

2021 Arkansas Insurance Legislation Summary: Arkansas Insurance Business Transfer Act



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This is the fifth article in a series of summaries of Insurance legislation from the 93rd Arkansas General Assembly.

Arkansas has joined a number of states in enacting legislation meant to allow an insurer to transfer blocks of business to another insurer without the need for individual policyholder consent.

On April 29, 2021, Governor Asa Hutchison signed Senate Bill 203, the Arkansas Insurance Business Transfer Act (“Arkansas IBT Law”). Modeled after the Oklahoma Insurance Business Transfer Act that was signed into law in May of 2018 and the NCOIL Insurance Business Transfer Model Act approved in March of 2020, the Arkansas IBT Law allows any United States insurer or reinsurer (“Transferring Insurer”) to transfer and novate a block of business to an insurance company domiciled in Arkansas, including an Arkansas-domiciled captive insurance company (“Assuming Company”). The IBT Law applies to property, casualty, life, health and any other line of business the Arkansas Insurance Commissioner finds to be suitable for a transfer. The IBT Law is designed to bring finality to the novation process by allowing an insurance company an organized and efficient process to transfer business to another insurance company via a court-ordered novation.

The Arkansas IBT Law requires the Transferring Company to file an insurance business transfer plan with the Arkansas Insurance Commissioner for an initial review and approval. In addition to identifying the parties and describing the transfer, the plan must also include:

1. the most recent audited financial statements and annual and quarterly reports of the Transferring and Assuming Insurers;
2. the most recent actuarial report opinion that quantifies the liabilities associated with the business to be transferred;
3. three-year financial projections for the Assuming Insurer;
4. a proposal for implementing and administering the insurance transfer including the form of notice to be provided to any affected policyholder;
5. a description of all reinsurance arrangements covering the business to be transferred and how those arrangements would be impacted;
6. evidence of approval or non-objective of the Transferring Insurer’s chief insurance regulator;
and

7. an opinion from an independent qualified expert selected by the Arkansas Insurance Commissioner.

The Arkansas Insurance Commissioner is to determine whether the plan is satisfactory to submit to the Pulaski County Circuit Court within 60 business days of receipt of a complete application. The Arkansas Insurance Commissioner is to authorize the submission of the plan unless he or she finds that the plan would have an adverse material impact on the interest of policyholders or claimants. Moreover, the Arkansas Insurance Commissioner may not authorize the submission of the plan to the court unless the Assuming Insurer is licensed in each line of business in each state where the Transferring Insurer is licensed unless the Assuming Insurer demonstrates an extraordinary circumstance preventing the Assuming Insurer from obtaining the requisite license or licenses, and the Arkansas Insurance Commissioner determines the lack of a license or licenses would not result in an adverse material impact on the interest of policyholders, contract holders, or reinsurers.

If the Arkansas Insurance Commissioner determines that the insurance transfer plan is sufficient to proceed with a court filing, the transferring insurer will then submit the transfer plan to the Pulaski County Circuit Court for a separate hearing. While policyholders will receive notice of the hearing and will be provided 60 days to comment on or object to the plan, a policyholder does not have the opportunity to opt-out of or otherwise reject the transfer or novation. If the Court finds that the transfer plan would not have an adverse material impact on policyholders or claimants, the Court shall enter an implementation order ordering transfer and novation with respect to all policyholders or reinsured, and extinguishing the rights of policyholders against the transferring insurer.

The Arkansas IBT Law is expected to become effective on July 28, 2021. The Arkansas Insurance Department is drafting regulations to implement the Arkansas IBT Law and expects to have such regulations in place before the end of the year.

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