

By: Cook

H.B. No. 4498

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the transfer and statutory novation of policies from a
3 transferring insurer to an assuming insurer by way of an insurance
4 business transfer.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Title.

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

9 SECTION 2. Purpose.

10 This act is adopted to provide options to address the
11 significant limitations in the current methods available to
12 insurers to transfer or assume blocks of insurance business in an
13 efficient and cost-effective manner that provides needed legal
14 finality for such transfers in order to provide for improved
15 operational and capital efficiency for insurance companies,
16 stimulates the economy by attracting segments of the insurance
17 industry to the state, make this state an attractive home
18 jurisdiction for insurance companies, encourages economic growth
19 and increased investment in the financial services sector and
20 increases the availability of quality insurance industry jobs in
21 this state. These purposes are accomplished by providing a basis
22 and procedures for the transfer and statutory novation of policies
23 from a transferring insurer to an assuming insurer by way of an
24 Insurance Business Transfer without the affirmative consent of

1 policyholders or reinsureds. The novation is effected by court
2 order. This act establishes the requirements for notice and
3 disclosure and standards and procedures for the approval of the
4 transfer and novation by the State Insurance Commissioner and a
5 District Court pursuant to an Insurance Business Transfer Plan.
6 This act does not limit or restrict other means of effecting a
7 transfer or novation.

8 SECTION 3. Definitions.

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

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

14 C. "Assuming insurer" means an insurer domiciled in this
15 State that assumes or seeks to assume policies from a transferring
16 insurer pursuant to this act. An assuming insurer may be a company
17 established pursuant to the State Captive Insurance Company Act.

18 D. "Court" means the district court of a county in Texas
19 with a population of more than two hundred fifty thousand.

20 E. "Department" means the Texas Department of Insurance.

21 F. "Commissioner" means the Texas Commissioner of
22 Insurance.

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

25 H. "Insurance Business Transfer" means a transfer and
26 novation in accordance with this act. Insurance Business Transfers
27 will transfer insurance obligations or risks, or both, of existing

1 or in-force contracts of insurance or reinsurance from a
2 transferring insurer to an assuming insurer. Once approved
3 pursuant to this act, the Insurance Business Transfer will effect a
4 novation of the transferred contracts of insurance or reinsurance
5 with the result that the assuming insurer becomes directly liable
6 to the policyholders of the transferring insurer and the
7 transferring insurer's insurance obligations or risks, or both,
8 under the contracts are extinguished.

9 I. "Insurance Business Transfer Plan" or "Plan" means the
10 plan submitted to the Department to accomplish the transfer and
11 novation pursuant to an Insurance Business Transfer, including any
12 associated transfer of assets and rights from or on behalf of the
13 transferring insurer to the assuming insurer.

14 J. "Independent expert" means an impartial person who has no
15 financial interest in either the assuming insurer or transferring
16 insurer, has not been employed by or acted as an officer, director,
17 consultant or other independent contractor for either the assuming
18 insurer or transferring insurer within the past twelve (12) months,
19 is not appointed by the Commissioner to assist in any capacity in
20 any insurer rehabilitation or delinquency proceeding and is
21 receiving no compensation in connection with the transaction
22 governed by this act other than a fee based on a fixed or hourly
23 basis that is not contingent on the approval or consummation of an
24 Insurance Business Transfer and provides proof of insurance
25 coverage that is satisfactory to the Commissioner.

26 K. "Insurer" means an insurance or surety company,
27 including a reinsurance company, and shall be deemed to include a

1 corporation, company, partnership, association, society, order,
2 individual or aggregation of individuals engaging in or proposing
3 or attempting to engage in any kind of insurance or surety business,
4 including the exchanging of reciprocal or inter-insurance
5 contracts between individuals, partnerships and corporations.

6 L. "Policy" means a policy, annuity contract or certificate
7 of insurance or a contract of reinsurance pursuant to which the
8 insurer agrees to assume an obligation or risk, or both, of the
9 policyholder or to make payments on behalf of, or to, the
10 policyholder or its beneficiaries, and shall include property,
11 casualty, life, health and any other line of insurance the
12 Commissioner finds via regulation is suitable for an insurance
13 business transfer.

