

Background Information on Insurance Business Transfer and Corporate Division Legislation
(April 12, 2019)

	NAIC Insurance Holding Company System Model Act & Reg. (Includes Form A) Link to Model Act Link to Model Reg	NAIC Assumption Reinsurance Model Act Link to Model	United Kingdom Part VII Link to Part VII	Oklahoma SB 1101 Link to Bill	Rhode Island Regulation 68 Link to Reg 68	Illinois SB 1737 Link to Bill	Connecticut HB 7025 Link to Bill	Michigan SB 1029 Link to Statute
Type of law	Mergers and acquisitions	Assumption reinsurance	Insurance business transfer	Insurance business transfer	Insurance business transfer	Corporate division	Corporate division	Corporate division
Type of entities	Domestic insurer	Insurers authorized in the state which either assume or transfer pursuant to an assumption reinsurance agreement	Insurance firms and friendly societies	Domestic, assuming insurers and reinsurers	Domestic, assuming commercial P&C insurers and non-life reinsurers	Domestic stock insurers	Domestic insurers	Domestic stock insurers
Lines covered	All lines	All lines	All lines	P&C, life, health and other suitable lines	Commercial P&C	All lines	All lines	All lines
Active and/or closed blocks of business	N/A	Both	Both	Both	Closed	Both	Both	Both

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Policyholder consent	Not required	Right to reject However, policyholder consent is deemed if there is either: (1) Payment of any premium to assuming insurer during the 24-month period after notice; or (2) No response in 1 month from policyholder after second notice 24 months later	Not required	Not required	Not required	Not required	Not required	Not required
Court approval	Not required However, any persons aggrieved by any action of	Not required	Required as a substitute for the policyholder consent that would	Required. The applicant shall inform the court of the reasons why he	Required The assuming company shall inform the court of the	Not required	Not required	Not Required

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	<p>the Commissioner may file an appeal with the applicable court. The filing of an appeal shall stay the application of any such action unless the court determines that the stay would be detrimental to the interests of policyholders, shareholders, creditors or the public. Any persons aggrieved by the Commissioner's failure to act or make a determination may petition the court for a writ</p>		<p>normally be needed to transfer policies from one insurer to another</p>	<p>or she petitions the court to find no material adverse impact to policyholders or claimants affected by the proposed transfer.</p> <p>If the court finds that the implementation of the transfer plan would not materially affect the interests of policyholders or claimants that are part of the subject business, the court shall enter an implementation order</p>	<p>reasons why it petitions the court to find no material adverse impact to policyholders, reinsureds or claimants on the transferred policies</p> <p>If the court approves the transfer plan, then it may make provisions as it deems fits on a finding that there is no material adverse impact to policyholders, reinsureds or claimants on the transferred policies</p>			

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	of mandamus that directs the Commissioner to act or make a determination.							
Regulatory approval	<p>Domestic regulator(s) must approve</p> <p>In addition, the effect of the merger or other acquisition of control should not substantially lessen competition in insurance in this state or tend to create a monopoly.</p> <p>Note: California, under CA Ins. Law 1011(c), takes the position that any Form A</p>	<p>Commissioner must approve any transactions involving residents of the state related to transfers of obligations or risks into or out of the state by any licensed insurer.</p>	<p>UK's national solvency and market conduct regulators may object, and court is unlikely to approve without regulator consent</p>	<p>Domestic regulator must approve, and the domestic regulator of the transferring company must either approve or provide a non-objection letter</p>	<p>Domestic regulator must approve, as well as the domestic regulator of the transferring company</p>	<p>Domestic regulator of the dividing company must approve</p>	<p>Domestic regulator of the dividing company must approve</p>	<p>Domestic regulator of the dividing company must approve</p> <p>In addition, the division should not substantially lessen competition in insurance in this state or tend to create a monopoly in this state [Sec. 5507(2)(c)]</p>

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	<p>transaction in another state involving 5% or more California policyholders must be approved by the California Commissioner</p>							
<p>Regulator review of potential impact on policyholder interests</p>	<p>Required</p> <p>The Commissioner shall approve any merger or other acquisition of control unless he/she finds that:</p> <p>(1) The financial condition of any acquiring party is such that it might jeopardize the financial</p>	<p>Commissioner shall consider the following factors, along with any other factors deemed appropriate by Commissioner, including:</p> <p>(1) Whether transfer is fair and reasonable to policyholders of both companies</p> <p>(2) Whether the notice of</p>	<p>The applicant and the independent expert must demonstrate that there is sufficient consideration of the extent of any adverse impacts on policyholders.</p> <p>Firms must show that there will be no material adverse impact, while the</p>	<p>The Commissioner shall authorize the submission of the plan to the court unless he or she finds that the transfer would have a material adverse impact on the interests of policyholders or claimants that are part of the subject business</p>	<p>Includes an expert's report that contains an opinion on the likely effects of the transfer plan on policyholders, and consideration as to whether the security position of policyholders or reinsureds of the transferring company are materially</p>	<p>Applicant must submit evidence that demonstrates that the interest of all classes of policyholders of the dividing company will be properly protected</p> <p>The Director shall approve a plan of division unless the Director finds that:</p>	<p>The Commissioner shall approve a plan of division unless he/she finds that:</p> <p>(1) The interest of any policyholder or interest holder will not be adequately protected; or</p> <p>(2) The proposed division constitutes a</p>	<p>Required</p> <p>The director shall approve a plan of division unless he/she finds that:</p> <p>(1) The financial condition of an acquiring party of a resulting insurer, if any, is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its</p>

