

1 ENGROSSED SENATE  
BILL NO. 606

By: Sparks of the Senate

2  
3 and

4 Mulready of the House

5 [ run-off insurance - notice - commutation plans -  
6 notification of Commissioner - guaranty funds -  
7 Commissioner - rehabilitation or liquidation - board  
of directors - promulgate rules - codification -  
effective date ]

8

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

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

13 For the purpose of this act:

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

16 2. "Assessment deficit" means the amount that the assessment  
17 for the previous year under Section 1944 of Title 36 of the Oklahoma  
18 Statutes is less than, and "assessment surplus" is the amount that  
19 the assessment for the previous year exceeds:

20 a. the run-off insurer's proportionate share of  
21 regulatory expenditure for the previous year, if the  
22 run-off insurer was domiciled in Oklahoma on March 15  
23 of the previous year, or

24

1           b.    the redomestication expenditure for the previous year  
2                    attributable to the run-off insurer, if the run-off  
3                    insurer was not domiciled in Oklahoma on March 15 of  
4                    the previous year;

5           3.    "Assumption policyholder" means a policyholder whose policy  
6 is reinsured under an assumption reinsurance agreement between the  
7 applicant and a reinsurer;

8           4.    "Assumption reinsurance agreement" means any contract which  
9 transfers insurance obligations and/or risks of existing or in-force  
10 contracts of insurance from a transferring insurer to an assuming  
11 insurer and is intended to effect a novation of the transferred  
12 contract of insurance with the result that the assuming insurer  
13 becomes directly liable to the policyholders of the transferring  
14 insurer and the transferring insurer's insurance obligations and/or  
15 risks under the contracts are extinguished, subject to the  
16 following:

- 17           a.    the agreement may be conditioned upon the  
18                    Commissioner's entry of an implementation order, and
- 19           b.    if any policy subject to the agreement is protected  
20                    through a guaranty association, then the assuming  
21                    insurer must have been and be licensed, and must have  
22                    been and be a member of the guaranty association, in  
23                    all states known to the applicant in which either:

1 (1) any property covered under the policy has a  
2 permanent situs, or

3 (2) the policyholder resided while the policy was in  
4 force;

5 5. "Class of creditors" means:

6 a. all voting policyholders, including those without  
7 known claims,

8 b. voting creditors, other than policyholders, or

9 c. any separate class of creditors as the Commissioner  
10 may in his or her discretion determine should approve  
11 the commutation plan;

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

13 a. a run-off insurer domiciled in Oklahoma whose  
14 business, excluding all business subject to an  
15 assumption reinsurance agreement, includes only the  
16 reinsuring of any line(s) of business other than life  
17 and/or the insuring of any line(s) of business other  
18 than life, workers' compensation, and personal lines  
19 insurance, or

20 b. an Oklahoma domestic insurance company meeting the  
21 requirements of subparagraph a of this paragraph and  
22 formed or re-activated for the sole purpose of  
23 entering into a voluntary restructuring under this act  
24 and whose liabilities consist of commercial

1 liabilities transferred to said company with the  
2 approval of the Commissioner and pursuant to the  
3 regulations issued by the Department under this act.  
4 The amount of the commercial liabilities transferred  
5 must be less than or equal to the amount of assets  
6 transferred to the newly formed or re-activated  
7 company;

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

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

11 9. "Creditor" means:

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

13 b. a policyholder other than an assumption policyholder;

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

15 11. "Guaranty association" means the Oklahoma Property and  
16 Casualty Insurance Guaranty Association created by the Oklahoma  
17 Property and Casualty Insurance Guaranty Association Act, Article  
18 20A of Title 36 of the Oklahoma Statutes, and the Oklahoma Life and  
19 Health Insurance Guaranty Association, created by the Oklahoma Life  
20 and Health Insurance Guaranty Association Act, Article 20B of Title  
21 36 of the Oklahoma Statutes, and any other similar entity now or  
22 after this created by the legislature of this state for the payment  
23 of claims of insolvent insurers. "Foreign guaranty association"

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1 means any similar entities now in existence in or after this created  
2 by the legislature of any other state;

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

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

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

10 15. "Personal lines insurance" means insurance issued for  
11 personal, family, or household purposes;

12 16. "Policy" means a contract of insurance or a contract of  
13 reinsurance;

14 17. "Policyholder" means an insured or a reinsured of the  
15 insurer;

16 18. "Proportionate share" means, for a particular run-off  
17 insurer as of December 31 of the previous year, the ratio of:

- 18 a. the gross assets of that run-off insurer, to  
19 b. the gross assets of all run-off insurers, other than  
20 those that were not domiciled in Oklahoma on March 15  
21 of that calendar year;

22 19. "Redomestication expenditure" means, for any calendar year:

- 23 a. the amount that the Department's expenditures  
24 attributable to the regulation of run-off insurers

1 increases as a result of any run-off insurer  
2 redomiciling to Oklahoma on or after March 15 of that  
3 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 that redomiciled to  
7 Oklahoma on or after March 15 of that year, but  
8 excluding any premium taxes;

