

ASSUMPTION REINSURANCE MODEL ACT

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Section 1. Purpose

This Act provides for the regulation of the transfer and novation of contracts of insurance by way of assumption reinsurance. It defines assumption reinsurance and establishes notice and disclosure requirements which protect and define the rights and obligations of policyholders, regulators and the parties to assumption reinsurance agreements.

Section 2. Scope

- A. This Act applies to any insurer authorized in this state which either assumes or transfers the obligations or risks, or both, on contracts of insurance pursuant to an assumption reinsurance agreement.

Drafting Note: Certain other transactions may result in a substantive assumption or transfer of obligations or risks, or both, under contracts of insurance. For example, some state statutes permit transactions in which affiliated insurers isolate certain obligations under existing insurance policies, in whole or in part, from other insurance operations (so-called "division statutes"). States desiring to assure their jurisdiction over assumptions of this type should consider including the following in their statutes:

1. Add "or other agreement, plan or arrangement whose effect on policyholder rights is substantially similar to an assumption reinsurance agreement" after "assumption reinsurance agreement" in Section 2A.
2. Insert ", or other agreement, plan or arrangement" after "contract" in Section 3B.
3. Insert ", or" after "extinguished" in Section 3B(2).
4. Insert a new Paragraph (3) in Section 3B that would read as follows: "Whose effect on policyholder rights is substantially similar to transactions meeting the conditions set forth in Paragraphs (1) and (2) of this subsection and that have not been specifically excluded from the application of this Act by Section 2B."

- B. This Act does not apply to:

- (1) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks, or both, under the contracts of insurance subject to the reinsurance agreement;
- (2) The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;
- (3) The transfer of contracts of insurance pursuant to mergers or consolidations of two (2) or more insurers to the extent that those transactions are regulated by statute;
- (4) Any insurer subject to a judicial order of liquidation or rehabilitation;

Drafting Note: This section is intended to apply to any similar proceedings under court order.

- (5) Any reinsurance agreement or transaction to which a state insurance guaranty association is a party, provided that policyholders do not lose any rights or claims afforded under their original policies pursuant to [cite applicable state guaranty fund laws]; or

- (6) The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder.

Section 3. Definitions

- A. “Assuming insurer” means the insurer that acquires an insurance obligation or risk, or both, from the transferring insurer pursuant to an assumption reinsurance agreement.
- B. “Assumption reinsurance agreement” means any contract that both:

Drafting Note: See notes after Section 2A for suggested additional language.

- (1) Transfers insurance obligations or risks, or both, of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and
- (2) Is intended to effect a novation of the transferred contract of insurance 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.
- C. “Contract of insurance” means any written agreement between an insurer and policyholder pursuant to which the insurer, in exchange for premium or other consideration, 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; it shall include all property, casualty, life, health, accident, surety, title and annuity business authorized to be written pursuant to the insurance laws of this state.

Drafting Note: Individual states may cite specific sections of their insurance laws regarding lines, classes or types of insurance to which this Act is applicable. If a state has a statutory definition of contract of insurance which is inconsistent with this definition, the state may want to consider using the statutory definition.

- D. “Home service business” means insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.
- E. “Notice of transfer” means the written notice to policyholders required by Section 4A.
- F. “Policyholder” means any individual or entity which has the right to terminate or otherwise alter the terms of a contract of insurance. It includes any certificateholder whose certificate is in force on the proposed effective date of the assumption, if the certificateholder has the right to keep the certificate in force without change in benefit following termination of the group policy.

The right to keep the certificate in force referred to in this section shall not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act, (“COBRA”) Section 601, *et seq.*, of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1161 *et seq.*).

- G. “Transferring insurer” means the insurer which transfers an insurance obligation or risk, or both, to an assuming insurer pursuant to an assumption reinsurance agreement.

Section 4. Notice Requirements

- A. Notice to Policyholders, Agents and Brokers
- (1) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder’s last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer’s agents or brokers of record on the affected policies.

- (2) The notice of transfer shall state or provide:
- (a) The date the transfer and novation of the policyholder's contract of insurance is proposed to take place;
 - (b) The name, address and telephone number of the assuming and transferring insurer;
 - (c) That the policyholder has the right to either consent to or reject the transfer and novation;
 - (d) The procedures and time limit for consenting to or rejecting the transfer and novation;
 - (e) A summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's rights;
 - (f) A statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides, or is otherwise authorized, as provided herein, to assume such business;
 - (g) The name and address of the person at the transferring insurer to whom the policyholder should send its written statement of acceptance or rejection of the transfer and novation; and
 - (h) The address and phone number of the insurance department where the policyholder resides so that the policyholder may write or call the insurance department for further information regarding the financial condition of the assuming insurer.
 - (i) The following financial data for both companies:
 - (i) Ratings for the last five (5) years if available or for such lesser period as is available from two (2) nationally recognized insurance rating services acceptable to the commissioner including the rating service's explanation of the meaning of the ratings. If ratings are unavailable for any year of the five-year period, this shall also be disclosed;
 - (ii) A balance sheet as of December 31 for the previous three (3) years if available or for such lesser period as is available and as of the date of the most recent quarterly statement;
 - (iii) A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and
 - (iv) An explanation of the reason for the transfer.
- (3) Notice in a form identical or substantially similar to Appendix A attached shall be deemed to comply with the requirements of Section 4A(2).
- (4) The notice of transfer shall include a pre-addressed, postage-paid response card which a policyholder may return as its written statement of acceptance or rejection of the transfer and novation.
- (5) The notice of transfer shall be filed as part of the prior approval requirement set forth in Section 4B(1).

