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## National Council of Insurance Legislators (NCOIL)

### Insurance Business Transfer Model Act

#### With Suggested Additions by ACLI - 7/1/19

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*\*Sponsored by Asm. Andrew Garbarino (NY) and Rep. Lewis Moore (OK)*  
*\*Initial Discussion Draft based on Oklahoma SB 1101 – The Insurance Business Transfer Act (enacted on May 7, 2018)*

#### Table of Contents

Section 1.	Title
Section 2.	Purpose
Section 3.	Definitions
Section 4.	Court Authority
Section 5.	Notice Requirements
Section 6.	Application Procedure
	A. Submitting Application of Insurance Business Transfer Plan to Insurance Commissioner
	B. Application to the Court for Approval of the Insurance Business Transfer Plan
	C. Approval of the Insurance Business Transfer Plan
	D. Implementation of Insurance Business Transfer Plan
Section 7.	Ongoing Oversight by Insurance Commissioner
Section 8.	Fees and Costs
Section 9.	Effective Date

#### **Section 1. Title**

This act shall be known and may be cited as the "Insurance Business Transfer Act".

#### **Section 2. Purpose**

This act is adopted to provide a basis and procedures for the transfer and statutory novation of policies from a transferring insurer to an assuming insurer by way of an

Insurance Business Transfer without the affirmative consent of policyholders or reinsureds. The novation is effected by court order. This act establishes the requirements for notice and disclosure and standards and procedures for the approval of the transfer and novation by the State Insurance Commissioner and a District Court pursuant to an Insurance Business Transfer Plan. This act does not limit or restrict other means of effecting a transfer or novation.

### **Section 3. Definitions**

A. "Affiliate" means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. "Applicant" means a transferring insurer or reinsurer applying under Section 6 of this act.

C. "Assuming insurer" means an insurer domiciled in this State 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 the State Captive Insurance Company Act.

D. "Court" means the [District Court].

*Drafting Note: Each state shall identify the specific court that shall have jurisdiction and venue*

E. "Department" means the State Insurance Department.

*Drafting Note: In certain states "State Insurance Department" may be replaced with the regulatory body that has jurisdiction over insurance*

F. "Commissioner" means the State Insurance Commissioner.

G. "Implementation order" means an order issued by the Court under Section 6 of this act.

H. "Insurance Business Transfer" means a transfer and novation in accordance with this act. 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.

I. "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.

J. "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 insurer rehabilitation or delinquency 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.

K. "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.

L. "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 via regulation is suitable for an insurance business transfer.

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

N. "Subject business" means the policy or policies that are the subject of the Insurance Business Transfer Plan.

O. "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.

P. "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 an Insurance Business Transfer Plan.

#### **Section 4. Court Authority**

Notwithstanding any other provision of law, the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this act. No provision of this act shall be construed to preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of power.

## **Section 5. Notice Requirements**

A. Whenever notice is required to be given by the applicant under the Insurance Business Transfer Act and except as otherwise permitted or directed by the court or the Insurance Commissioner, the applicant shall, within fifteen (15) days of the event triggering the requirement, cause transmittal of the notice:

1. To the chief insurance regulator in each jurisdiction in which the applicant:
  - a. holds or has ever held a certificate of authority, and
  - b. in which policies that are part of the subject business were issued or policyholders currently reside;
2. To the National Conference of Insurance Guaranty Funds, the National Organization of Life and Health Insurance Guaranty Associations and all state insurance guaranty associations for the states in which the applicant:
  - a. holds or has ever held a certificate of authority, and
  - b. in which policies that are part of the subject business were issued or policyholders currently reside;
3. To reinsurers of the applicant pursuant to the notice provisions of the reinsurance agreements applicable to the policies that are part of the subject business, or where an agreement has no provision for notice, by internationally recognized delivery service;
4. To all policyholders holding policies that are part of the subject business, at their last-known address as indicated by the records of the applicant or to the address to which premium notices or other policy documents are sent. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the subject business; and
5. By publication in a newspaper of general circulation in the state in which the applicant has its principal place of business and in such other publications that the Commissioner requires.

B. If notice is given in accordance with this section, any orders under this act shall be conclusive with respect to all intended recipients of the notice, whether or not they receive actual notice.

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

D. Depending upon the circumstances, notice under this section may take the form of first-class mail, facsimile and/or electronic notice.

