

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 606

By: Sparks

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5
6 AS INTRODUCED

7 An Act relating to run-off insurance; defining terms;
8 requiring notice in certain situations; providing for
9 terms of notice; authorizing applications for
10 commutation plans; specifying terms of procedure for
11 authorizing a commutation plan; requiring
12 implementation order in certain situations;
13 specifying body of law applicable to commutation
14 plans; requiring notification of Commissioner upon
15 completion of commutation plan; requiring
16 Commissioner to file certain order; specifying terms
17 of certain order; authorizing the Commissioner to
18 modify a commutation plan in certain situations;
19 authorizing guaranty funds to intervene in certain
20 proceedings; authorizing Commissioner to apply to be
21 named statutory receiver of certain applicants;
22 authorizing Commissioner to request proceeding be
23 converted to rehabilitation or liquidation;
24 authorizing court to convert to rehabilitation or
liquidation in certain circumstances; authorizing
board of directors control over applicant in certain
situations; requiring an application fee; specifying
certain additional fees for run-off insurers;
authorizing the Commissioner to asses certain annual
fees by a certain date; requiring certain insurers to
pay certain fees; requiring assessments be in
additional to other applicable taxes and fees;
exempting run-off insurers from certain fees;
defining scope of fee assessment; authorizing
Commissioner to promulgate rules; prohibiting
Department from implementing certain sections of act
until rules promulgated; providing for codification;
and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1941 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 For the purpose of this act:

6 1. "Applicant" means a commercial run-off insurer applying
7 under Section 1943 of Title 36 of the Oklahoma Statutes;

8 2. "Assessment deficit" means the amount that the assessment
9 for the previous year under Section 1944 of Title 36 of the Oklahoma
10 Statutes is less than, and "assessment surplus" is the amount that
11 the assessment for the previous year exceeds:

12 a. the run-off insurer's proportionate share of
13 regulatory expenditure for the previous year, if the
14 run-off insurer was domiciled in Oklahoma on March 15
15 of the previous year, or

16 b. the redomestication expenditure for the previous year
17 attributable to the run-off insurer, if the run-off
18 insurer was not domiciled in Oklahoma on March 15 of
19 the previous year;

20 3. "Assumption policyholder" means a policyholder whose policy
21 is reinsured under an assumption reinsurance agreement between the
22 applicant and a reinsurer;

23 4. "Assumption reinsurance agreement" means any contract which
24 transfers insurance obligations and/or risks of existing or in-force

1 contracts of insurance from a transferring insurer to an assuming
2 insurer and is intended to effect a novation of the transferred
3 contract of insurance with the result that the assuming insurer
4 becomes directly liable to the policyholders of the transferring
5 insurer and the transferring insurer's insurance obligations and/or
6 risks under the contracts are extinguished, subject to the
7 following:

- 8 a. the agreement may be conditioned upon the
9 Commissioner's entry of an implementation order, and
- 10 b. if any policy subject to the agreement is protected
11 through a guaranty association, then the assuming
12 insurer must have been and be licensed, and must have
13 been and be a member of the guaranty association, in
14 all states known to the applicant in which either:
 - 15 (1) any property covered under the policy has a
16 permanent situs, or
 - 17 (2) the policyholder resided while the policy was in
18 force;

19 5. "Class of creditors" means:

- 20 a. all voting policyholders, including those without
21 known claims,
- 22 b. voting creditors, other than policyholders, or

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1 c. any separate class of creditors as the Commissioner
2 may in his or her discretion determine should approve
3 the commutation plan;

4 6. "Commercial run-off insurer" means:

5 a. a run-off insurer domiciled in Oklahoma whose
6 business, excluding all business subject to an
7 assumption reinsurance agreement, includes only the
8 reinsuring of any line(s) of business other than life
9 and/or the insuring of any line(s) of business other
10 than life, workers' compensation, and personal lines
11 insurance, or

12 b. an Oklahoma domestic insurance company meeting the
13 requirements of subparagraph a of this paragraph and
14 formed or re-activated for the sole purpose of
15 entering into a voluntary restructuring under this act
16 and whose liabilities consist of commercial
17 liabilities transferred to said company with the
18 approval of the Commissioner and pursuant to the
19 regulations issued by the Department under this act.
20 The amount of the commercial liabilities transferred
21 must be less than or equal to the amount of assets
22 transferred to the newly formed or re-activated
23 company;

24 7. "Commissioner" means the Insurance Commissioner of Oklahoma;

1 8. "Commutation plan" means a plan for extinguishing the
2 outstanding liabilities of a commercial run-off insurer;

3 9. "Creditor" means:

4 a. any person that has a claim against the applicant, or

5 b. a policyholder other than an assumption policyholder;

6 10. "Department" means the Oklahoma Insurance Department;