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

B. Notification and Prior Approval Requirements

- (1) Prior approval by the commissioner is required for any transaction where an insurer domiciled in this state assumes or transfers obligations and/or risks on contracts of insurance under an assumption reinsurance agreement. No insurer licensed in this state shall transfer obligations and/or risks on contracts of insurance issued to or owned by residents of this state to any insurer that is not licensed in this state. An insurer domiciled in this state shall not assume obligations or risks, or both, on contracts of insurance issued to or owned by policyholders residing in any other state unless it is licensed in the other state, or the insurance regulatory official of that state has approved the assumption.
- (2) Any licensed foreign insurer that enters into an assumption reinsurance agreement which transfers the obligations or risks, or both, on contracts of insurance issued to or owned by residents of this state, shall file or cause to be filed with the commissioner of insurance of this state the assumption certificate, a copy of the notice of transfer and an affidavit that the transaction is subject to substantially similar requirements in the state of domicile of both the transferring and assuming insurer. If no such requirements exist in the domicile of either the transferring or assuming insurers, then the requirements of Section 4B(3) shall apply.

Drafting Note: It is anticipated that the insurance department will review the filing in a manner consistent with the policy form review process applicable for the state which could include either prior approval or file and use.

- (3) Any licensed foreign insurer that enters into an assumption reinsurance agreement which transfers the obligations or risks, or both, on contracts of insurance issued to or owned by residents of this state, shall obtain prior approval of the commissioner of insurance of this state and be subject to all other requirements of this Act with respect to residents of this state, unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by statute or regulation in the jurisdiction of their domicile which are substantially similar to those contained herein.
- (4) The following factors, along with such other factors as the commissioner deems appropriate under the circumstances, shall be considered by the commissioner in reviewing a request for approval:
 - (a) The financial condition of the transferring and assuming insurers and the effect the transaction will have on the financial condition of each company;
 - (b) The competence, experience and integrity of those persons who control the operation of the assuming insurer;
 - (c) The plans or proposals the assuming party has with respect to the administration of the policies subject to the proposed transfer;
 - (d) Whether the transfer is fair and reasonable to the policyholders of both companies; and
 - (e) Whether the notice of transfer to be provided by the insurer is fair, adequate and not misleading.

Section 5. Policyholder Rights

- A. Policyholders shall have the right to reject the transfer and novation of their contracts of insurance. Policyholders electing to reject the assumption transaction shall return to the transferring insurer the pre-addressed, postage-paid response card or other written notice and indicate thereon that the assumption is rejected (collectively referred to as the "Response Card").

- B. Payment of any premium to the assuming company during the twenty-four-month period after notice is received shall be deemed to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation shall be deemed to have been effected, provided that the premium notice clearly states that payment of the premium to the assuming insurer shall constitute acceptance of the transfer. However, the premium notice shall also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to any home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the Notice of Transfer required by Section 4 and in the assumption certificate.
- C. After no fewer than twenty-four (24) months from the mailing of the initial notice of transfer required under section 4A, if positive consent to, or rejection of, the transfer and assumption has not been received or consent has not been deemed to have occurred under Subsection B of this section, the transferring company shall send to the policyholder a second and final notice of transfer as specified in Section 4A. If the policyholder does not accept or reject the transfer during the one month period immediately following the date on which the transferring insurer mails the second and final notice of transfer, the policyholder's consent will be deemed to have occurred and novation of the contract will be effected. With respect to the home service business, or any other business not using premium notices, the twenty-four and one month periods shall be measured from the date of delivery of the Notice of Transfer pursuant to Section 4A(1).
- D. The transferring insurer will be deemed to have received the Response Card on the date it is postmarked. A policyholder may also send its Response Card by facsimile or other electronic transmission or by registered mail, express delivery or courier service, in which case the Response Card shall be deemed to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

Section 6. Effect of Consent

If a policyholder consents to the transfer pursuant to Section 5 or if the transfer is effected under Section 7, there shall be a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer shall thereby be relieved of all insurance obligations or risks, or both, transferred under the assumption reinsurance agreement and the assuming insurer shall become directly and solely liable to the policyholder for those insurance obligations or risks, or both.