9 20. "Regulatory expenditure" means, for any calendar year:

- 10 a. the amount of the Department's expenditures  
11 attributable to the regulation of run-off insurers  
12 domiciled in Oklahoma on March 15 of that year, less  
13 b. filing fees, examination costs, and any other fees in  
14 relation to insurance regulation in this state paid to  
15 this state by run-off insurers domiciled in Oklahoma  
16 on March 15 of that year, but excluding any premium  
17 taxes;

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

- 19 a. is domiciled in Oklahoma,  
20 b. has liabilities under policies for property and  
21 casualty lines of business,  
22 c. has ceased underwriting new business, and  
23 d. is only renewing ongoing business to the extent  
24 required by law or by contract.

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

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

7 1. By first class mail and facsimile to the insurance regulator  
8 in each jurisdiction in which the applicant is doing business;

9 2. By first class mail to the national conference of insurance  
10 guaranty funds and all guaranty associations for the states in which  
11 the applicant is doing business;

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

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

17 5. By first class mail to all persons known or reasonably  
18 expected to have claims against the applicant including all  
19 policyholders, at their last known address as indicated by the  
20 records of the applicant;

21 6. By first class mail to federal, state, and local government  
22 agencies and instrumentalities as their interests may arise; and  
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1           7. By publication in a newspaper of general circulation in the  
2 state in which the applicant has its principal place of business and  
3 in any other locations that the Commissioner deems appropriate.

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

7           C. Where this chapter requires that the applicant provide  
8 notice but the Commissioner has been named receiver of the  
9 applicant, the Commissioner shall provide the required notice.

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

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

15          B. Procedure.

16            1. The applicant shall give notice of the application and  
17 proposed commutation plan.

18            2. All creditors shall be given the opportunity to vote on the  
19 plan.

20            3. All creditors, assumption policyholders, reinsurers, and  
21 guaranty associations shall be provided with access to the same  
22 information relating to the proposed plan and shall be given the  
23 opportunity to file comments or objections with the Commissioner.

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



- a. fifty percent (50%) of each class of creditors, and
- b. the holders of seventy-five percent (75%) in value of the liabilities owed to each class of creditors.

C. Implementation order.

1. The Commissioner shall enter an implementation order if:

- a. the plan is approved under paragraph 4 of subsection B of this section, and
- b. the Commissioner determines that implementation of the commutation plan would not materially adversely affect either the interests of objecting creditors or the interests of assumption policyholders.

2. The implementation order shall:

- a. order implementation of the commutation plan,
- b. subject to any limitations in the commutation plan, enjoin all litigation in all jurisdictions between the applicant and creditors other than with the leave of the Commissioner,
- c. require all creditors to submit information requested by the bar date specified in the plan,
- d. require that upon a noticed application, the applicant obtain Commissioner approval before making any payments to creditors other than, to the extent permitted under the commutation plan, payments in the ordinary course of business, this approval to be based

1 upon a showing that the applicant's assets exceed the  
2 payments required under the terms of the commutation  
3 plan as determined based upon the information  
4 submitted by creditors under subparagraph c of this  
5 paragraph,

6 e. release the applicant of all obligations to its  
7 creditors upon payment of the amounts specified in the  
8 commutation plan,

9 f. require quarterly reports from the applicant to the  
10 Commissioner regarding progress in implementing the  
11 plan, and

12 g. be binding upon the applicant and upon all creditors  
13 and owners of the applicant, whether or not a  
14 particular creditor or owner is affected by the  
15 commutation plan or has accepted it or has filed any  
16 information on or before the bar date, and whether or  
17 not a creditor or owner ultimately receives any  
18 payments under the plan.

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

20 D. Applicable law and procedure with respect to dispute  
21 resolution procedures.

22 1. Any dispute resolution procedure in any commutation plan  
23 brought by a ceding insurance creditor to challenge the value of its  
24

1 claim assessed in any commutation plan will be consistent with the  
2 provisions of title 9, United States code;

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

7 a. not attempt to enforce a reinsurance contract on terms  
8 different than those set forth in the reinsurance  
9 contract,

10 b. not apply the laws of Oklahoma to reinsurance  
11 agreements of ceding insurers not domiciled in  
12 Oklahoma unless the reinsurance contract provides that  
13 Oklahoma law shall apply,

14 c. apply the law applicable to the underlying contract  
15 between the ceding insurer and the applicant or, if  
16 the underlying reinsurance contract has no choice of  
17 law provision, the law of the state of domicile of the  
18 ceding insurer shall apply.

19 E. Order of dissolution or discharge.

20 1. Upon completion of the commutation plan, the applicant shall  
21 advise the Commissioner.