7 11. "Guaranty association" means the Oklahoma Property and
8 Casualty Insurance Guaranty Association created by the Oklahoma

9 Property and Casualty Insurance Guaranty Association Act, Article

10 20A of Title 36 of the Oklahoma Statutes, and the Oklahoma Life and

11 Health Insurance Guaranty Association, created by the Oklahoma Life

12 and Health Insurance Guaranty Association Act, Article 20B of Title

13 36 of the Oklahoma Statutes, and any other similar entity now or

14 after this created by the legislature of this state for the payment

15 of claims of insolvent insurers. "Foreign guaranty association"

16 means any similar entities now in existence in or after this created

17 by the legislature of any other state;

18 12. "Implementation order" means an order under subsection C of
19 Section 1943 of Title 36 of the Oklahoma Statutes;

20 13. "Insurer" has the meaning given in Section 1901 of Title 36
21 of the Oklahoma Statutes;

22 14. "Person" has the meaning given in Section 104 of Title 36
23 of the Oklahoma Statutes and any similar entity or any combination
24 acting in concert;

- 1 15. "Personal lines insurance" means insurance issued for
2 personal, family, or household purposes;
- 3 16. "Policy" means a contract of insurance or a contract of
4 reinsurance;
- 5 17. "Policyholder" means an insured or a reinsured of the
6 insurer;
- 7 18. "Proportionate share" means, for a particular run-off
8 insurer as of December 31 of the previous year, the ratio of:
- 9 a. the gross assets of that run-off insurer, to
10 b. the gross assets of all run-off insurers, other than
11 those that were not domiciled in Oklahoma on March 15
12 of that calendar year;
- 13 19. "Redomestication expenditure" means, for any calendar year:
- 14 a. the amount that the Department's expenditures
15 attributable to the regulation of run-off insurers
16 increases as a result of any run-off insurer
17 redomiciling to Oklahoma on or after March 15 of that
18 year, less
19 b. filing fees, examination costs, and any other fees in
20 relation to insurance regulation in this state paid to
21 this state by run-off insurers that redomiciled to
22 Oklahoma on or after March 15 of that year, but
23 excluding any premium taxes;
- 24 20. "Regulatory expenditure" means, for any calendar year:

- 1 a. the amount of the Department's expenditures
2 attributable to the regulation of run-off insurers
3 domiciled in Oklahoma on March 15 of that year, less
4 b. filing fees, examination costs, and any other fees in
5 relation to insurance regulation in this state paid to
6 this state by run-off insurers domiciled in Oklahoma
7 on March 15 of that year, but excluding any premium
8 taxes;

9 21. "Run-off insurer" means an insurer that:

- 10 a. is domiciled in Oklahoma,
11 b. has liabilities under policies for property and
12 casualty lines of business,
13 c. has ceased underwriting new business, and
14 d. is only renewing ongoing business to the extent
15 required by law or by contract.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1942 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Wherever in this chapter notice is required, the applicant
20 shall, within ten (10) days of the event triggering the requirement,
21 cause transmittal of the notice:

22 1. By first class mail and facsimile to the insurance regulator
23 in each jurisdiction in which the applicant is doing business;
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1 2. By first class mail to the national conference of insurance
2 guaranty funds and all guaranty associations for the states in which
3 the applicant is doing business;

4 3. Pursuant to the notice provisions of reinsurance agreements
5 or, where an agreement has no provision for notice, by first class
6 mail to all reinsures of the applicant;

7 4. By first class mail to all insurance agents or insurance
8 producers of the applicant;

9 5. By first class mail to all persons known or reasonably
10 expected to have claims against the applicant including all
11 policyholders, at their last known address as indicated by the
12 records of the applicant;

13 6. By first class mail to federal, state, and local government
14 agencies and instrumentalities as their interests may arise; and

15 7. By publication in a newspaper of general circulation in the
16 state in which the applicant has its principal place of business and
17 in any other locations that the Commissioner deems appropriate.

18 B. If notice is given in accordance with this section, any
19 orders under this act shall be conclusive with respect to all
20 claimants and policyholders, whether or not they received notice.

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

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1943 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Application. Any commercial run-off insurer may apply to
5 the Commissioner for an order implementing a commutation plan.

6 B. Procedure.

7 1. The applicant shall give notice of the application and
8 proposed commutation plan.

9 2. All creditors shall be given the opportunity to vote on the
10 plan.

11 3. All creditors, assumption policyholders, reinsurers, and
12 guaranty associations shall be provided with access to the same
13 information relating to the proposed plan and shall be given the
14 opportunity to file comments or objections with the Commissioner.

15 4. Approval of a commutation plan requires consent of:

16 a. fifty percent (50%) of each class of creditors, and

17 b. the holders of seventy-five percent (75%) in value of
18 the liabilities owed to each class of creditors.