Section 7. Commissioner's Discretion

If an insurer domiciled in this state or in a jurisdiction having a substantially similar law is deemed by the domiciliary commissioner to be in hazardous financial condition or an administrative proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the contracts of insurance is in the best interest of the policyholders, as determined by the domiciliary commissioner, a transfer and novation may be effected notwithstanding the provisions of this Act. This may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the commissioner.

Drafting Note: States must amend their guaranty association law to specify that residents whose policies are transferred to an unlicensed insurer pursuant to this section are entitled to continued guaranty association protection.

Section 8. Effective Date

This Act shall take effect six (6) months after the date it is enacted and shall apply to all assumption reinsurance agreements entered into on or after that effective date.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1993 Proc. 3rd Quarter 7, 29, 650, 670-674 (adopted).

1999 Proc. 1st Quarter 8, 9, 755, 757-758 (amended).

Appendix A

NOTICE OF TRANSFER

IMPORTANT: THIS NOTICE AFFECTS YOUR CONTRACT RIGHTS. PLEASE READ IT CAREFULLY.

Transfer of Policy

The [ABC Insurance Company] has agreed to replace us as your insurer under [insert policy/certificate name and number] effective [insert date]. The [ABC Insurance Company's] principal place of business is [insert address] and certain financial information concerning both companies is attached, including (1) ratings for the last five years, if available, or for such lesser period as is available from two nationally recognized insurance rating services; (2) balance sheets for the previous three years, if available, or for such lesser period as is available and as of the date of the most recent quarterly statement; (3) a copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and (4) an explanation of the reason for the transfer. You may obtain additional information concerning [ABC Insurance Company] from reference materials in your local library or by contacting your Insurance Commissioner at [insert address and phone number].

The [ABC Insurance Company] is licensed to write this coverage in your state. The Commissioner of Insurance in your state has reviewed the potential effect of the proposed transaction, and has approved the transaction.

Your Rights

You may choose to consent to or reject the transfer of your policy to [ABC Insurance Company]. If you want your policy transferred, you may notify us in writing by signing and returning the enclosed pre-addressed, postage-paid card or by writing to us at:

[Insert name, address and facsimile number of contact person.]

Payment of your premium to the assuming company will also constitute acceptance of the transaction. However, a method will be provided to allow you to pay the premium while reserving the right to reject the transfer.

If you reject the transfer, you may keep your policy with us or exercise any option under your policy. If we do not receive a written rejection you will, as a matter of law, have consented to the transfer. However, before this consent is final you will be provided a second notice of the transfer twenty-four months from now. After the second notice is provided, you will have one month to reply. If you have paid your premium to the [ABC Insurance Company], without reserving your right to reject the transfer, you will not receive a second notice.

Drafting Note: The second and final notice to the policyholders should include a date by which the policyholder should respond. The date should be one month after the date on which the notice was mailed to the policyholder.

Effect of Transfer

If you accept this transfer, [ABC Insurance Company] will be your insurer. It will have direct responsibility to you for the payment of all claims, benefits and for all other policy obligations. We will no longer have any obligations to you.

If you accept this transfer, you should make all premium payments and claims submissions to [ABC Insurance Company] and direct all questions to [ABC Insurance Company].

If you have any further questions about this agreement, you may contact [XYZ Insurance] or [ABC Insurance].

Sincerely,

[XYZ Insurance Company [ABC Insurance Company
111 No Street 222 No Street
Smithville, USA Jonesville, USA
555/555-5555] 333/333-3333]

For your convenience, we have enclosed a pre-addressed postage-paid response card. Please take time now to read the enclosed notice and complete and return the response card to us.

[Notice Date]

RESPONSE CARD

_____ Yes, I accept the transfer of my policy from
[name of transferring company] to [name of
assuming company].

_____ No, I reject the proposed transfer of my policy
from [name of transferring company] to [name of
assuming company] and wish to retain my policy
with [name of transferring company].

