

## ASSUMPTION REINSURANCE MODEL ACT

### Table of Contents

Section 1.	Purpose
Section 2.	Scope
Section 3.	Definitions
Section 4.	Notice Requirements
Section 5.	Policyholder Rights
Section 6.	Effect of Consent
Section 7.	Commissioner's Discretion
Section 8.	Effective Date
Appendix A.	Notice of Transfer

### 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;
- Drafting Note:** Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.
- (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).

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.

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*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,