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

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

18 O. "Transfer and novation" means the transfer of insurance
19 obligations or risks, or both, of existing or in-force policies
20 from a transferring insurer to an assuming insurer, and is intended
21 to effect a novation of the transferred policies with the result
22 that the assuming insurer becomes directly liable to the
23 policyholders of the transferring insurer on the transferred
24 policies and the transferring insurer's insurance obligations or
25 risks, or both, under the transferred policies are extinguished.

26 P. "Transferring insurer" means an insurer or reinsurer
27 that transfers and novates or seeks to transfer and novate

1 obligations or risks, or both, under one or more policies to an
2 assuming insurer pursuant to an Insurance Business Transfer Plan.

3 SECTION 4. Court Authority.

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

11 SECTION 5. Notice Requirements.

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

17 1. To the chief insurance regulator in each jurisdiction in
18 which the applicant:

- 19 a. holds or has ever held a certificate of authority, and
20 b. in which policies that are part of the subject business
21 were issued or policyholders currently reside;

22 2. To the National Conference of Insurance Guaranty Funds,
23 the National Organization of Life and Health Insurance Guaranty
24 Associations and all state insurance guaranty associations for the
25 states in which the applicant:

- 26 a. holds or has ever held a certificate of authority, and
27 b. in which policies that are part of the subject business

1 were issued or policyholders currently reside;

2 3. To reinsurers of the applicant pursuant to the notice
3 provisions of the reinsurance agreements applicable to the policies
4 that are part of the subject business, or where an agreement has no
5 provision for notice, by internationally recognized delivery
6 service;

7 4. To all policyholders holding policies that are part of
8 the subject business, at their last-known address as indicated by
9 the records of the applicant or to the address to which premium
10 notices or other policy documents are sent. A notice of transfer
11 shall also be sent to the transferring insurer's agents or brokers
12 of record on the subject business; and

13 5. By publication in a newspaper of general circulation in
14 the state in which the applicant has its principal place of business
15 and in such other publications that the Commissioner requires.

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

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

23 D. Notice under this section may take the form of
24 first-class mail, facsimile and/or electronic notice.

25 SECTION 6. Application Procedure.

26 A. An Insurance Business Transfer Plan must be filed by the
27 applicant with the Insurance Commissioner for his or her review and

1 approval. The Plan must contain the information set forth below or
2 an explanation as to why the information is not included. The Plan
3 may be supplemented by other information deemed necessary by the
4 Commissioner:

5 a. the name, address and telephone number of the
6 transferring insurer and the assuming insurer and their respective
7 direct and indirect controlling persons, if any,

8 b. summary of the Insurance Business Transfer Plan,

9 c. identification and description of the subject business,

10 d. most recent audited financial statements and statutory
11 annual and quarterly reports of the transferring insurer and
12 assuming insurer filed with their domiciliary regulator,

13 e. the most recent actuarial report and opinion that
14 quantify the liabilities associated with the subject business,

15 f. pro-forma financial statements showing the projected
16 statutory balance sheet, results of operations and cash flows of
17 the assuming insurer for the three (3) years following the proposed
18 transfer and novation,

19 g. officers' certificates of the transferring insurer and
20 the assuming insurer attesting that each has obtained all required
21 internal approvals and authorizations regarding the Insurance
22 Business Transfer Plan and completed all necessary and appropriate
23 actions relating thereto,

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

- 1 i. full description as to how such notice shall be provided,
- 2 j. description of any reinsurance arrangements that would
- 3 pass to the assuming insurer under the Insurance Business Transfer
- 4 Plan,
- 5 k. description of any guarantees or additional reinsurance
- 6 that will cover the subject business following the transfer and
- 7 novation,
- 8 l. a statement describing the assuming insurer's proposed
- 9 investment policies and any contemplated third-party claims
- 10 management and administration arrangements,
- 11 m. description of how the transferring and assuming
- 12 insurers will be licensed for guaranty association coverage
- 13 purposes, including, but not limited to:
- 14 (1) Guaranty association coverage;
- 15 (2) The financial implications of the transaction including
- 16 solvency, capital adequacy, cash flow, reserves, asset quality and
- 17 risk-based capital;
- 18 (3) An analysis of the assuming insurer's corporate
- 19 governance structure to ensure that there is proper board
- 20 management oversight and expertise to manage the subject business;
- 21 (4) The competency, experience and integrity of the persons
- 22 who would control the operation of an involved insurer; and
- 23 (5) Ensuring the transaction is not being made for improper
- 24 purposes, including fraud.
- 25 n. evidence of approval or nonobjection of the transfer from
- 26 the chief insurance regulator of the state of the transferring
- 27 insurer's domicile, and