Date

Signature

Name: _____

Street Address: _____

City, State, Zip: _____

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This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	NO CURRENT ACTIVITY	
Alaska		ALASKA STAT. § 21.12.025 (2004).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. § 20-736 (1997).
Arkansas		ARK. CODE R. § 55 (1992).
California	NO CURRENT ACTIVITY	
Colorado	3 COLO. CODE REGS. § 702-3:3-3-1 (1990/2012).	
Connecticut	NO CURRENT ACTIVITY	
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida	NO CURRENT ACTIVITY	
Georgia	GA. CODE ANN. §§ 33-52-1 to 33-52-6 (1992).	GA. COMP. R. & REGS. 120-2-62 (1995).
Guam	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Hawaii	NO CURRENT ACTIVITY	
Idaho	NO CURRENT ACTIVITY	
Illinois	NO CURRENT ACTIVITY	
Indiana	NO CURRENT ACTIVITY	
Iowa		IOWA CODE § 515.68A (1997).
Kansas	KAN. STAT. ANN. §§40-5201 to 40-5210 (2004).	BULLETIN 1993-21 (1993).
Kentucky	NO CURRENT ACTIVITY	
Louisiana	NO CURRENT ACTIVITY	
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 761 to 766 (1994).	
Maryland	NO CURRENT ACTIVITY	
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri	MO. REV. STAT. §§ 375.1280 to 375.1295 (1993).	
Montana	NO CURRENT ACTIVITY	
Nebraska	NEB. REV. STAT. §§ 44-6201 to 44-6211 (1993); BULLETIN CB-85 (1993) (Appendix of model).	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	NO CURRENT ACTIVITY	
New Jersey	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
New Mexico	NO CURRENT ACTIVITY	
New York		OGC Op. No. 08-07015 (2008).
North Carolina	N.C. GEN. STAT. §§ 58-10-20 to 58-10-45 (1996).	
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	NO CURRENT ACTIVITY	
Oklahoma	NO CURRENT ACTIVITY	
Oregon	OR. REV. STAT. §§ 742.150 to 742.162 (1995); OR. ADMIN. R. 836-050-0000 to 836-050-0020 (1996/2006).	
Pennsylvania		31 PA. CODE §§ 90i.1 to 90i.3 (1993) (Statement of policy).
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	R.I. GEN. LAWS §§ 27-53.1 to 27-53.1-8 (1996).	
South Carolina	NO CURRENT ACTIVITY	
South Dakota	NO CURRENT ACTIVITY	
Tennessee	NO CURRENT ACTIVITY	
Texas	NO CURRENT ACTIVITY	
Utah	NO CURRENT ACTIVITY	
Vermont	VT. STAT. ANN. tit. 8, §§ 8201 to 8208 (1994).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Washington		WASH. ADMIN. CODE 284-95-010 to 284-95-080 (1991).
West Virginia		W. VA. CODE § 33-4-15 (1957/2005).
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	

ASSUMPTION REINSURANCE MODEL ACT

Proceeding Citations

Cited to the Proceedings of the NAIC

In June of 1990 the Reinsurance Issues Working Group recommended the establishment of a group to review the issue of assumption reinsurance and the questions raised by these types of agreements. **1990 Proc. II 795.**

Section 1. Purpose

In a memorandum announcing the organizational meeting, the chair said the proposed transfer of reinsurance on a permanent basis (sometimes known as bulk or substitution reinsurance) had on occasion been effected without proper consent of the policyholders. He said it was imperative to draft guidance for these transactions to provide clarification for regulators. **1991 Proc. IB 941-942.**

Section 2. Scope

The chair of the working group considering the issue identified three basic contract transfers as examples for consideration. These types are (1) a current contract which has premium payments being made, (2) a single premium payment policy such as a single premium annuity contract, and (3) a policy that has no premiums currently being paid, but is in a payout or potential payout mode. **1991 Proc. IB 942.**

The chair was asked if the group would also consider in its study court-ordered assumptions in the case of impaired companies, and the chair responded in the affirmative. **1991 Proc. IB 927.**

In 1997 the NAIC adopted a white paper on liability-based restructuring. It contained a section on the impact of LBRs on the Assumption Reinsurance Model Act. **1997 Proc. 2nd Quarter 217-218.**

The LBR white paper was intended to be an informational document to aid regulators faced with reviewing, approving and ongoing oversight of these types of transactions. The conclusions and recommendations section recommended revisions to several NAIC models, including the Assumption Reinsurance Model Act. **1997 Proc. 2nd Quarter 205-206, 220.**

A. The Executive Committee handed down a charge to consider whether the Assumption Reinsurance Model Act should be amended to clarify that a division transaction was subject to all of the requirements of that model act. A regulator suggested that the best way to approach the issue was to add a drafting note to the model. **1998 Proc. 2nd Quarter II 950.**

A regulator suggested drafting language for a drafting note to Section 2 that would explicitly indicate that the Act's provisions were applicable to all transactions that effectively transfer policyholder obligations from the original insurer to another insurer, regardless of the form or manner of the transaction. Another regulator opined that the language of Section 2 of the model was probably broad enough to encompass division transactions, but that language for a drafting note ought to explicitly reference transactions of that type. **1998 Proc. 3rd Quarter 830.**

Another regulator opined that the drafting note should specifically exclude mergers and acquisitions and asked that the committee recommend these transactions be excluded. A motion was passed recommending that consideration of merger and acquisition transactions be contemplated in the drafting note. **1998 Proc. 3rd Quarter 830.**

