

# A Death in the Family and a Proper Burial

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The Merriam-Webster Dictionary defines **legacy** as something that is received from someone who has died. In the insurance industry, the analogy would be inherited run-off of business that has died, but not yet buried.

The U.S. has not historically been as flexible as most other insurance developed countries in permitting insurers to ‘divest’ run-off or legacy business. Recent actions by three states may provide differing solutions to this impediment.

Rhode Island Regulation 68 (the “Rhode Island Regulation”), Connecticut Public Act 17-2 (the “Connecticut Act”) and Oklahoma Senate Bill 606 (the “Oklahoma Bill”). Below please find a chart summarizing, at a high-level, the major components of each.

	Rhode Island Regulation	Connecticut Act <sup>1</sup>	Oklahoma Bill <sup>2</sup>
<b>Effective Date:</b>	Effective Date: Already effective.	Effective Date: October 1, 2017.	Effective Date: The bill as presently drafted is scheduled to become effective November 1, 2017. However, the bill is still making its way through Oklahoma’s legislative process, and as such, is subject to change. As of now, the bill will only apply to run-off insurers that cease underwriting new business after January 1, 2018, or that were not domiciled in Oklahoma on January 1, 2018.
<b>What Blocks of Business Are Eligible?</b>	Commercial property and casualty, including all classes of reinsurance, that has no new written premium for the last 60 months; excludes worker’s compensation, personal lines, and life. R.I. Gen. Laws. s. 27-14.5-1, et. seq.; R27-68-004.	The Connecticut Act does not appear to limit its application to any specific lines of business.	Applies to commercial run-off insurers. <sup>3</sup>
<b>Application Procedure</b>	If the entity wishing to transfer is a non-Rhode Island domestic insurer, Rhode Island would first require the domestic regulator of the company transferring the business into Rhode Island to initially approve the plan prior to its submission of the plan to Rhode Island, and will also implement a process to hear the concerns from other regulators who may have a significant number of policyholders in their states. R27-68-004.	Any domestic insurer may divide into two or more resulting insurers pursuant to a plan of division.  Dividing insurers must develop a plan of division, which must be approved first by the dividing insurer and then by the insurance commissioner. The Public Act specifies the plan’s required components, and specifies the effects of the division, including how obligations and interests are allocated.	The applicant shall give notice of the application and proposed commutation plan. All creditors shall be given the opportunity to vote on the plan. Approval of a commutation plan requires consent of 50% of each class of creditors, and the holders of 75% in value of the liabilities owed to each class of creditors.

<sup>1</sup> All references in this column come directly from the Connecticut Act.

<sup>2</sup> All references in this column come directly from the Oklahoma Bill, as it is presently drafted.

<sup>3</sup> Commercial run-off insurer means (a) a run-off insurer domiciled in Oklahoma whose business, excluding all business subject to an assumption reinsurance agreement, includes only the reinsuring of any line(s) of business other than life and/or the insuring of any line(s) of business other than life, workers’ compensation, and personal lines insurance, or (b) an Oklahoma domestic insurance company meeting the requirements of part “a” of this definition and formed or re-activated for the sole purpose of entering into a voluntary restructuring under the Oklahoma Bill and whose liabilities consist of commercial liabilities transferred to said company with the approval of the Commissioner and pursuant to the regulations issued by the Department under this act. The amount of the commercial liabilities transferred must be less than or equal to the amount of assets transferred to the newly formed or re-activated company.

