requires the commissioner to provide the required notice on behalf of an applicant for which the commissioner has been named as receiver. Notice may be provided by first-class mail, facsimile, or electronic means.

### **Rulemaking Authority**

C.S.H.B. 4498 authorizes the commissioner to adopt rules consistent with the bill's provisions as necessary for their implementation.

### **Confidentiality**

C.S.H.B. 4498 establishes that the status of any part of an application for an insurance business transfer as confidential at the time of application, including any documents, materials, communications, or other information submitted to the commissioner in contemplation of the application, is not affected by the process provided by the bill's provisions.

### **Definitions**

C.S.H.B. 4498 includes the following definitions:

- "affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a specified person;
- "assuming insurer" means an insurer domiciled in Texas that assumes or seeks to assume policies from a transferring insurer, and an assuming insurer expressly may be a captive insurance company;
- "implementation order" means an order issued by the court under the bill's provisions to implement an insurance business transfer plan;
- "insurance business transfer" means a transfer and novation by a transferring insurer to an assuming insurer made under the bill's provisions;
- "insurance business transfer plan" means the plan submitted to accomplish an insurance business transfer, including any associated transfer of assets and rights from or on behalf of the transferring insurer to the assuming insurer;
- "insurer" means an insurance or surety company, including a reinsurance company, and the term includes a corporation, company, partnership, association, society, order,

individual, or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;

- "policy" means a policy, annuity contract, certificate of insurance, or a contract of reinsurance under which the insurer agrees to assume an obligation, risk, or both of the policyholder or to make payments on behalf of, or to, the policyholder or the policyholder's beneficiaries, and the term includes property, casualty, life, health, and any other line of insurance the commissioner finds is suitable for an insurance business transfer;
- "policyholder" means an insured or a reinsured under a policy that is part of the subject business;
- "subject business" means the policy or policies that are the subject of the insurance business transfer plan;
- "transfer and novation" means the transfer of insurance obligations, risks, or both of existing or in-force policies from a transferring insurer to an assuming insurer that is intended to effect a novation of the transferred policies that results in the assuming insurer becoming directly liable to the policyholders of the transferring insurer on the extinguishment of the transferring insurer's insurance obligations, risks, or both under the transferred policies; and
- "transferring insurer" means an insurer or reinsurer that transfers and novates or seeks to transfer and novate obligations, risks, or both under one or more policies to an assuming insurer under an insurance business transfer plan.

### **Applicability**

C.S.H.B. 4498 applies only to an insurance business transfer under a contract entered into or agreement made on or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4498 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits provisions from the introduced that established a short title for the bill and the purposes of the bill's provisions.

Whereas the substitute includes assuming insurers, transferring insurers, and reinsurers in the definition of "applicant," the introduced included only transferring insurers and reinsurers. Additionally, the substitute revises the definition of "insurance business transfer" established in the introduced to clarify that the transfer and novation is by a transferring insurer to an assuming insurer.

While both the introduced and substitute provide for the inclusion of an independent expert's report in an insurance business transfer plan, the substitute also includes a requirement that was not in the introduced for the independent expert to submit a report to the commissioner in the form and manner prescribed by the commissioner. The substitute specifies that the applicant files the plan with the commissioner for review and approval after obtaining the independent expert's report, whereas the introduced did not.

Both the introduced and the substitute require an insurance business transfer plan to include a description of how the transferring insurer and the assuming insurer will be licensed for guaranty

association coverage purposes. However, the substitute omits language included in the introduced that specified certain information to be included in that description.

The substitute changes the court with which an applicant files a verified petition seeking approval of an insurance business transfer plan from a district court in a county with a population of more than 250,000, as in the introduced, to a district court in a county with a population of more than one million.

Both the introduced and the substitute require an applicant that files a verified petition with a court seeking approval of an insurance business transfer plan to file a request for the court to enter a preliminary scheduling order, but the substitute includes the following additional provisions that were not in the introduced:

- a deadline for filing that request;
- a requirement for the preliminary scheduling order to include a date and time for a status conference; and
- a deadline for holding the status conference.

Whereas the introduced required an applicant to provide notice of the court hearing, the substitute requires the applicant to provide notice of the application for court approval of the insurance business transfer plan. The substitute changes the deadline for the applicant to provide such notice from within 15 days after receipt of the scheduling order, as in the introduced, to not later than the 45th day after receipt of the preliminary scheduling order. The substitute replaces the introduced version's requirement for the notice to policyholders to include the date and time of the approval hearing with a requirement for the notice to include the date and time of the status conference.

The substitute changes the general deadline for an applicant to provide notice required by the bill from within 15 days of the event triggering the requirement, as in the introduced, to not later than the 45th day after the date of the event requiring notice.

Whereas the introduced established that any person, including by their legal representative, who considers themselves to be adversely affected can present evidence or comment to the court at the approval hearing, the substitute authorizes a party to the plan, or a third party or other person who files a request to provide comments or objections or to be heard in the matter on the basis that the person believes the person will be materially adversely affected by approval and implementation of the plan to present evidence or comments to the court at a hearing.

Whereas the introduced required the commissioner to promulgate rules that are consistent with the bill's provisions and prohibited the approval of plans unless and until such regulations are promulgated, the substitute authorizes the commissioner to adopt rules consistent with the bill's provisions as necessary for their implementation.

The substitute sets the amount of the nonrefundable filing fee an applicant must pay TDI at \$10,000, whereas the introduced did not specify the amount of the fee.

The bill changes from TDI, as in the introduced, to the commissioner the entity that approves consultants who are retained by the independent expert and to whom the transferring and assuming insurers are obligated to pay compensation.

Whereas the introduced established that the bill's provisions apply to civil actions commenced on or after September 1, 2023, the substitute establishes that the bill's provisions apply only to an insurance business transfer under a contract entered into or agreement made on or after the bill's effective date.