The first draft of revisions contained modifications to a portion of the model act, which could have the effect of creating problems that would otherwise not exist, according to one regulator. Another regulator observed that the parent committee's intent had been to create fairly narrow language that focused specifically on division transactions, and not on other types of reorganizations. **1998 Proc. 4th Quarter II 919.**

Two states already had a law governing division transactions and a representative from one of those states said that a division transaction was not in fact a transfer of policyholder obligations to another insurer, but rather a way that an existing entity could divide itself into a number of successor entities, each of which would be a part of the original whole. In such a transaction the assets and liabilities of the pre-division entity would be reallocated to the separate parts following the division. Another regulator acknowledged that it might be possible to argue that policyholder obligations had not been transferred to another insurer. **1998 Proc. 4th Quarter II 919.**

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Proceeding Citations

Cited to the Proceedings of the NAIC

Section 2A (cont.)

A regulator noted that the liability-based restructuring white paper was not intended to address division transactions per se, although it might have been cited as one method of restructuring. **1998 Proc. 4th Quarter II 919.**

A regulator suggested adding language to the draft to focus more directly on the policyholder's interest rather than on the form of the transaction itself. Other regulators agreed that the proposal better expressed the regulatory intent underlying the drafting note. The chair commented that one of the basic regulatory objectives was to ensure that companies could not do indirectly anything potentially detrimental to the interests of policyholders that they would not be able to do directly. **1998 Proc. 4th Quarter II 916.**

No further public comment was received on the draft and it was adopted as drafted. **1999 Proc. 1st Quarter 755.**

B. Shortly before adoption of the model a new Paragraph (6) was added as a technical amendment to exempt from the act transfers of liabilities under a single group contract from one insurer to another upon the request of the group policyholder. **1993 Proc. 2nd Quarter 915.**

Section 3. Definitions

C. After much discussion on the definition of “contract of insurance,” several persons suggested adding a drafting note to indicate that a state may want to use its own statutory language to define the term. **1993 Proc. IB 1292.**

Section 4. Notice Requirements

A. After the 1992 NAIC summer meeting several changes were made to the model draft. One of the changes was to require that the notice of transfer contain ratings for both companies for the past five years. One regulator suggested the addition of language requiring disclosure of the fact if either company had not been rated by any of the acceptable rating services. **1993 Proc. IB 1313, 1316.**

An industry spokesperson questioned the potential benefit to be derived from distributing rating agency information on the assuming insurer to policyholders affected by a proposed assumption transaction. He also said distribution of the Management Discussion and Analysis section from the company's annual statement would be burdensome to the companies and of doubtful value to the policyholders. The working group chair noted that the broader disclosure provisions had been introduced as a consideration for agreeing to forego a requirement of positive written consent from policyholders before the novation could be effected. **1993 Proc. IB 1296.**

Consumer interest groups commended the NAIC for the draft changes, which they said were more protective of consumers. In addition, representatives suggested the notices be provided in multiple languages where the need exists. They were concerned that consumers might not understand the information on company ratings, and suggested an explanation of the ratings should also be provided. **1993 Proc. IB 1291.**

The working group concurred with a suggestion from an agents' trade association for providing notice to agents of record on the policies to be transferred. This was accomplished by adding agents and brokers to the heading so that Subsection A also applied to them. **1993 Proc. IB 1251, 1253.**

B. While soliciting comments on the draft, the working group heard from an individual who expressed concern over the prior approval mandated in the model. He said he thought the current draft required unnecessary and laborious approval methods that could lead to the demise of assumption reinsurance as a viable method of transfer. He suggested limiting approval of the transaction to the two domiciliary states with a filing of the assumption certificate on a “file and use” basis in all other states. **1992 Proc. IIB 983.**

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Proceeding Citations

Cited to the Proceedings of the NAIC

Section 4B (cont.)

Consumer interest groups supported the prohibition of transfers of policies to an insurer not licensed in the state. They expressed concern about guaranty fund protection for policyholders should an insurer become insolvent. **1993 Proc. IB 1291.**

A U.S. Senate Subcommittee held a hearing on assumption reinsurance, and the chair of that subcommittee reported that a substantial number of policyholders were transferred to financially weaker insurers, and he found very little or no regulatory scrutiny of the financial condition of the assuming and the transferring insurers. **1993 Proc. IB 1288-1289.**

At one point the draft included a deemer provision allowing the assumption to take place if the commissioner had not disapproved it within 30 days. **1993 Proc. IB 1254.** The drafters felt the deemer provision contradicted the basic concept of prior approval and it was deleted. **1993 Proc. 2nd Quarter 915.**

Early drafts of Paragraph (1) required action on policies “issued to” residents of the state. This was later changed to “owned by” because the policyowner was the party who should be given the right to accept or reject any proposed transfer. Still later the wording was changed to include both the policyowner and the insured. **1993 Proc. IB 1249, 1954.**

In response to a suggestion that the commissioner be required to find the transfer is fair and in the interests of the policyholders, the working group established minimum standards that the commissioner should consider prior to approval. The list drafted for Paragraph (4) remained unchanged and was included in the model adopted. **1993 Proc. IB 1251, 1254-1255.**

Section 5. Policyholder Rights

The first comments received on the project were concerns about how policyholder consent would be determined. One of the working group members explained that in the absence of a response from the policyholder, the company can make a presumption of acceptance if 60 days have passed. However, the policyholder would retain the right to reject the transfer by his action at any time. The regulators were asked to take into account in their deliberations that very few policyholders were likely to respond. **1991 Proc. IIB 1115.**

The working group was asked for its reason for desiring positive consent. The chair responded that the primary objective was to protect the policyholder’s contract rights in the case of a transfer. One attendee commented that protection of the policyholder should take into account that, if the company intends to get out of a line of business, the policyholder may be better served by a company that is dedicated to that kind of business. An academic in attendance asked the regulators to consider three points he considered essential to effect an assumption: that the policyholders must provide prior positive consent to the transfer, that the assuming company must be licensed in the policyholder’s state of residence, and that the notice of proposed transfer be accompanied by adequate disclosure. To the argument that policyholders would not respond, he suggested companies embark on a promotional campaign to solicit the consent of the policyholders. **1991 Proc. IIB 1115.**

The first draft of the model law released for comment was similar in concept to a New York law, which was based on a presumption of policyholder acceptance of the proposed transfer absent formal written rejection within the prescribed period of time. **1991 Proc. IIB 1113.**

One of the interested parties suggested that affirmative consent can be obtained from a substantial majority of policyholders when the transfer is in the best interests of the policyholders and when the situation is accurately described in the notice. He suggested that when the transfer is not in the best interests of the policyholders, and when the situation is accurately described in the notice, affirmative consent will not be obtained from a sufficient number of policyowners. **1993 Proc. IB 1246.**

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Section 5 (cont.)

A consumer representative commented that while prior positive consent to any proposed assumption transaction remained a desirable objective, it was recognized that it might be difficult to obtain this from policyholders. He suggested requiring a specific recommendation from the domiciliary commissioner of the company that originally issued the policy be included in the notice sent to the policyholder, which he felt would help consumers decide whether to accept the proposed transfer. He also said his organization was not opposed to waiving prior approval requirements in cases where the original insurer was in serious financial difficulty or had been found insolvent. **1993 Proc. IB 1230.**

A. A United States Senator interested in the issue of assumption reinsurance expressed the opinion that, as a matter of contract law, transfers between companies are attempted novations of existing contractual relationships. He said novations should be accomplished only with the consent of the policyholder to whom the obligation was owed. **1993 Proc. IB 1289.**

B. A meeting attendee suggested further examination of the language used in the Notice of Transfer, as he thought there was some uncertainty regarding the ability of a policyholder to pay an anniversary premium while still reserving the right to reject the proposed transfer within the time period provided for that purpose. **1993 Proc. IB 1296.**

One regulator suggested that the language in the draft stipulate a specific method by which a policyholder might pay a premium to the assuming insurer while reserving the right to eventually reject the proposed transfer. A member of the working group said its intent had been to include a section for that purpose on the response card. **1993 Proc. IB 1249.**

Language was drafted for inclusion in this subsection to indicate that payment of any premium during the period provided for policyholder rejection could constitute consent to the transfer, provided that a satisfactory method allowing payments to be made without forfeiting the right subsequently to reject the proposed transfer was also included. **1993 Proc. 2nd Quarter 915.**

C. After the working group agreed to put in a time limit during which policyholders could reject a proposed assumption transaction, the drafters settled on a three-year period. Twelve months after a first notice, a second notice was required, if a response had not been received. Twelve months later a third notice was required. If no rejection was received during the next twelve months, the policyholder's consent was deemed to have occurred. **1992 Proc. IB 1323, 1334.**

At the next meeting of the working group, an industry representative suggested a compromise time of one year to effect novation. The working group did revise the draft to change to two notices at 30 and six months. **1992 Proc. IIB 981, 983.**

The industry spokesperson again pointed out that the consensus of the industry was that the three years during which a policyholder might formally reject a proposed assumption was entirely too long to be practical. **1992 Proc. IIB 971.**

The next draft prepared by the working group provided for a second notice 12 months after the original notification, and a two-month period to reply after the second notice. An advisory committee expressed concern that the 14-month period might impede the timely conclusion of transactions that would be beneficiary to consumers as well as companies. **1993 Proc. IB 1296, 1314.**

Consumer interest groups were opposed to this subsection and Subsection B because they felt it weakened the rights of the policyholder in regard to a policy transfer. The amendments to Subsection C which reduced the notice period gave consumers even less opportunity to reject the transfer before consent would be deemed to have occurred. The consumer representatives expressed concern about consumers who were not as sophisticated as the insurer and might not understand the circumstances and consequences. **1993 Proc. IB 1291.**

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Section 5C (cont.)