1 o. a report from an independent expert, selected by the
2 Commissioner from a list of at least two nominees submitted jointly
3 by the transferring insurer and the assuming insurer, to assist the
4 Commissioner and the court in connection with their review of the
5 proposed transaction. Should the Commissioner, in his or her sole
6 discretion, reject the nominees, he or she may appoint the
7 independent expert. The report shall provide the following:

8 (1) a statement of the independent expert's professional
9 qualifications and descriptions of the experience that qualifies
10 him or her as an expert suitable for the engagement,

11 (2) whether the independent expert has, or has had, direct
12 or indirect interest in the transferring or assuming insurer or any
13 of their respective affiliates,

14 (3) the scope of the report,

15 (4) a summary of the terms of the Insurance Business
16 Transfer Plan to the extent relevant to the report,

17 (5) a listing and summaries of documents, reports and other
18 material information the independent expert has considered in
19 preparing the report and whether any information requested was not
20 provided,

21 (6) the extent to which the independent expert has relied on
22 information provided by and the judgment of others,

23 (7) the people on whom the independent expert has relied and
24 why, in his or her opinion, such reliance is reasonable,

25 (8) the independent expert's opinion of the likely effects
26 of the Insurance Business Transfer Plan on policyholders,
27 reinsurers and claimants, distinguishing between:

1 (a) transferring policyholders, reinsurers and claimants,
2 (b) policyholders, reinsurers and claimants of the
3 transferring insurer whose policies will not be transferred, and

4 (c) policyholders, reinsurers and claimants of the assuming
5 insurer,

6 (9) for each opinion that the independent expert expresses
7 in the report the facts and circumstances supporting the opinion,
8 and

9 (10) consideration as to whether the security position of
10 policyholders that are affected by the Insurance Business Transfer
11 are materially adversely affected by the transfer.

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

15 a. analysis of the transferring insurer's actuarial review
16 of reserves for the subject business to determine the reserve
17 adequacy,

18 b. analysis of the financial condition of the transferring
19 and assuming insurers and the effect the transfer will have on the
20 financial condition of each company,

21 c. review of the plans or proposals the assuming insurer has
22 with respect to the administration of the policies subject to the
23 proposed transfer,

24 d. whether the proposed transfer has a material, adverse
25 impact on the policyholders, reinsurers and claimants of the
26 transferring and the assuming insurers,

27 e. analysis of the assuming insurer's corporate governance

1 structure to ensure that there is proper board and management
2 oversight and expertise to manage the subject business, and

3 f. any other information that the Commissioner requests in
4 order to review the Insurance Business Transfer.

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

10 4. The Commissioner shall authorize the submission of the
11 Plan to the court unless he or she finds that the Insurance Business
12 Transfer would have a material adverse impact on the interests of
13 policyholders, reinsurers or claimants that are part of the subject
14 business.

15 5. If the Commissioner determines that the Insurance
16 Business Transfer would have a material adverse impact on the
17 interests of policyholders, reinsurers or claimants that are part
18 of the subject business, he or she shall notify the applicant and
19 specify any modifications, supplements or amendments and any
20 additional information or documentation with respect to the Plan
21 that must be provided to the Commissioner before he or she will
22 allow the applicant to proceed with the court filing.