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	<p>stability of the insurer, or prejudice the interest of its policyholders;</p> <p>(2) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to the insurer's policyholders and not in the public interest;</p>	<p>transfer provided by insurer is fair, adequate, and not misleading</p>	<p>independent expert must define what material means in this context and assess whether policyholders will be affected</p>	<p>If the Commissioner determines that the transfer would have a material adverse impact on the interests of policyholders or claimants that are part of the subject business, he or she shall notify the applicant and specify any modifications, supplements or amendments and any additional information or documentation with respect to the plan that must be provided to the Commissioner</p>	<p>adversely affected by the transfer</p>	<p>(1) The interest of any class of policyholder or shareholder of the dividing company will not be properly protected;</p> <p>(2) The proposed division violates a provision of the Uniform Fraudulent Transfer Act; or</p> <p>(3) The division is being made for purposes of hindering, delaying, or defrauding any policyholders</p>	<p>fraudulent transaction</p>	<p>policyholders or the interests of a remaining shareholder that is unaffiliated with the acquiring party. [Sec. 5507(2)(d)]</p> <p>(2) The terms of the plan of division are unfair and unreasonable to the dividing insurer's policyholders or shareholders. [Sec. 5507(2)(e)]</p> <p>(3) An acquiring party of a resulting insurer, if any, has plans or proposals to liquidate the resulting insurer, sell its assets, or consolidate or</p>

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	<p>(3) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the public to permit the merger or other acquisition of control; or</p> <p>(4) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.</p>			<p>before he or she will allow the applicant to proceed with the court filing</p>		<p>or other creditors of the dividing company</p>		<p>merge the resulting insurer with a person, or to make any other material change in its business or corporate structure or management, that are unfair and unreasonable to the resulting insurer's policyholders and not in the public interest. [Sec. 5507(2)(f)]</p> <p>(4) The competence, experience and integrity of the persons who would control the operation of a resulting insurer are such that it would not</p>

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								<p>be in the interest of the resulting insurer's policyholders or the general public to permit the division. [Sec. 5507(2)(g)]</p> <p>(5) The division is likely to be hazardous or prejudicial to the insurance-buying public. [Sec. 5507(2)(h)]</p> <p>(6) The interest of the policyholders of the dividing insurer that may become policyholders of a resulting insurer(s) will not be adequately protected by the resulting</p>

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								<p>insurer(s) or acquiring party(ies) of a resulting insurer(s), if any [Sec. 5507(2)(a)]</p> <p>(7) The division is being made for purposes of hindering, delaying or defrauding any policyholders [Sec. 5507(2)(j)]</p>
<p>Regulator review of financial condition</p>	<p>Required</p> <p>Applicant must file its business plan, financial projections and audited financials</p> <p>The Commissioner shall approve any merger or other</p>	<p>Required</p> <p>Commissioner shall consider the following factors, along with any other factors deemed appropriate by Commissioner, including, financial condition of transferring</p>	<p>Required</p> <p>Based on independent expert analysis, regulator reviews financial impact, including long-term solvency and fairness</p>	<p>Applicant must submit most recent audited financial statements, annual and quarterly reports, actuarial report and opinion, and pro-forma financial statements that show the</p>	<p>Includes an actuarial review of the ceding company's reserves for the book of business being transferred to the assuming company, an actuarial analysis to determine the feasibility that</p>	<p>Applicant is not required to file financial statements or projections Regulator may disapprove if a resulting company's assets are "unreasonably small"</p>	<p>The plan of division shall include a reasonable description of policies or other liabilities, items of capital, surplus or other property the domestic insurer</p>	<p>Required</p> <p>The director shall approve a plan of division unless he/she finds that:</p> <p>(1) The financial condition of an acquiring party of a resulting insurer, if any, is such that it</p>