The working group engaged in extensive discussion of the concerns which had been expressed regarding the implied consent provisions, and concluded the decision of whether to mandate express written consent was a public policy question which the entire membership of the NAIC would have to make. The working group was of the opinion, however, that requiring express written consent would effectively eliminate assumption reinsurance transactions. The group felt this would not be in the public interest since the transactions served a legitimate, useful function. The group voted in favor of not recommending any changes to the implied consent provisions. **1993 Proc. IB 1251.**

The drafting committee called a meeting to concentrate on comments on that single issue of express versus implied consent. The individual asked to summarize the industry position said that there often arose situations in which a company found itself in the position where it could no longer efficiently and profitably market and service a product or class of business. The industry needed a mechanism where it could transfer that business to another insurer that would be in a better position to provide ongoing services to policyholders and to market the product more effectively. He indicated it was usually the original insurer's objective in such instances that the balance sheet not continue to be encumbered by liabilities associated with that business, so conventional coinsurance with a service agreement would not suffice to achieve the company's objective in this regard. **1993 1st Quarter 401.**

One regulator asked if any attempt to codify proper procedure via model legislation might not inadvertently supersede existing common law protections, leaving the policyholders in a potentially less advantageous position. A meeting attendee responded that common law protections would be expanded and enhanced via statutory provisions, which were intended to afford greater clarity and consistency, and broader regulatory involvement. Another regulator commented that it was ultimately a matter of finding a reasonably balanced approach which fairly reflected legitimate interests and concerns of all parties. It was his opinion that consumer interests would be better served if the time period after which implied consent would be deemed to have occurred was extended to at least three years. He also suggested this would make companies more attentive to the long-term financial condition of any company to which they might consider transferring business. **1993 Proc. 1st Quarter 402.**

Just before adoption of the draft the task force voted to change the 30-month period for rejection to 12 months again. The chair explained that some committee members had favored the longer period in an attempt to ensure that the ceding insurer maintained its interest in the transaction for the full 36 months. **1993 Proc. 2nd Quarter 866, 916.**

After adoption by the task force, the parent committee reconsidered the issue of the amount of time for the consumer notice period. The advantage of the three-year time period was better service to the consumers. The advantage of the one-year time period was less cost and inconvenience to the ceding carrier. A regulator in favor of the shorter period questioned whether a consumer would actually be better informed at the end of 36 months than at the end of 12 months. The committee voted to adopt the model with a second notice 30 months after the initial notice, with consent deemed to have occurred six months after the second notice. **1993 Proc. 3rd Quarter 650, 673.**

When the model was considered by the Executive Committee, the period of time for notice was revised again. The period was changed to 25 months, with the thought that policyholders would have at least two annual premium periods to take note of the transfer. **1993 Proc. 3rd Quarter 29.**

Section 6. Effect of Consent

The original draft released contained a provision that unless positive consent occurred, the policyholders would continue to have the right to reject the transfer. One commentator said the issue of the original insurer's contingent liability would require further clarification. **1991 Proc. IIB 1114, 1118.**

An industry representative said that the continuing liability and the continuing right to reject was not a workable solution. Another suggested that the draft must contain a cut-off point for liability in order for assumption reinsurance to continue. **1992 Proc. IB 1337.**

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Section 6 (cont.)

The first draft allowed an unlimited timeframe during which the policyholder who had not ratified the assumption transaction could have his policy revert to the original carrier. The regulators drafted a revised proposal which limited the timeframe to avoid potential problems caused by the indeterminate reversionary period. An industry representative suggested the time be limited to less than one year to avoid or reduce any potential problems in reporting the contingent liability on the annual statement. One regulator questioned the need to limit the time. He said that, by requiring the ceding company to remain contingently liable, the regulators hoped to ensure that the ceding company would act responsibly in selecting an assuming company. The ceding company would be more aware of the condition of the assuming insurer and more cautious about ceding business to a company that may not be able to provide for the policyholders after the transaction. **1992 Proc. IB 1335-1336.**

In a communication from consumer interest groups, the working group was urged to protect consumers in the event of a transfer of policies by providing for residual liability in the absence of affirmative consent of the policyholder. The consumer representatives recommended that the original insurer remain liable so that it took responsibility for the risks of a bad transfer. The residual liability, they felt, would force transferring insurers to be more conscientious about with whom they enter into transactions, knowing that they could be held accountable. **1993 Proc. IB 1291.**

At one point the task force considered an indemnity reinsurance contract involving 100 percent coinsurance together with a service agreement instead of the novation. The president of a guaranty association organization responded with a number of problems that this type of arrangement could cause. **1993 Proc. IB 1242, 1244, 1246.**

An industry representative also spoke against a 100 percent indemnity coinsurance transaction as an alternative. He said these transactions increased the cost of administration and forced the assuming company to set up a separate operation to handle the reinsured block. **1993 Proc. IB 1243.**

An insurance trade association representative said most assumption reinsurance transactions benefit the policyholder because almost all transactions move the business from a weaker company to a stronger company. The association spokesperson also said the practice is essential for the business of life insurance because of the long-term nature of the contracts. The association spoke against 100 percent indemnity coinsurance because of the increased cost and complexity. **1993 Proc. 1st Quarter 399-400.**

A United States senator interested in the issue said that, because most policyholders do not consent, it was his opinion that as a matter of law an involuntary transfer was ineffective to extinguish the transferring company's obligation to the policyholder. While the new company assumed the obligation and acquired the assets backing the policy, the previous company, if called upon to perform its unextinguished obligation, will suffer a direct reduction in net worth. He said the NAIC's effort at correction did not remedy these problems, but just gave the policyholders less legal protection. **1993 Proc. IB 1289.**

Correspondence received by the working group pointed out a recent court decision holding that notice of the transfer did not extinguish the liability of the ceding company. The court said it would be persuaded only by evidence of clear and definite intent of the policyowner to release the ceding company from liability. The correspondent suggested that the NAIC model as drafted would reduce policyholder rights. He suggested the model should build upon the contractual rights and include statutory protections in addition to those found in the common law. **1993 Proc. IB 1245.**

An interested party commented upon a recent case where a company had transferred a block of policies, but had formally guaranteed the performance of the assumed obligations. One regulator commented that his state would not permit any arrangement where one insurer undertook to guaranty the obligations of another, nor would it permit the use of a cut-through endorsement to create a direct obligation that might not otherwise exist. **1993 Proc. 1st Quarter 401.**

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Section 6 (cont.)

When questioned about the constitutionality of the current draft, the industry spokesperson pointed out that in none of the cases where the courts held there was inadequate notification and preservation of policyholder rights had companies complied with all the requirements contained in the draft the NAIC was considering. He expressed the view that full compliance with these requirements would be sufficient to ensure that courts would not invalidate the assumption transaction. **1993 Proc. 1st Quarter 402.**

A committee of an accounting organization was asked to consider how a ceding company would account for an assumption reinsurance agreement under the proposed model act. The response was that the preferred method would be to account for the transaction as if the extinguishment of liability occurs only when express consent has been received or the rejection period has expired. The ceding company could recognize a gain and remove the assets and liabilities from its financial statements only when the novation occurs. **1993 Proc. 2nd Quarter 932-933.**

Section 7. Commissioner's Discretion

One regulator reacted to an early draft with the comment that Section 7 did not appear to grant the commissioner any discretion if the company is in an administrative supervision or conservation rather than a court-ordered receivership. **1992 Proc. IB 1336.**

While the working group was soliciting comments on the draft, one individual suggested consideration of a provision for waiver of formal notice requirements. The chair pointed out that the draft language permitted waiver or modification of notice requirements at the commissioner's discretion in special circumstances. **1992 Proc. IB 1331.**

The working group reviewed comments to determine whether a change should be made to Section 7. The suggestion was to amend this section so that transfers would be allowed only to licensed insurer. This recommendation was the subject of extensive discussion with recognition given to the goal of ensuring continued guaranty fund coverage, but also an appreciation for the flexibility this section gives commissioners in a rehabilitation. The group decided to highlight this section as a public policy matter that needed consideration by the entire task force. **1993 Proc. IB 1251.**

Later the task force considered the issue of guaranty coverage and the chair suggesting adding language directing each state to make revisions to its guaranty fund law as might be required to ensure continuity of protection for policyholders affected by a transfer of their policies to an unlicensed company. Regulators from two states indicated that transfers to unlicensed companies would not be approved. The next draft containing a drafting note to Section 7 suggesting that a state may want to amend its guaranty association law. **1993 Proc. IB 1248, 1314.**

Section 8. Effective Date

Appendix A

An advisory group suggested adding language that said "If you have paid your premium to the ABC Company, without reserving your right to reject the transfer, you will not receive a second notice." The working group agreed with the clarification. **1993 Proc. IB 1293.**

Revised language requiring provision of the commissioner's telephone numbers was added at the end of the first paragraph, along with a new final sentence stating that the proposed transfer had been reviewed and approved by the commissioner. **1993 Proc. 2nd Quarter 915.**

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Chronological Summary of Actions

December 1993: Model Adopted.

June 1999: Amended Section 2 to add a drafting note regarding liability-based restructuring.