88R24335 JES-F

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

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

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

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

CHAPTER 806.  INSURANCE BUSINESS TRANSFERS

SUBCHAPTER A.  GENERAL PROVISIONS

Sec. 806.001.  DEFINITIONS. In this chapter:

(1)  "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.

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

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

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

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

(6)  "Insurance business transfer plan" means the plan submitted to the department 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.

(7)  "Insurer" means an insurance or surety company, including a reinsurance company. 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.

(8)  "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. The term includes property, casualty, life, health, and any other line of insurance the commissioner finds is suitable for an insurance business transfer.

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

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

(11)  "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.

(12)  "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.

Sec. 806.002.  CONSENT TO ONGOING COMMISSIONER OVERSIGHT. An insurer subject to this chapter 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.

Sec. 806.003.  AUTHORITY OF COURT. Notwithstanding any other law, a court may issue an order, process, or judgment that is necessary or appropriate to carry out this chapter. This chapter 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.

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

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

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

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

(2)  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:

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

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

(3)  to each reinsurer of the applicant:

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

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

(4)  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

(5)  by publication in:

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

(B)  each publication required by the commissioner.

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

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

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

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

Sec. 806.006.  CONFIDENTIALITY. 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 this chapter.

SUBCHAPTER B.  INITIAL APPLICATION; COMMISSIONER REVIEW

Sec. 806.051.  COMMISSIONER AND COURT APPROVAL REQUIRED. After obtaining an independent expert report under Section 806.052, an applicant shall file an insurance business transfer plan with:

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

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

Sec. 806.052.  INDEPENDENT EXPERT; REPORT. (a)  The commissioner shall 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 the commissioner's and the court's review of a proposed insurance business transfer. The commissioner may, in the commissioner's sole discretion, reject the nominees and appoint another person as the independent expert.

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

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

(2)  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;

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

(4)  receives no compensation in connection with the applicable transaction under this chapter, 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

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

(c)  The independent expert shall 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:

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

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

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

(4)  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;

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

(6)  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;

(7)  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;

(8)  the independent expert's opinion of the likely effects of the transfer on policyholders, reinsurers, and claimants, distinguishing between:

(A)  transferring policyholders, reinsurers, and claimants;

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

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

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

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

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

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

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

(14)  each person on whom the independent expert has relied and why, in the independent expert's opinion, that reliance is reasonable;

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

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

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

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

(2)  a summary of the plan;

(3)  identification and description of the subject business;

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

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

(6)  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;

(7)  officers' certificates of the transferring insurer and the 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;

(8)  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;

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

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

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

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

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

(14)  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

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

(b)  The commissioner may require an insurance business transfer plan submitted under Subsection (a) to include additional information the commissioner considers necessary for the plan's review and approval.

Sec. 806.054.  COMMISSIONER REVIEW. (a)  Not later than the 60th business day after the date of receipt of a complete insurance business transfer plan, the commissioner shall 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.

(b)  The commissioner shall authorize the submission of the insurance business transfer 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.

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

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

Sec. 806.055.  CONSEQUENCES OF MATERIAL ADVERSE IMPACT DETERMINATION. (a)  Not later than the 30th day after the date the commissioner notifies the applicant of a material adverse impact under Section 806.054, the applicant may 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.

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

(1)  is considered a new filing; and

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

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

SUBCHAPTER C. APPLICATION FOR COURT APPROVAL

Sec. 806.101.  APPLICATION. (a)  Not later than the 30th day after the date an applicant receives notice from the commissioner under Section 806.054(d) that the applicant may submit the insurance business transfer plan to a court, the applicant shall file a verified petition with a district court in a county with a population of more than one million seeking approval of the plan. On written request by the applicant, the commissioner may extend the period for filing the petition for an additional 30 days.

(b)  The applicant's petition must:

(1)  include the insurance business transfer plan;

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

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

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

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

Sec. 806.102.  NOTICE AND COMMENT PERIOD. (a)  Not later than the 45th day after receipt of the preliminary scheduling order under Section 806.101(c), the applicant shall provide notice of the application for court approval of the insurance business transfer plan. The notice commences a comment period that expires on the 61st day after the date the notice is provided.

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

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

(2)  the name, address, and telephone number of the assuming insurer and the 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 or objections on 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, as provided by this chapter, to assume the subject business and that court approval of the insurance business transfer plan will extinguish all rights of policyholders under policies that are part of the subject business against the transferring insurer;

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

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

(9)  either:

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

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

Sec. 806.103.  PARTICIPATION IN COURT PROCEEDINGS. (a)  Only a party to the insurance business transfer 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, may present evidence or comments to the court at a hearing.

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

(c)  Each person participating in the hearing shall:

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

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

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

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

(c)  If the court finds that the implementation of the insurance business transfer plan would not materially adversely affect the interests of policyholders, reinsurers, or claimants that are part of the subject business, the court shall enter a judgment and implementation order. The judgment and implementation order must:

(1)  order implementation of the plan;

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

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

(B)  providing that:

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

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

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

(4)  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 contract;

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

(6)  make other provisions with respect to incidental, consequential, and supplementary matters as necessary to ensure the plan is fully and effectively carried out.

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

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

(1)  deny the petition; or

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

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

SUBCHAPTER D.  FEES AND COSTS

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

Sec. 806.152.  COMMISSIONER COSTS. (a)  The commissioner may 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 an insurance business transfer plan under this chapter.

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

Sec. 806.153.  INDEPENDENT EXPERT COSTS AND FEES. (a)  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 independent expert and approved by the commissioner, incurred in fulfilling the obligations of the independent expert under this chapter.

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

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

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

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

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

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

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