22 2. The Commissioner shall then enter an order that:  
23  
24

1 a. is effective upon filing with the Commissioner proof  
2 that the applicant has provided notice of entry of the  
3 order,

4 b. transfers those liabilities subject to an assumption  
5 reinsurance agreement to the assumption reinsurer,  
6 thereby notating the original policy by substituting  
7 the assumption reinsurer for the applicant and  
8 releasing the applicant of any liability relating to  
9 the transferred liabilities,

10 c. assigns each assumption reinsurer the benefit of  
11 reinsurance on transferred liabilities, except that  
12 the assignment shall only be effective upon the  
13 consent of the reinsurer if either:

14 (1) the reinsurance contract requires that consent,

15 or

16 (2) the consent would otherwise be required under  
17 applicable law, and

18 d. either:

19 (1) the applicant be discharged from the proceeding  
20 without any liabilities, or

21 (2) the applicant be dissolved.

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

23 F. Reinsurance. Nothing in this act shall be construed as  
24 authorizing the applicant, or any other entity, to compel payment

1 from a reinsurer on the basis of estimated incurred but not reported  
2 losses or loss expenses, or case reserves for unpaid losses and loss  
3 expenses.

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

10 H. Role of guaranty funds; relationship to  
11 rehabilitation/liquidation statutes.

12 1. The guaranty funds shall have the right to intervene in any  
13 and all proceedings under this section; provided, that  
14 notwithstanding any provision of Title 36 of the Oklahoma Statutes,  
15 any action taken by a commercial run-off insurer to restructure  
16 pursuant to this act, including the formation or re-activation of an  
17 insurance company for the sole purpose of entering into a voluntary  
18 restructuring shall not affect the guaranty fund coverage existing  
19 on the business of such commercial run-off insurer prior to the  
20 taking of such action.

21 2. If, at any time, the conditions for placing an insurer in  
22 rehabilitation or liquidation specified in Article 19 of Title 36 of  
23 the Oklahoma Statutes exist, the Commissioner may make application  
24 to the court to be named statutory receiver of the applicant

1 pursuant to the procedure set forth in Section 1903 of Title 36 of  
2 the Oklahoma Statutes.

3 3. If no implementation order has been entered, then upon being  
4 named receiver, the Commissioner may request, and if requested, the  
5 court shall order, that the proceeding under this act be converted  
6 to a rehabilitation or liquidation pursuant to Article 19 of Title  
7 36 of the Oklahoma Statutes If an implementation order has already  
8 been entered, then the court may order a conversion upon a showing  
9 that some material factor in approving the original order has  
10 changed.

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

17 5. Unless and until the Commissioner is named receiver, the  
18 board of directors or other controlling body of the applicant shall  
19 remain in control of the applicant.

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

23 A. Application fee. Upon application to the Commissioner  
24 pursuant to Section 1943 of Title 36 of the Oklahoma Statutes, the

1 applicant shall pay a fee to the Department in the amount of Ten  
2 Thousand Dollars (\$10,000.00).

3 1. In connection with the Departments' participation in the  
4 proceedings undertaken pursuant to Section 1943 of Title 36 of the  
5 Oklahoma Statutes, the applicant shall be assessed the following  
6 expenses:

7 a. one hundred fifty percent (150%) of the total salaries  
8 and benefits paid to the personnel of the Department  
9 engaged in the proceedings, including, but not limited  
10 to, examiners, actuaries, attorneys, managers, and  
11 para-professionals, less any salary reimbursements,  
12 and

13 b. the Department may retain independent attorneys,  
14 appraisers, actuaries, certified public accountants,  
15 or other professionals and specialists to assist  
16 Department personnel in connection with the  
17 proceedings, the cost of which shall be borne by the  
18 applicant.

19 B. Ongoing assessment.

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

22 a. one thousand dollars (\$1,000), or

23 b. the sum of that run-off insurer's proportionate share  
24 of estimated regulatory expenditure for that calendar

1           year and that run-off insurer's assessment deficit,  
2           less its assessment surplus.

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

6           a. one hundred fifty percent (150%) of the total salaries  
7           and benefits paid to the examining personnel of the  
8           Department engaged in those examinations, including,  
9           but not limited to, examiners, actuaries, attorneys,  
10           managers, and para-professionals, less any salary  
11           reimbursements,

12           b. all reasonable technology costs related to the  
13           examination process. Technology costs shall include  
14           the actual cost of software and hardware utilized in  
15           the examination process and the cost of training  
16           examination personnel in the proper use of the  
17           software or hardware, and

18           c. all necessary and reasonable education and training  
19           costs incurred by the state to maintain the  
20           proficiency and competence of the examining personnel.  
21           All such costs shall be incurred in accordance with  
22           appropriate state of Oklahoma regulations, guidelines  
23           and procedures.



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

3           4. An insurer that redomiciles to Oklahoma after March 15 of  
4 any year and that qualifies as a run-off insurer upon  
5 redomestication shall pay an assessment equal to the Commissioner's  
6 estimate of redomestication expenditure attributable to that run-off  
7 insurer.

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

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

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

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

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

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

1 Passed the Senate the 7th day of March, 2017.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2017.

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8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives