

PROPOSED RULE 126
INSURANCE BUSINESS TRANSFERS

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SEP 15 2021

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Section 1. Authority

This rule is issued pursuant to Act 1018 of 2021, “An Act to Establish the Arkansas Business Transfer Act,” codified at Ark. Code Ann. §23-69-501 et seq.

Section 2. Purpose

The purpose of this rule is to implement the Arkansas Insurance Business Transfer Act (“the Act”) to provide standards and procedures for the transfer and novation of insurance policies from a transferring insurer to an assuming insurer through a transaction known as an “insurance business transfer.” The Act permits an insurer to take a book of insurance policies and completely transfer all risks, obligations and liabilities to another company. This mechanism can provide legal and economic finality to legacy insurance risks and improve the use of capital and management resources by permitting another company with expertise in run-off business to assume the discontinued lines of business that are the subject of the transfer.

Such a transaction does not require the affirmative consent of policyholders or reinsureds if the transfer and novation is conducted in accordance with the Act. However, even with the absence of affirmative consent, the interests of policyholders, claimants, and reinsureds is always

a primary consideration when this type of transaction is pursued. Procedural safeguards found in the Act and this Rule exist to avoid any adverse material impact on those interests.

Section 3. Applicability and Scope

This rule applies to all proposed transactions pursued under the Arkansas Insurance Business Transfer Act in which a transfer is sought of some or all insurance obligations, risks, or both, of existing or in-force contracts for insurance or reinsurance by a transferring insurer to one or more assuming insurers. Application of this rule does not limit or restrict other valid means of effecting a transfer or novation.

Section 4. Definitions

As used in this rule:

(1) "Affiliate" has the meaning ascribed to such term in Ark. Code Ann. § 23-63-503.

(2) "Applicant" means a transferring insurer or reinsurer applying under Ark. Code Ann. § 23-69-506.

(3) "Assuming insurer" means an insurer domiciled in Arkansas that assumes or seeks to assume policies from a transferring insurer pursuant to this act. An assuming insurer may be a company established pursuant to Ark. Code Ann. §§ 23-63-1601, et seq., regarding captive insurers.

(4) "Court" means the Pulaski County Circuit Court. All proceedings brought under the Insurance Business Transfer Act have proper and exclusive venue in the Pulaski County Circuit Court.

(5) "Department" means the Arkansas Insurance Department.

(6) "Commissioner" means the Arkansas Insurance Commissioner.

(7) "Implementation order" means an order issued by the Pulaski County Circuit Court under Ark. Code Ann. § 23-69-506.

(8) "Insurance business transfer" means a transfer and novation in accordance with the Act or this rule. Insurance business transfers will transfer insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer. Once approved pursuant to this act, the insurance business transfer will effect a novation of the transferred contracts of insurance or reinsurance with the result that the assuming

insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks, or both, under the contracts are extinguished.

(9) "Insurance business transfer plan" or "Plan" means the plan submitted to the Department to accomplish the transfer and novation pursuant to an insurance business transfer, including any associated transfer of assets and rights from or on behalf of the transferring insurer to the assuming insurer.

(10) "Independent expert" means an impartial person who 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 within the past twelve (12) months, is not appointed by the Commissioner to assist in any capacity in any proceeding and is receiving no compensation in connection with the transaction governed by this Act other than a fee based on a fixed or hourly basis that is not contingent on the approval or consummation of an insurance business transfer and provides proof of insurance coverage that is satisfactory to the Commissioner.

(11) "Insurer" means an insurance or surety company, including a reinsurance company, and shall be deemed to include 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 inter-insurance contracts between individuals, partnerships and corporations.

(12) "Notice" means provision of notification pursuant to Ark. Code Ann. §23-69-505 within fifteen (15) days of an event triggering a notice requirement under the Act.

(13) "Policy" means a policy, contract or certificate of insurance or a contract of reinsurance pursuant to which the insurer agrees to assume an obligation or risk, or both, of the policyholder or to make payments on behalf of, or to, the policyholder or its beneficiaries, and shall include property, casualty, life, health and any other line of insurance the Commissioner finds is suitable for an insurance business transfer.

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

(15) "Subject business" means the policy or policies that are the subject of the Plan.

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

to effect a novation of the transferred policies with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer on the transferred policies and the transferring insurer's insurance obligations or risks, or both, under the transferred policies are extinguished.

(17) "Transferring insurer" means an insurer or reinsurer that transfers and novates or seeks to transfer and novate obligations or risks, or both, under one or more policies to an assuming insurer pursuant to a Plan.

Section 5. Application Procedure

(a) Insurance Business Transfer Plan-Fee and Contents

An Insurance Business Transfer Plan must be filed by the applicant with the Commissioner for his or her review and approval. At the time of filing its application with the Commissioner for review and approval of a Plan, the applicant shall pay a nonrefundable fee to the Department in the amount of ten thousand dollars (\$10,000.00).

The Plan must contain the information set forth below or an explanation as to why the information is not included. The Plan may be supplemented by other information deemed necessary by the Commissioner:

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

(2) summary of the Plan;

(3) identification and description of the subject business;

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

(5) the most recent actuarial report and opinion that quantify the liabilities associated with the subject business, including the assuming company's report or opinion;

(6) pro-forma financial statements showing the projected statutory balance sheet, results of operations and cash flows of the assuming insurer for the three (3) 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 thereto;

(8) proposal for implementation and administration of the Plan, including the form of notice to be provided under the Plan to any policyholder whose policy is part of the subject business;

(9) full description as to how such notice shall be provided;

(10) description of any reinsurance arrangements that would pass to the assuming insurer under the Insurance Business Transfer Plan;

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

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

(13) evidence of approval or nonobjection of the transfer from the chief insurance regulator of the state of the transferring insurer's domicile; and

(14) an opinion report from an independent expert, selected by the Commissioner 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 review of the proposed transaction. Should the Commissioner, in his or her sole discretion reject the nominees, he or she may appoint the independent expert.

(b) Independent Expert Opinion Report – Contents

The Independent Expert Opinion Report shall provide the following:

(1) a statement of the independent expert's professional qualifications and descriptions of the experience that qualifies him or her as an expert suitable for the engagement,

(2) whether the independent expert has, or has had, direct or indirect interest in the transferring or assuming insurer or any of their respective affiliates,

(3) the scope of the report,

(4) a summary of the terms of the Plan to the extent relevant to the report,

(5) documents, reports and other material information the independent expert has considered in preparing the report and whether any information requested was not provided,

(6) the extent to which the independent expert has relied on information provided by and the judgment of others,

(7) the people on whom the independent expert has relied and why, in his or her opinion, such reliance is reasonable,

(8) the independent expert's opinion of the likely effects of the Insurance Business Transfer Plan on policyholders and claimants, distinguishing between:

(A) transferring policyholders and claimants,

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

(C) policyholders and claimants of the assuming insurer,

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

(10) consideration as to whether the security position of policyholders that are affected by the insurance business transfer are adversely materially affected by the transfer.

(11) The independent expert's opinion report shall include, but not be limited to, a review of the following:

(A) analysis of the transferring insurer's actuarial review of reserves for the subject business to determine the reserve adequacy,

(B) analysis of the financial condition of the transferring and assuming insurers and the effect the transfer will have on the financial condition of each company,

(C) review of the plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer,

(D) whether the proposed transfer has an adverse material impact on the policyholders and claimants of the transferring and the assuming insurers,

(E) 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, and:

(F) The Business purposes of the proposed transfer.

(G) Capital adequacy and risk-based capital, including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions;

(H) Cash flow and reserve adequacy testing, including consideration of the effects of diversification on policy liabilities;

(I) Business plans

(J) The impact, if any, of concentration of lines of business following the proposed transfer; and

(K) Management's competence, experience, and integrity

(L) any other information that the Commissioner requests in order to review the insurance business transfer.

—(12) Within five (5) days of receiving a completed application for an Insurance Business Transfer, the Commissioner shall provide general notice by posting an acknowledgment of the application on the AID website and by transmitting it the Department's routine email distribution system to interested parties in the industry.

Section 6. Review of Insurance Business Transfer Plan

(a) Matters to be Considered During Commissioner's Review

(1) When reviewing an applicant's insurance business transfer plan for authorization to submit to the court, the Commissioner shall consider, among other things:

(A) all assets, liabilities, and cash flow, the nature and composition of the assets proposed to be transferred in support of the plan, and

(B) all proposed assets of the resulting transferring and assuming insurers, which consideration must include an assessment of the risks and quality, including the liquidity and marketability, of the proposed portfolio of the resulting assuming insurer; consideration of assets and liability matching; and the treatment of the material elements of the portfolio based on the statutory accounting practices.

(2) After making the considerations described in subsection (a)(1) of this section, the Commissioner shall approve an insurance business transfer plan for submission to the court if the Commissioner finds that the following requirements are met:

(A) The financial condition of the transferring ~~insurer~~ and the assuming insurer, ~~or an acquiring party of an assuming insurer, if any,~~ will not jeopardize the financial stability of the transferring insurer or prejudice the interest of its policyholders, contract holders, or reinsurers, in each case, in a manner that is unfair to its policyholders, contract holders, or reinsurers;

(B) The terms of the plan of transfer are fair and reasonable to the transferring insurer's and any assuming insurer's policyholders, contract holders, or reinsurers;

(C) Neither a transferring insurer, ~~nor~~ an assuming insurer, ~~nor an acquiring party of an assuming insurer, if any~~, has plans or proposals to liquidate the transferring insurer or of any assuming insurer, consolidate or merge the transferring insurer or any assuming insurer with a person, or make any other material change in the transferring insurer's or any assuming insurer's business or corporation structure or management that is unfair or unreasonable to the transferring insurer's or assuming insurers' policyholders, contract holders, or reinsurers and not in the public interest;

(D) The competence, experience, and integrity of the persons who would control the operation of a transferring insurer, if it survives the transfer, and any assuming insurer are such that it would be consistent with the interest of the transferring insurer's and any assuming insurers' policyholders, contract holders, or reinsurers and the general public to permit the transfer;

(E) The business transfer is not likely to be hazardous or prejudicial to the insurance-buying public;

(F) The interest of the policyholders of the transferring insurer that may become policyholders of an assuming insurer will be adequately protected by the assuming insurer ~~or acquiring party of an assuming insurer, if any~~;

(G) The transferring insurer, if it survives the business transfer, and the assuming insurers will be solvent upon the consummation of the transfer;

(H) The assets allocated to the transferring insurer, if it survives the business transfer, and the assuming insurer will not, upon the consummation of the business transfer, be unreasonably small in relation to the business and transactions in which the insurers were engaged or are about to engage;

(I) The proposed business transfer is not being made for the purpose of hindering, ~~delaying~~ delaying, or defrauding any policyholders, contract holders, or reinsurers.

(J) If the business transfer plan ~~allocates~~ includes policies of long-term care insurance, as defined in the Long Term Care Insurance Act of 2005, Ark. Code Ann §23-97-301 et seq., the liabilities associated with ~~the allocated those~~ policies do not constitute more than a de minimus amount of the insurance liabilities ~~allocated to of~~ the transferring insurer, if it survives the business transfer, or to any assuming insurer;

(3) A transferring insurer that files an insurance business transfer plan shall pay all expense incurred by the Commissioner in connection with proceedings under the section, including expenses for Attorneys, Actuaries, Accountants, and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed plan of business transfer. A transferring insurer may ~~allocate~~ treat the expense in the plan in the same manner as any other liability.

(4) If the Commissioner approves an insurance business transfer plan, the Commissioner shall issue:

(A) An order that is accompanied by finding of fact and conclusion of law; and

(B) A Certificate of Authority authorizing the Assuming insurer to transact the business of insurance in this state; except that the Commissioner may waive this requirement if an assuming insurer will not survive a merger simultaneous with the business transfer in accordance with the insurance business transfer plan.

(5) the conditions in this section for freeing one or more of the ~~resulting transferring insurerstransferring insurers~~ from the liabilities of the transferring insurer and for ~~allocating~~ eliminating some or all the liabilities of the transferring insurer are deemed to have been satisfied if the Commissioner approves the plan of transfer and a circuit court ~~issues~~ a final order.

(b) Procedure for Review and Approval

The Commissioner shall have sixty (60) business days from the date of receipt of a complete Plan to review the Plan to determine if the applicant will be authorized to submit it to the court. The Commissioner may extend the sixty-day review period for an additional thirty (30) business days.

(1) The Commissioner shall authorize the submission of the Plan to the court unless he or she finds that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business.

(2) The commissioner shall not authorize the submission of the insurance business transfer plan to the court unless:

(A) the assuming insurer is licensed in each line of business in each state where the transferring insurer is licensed and policies subject to the proposed transfer were written, or

the assuming insurer demonstrates an extraordinary circumstance preventing it from obtaining such license or licenses; and

(B) the commissioner determines that the lack of such license or licenses would not result in an adverse material impact on the interests of policyholders, contract holders, or reinsurers.

(3) If the Commissioner determines that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business, he or she shall notify the applicant and specify any modifications, supplements or amendments and any additional information or documentation with respect to the Plan that must be provided to the Commissioner before he or she will allow the applicant to proceed with the court filing.

(4) The applicant shall have thirty (30) days from the date the Commissioner notifies him or her in writing, to file an amended Plan providing the modifications, supplements or amendments and additional information or documentation as requested by the Commissioner. If necessary, the applicant may request in writing an extension of time of thirty (30) days. If the applicant does not make an amended filing within the time period provided for in this paragraph, including any extension of time granted by the Commissioner, the Plan filing will terminate and a subsequent filing by the applicant will be considered a new filing which shall require compliance with all provisions of this act as if the prior filing had never been made.

(5) The Commissioner's review period shall recommence when the modification, supplement, ~~amendment~~amendment, or additional information is received.

Section 7. Petition for Court Approval and Implementation Order

(a) If the Commissioner determines that the Plan may proceed with the court filing, the Commissioner shall confirm that fact in writing to the applicant.

(b) Within thirty (30) days after the Commissioner confirms that the applicant may proceed with the court filing, the applicant shall apply to the court for approval of the Plan pursuant to Ark. Code Ann. §23-69-509. Upon written request by the applicant, the Commissioner may extend the period for filing an application with the court for an additional thirty (30) days.

(c) The applicant shall inform the court of the reasons why he or she petitions the court to find no adverse material impact to policyholders or claimants affected by the proposed transfer.

(d) The application shall be in the form of a verified petition for implementation of the Plan in the court. The petition shall include the Plan and shall identify any documents and witnesses which the applicant intends to present at a hearing regarding the petition.

(e) The Commissioner shall be a party to the proceedings before the court concerning the petition and shall be served with copies of all filings pursuant to the Arkansas Rules of Civil Procedure. The Commissioner's position in the proceeding shall not be limited by his or her initial review of the Plan.

Section 8. Confidentiality

The confidentiality provisions in the Arkansas Insurance Code and Rules, including but not limited to Ark. Code Ann. § 23-61-103(d)(5), related to actuarial reports, Ark. Code Ann. § 23-61-103(d), related to active investigations or examinations, Ark. Code Ann. § 23-61-107, related to financial records, and Ark. Code Ann. § 23-61-207, related to ancillary information and workpapers, shall apply to transactions governed by this rule.

Section 9. Effective Date

The effective date of this Rule is January 1, 2022.

ALAN McCLAIN
INSURANCE COMMISSIONER

DATE

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S4/21/21

A Bill

SENATE BILL 203

5 By: Senator Rapert
6 By: Representative Lowery
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE ARKANSAS INSURANCE BUSINESS
10 TRANSFER ACT; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO ESTABLISH THE ARKANSAS INSURANCE
15 BUSINESS TRANSFER ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 23, Chapter 69, is amended to add an
21 additional subchapter to read as follows:

22 Subchapter 5 – Arkansas Insurance Business Transfer Act
23

24 23-69-501. Title.

25 This subchapter shall be known and may be cited as the "Arkansas
26 Insurance Business Transfer Act".
27

28 23-69-502. Legislative findings – Purpose.

29 (a) The General Assembly finds that:

30 (1) There is not a basis or procedure for the transfer and
31 novation of insurance policies from a transferring insurer to an assuming
32 insurer by way of an insurance business transfer without the affirmative
33 consent of policyholders or reinsureds; and

34 (2) There is a need to provide a basis and procedures for the
35 transfer and novation of insurance policies from a transferring insurer to an
36 assuming insurer by way of an insurance business transfer without the



1 affirmative consent of policyholders or reinsureds if the transfer and
2 novation is conducted by a court order.

3 (b)(1) The purpose of this subchapter is to establish the requirements
4 for notice and disclosure and standards and procedures for the approval of a
5 transfer and novation by the Insurance Commissioner and the Pulaski County
6 Circuit Court under an insurance business transfer plan.

7 (2) However, it is not the purpose of this subchapter to limit
8 or restrict other means of effecting a transfer or novation.

9
10 23-69-503. Definitions.

11 As used in this subchapter:

12 (1) "Affiliate" means an affiliate as that term is defined in §
13 23-63-503;

14 (2) "Applicant" means a transferring insurer or reinsurer that
15 submits an application under § 23-69-506;

16 (3)(A) "Assuming insurer" means an insurer domiciled in this
17 state that assumes or seeks to assume policies from a transferring insurer
18 under this subchapter.

19 (B) "Assuming insurer" may include a company established
20 under § 23-63-1601 et seq.;

21 (4) "Implementation order" means an order issued by the Pulaski
22 County Circuit Court under § 23-69-509;

23 (5) "Independent expert" means an impartial person who:

24 (A) Does not have a financial interest in either the
25 transferring insurer or the assuming insurer;

26 (B) Has not been employed by or acted as an officer,
27 director, consultant, or other independent contractor for either the
28 transferring insurer or the assuming insurer within the past twelve (12)
29 months;

30 (C) Has not been appointed by the Insurance Commissioner
31 to assist in any capacity in any proceeding;

32 (D) Has not received any compensation in connection with
33 an insurance business transfer under this subchapter other than a fee based
34 on a fixed or hourly basis that is not contingent on the approval or
35 consummation of the insurance business transfer; and

36 (E) Has proof of insurance coverage that is satisfactory

1 to the commissioner;

2 (6)(A) "Insurance business transfer" means a transfer of
3 insurance obligations or risks, or both, of existing or in-force contracts of
4 insurance or reinsurance from a transferring insurer to an assuming insurer.

5 (B) Once approved, the insurance business transfer shall
6 effect a transfer and novation of the transferred contracts of insurance or
7 reinsurance with the result that the assuming insurer becomes directly liable
8 to the policyholders of the transferring insurer and the transferring
9 insurer's insurance obligations or risks, or both, under the contracts, are
10 extinguished;

11 (7) "Insurance business transfer plan" means the plan submitted
12 to the State Insurance Department to accomplish the transfer and novation
13 under an insurance business transfer, including any associated transfer of
14 assets and rights from or on behalf of the transferring insurer to the
15 assuming insurer;

16 (8) "Insurer" means an insurance or surety company, including a
17 reinsurance company, and includes a corporation, company, partnership,
18 association, society, order, individual, or aggregation of individuals
19 engaging in, proposing to engage in, or attempting to engage in any kind of
20 insurance or surety business, including the exchanging of reciprocal or
21 inter-insurance contracts between individuals, partnerships, and
22 corporations;

23 (9) "Policy" means a policy, contract or certificate of
24 insurance, or a contract of reinsurance under which the insurer agrees to
25 assume an obligation or risk, or both, of the policyholder or to make
26 payments on behalf of, or to, the policyholder or its beneficiaries, and
27 includes property, casualty, life, health, and any other line of insurance
28 the commissioner finds is suitable for an insurance business transfer;

29 (10) "Policyholder" means an insured or a reinsured under a
30 policy that is part of a subject business;

31 (11) "Subject business" means the policy or policies that are
32 the subject of the insurance business transfer plan;

33 (12) "Transfer and novation" means the transfer of insurance
34 obligations or risks, or both, of existing or in-force policies from a
35 transferring insurer to an assuming insurer, and is intended to effect a
36 novation of the transferred policies with the result that:

1 (A) The assuming insurer becomes directly liable to the
2 policyholders of the transferring insurer on the transferred policies; and

3 (B) The transferring insurer's insurance obligations or
4 risks, or both, under the transferred policies are extinguished; and

5 (13) "Transferring insurer" means an insurer or reinsurer that
6 transfers and novates or seeks to transfer and novate obligations or risks,
7 or both, under one (1) or more policies to an assuming insurer under an
8 insurance business transfer plan.

9
10 23-69-504. Venue.

11 (a) All court proceedings brought under this subchapter shall be filed
12 in the Pulaski County Circuit Court.

13 (b) The court may issue any order, process, or judgment that is
14 necessary or appropriate to carry out this subchapter.

15 (c) This subchapter does not preclude the court from, on its own
16 motion, taking any action or making any determination necessary or
17 appropriate to enforce or implement court orders or rules or to prevent an
18 abuse of power.

19
20 23-69-505. Notice required.

21 (a) Except as otherwise ordered by the Pulaski County Circuit Court or
22 the Insurance Commissioner, if notice is required to be given by the
23 applicant under this subchapter, the applicant, within fifteen (15) days of
24 the event triggering the requirement, shall cause transmittal of the notice:

25 (1) By first class mail, postage prepaid, to the chief insurance
26 regulator in each jurisdiction in which the applicant holds or has ever held
27 a certificate of authority, and in which policies that are part of the
28 subject business were issued or where policyholders currently reside;

29 (2) By certified first class mail, postage prepaid, to the
30 National Conference of Insurance Guaranty Funds, the National Organization of
31 Life and Health Insurance Guaranty Associations, and all state insurance
32 guaranty associations for the states in which the applicant holds or has ever
33 held a certificate of authority, and in which policies that are part of the
34 subject business were issued or where policyholders currently reside;

35 (3) To reinsurers of the applicant under the notice requirements
36 of the reinsurance agreements applicable to the policies that are part of the

1 subject business, or if an agreement does not require notice, by an
2 internationally recognized delivery service;

3 (4)(A) By United States mail, first class postage prepaid, to
4 all policyholders holding policies that are part of the subject business, at
5 their last known address as indicated by the records of the applicant or to
6 the address to which premium notices or other policy documents are sent.

7 (B) A notice of transfer shall be sent to the transferring
8 insurer's agents or brokers of record on the subject business; and

9 (5) By publication in a newspaper of general circulation in the
10 state in which the applicant has its principal place of business and in such
11 other publications that the commissioner requires.

12 (b) If notice is given under subsection (a) of this section, an order
13 under this subchapter shall be conclusive with respect to all intended
14 recipients of the notice, whether or not they receive actual notice.

15 (c) If the commissioner has been named receiver of the applicant, the
16 commissioner shall provide the required notice under this subchapter.

17
18 23-69-506. Application – Insurance business transfer plan.

19 (a) An applicant shall file an insurance business transfer plan with
20 the Insurance Commissioner for his or her review and approval.

21 (b) The insurance business transfer plan shall contain the following
22 information or an explanation as to why the information is not included:

23 (1) The name, address, and telephone number of the transferring
24 insurer and the assuming insurer and their respective direct and indirect
25 controlling persons, if any;

26 (2) A summary of the insurance business transfer plan;

27 (3) The identification and description of the subject business;

28 (4) The most recent audited financial statements and annual and
29 quarterly reports of the transferring insurer and assuming insurer filed with
30 their domiciliary regulator;

31 (5) The most recent actuarial report and opinion that quantifies
32 the liabilities associated with the subject business;

33 (6) The pro forma financial statements showing the projected
34 balance sheet, results of operations, and cash flows of the assuming insurer
35 for the three (3) years following the proposed transfer and novation;

36 (7) Officers' certificates of the transferring insurer and the

1 assuming insurer attesting that each has obtained all required internal
2 approvals and authorizations regarding the insurance business transfer plan
3 and completed all necessary and appropriate actions as required;

4 (8) A proposal for implementation and administration of the
5 insurance business transfer plan, including the form of notice to be provided
6 under the insurance business transfer plan to any policyholder whose policy
7 is part of the subject business;

8 (9) A full description of how the notice described in
9 subdivision (b)(8) of this section shall be provided;

10 (10) A description of all reinsurance arrangements that would
11 pass to the assuming insurer under the insurance business transfer plan;

12 (11) A description of any guarantees or additional reinsurance
13 that will cover the subject business following the transfer and novation;

14 (12) A statement describing the assuming insurer's proposed
15 investment policies and any contemplated third party claims management and
16 administration arrangements;

17 (13) Evidence of approval or nonobjection of the transfer from
18 the chief insurance regulator of the state of the transferring insurer's
19 domicile;

20 (14)(A) An opinion report from an independent expert, selected
21 by the commissioner from a list of at least two (2) nominees submitted
22 jointly by the transferring insurer and the assuming insurer, to assist the
23 commissioner and the Pulaski County Circuit Court in the review of the
24 proposed transaction.

25 (B) If the commissioner, in his or her sole discretion,
26 rejects the nominees described in subdivision (b)(14)(A) of this section, the
27 commissioner may appoint an independent expert; and

28 (15) Any other information the commissioner deems necessary.

29
30 23-69-507. Opinion report – Review requirements.

31 (a) The opinion report required under § 23-69-506(b)(14) shall provide
32 the following:

33 (1) A statement of the independent expert's professional
34 qualifications, including a description of the experience that qualifies him
35 or her as an expert suitable for the engagement;

36 (2) A statement indicating whether or not the independent expert

1 has, or has had, direct or indirect interest in the transferring insurer or
2 the assuming insurer or any affiliate of the transferring insurer or assuming
3 insurer;

4 (3) A statement as to the scope of the opinion report;

5 (4) A summary of the terms of the insurance business transfer
6 plan to the extent relevant to the opinion report;

7 (5) Documents, reports, and other material information the
8 independent expert has considered in preparing the opinion report and if any
9 information requested has not been provided;

10 (6) A statement indicating the extent to which the independent
11 expert has relied on the information and judgment of others;

12 (7) The identities of the individuals on whom the independent
13 expert has relied and a statement as to why, in the opinion of the
14 independent expert, such reliance is reasonable;

15 (8) A statement of the independent expert's opinion of the
16 likely effects of the insurance business transfer plan on policyholders and
17 claimants, distinguishing between the following:

18 (A) Transferring policyholders and claimants;

19 (B) Policyholders and claimants of the transferring
20 insurer whose policies will not be transferred; and

21 (C) Policyholders and claimants of the assuming insurer;

22 (9) For each opinion that the independent expert expresses in
23 the opinion report, a statement of the facts and circumstances supporting the
24 opinion; and

25 (10) A statement as to whether the security position of
26 policyholders that are affected by the insurance business transfer are
27 adversely materially affected by the insurance business transfer.

28 (b) The independent expert shall include in an opinion report:

29 (1) An analysis of the transferring insurer's actuarial review
30 of reserves for the subject business to determine the reserve adequacy;

31 (2) An analysis of the financial condition of the transferring
32 insurer and the assuming insurer and the effect the insurance business
33 transfer will have on the financial condition of each insurer;

34 (3) A review of the plans or proposals the assuming insurer has
35 with respect to the administration of the policies subject to the proposed
36 insurance business transfer;

1 (4) An analysis of whether the proposed insurance business
2 transfer will have an adverse material impact on the policyholders and
3 claimants of the transferring insurer and the assuming insurer;

4 (5) An analysis of the assuming insurer's corporate governance
5 structure to ensure that there is proper board and management oversight and
6 expertise to manage the subject business; and

7 (6) Any other information that the Insurance Commissioner
8 requests in order to review the insurance business transfer.

9
10 23-69-508. Insurance business transfer plan – Review – Insurance
11 Commissioner.

12 (a)(1) The Insurance Commissioner shall have sixty (60) business days
13 from the date of receipt of a completed application for an insurance business
14 transfer plan filed under § 23-69-506 to review the insurance business
15 transfer plan to determine if the applicant is authorized to submit it to the
16 Pulaski County Circuit Court.

17 (2) The commissioner may extend the sixty-day review period for
18 an additional thirty (30) business days.

19 (b) The commissioner shall authorize the submission of the insurance
20 business transfer plan to the court unless he or she finds that the insurance
21 business transfer would have an adverse material impact on the interests of
22 policyholders or claimants that are part of the subject business.