23 6. The applicant shall have thirty (30) days from the date
24 the Commissioner notifies him or her, pursuant to paragraph 5 of
25 this subsection, to file an amended Insurance Business Transfer
26 Plan providing the modifications, supplements or amendments and
27 additional information or documentation as requested by the

1 Commissioner. If necessary the applicant may request in writing an
2 extension of time of thirty (30) days. If the applicant does not
3 make an amended filing within the time period provided for in this
4 paragraph, including any extension of time granted by the
5 Commissioner, the Insurance Business Transfer Plan filing will
6 terminate and a subsequent filing by the applicant will be
7 considered a new filing which shall require compliance with all
8 provisions of this act as if the prior filing had never been made.

9 7. The Commissioner's review period in paragraph 3 of this
10 subsection shall recommence when the modification, supplement,
11 amendment or additional information requested in paragraph 5 of
12 this subsection is received.

13 8. If the Commissioner determines that the Plan may proceed
14 with the court filing, the Commissioner shall confirm that fact in
15 writing to the applicant.

16 B. Application to the court for approval of the Insurance
17 Business Transfer Plan.

18 1. Within thirty (30) days after notice from the
19 Commissioner that the applicant may proceed with the court filing,
20 the applicant shall apply to the court for approval of the Insurance
21 Business Transfer Plan. Upon written request by the applicant, the
22 Commissioner may extend the period for filing an application with
23 the court for an additional thirty (30) days.

24 2. The applicant shall inform the court of the reasons why
25 he or she petitions the court to find no material adverse impact to
26 policyholders, reinsurers or claimants affected by the proposed
27 transfer.

1 3. The application shall be in the form of a verified
2 petition for implementation of the Insurance Business Transfer Plan
3 in the court. The petition shall include the Insurance Business
4 Transfer Plan and shall identify any documents and witnesses which
5 the applicant intends to present at a hearing regarding the
6 petition.

7 4. The Commissioner shall be a party to the proceedings
8 before the court concerning the petition and shall be served with
9 copies of all filings pursuant to the Rules for District Courts of
10 the State. The Commissioner's position in the proceeding shall not
11 be limited by his or her initial review of the Plan.

12 5. Following the filing of the petition, the applicant shall
13 file a motion for a scheduling order setting a hearing on the
14 petition.

15 6. Within fifteen (15) days after receipt of the scheduling
16 order, the applicant shall cause notice of the hearing to be
17 provided in accordance with the notice provisions of Section 5 of
18 this act. Following the date of distribution of the notice, there
19 shall be a sixty-day comment period.

20 7. The notice to policyholders shall state or provide:

21 a. the date and time of the approval hearing,

22 b. the name, address and telephone number of the assuming
23 insurer and transferring insurer,

24 c. that a policyholder may comment on or object to the
25 transfer and novation,

26 d. the procedures and deadline for submitting comments or
27 objections on the Plan,

1 e. a summary of any effect that the transfer and novation
2 will have on the policyholder's rights,

3 f. a statement that the assuming insurer is authorized, as
4 provided in this section, to assume the subject business and that
5 court approval of the Plan shall extinguish all rights of
6 policyholders under policies that are part of the subject business
7 against the transferring insurer,

8 g. that policyholders shall not have the opportunity to opt
9 out of or otherwise reject the transfer and novation,

10 h. contact information for the Insurance Department where
11 the policyholder may obtain further information, and

12 i. information on how an electronic copy of the Insurance
13 Business Transfer Plan may be accessed. In the event policyholders
14 are unable to readily access electronic copies, the applicant shall
15 provide hard copies by first-class mail.

16 8. Any person, including by their legal representative, who
17 considers himself, herself or itself to be adversely affected can
18 present evidence or comments to the court at the approval hearing.
19 However, such comment or evidence shall not confer standing on any
20 person. Any person participating in the approval hearing must
21 follow the process established by the court and shall bear his or
22 her own costs and attorney fees.

23 C. Approval of the Insurance Business Transfer Plan.

24 1. After the comment period pursuant to paragraph 6 of
25 subsection B of this section has ended the Insurance Business
26 Transfer Plan shall be presented by the applicant for approval by
27 the court.

1 2. At any time before the court issues an order approving
2 the Insurance Business Transfer Plan, the applicant may withdraw
3 the Insurance Business Transfer Plan without prejudice.