19 C. Implementation order.

20 1. The Commissioner shall enter an implementation order if:

21 a. the plan is approved under paragraph 4 of subsection B
22 of this section, and

23 b. the Commissioner determines that implementation of the
24 commutation plan would not materially adversely affect

1 either the interests of objecting creditors or the
2 interests of assumption policyholders.

3 2. The implementation order shall:

4 a. order implementation of the commutation plan,

5 b. subject to any limitations in the commutation plan,

6 enjoin all litigation in all jurisdictions between the
7 applicant and creditors other than with the leave of
8 the Commissioner,

9 c. require all creditors to submit information requested
10 by the bar date specified in the plan,

11 d. require that upon a noticed application, the applicant
12 obtain Commissioner approval before making any
13 payments to creditors other than, to the extent
14 permitted under the commutation plan, payments in the
15 ordinary course of business, this approval to be based
16 upon a showing that the applicant's assets exceed the
17 payments required under the terms of the commutation
18 plan as determined based upon the information
19 submitted by creditors under subparagraph c of this
20 paragraph,

21 e. release the applicant of all obligations to its
22 creditors upon payment of the amounts specified in the
23 commutation plan,

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1 f. require quarterly reports from the applicant to the
2 Commissioner regarding progress in implementing the
3 plan, and

4 g. be binding upon the applicant and upon all creditors
5 and owners of the applicant, whether or not a
6 particular creditor or owner is affected by the
7 commutation plan or has accepted it or has filed any
8 information on or before the bar date, and whether or
9 not a creditor or owner ultimately receives any
10 payments under the plan.

11 3. The applicant shall give notice of entry of the order.

12 D. Applicable law and procedure with respect to dispute
13 resolution procedures.

14 1. Any dispute resolution procedure in any commutation plan
15 brought by a ceding insurance creditor to challenge the value of its
16 claim assessed in any commutation plan will be consistent with the
17 provisions of title 9, United States code;

18 2. The adjudicator and the court, if applicable, hearing any
19 appeal from an adjudication proceeding where the ceding insurance
20 creditor challenges the value of its claim assessed by the applicant
21 in its commutation plan, shall:

22 a. not attempt to enforce a reinsurance contract on terms
23 different than those set forth in the reinsurance
24 contract,

- 1 b. not apply the laws of Oklahoma to reinsurance
2 agreements of ceding insurers not domiciled in
3 Oklahoma unless the reinsurance contract provides that
4 Oklahoma law shall apply,
5 c. apply the law applicable to the underlying contract
6 between the ceding insurer and the applicant or, if
7 the underlying reinsurance contract has no choice of
8 law provision, the law of the state of domicile of the
9 ceding insurer shall apply.

10 E. Order of dissolution or discharge.

11 1. Upon completion of the commutation plan, the applicant shall
12 advise the Commissioner.

13 2. The Commissioner shall then enter an order that:

- 14 a. is effective upon filing with the Commissioner proof
15 that the applicant has provided notice of entry of the
16 order,
17 b. transfers those liabilities subject to an assumption
18 reinsurance agreement to the assumption reinsurer,
19 thereby notating the original policy by substituting
20 the assumption reinsurer for the applicant and
21 releasing the applicant of any liability relating to
22 the transferred liabilities,
23 c. assigns each assumption reinsurer the benefit of
24 reinsurance on transferred liabilities, except that

1 the assignment shall only be effective upon the
2 consent of the reinsurer if either:

- 3 (1) the reinsurance contract requires that consent,
- 4 or
- 5 (2) the consent would otherwise be required under
- 6 applicable law, and

7 d. either:

- 8 (1) the applicant be discharged from the proceeding
- 9 without any liabilities, or
- 10 (2) the applicant be dissolved.

11 3. The applicant shall provide notice of entry of the order.

12 F. Reinsurance. Nothing in this act shall be construed as
13 authorizing the applicant, or any other entity, to compel payment
14 from a reinsurer on the basis of estimated incurred but not reported
15 losses or loss expenses, or case reserves for unpaid losses and loss
16 expenses.

17 G. Modifications to plan. After provision of notice and an
18 opportunity to object, and upon a showing that some material factor
19 in approving the plan has changed, the Commissioner may modify or
20 change a commutation plan, except that upon entry of an order under
21 paragraph 2 of subsection E of this section, there shall be no
22 recourse against the applicant's owners absent a showing of fraud.

23 H. Role of guaranty funds; relationship to
24 rehabilitation/liquidation statutes.

1 1. The guaranty funds shall have the right to intervene in any
2 and all proceedings under this section; provided, that
3 notwithstanding any provision of Title 36 of the Oklahoma Statutes,
4 any action taken by a commercial run-off insurer to restructure
5 pursuant to this act, including the formation or re-activation of an
6 insurance company for the sole purpose of entering into a voluntary
7 restructuring shall not affect the guaranty fund coverage existing
8 on the business of such commercial run-off insurer prior to the
9 taking of such action.