23 (c) The commissioner shall not authorize the submission of the
24 insurance business transfer plan to the court unless:

25 (1) The assuming insurer is licensed in each line of business in
26 each state where the transferring insurer is licensed or the assuming insurer
27 demonstrates an extraordinary circumstance preventing the assuming insurer
28 from obtaining the license or licenses; and

29 (2) The commissioner determines that the lack of the license or
30 licenses under subdivision (c)(1) of this section would not result in an
31 adverse material impact on the interests of policyholders, contract holders,
32 or reinsurers.

33 (d) If the commissioner determines that the insurance business
34 transfer would have an adverse material impact on the interests of
35 policyholders or claimants that are part of the subject business, the
36 commissioner shall notify the applicant and specify any modifications,

1 supplements, or amendments and any additional information or documentation
2 with respect to the insurance business transfer plan that shall be provided
3 to the commissioner before he or she allows the applicant to proceed with the
4 court filing.

5 (e)(1) The applicant shall have thirty (30) days from the date the
6 commissioner notifies him or her or it under subsection (d) of this section
7 of the need to file an amended insurance business transfer plan providing the
8 modifications, supplements, amendments, or additional information or
9 documentation as requested by the commissioner.

10 (2) The applicant may request in writing an extension of time of
11 thirty (30) days.

12 (3) If the applicant does not make an amended filing within the
13 time period provided for in this subsection, including any extension of time
14 granted by the commissioner under subdivision (e)(2) of this section, the
15 insurance business transfer plan filing shall terminate, and a subsequent
16 filing by the applicant shall be considered a new filing that shall require
17 compliance with this subchapter as if the prior filing had never been made.

18 (f) The commissioner's review period shall recommence when the
19 modification, supplement, amendment, or additional information or
20 documentation is received.

21 (g) If the commissioner determines that the insurance business
22 transfer plan may proceed with the court filing, the commissioner shall
23 confirm that fact in writing to the applicant.

24
25 23-69-509. Insurance business transfer plan – Petition for court
26 approval – Implementation order.

27 (a)(1) Within thirty (30) days after notice from the Insurance
28 Commissioner that an applicant may proceed with filing the insurance business
29 transfer plan with the Pulaski County Circuit Court, the applicant shall
30 petition the court for approval of the insurance business transfer plan.

31 (2) Upon written request by the applicant, the commissioner may
32 extend the period for filing a petition with the court for an additional
33 thirty (30) days.

34 (b) An applicant shall inform the court of the reason for the
35 applicant's petition to the court to approve the insurance business transfer
36 plan on the basis that no adverse material impact to policyholders or

1 claimants affected by the proposed insurance business transfer will result.

2 (c)(1) A petition shall be in the form of a verified petition to the
3 court for implementation of the insurance business transfer plan through the
4 court.

5 (2) The petition shall include the insurance business transfer
6 plan and shall identify any documents and witnesses that the applicant
7 intends to present at a hearing regarding the petition.

8 (d)(1) The commissioner shall be a party to the proceedings before the
9 court concerning the petition and shall be served with copies of all filings
10 according to the Arkansas Rules of Civil Procedure.

11 (2) The position of the commissioner in the proceeding shall not
12 be limited by his or her initial review of the insurance business transfer
13 plan.

14 (e)(1) Following the filing of the petition, an applicant shall file a
15 motion for a scheduling order setting a hearing on the petition.

16 (2)(A) Within fifteen (15) days after receipt of the scheduling
17 order, the applicant shall cause notice of the hearing to be provided
18 according to § 23-69-505.

19 (B) Following the date of distribution of the notice,
20 there shall be a comment period of sixty (60) days.

21 (f) The notice to policyholders shall provide:

22 (1) The date and time of the approval hearing;

23 (2) The name, address, and telephone number of the assuming
24 insurer and transferring insurer;

25 (3) A statement that a policyholder may comment on or object to
26 the transfer and novation;

27 (4) The procedures and deadline for submitting comments on or
28 objections to the insurance business transfer plan;

29 (5) A summary of any effect that the transfer and novation will
30 have on the policyholder's rights;

31 (6) A statement that the assuming insurer is authorized to
32 assume the subject business and that court approval of the insurance business
33 transfer plan shall extinguish all rights of policyholders under policies
34 that are part of the subject business against the transferring insurer;

35 (7) A statement that a policyholder does not have the
36 opportunity to opt out of or otherwise reject the transfer and novation;

1 (8) Contact information for the State Insurance Department for
2 the policyholder to obtain further information; and

3 (9)(A) Information on how to access an electronic copy of the
4 insurance business transfer plan.

5 (B) If a policyholder is unable to readily access an
6 electronic copy of the insurance business transfer plan, the applicant shall
7 provide a hard copy of the insurance business transfer plan to the
8 policyholder by first class mail.

9 (g)(1) A person, including his, her, or its legal representative, who
10 or that considers himself, herself, or itself to be adversely affected may
11 present evidence or comments to the court at the approval hearing.

12 (2) However, the evidence or comments shall not confer standing
13 on any person.

14 (3) A person participating in the approval hearing shall follow
15 the process established by the court and shall be responsible for his, her,
16 or its own costs and attorney's fees.

17 (h) After the comment period described in subdivision (e)(2)(B) of
18 this section has ended, the insurance business transfer plan shall be
19 presented by the applicant for approval by the court.

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

23 (j)(1) If the court finds that the implementation of the insurance
24 business transfer plan would not have an adverse material impact on the
25 interests of policyholders or claimants that are part of the subject
26 business, the court shall enter an implementation order.

27 (2) The implementation order shall:

28 (A) Order implementation of the insurance business
29 transfer plan;

30 (B) Order a transfer and novation with respect to all
31 policyholders or reinsureds and their respective policies and reinsurance
32 agreements under the subject business, including:

33 (i) The extinguishment of all rights of
34 policyholders under policies that are part of the subject business against
35 the transferring insurer;

36 (ii) Providing that the transferring insurer shall

1 have no further rights, obligations, or liabilities with respect to such
2 policies; and

3 (iii) Providing that the assuming insurer shall have
4 all such rights, obligations, and liabilities as if the assuming insurer,
5 instead of the transferring insurer, were the original insurer of such
6 policies;

7 (C) Release the transferring insurer from all obligations
8 or liabilities under policies that are part of the subject business;

9 (D)(i) Authorize and order the transfer of property or
10 liabilities, including without limitation the ceded reinsurance of
11 transferred policies and contracts on the subject business.

12 (ii) The subject business shall vest in and become a
13 liability of the assuming insurer;

14 (E) Order that the applicant provide notice of the
15 transfer and novation according to § 23-69-505; and

16 (F) Make any orders with respect to incidental,
17 consequential, and supplementary matters as are necessary to assure the
18 insurance business transfer plan is fully and effectively executed.

19 (k) If the court finds that the insurance business transfer plan
20 should not be approved, the court by its order may:

21 (1) Deny the petition; or

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

24 (l) This section does not affect the right of appeal for any party.

25
26 23-69-510. Oversight of operations.

27 Insurers subject to this subchapter consent to the jurisdiction of the
28 Insurance Commissioner with regard to ongoing oversight of operations,
29 management, and solvency relating to the transferred business, including the
30 authority of the commissioner to conduct financial analysis and examinations.

31
32 23-69-511. Fees – Reimbursements.

33 (a) At the time of filing its application with the Insurance
34 Commissioner for review and approval of an insurance business transfer plan,
35 an applicant shall pay a nonrefundable fee to the State Insurance Department
36 in the amount of ten thousand dollars (\$10,000).

1 (b) In the commissioner's discretion, the department may participate
2 in the proceedings undertaken under this subchapter, and the applicant shall
3 reimburse the department for any compensation and benefits paid to the
4 personnel of the department for time spent engaged in the proceedings,
5 including without limitation examiners, actuaries, attorneys, managers, and
6 paraprofessionals.

7 (c) The commissioner may retain independent attorneys, appraisers,
8 actuaries, certified public accountants, or other professionals and
9 specialists to assist department personnel in connection with the review
10 required by this subchapter, and the cost shall be borne by the applicant.

11 (d) The applicant shall pay the expenses of the department and its
12 authorized consultants incurred in fulfilling their obligations under this
13 subchapter, including the actual expenses of the department or the expenses
14 and compensation of any consultants retained by the department.

15 (e) Failure to pay any of the requisite fees or reimbursements within
16 thirty (30) days of demand shall be grounds for the commissioner to request
17 that the Pulaski County Circuit Court dismiss the petition for approval of
18 the insurance business transfer plan before the filing of an implementation
19 order by the court or, if after the filing of an implementation order, the
20 commissioner may suspend or revoke the assuming insurer's certificate of
21 authority to transact insurance business in this state.

22
23 23-69-512. Rules.

24 The Insurance Commissioner shall promulgate rules to implement this
25 subchapter.

26
27 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

28 (a) The Insurance Commissioner shall promulgate rules necessary to
29 implement this act.

30 (b)(1) When adopting the initial rules to implement this act, the
31 final rule shall be filed with the Secretary of State for adoption under §
32 25-15-204(f):

33 (A) On or before January 1, 2021; or

34 (B) If approval under § 10-3-309 has not occurred by
35 January 1, 2021, as soon as practicable after approval under § 10-3-309.

36 (2) The commissioner shall file the proposed rule with the

1 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
2 2021, so that the Legislative Council may consider the rule for approval
3 before January 1, 2021.

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/s/Rapert

APPROVED: 4/29/21