4 3. If the court finds that the implementation of the
5 Insurance Business Transfer Plan would not materially adversely
6 affect the interests of policyholders, reinsurers or claimants that
7 are part of the subject business, the court shall enter a judgment
8 and implementation order. The judgment and implementation order
9 shall:

10 a. order implementation of the Insurance Business Transfer
11 Plan,

12 b. order a statutory novation with respect to all
13 policyholders or reinsureds and their respective policies and
14 reinsurance agreements under the subject business, including the
15 extinguishment of all rights of policyholders under policies that
16 are part of the subject business against the transferring insurer,
17 and providing that the transferring insurer shall have no further
18 rights, obligations, or liabilities with respect to such policies,
19 and that the assuming insurer shall have all such rights,
20 obligations, and liabilities as if it were the original insurer of
21 such policies,

22 c. release the transferring insurer from any and all
23 obligations or liabilities under policies that are part of the
24 subject business,

25 d. authorize and order the transfer of property or
26 liabilities, including, but not limited to, the ceded reinsurance
27 of transferred policies and contracts on the subject business,

1 notwithstanding any non-assignment provisions in any such
2 reinsurance contracts. The subject business shall vest in and
3 become liabilities of the assuming insurer,

4 e. order that the applicant provide notice of the transfer
5 and novation in accordance with the notice provisions in Section 5
6 of this act, and

7 f. make such other provisions with respect to incidental,
8 consequential and supplementary matters as are necessary to assure
9 the Insurance Business Transfer Plan is fully and effectively
10 carried out.

11 4. If the court finds that the Insurance Business Transfer
12 Plan should not be approved, the court by its order may:

13 a. deny the petition, or

14 b. provide the applicant leave to file an amended Insurance
15 Business Transfer Plan and petition.

16 5. Nothing in this section in any way effects the right of
17 appeal of any party.

18 D. Implementation of Insurance Business Transfer Plan.

19 The Commissioner shall promulgate rules that are consistent
20 with the provisions of the Insurance Business Transfer Act. No
21 insurance business transfer plan shall be approved in a State
22 unless and until such regulations are promulgated.

23 E. The portion of the application for an Insurance Business
24 Transfer that would otherwise be confidential, including any
25 documents, materials, communications or other information
26 submitted to the Commissioner in contemplation of such application,
27 shall not lose such confidentiality.

1 SECTION 7. Ongoing Oversight by Insurance Commissioner.

2 Insurers subject to this act consent to the jurisdiction of
3 the Insurance Commissioner with regard to ongoing oversight of
4 operations, management and solvency relating to the transferred
5 business, including the authority of the Commissioner to conduct
6 financial analysis and examinations.

7 SECTION 8. Fees and Costs.

8 A. At the time of filing its application with the Insurance
9 Commissioner for review and approval of an Insurance Business
10 Transfer Plan, the applicant shall pay a nonrefundable fee to the
11 Insurance Department.

12 B. The Commissioner may retain independent attorneys,
13 appraisers, actuaries, certified public accountants, authorized
14 consultants, or other professionals and specialists to assist
15 Department personnel in connection with the review required by the
16 Insurance Business Transfer Act, the cost of which shall be borne by
17 the applicant.

18 C. The transferring insurer and the assuming insurer shall
19 jointly be obligated to pay any compensation, costs and expenses of
20 the independent expert and any consultants retained by the
21 independent expert and approved by the Department incurred in
22 fulfilling the obligations of the independent expert under this
23 act. Nothing in this act shall be construed to create any duty for
24 the independent expert to any party other than the Department or the
25 Court.

26 D. Failure to pay any of the requisite fees or costs within
27 thirty (30) days of demand shall be grounds for the Commissioner to

1 request that the court dismiss the petition for approval of the
2 Insurance Business Transfer Plan prior to the filing of an
3 implementation order by the court or, if after the filing of an
4 implementation order, the Commissioner may suspend or revoke the
5 assuming insurer's certificate of authority to transact insurance
6 business in this state.

7 SECTION 9. The changes in law made by this Act apply to
8 civil actions commenced on or after September 1, 2023.

9 SECTION 10. This Act takes effect September 1, 2023.