	Rhode Island Regulation	Connecticut Act <sup>1</sup>	Oklahoma Bill <sup>2</sup>
<b>Insurance Department Approval Process</b>	<p>An Insurance Business Transfer Plan ("IBT") must be submitted by the Assuming Company for review by the Department and must contain all operative provisions required in R27-68-004.</p> <p>The Rhode Island Department has 60 days from the date of receipt of the IBT to review the Plan. The Department may extend the 60 day review period for an additional 30 business days. If the Department's review determines that the Plan as submitted does not meet the standards of existing statute or Regulation 68, the Department must notify the Assuming Company and specify any modifications, supplements, or amendments and any additional information or documentation with respect to the Plan that must be provided to the Department before the Department will consider whether the Plan may proceed with the Court filing.</p> <p>R27-68-004.</p>	<p>A division must be approved by the commissioner after reasonable notice and a public hearing, if such notice and hearing are deemed by the commissioner to be in the public interest. The commissioner shall approve a plan of division unless the commissioner finds that: (A) The interest of any policyholder or interest holder will not be adequately protected; or (B) the proposed division constitutes a fraudulent transfer under sections 52-552a to 52-552l, inclusive, of the general statutes.</p> <p>After a plan of division has been adopted and approved an officer or duly authorized representative of the dividing insurer shall sign a certificate of division.</p>	<p>As a condition precedent to an implementation order, the commissioner must determine that implementation of the commutation plan would not materially adversely affect either the interests of objecting creditors or the interests of assumption policyholders.</p>
<b>Application to the Court for Approval of the Insurance Business Transfer Plan</b>	<p>Within 90 days after notice from the Rhode Island Department of Insurance that the Assuming Company may proceed, the Assuming Company must apply to the Court for approval of the IBT.</p> <p>The application must be in the form of a Petition for Implementation of the IBT in the Providence County Superior Court and include the IBT and any evidence which the parties to the proposed transfer intend to submit to the Court for the approval hearing.</p> <p>R27-68-004.</p>	N/A	N/A
<b>Likely Acceptance in Other States</b>	<p>Requires a court order and therefore better positioned to argue for "full faith and credit" in other states. If the transferred business requires licenses in other states, those other states may subject the insurer to "seasoning" requirements. If "seasoning" is not feasible for a reinsurer, a form of security/collateralization may be required.</p>	<p>Permitting division of an insurer allows the resulting insurers to argue that the assignment of policies to one or the other insurer is effected by operation of law and that the licensing of either resulting insurer is merely a matter of other states renewing the license of each such insurer. There could be a better argument against imposing seasoning requirements.</p>	<p>Does not appear to require court approval, potentially making it more susceptible to challenge. May face similar seasoning issues as the Rhode Island proposal.</p>

	Rhode Island Regulation	Connecticut Act <sup>1</sup>	Oklahoma Bill <sup>2</sup>
Other Relevant Information	<p>A Rhode Island domestic may also petition for implementation of a commutation plan either concurrently with the IBT or at a later date.</p> <p>Permits 'alien insurers' to utilize Regulation 68.</p>	<p>"If a provision of any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, indenture or other contract relating to indebtedness, or a provision of any other type of contract other than an insurance policy, annuity or reinsurance agreement, that was issued, incurred or executed by the domestic insurer before October 1, 2017, requires the consent of the obligee to a merger of the insurer or treats such a merger as a default, that provision applies to a division of the insurer as if such division were a merger."<sup>4</sup></p> <p>The commissioner may, simultaneous to approving a division, permit the formation of a domestic insurer established for the sole purpose of merging or consolidating with an existing domestic insurer.</p> <p>Except as provided in the organic law or organic rules of the dividing insurer, the division does not give rise to any rights that an interest holder, governor<sup>5</sup> or third party would have upon a dissolution, liquidation or winding up of the dividing insurer.</p> <p>The Connecticut Act grants the commissioner the authority to adopt implementing regulations and makes conforming changes. As such, additional requirements may be imposed at a later date.</p> <p>The Connecticut Act permits a Connecticut domestic to divide into two domestic insurers. This would appear to preclude a transfer of business into Connecticut from a third party.</p> <p>Finally, the Connecticut Act appears to be, at least in part, modeled after Pennsylvania's division statute, which is perhaps best known as having been used by Cigna in 1996 to divide the business of one of its units with a newly formed entity know as Brandywine, which assumed certain runoff blocks, while an existing Cigna entity continued to write new business. After challenges and litigation, that transaction was ultimately approved.</p>	<p>Reinsurance: "Nothing in this act shall be construed as authorizing the applicant, or any other entity, to compel payment from a reinsurer on the basis of estimated incurred but not reported losses or loss expenses, or case reserves for unpaid losses and loss expenses."</p> <p>Oklahoma must still draft regulations in order to provide more specifics on implementation of the law.</p>

<sup>4</sup> "Interest", unless the context otherwise requires, means: (A) A governance interest in an unincorporated entity; (B) a transferable interest in an unincorporated entity; or (C) a share or membership in a corporation. "Interest holder" means a direct holder of an interest. "Organic law" means the section of the general statutes, if any, other than this section and sections 2 to 9, inclusive, of this act and sections 34-601 to 34-646, inclusive, of the general statutes, governing the internal affairs of an entity. "Organic rules" means the private organic rules and public organic document of an entity.

<sup>5</sup> "Governor", with respect to an entity, means a person: (A) By or under whose authority the powers of an entity are exercised; and (B) under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

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