Apetrop USA, llc

# H.198 - THE LEGACY INSURANCE MANAGEMENT ACT

## WHAT THE ACT DOES

- The Legacy Insurance Management Act enables a Vermont company to assume a closed block of non-admitted commercial insurance policies and/or reinsurance agreements from a non-admitted transferring insurer, taking over the obligations to policyholders and reinsurance counterparties and custody and administration of the related reserves.

- The policies that may be transferred will be limited to blocks of non-admitted insurance policies and/or reinsurance agreements (i.e. unusual or higher risk insurance not available from licensed insurers).

- No personal lines (e.g., health insurance, automobile insurance, homeowners insurance) are involved, nor are compulsory insurances (e.g., workers' compensation).

- In such transactions, the affected policyholders will be commercial entities, either large corporations or other insurers and reinsurers.

## THE PURPOSE OF LEGACY INSURANCE TRANSFERS

- The legacy insurance to be transferred is known as "run-off." The policies in the closed block are usually 10+ years old: premiums are no longer being paid on these policies and the policy periods have long since expired, but the contracts remain open (i.e. the liabilities of the insurers under the contracts remain outstanding) to provide cover for latent or long-tail events, such as pharmaceutical or medical device liability, pollution, or latent contamination.

- Transfers of closed blocks of insurance allow companies that are no longer active in writing insurance business in a particular line (e.g., medical device or pharmaceutical liability) to transfer such insurance obligations to companies that are active and/or expert in that line. A transfer provides the insured specialized, best-practices-informed administration, adjustment and processing of their claims by the assuming company while allowing the original company to focus on its core business and competency.

- An insurer can achieve similar results by other means, such as acquisition by reinsurance and/or third-party claims management, but such methods do not provide the insurer or the insured the finality or certainty of a transfer, leaving the block liabilities on the insurer's balance sheet.

- Currently there is no regulatory oversight of such a transaction, nor of the management of claims portfolios by third parties.

- The Act provides regulatory oversight of both the transaction and claims management of the portfolio. In addition, the Act enables Vermont to avail itself of the opportunities afforded by its competitor jurisdictions in Europe and Asia with respect to internal restructuring.

**HOW A LEGACY INSURANCE TRANSFER UNDER THE ACT WORKS**

- The transferring non-admitted insurer and the assuming Vermont company would specify the insurance policies and/or reinsurance agreements to be transferred, agree on the commercial terms of the transfer and the assuming company would submit a detailed transfer plan to the Department of Financial Regulation (DFR) for its review and approval.

- The transfer plan includes, among other things, the assuming company's pro forma financials projecting solvency after the transfer and the assuming company's proposed procedures and other arrangements relating to solvency, administration, claims management and other relevant matters, under the oversight of the DFR and the Commissioner.

- Pursuant to the Act, each policyholder in the closed block would be provided notice of the proposed transfer.

- All parties, including policyholders in the closed block, would have an opportunity to object or comment and to attend a hearing before the Commissioner regarding approval of the transfer plan.

- Objecting policyholders and reinsurance counterparties would be excluded from the plan; parties that accepted the plan, or were deemed to have accepted the plan by not providing notice of objection as required, would have their insurance policies or reinsurance agreements statutorily novated under the Act.

- If any policy in the block contains a term that prohibits transfer or assignment without consent and no consent is obtained, the policy will not transfer with the block.

- Any transferred insurance policy would be transferred together with any inuring reinsurance protection.

- The consequence of any transfer would be to substitute the assuming company for the transferring insurer for the purposes of any claim or other purpose under each assumed policy or reinsurance agreement and, further, have the effect of a statutory novation of the transferred insurance policies and reinsurance agreements.

- The assuming company would be obligated to respond to claims under ALL of the same terms and conditions as were in effect prior to the transaction.

- The Commissioner would be able to set stringent standards for assuming companies.

- In effect, LIMA will bring within the regulatory authority of the Commissioner insurance and reinsurance business that is presently located outside the purview of any U.S.

insurance regulatory authority, providing a material benefit to policyholders and reinsurance counterparties.

**HOW THE ACT SERVES VERMONT**

- Vermont has an exceptionally robust insurance regulatory authority, making it an attractive jurisdiction for such transfers. The Act would strengthen Vermont's brand as an insurance sector regulatory jurisdiction with global-scale capacities.

- Under this Act, the assuming company would both domesticate the assigned portfolios in Vermont and retain the provision of expert claims management services. This would create a number of well-paying jobs in Vermont both to manage these portfolios and provide related ancillary services, including audit and inspection, accounting and legal services.

- The taxes and fees in this bill will provide consequential income for the state.

- Given the international nature and scope of the insurance business gradually eroding border distinctions, insurance business transfer legislation like the Act will come to the U.S. in time and probably sooner rather than later. It would be commercially advantageous for Vermont to be in the vanguard of these restructuring transactions, attracting business before other states establish equivalent capacity.

*Questions? Please contact*

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