## **Section 6. Application Procedure**

### **A. Application Procedure.**

1. An Insurance Business Transfer Plan must be filed by the applicant with the Insurance Commissioner for his or her review and approval. 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:

- a. the name, address and telephone number of the transferring insurer and the assuming insurer and their respective direct and indirect controlling persons, if any,
- b. summary of the Insurance Business Transfer Plan,
- c. identification and description of the subject business,
- d. most recent audited financial statements and statutory annual and quarterly reports of the transferring insurer and assuming insurer filed with their domiciliary regulator,
- e. the most recent actuarial report and opinion that quantify the liabilities associated with the subject business,
- f. 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,
- g. officers' certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals and authorizations regarding the Insurance Business Transfer Plan and completed all necessary and appropriate actions relating thereto,

h. proposal for Plan implementation and administration, including the form of notice to be provided under the Insurance Business Transfer Plan to any policyholder whose policy is part of the subject business,

i. full description as to how such notice shall be provided,

j. description of any reinsurance arrangements that would pass to the assuming insurer under the Insurance Business Transfer Plan,

k. description of any guarantees or additional reinsurance that will cover the subject business following the transfer and novation,

l. a statement describing the assuming insurer's proposed investment policies and any contemplated third-party claims management and administration arrangements,

with respect  
to life and  
health and  
any non-commercial  
P+C coverage

m. description of how the transferring and assuming insurers will be licensed such that policyholders maintain guaranty association coverage in the same state in which they had it immediately prior to the transaction,

nn. evidence of approval or nonobjection of the transfer from the chief insurance regulator of the state of the transferring insurer's domicile, and

no. a 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. The 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 Insurance Business Transfer 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 materially adversely affected by the transfer.

2. The independent expert's report as required by subparagraph ~~80~~ of paragraph 1 of this subsection shall include, but not be limited to, a review of the following:

a. analysis of the business purposes of the proposed transaction,

ab. analysis of the transferring insurer's actuarial review of reserves for the subject business to determine the reserve adequacy, including, but not limited to:

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

(2) cash flow and reserve adequacy testing (including consideration of the effects of diversification on policy liabilities,

bc. 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,

d. analysis of the impact, if any, of concentration of lines of business following the transaction,

ee. review of the plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer,

ef. whether the proposed transfer has a material, adverse impact on the policyholders and claimants of the transferring and the assuming insurers,

eg. 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

fh. any other information that the Commissioner requests in order to review the Insurance Business Transfer.

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

4. The Commissioner's review process must include certain findings, including:

a. the financial condition of an involved insurer will not jeopardize the financial stability of the insurers, or prejudice the interest of its policyholders or reinsurers,

b. an involved insurer will not have plans or proposals to liquidate another involved insurer, sell its assets, or consolidate or merge or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to policyholders, reinsurers or the public,

c. the involved insurers will be solvent at the time of the transaction,

d. the assets allocated to the involved insurers will not be, at the time of the transaction, unreasonably small in relation to the business and transaction,

e. the terms of the transaction will not be unfair or unreasonable to any involved insurer's policyholders or reinsurers,



f. the competence, experience and integrity of the persons who would control the operation of an involved insurer are such that it would be in the interest of the involved insurers' policyholders and reinsurers and the general public to permit the transfer,

g. the transaction is not likely to be hazardous or prejudicial to the insurance-buying public,

h. the interest of the policyholders of an involved insurer that may become policyholders of another insurer will be adequately protected, and

i. the transaction is not being made for purposes of hindering, delaying or defrauding any policyholders or reinsurers.

5. In determining whether to approve the transaction, the regulator must consider, among other things, all assets, liabilities, cash flows and the nature and composition of the assets proposed to be transferred, including, without limitation:

a. an assessment of the risks and quality (including liquidity and marketability) of the proposed transfer portfolio, and

b. consideration of asset/liability matching and the treatment of the material elements of the portfolio for purposes of statutory accounting.

46. The Commissioner shall authorize the submission of the Plan to the court unless he or she finds that the Insurance Business Transfer would have a material adverse impact on the interests of policyholders or claimants that are part of the subject business.

57. If the Commissioner determines that the Insurance Business Transfer would have a material adverse 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.

68. The applicant shall have thirty (30) days from the date the Commissioner notifies him or her, pursuant to paragraph 5 of this subsection, to file an amended Insurance Business Transfer 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 Insurance Business Transfer Plan filing will