10 2. If, at any time, the conditions for placing an insurer in
11 rehabilitation or liquidation specified in Article 19 of Title 36 of
12 the Oklahoma Statutes exist, the Commissioner may make application
13 to the court to be named statutory receiver of the applicant
14 pursuant to the procedure set forth in Section 1903 of Title 36 of
15 the Oklahoma Statutes.

16 3. If no implementation order has been entered, then upon being
17 named receiver, the Commissioner may request, and if requested, the
18 court shall order, that the proceeding under this act be converted
19 to a rehabilitation or liquidation pursuant to Article 19 of Title
20 36 of the Oklahoma Statutes If an implementation order has already
21 been entered, then the court may order a conversion upon a showing
22 that some material factor in approving the original order has
23 changed.

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1 4. The court may enter an order naming the Commissioner as
2 receiver only upon finding either that one or more grounds for
3 rehabilitation or liquidation specified in Article 19 of Title 36 of
4 the Oklahoma Statutes exist or that the applicant has materially
5 failed to follow the commutation plan or any other Commissioner
6 instructions.

7 5. Unless and until the Commissioner is named receiver, the
8 board of directors or other controlling body of the applicant shall
9 remain in control of the applicant.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1944 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Application fee. Upon application to the Commissioner
14 pursuant to Section 1943 of Title 36 of the Oklahoma Statutes, the
15 applicant shall pay a fee to the Department in the amount of Ten
16 Thousand Dollars (\$10,000.00).

17 1. In connection with the Departments' participation in the
18 proceedings undertaken pursuant to Section 1943 of Title 36 of the
19 Oklahoma Statutes, the applicant shall be assessed the following
20 expenses:

21 a. one hundred fifty percent (150%) of the total salaries
22 and benefits paid to the personnel of the Department
23 engaged in the proceedings, including, but not limited
24 to, examiners, actuaries, attorneys, managers, and

1 para-professionals, less any salary reimbursements,
2 and

3 b. the Department may retain independent attorneys,
4 appraisers, actuaries, certified public accountants,
5 or other professionals and specialists to assist
6 Department personnel in connection with the
7 proceedings, the cost of which shall be borne by the
8 applicant.

9 B. Ongoing assessment.

10 1. Every March 15, the Commissioner shall assess each run-off
11 insurer an amount equal to the greater of:

- 12 a. one thousand dollars (\$1,000), or
13 b. the sum of that run-off insurer's proportionate share
14 of estimated regulatory expenditure for that calendar
15 year and that run-off insurer's assessment deficit,
16 less its assessment surplus.

17 2. The calculation of the assessment surplus or deficit shall
18 reflect the total cost of any examinations, which shall be borne by
19 the companies so examined, and shall include the following expenses:

- 20 a. one hundred fifty percent (150%) of the total salaries
21 and benefits paid to the examining personnel of the
22 Department engaged in those examinations, including,
23 but not limited to, examiners, actuaries, attorneys,
24

1 managers, and para-professionals, less any salary
2 reimbursements,

3 b. all reasonable technology costs related to the
4 examination process. Technology costs shall include
5 the actual cost of software and hardware utilized in
6 the examination process and the cost of training
7 examination personnel in the proper use of the
8 software or hardware, and

9 c. all necessary and reasonable education and training
10 costs incurred by the state to maintain the
11 proficiency and competence of the examining personnel.
12 All such costs shall be incurred in accordance with
13 appropriate state of Oklahoma regulations, guidelines
14 and procedures.

15 3. Each run-off insurer shall pay the assessment to the
16 Department on or before the following fifteenth (15th) day of April.

17 4. An insurer that redomiciles to Oklahoma after March 15 of
18 any year and that qualifies as a run-off insurer upon
19 redomestication shall pay an assessment equal to the Commissioner's
20 estimate of redomestication expenditure attributable to that run-off
21 insurer.

22 5. All assessments collected pursuant to this section shall be
23 in addition to any taxes and fees otherwise payable to the state.
24

1 C. Pools. Except with respect to policy renewals required by
2 law or contract, no run-off insurer shall be subject to any
3 assessment or assignment in connection with any residual market,
4 fair plan, or assigned-risk plan mechanisms in this state.

5 D. Scope. This section shall only apply to run-off insurers
6 that cease underwriting new business after January 1, 2018, or that
7 were not domiciled in Oklahoma on January 1, 2018.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1945 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 The Commissioner shall promulgate rules that may be necessary to
12 effectuate the purposes of this act. The Department shall not
13 accept applications under Section 1933 of Title 36 of the Oklahoma
14 Statutes until the time that these rules have been promulgated.

15 SECTION 6. This act shall become effective November 1, 2017.

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