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	<p>acquisition of control unless he/she finds that:</p> <p>(1) The financial condition of any acquiring party is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders; or</p> <p>(2) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with</p>	<p>and assuming insurers and effect on financial condition of each company</p> <p>Review of financial data for both assuming and transferring insurer, including 5 years of ratings, 3 years of balance sheets, MD&A filed in previous year annual statement, and explanation of reason for transfer</p>	<p>Regulator has broad discretion to object based on solvency risk</p>	<p>projected statutory balance sheet, results of operations and cash flows of the assuming insurer for the 3 years following the proposed transfer and novation</p> <p>Insurers consent to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management and solvency relating to the transferred business, including the</p>	<p>the assuming company's assets are sufficient to achieve a solvent run-off of all known and anticipated liabilities, an analysis of the assuming company's invested assets, and any other examination and/or analysis procedures that the Superintendent deems appropriate in order to monitor the financial solvency of the assuming company</p>	<p>The Director shall approve a plan of division unless the Director finds that: one or more resulting companies will not be solvent upon the consummation of the division; or the remaining assets of one or more resulting companies will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the resulting</p>	<p>proposes to allocate to a resulting insurer, including the manner by which each reinsurance contract is to be allocated</p>	<p>might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining shareholder that is unaffiliated with the acquiring party. [Sec. 5507(2)(d)]</p> <p>(2) An acquiring party of a resulting insurer, if any, has plans or proposals to liquidate the resulting insurer, sell its assets, or consolidate or merge the resulting insurer with a person, or to make any other material</p>

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	<p>any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to the insurer's policyholders and not in the public interest.</p>			<p>authority of the Commissioner to conduct financial analysis and examinations</p>		<p>company was engaged or is about to engage</p> <p>The Director may consider all proposed assets of the resulting company, including, without limitation, reinsurance agreements, parental guarantees, support or keep well agreements, or capital maintenance or contingent capital agreements, in each case, regardless of whether the</p>		<p>change in its business or corporate structure or management, that are unfair and unreasonable to the resulting insurer's policyholders, and not in the public interest. [Sec. 5507(2)(f)]</p> <p>(3) One or more resulting insurers will not be solvent on the consummation of the division [Sec. 5507(2)(k)]</p> <p>(4) The assets allocated to one or more resulting insurers will be, upon consummation of a division,</p>

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						same would qualify as an admitted asset		unreasonably small in relation to the business and transactions in which the resulting insurer was engaged or is about to engage [Sec. 5507(2)(l)]
Balance sheet considerations	Section 5.D of the Model Act contains various factors to determine whether an insurer's surplus with regard to policyholders is reasonable in relation to its liabilities and adequate to meet its financial needs, including the size of the insurer as measured by its assets, capital	Not specifically addressed	Law gives regulator broad discretion, but does not contemplate any departure from valuation principles that normally apply	Not specifically addressed, but requires the applicant to describe any guarantees or additional reinsurance that will cover the subject business following the transfer and novation	Not specifically addressed, but requires the applicant to describe any guarantees or additional reinsurance that will cover the transferred business	In considering financial condition, the Director can give credit for non-admitted assets He or she can approve even if a resulting company is insolvent from inception under normal NAIC valuation standards	Not specifically addressed	In determining the financial condition and solvency of the resulting insurer(s), the regulator may consider, among other things, all assets, liabilities and cash flows [Sec. 5507(5)]

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	and surplus, reserves, premium writings, insurance in force and other appropriate criteria, and the quality, diversification and liquidity of its investment portfolio.							
Regulator review of operational impacts	<p>Required</p> <p>Any material changes in the insurer's business, corporate structure and/or management must not be unfair or unreasonable to the insurer's policyholders and must be in</p>	<p>Required</p> <p>Commissioner shall consider the following factors, along with any other factors deemed appropriate by Commissioner, including, plans or proposals assuming insurer has with respect to</p>	<p>Required</p> <p>Regulator reviews operational impacts, including administrative systems and policyholder service</p>	<p>Insurers consent to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management and solvency relating to the transferred business, including the authority of the</p>	<p>Includes an analysis of the assuming company's corporate governance structure to ensure that there is proper board and management oversight and expertise to manage the assumed book of business</p>	<p>No requirement to review operational impacts</p>	<p>No requirement</p>	<p>Required</p> <p>Any material changes in the resulting insurer(s)' business, corporate structure and/or management must not be unfair or unreasonable to the resulting insurer(s)' policyholders</p>

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	the public interest	administration of transferred policies		Commissioner to conduct financial analysis and examinations.				and must be in the public interest. [Sec. 5507(2)(f)]
Regulator review of owner and management qualifications	<p>Required</p> <p>Applicant must submit detailed biographies for controlling persons</p> <p>The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would be in the interest of the insurer's policyholders and the public to permit the</p>	<p>Commissioner shall consider the following factors, along with any other factors deemed appropriate by Commissioner, including, the competence, experience and integrity of those who control assuming insurer</p>	<p>Required</p> <p>Regulator conducts review of impacts on management, administration and governance arrangements</p>	<p>Insurers consent to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management and solvency relating to the transferred business, including the authority of the Commissioner to conduct financial analysis and examinations.</p>	<p>Includes an analysis of the assuming company's corporate governance structure to ensure that there is proper board and management oversight and expertise to manage the assumed book of business</p>	<p>No requirement to review background of controlling persons</p>	<p>No requirement</p>	<p>Required</p> <p>The competence, experience and integrity of the persons who would control the operation of the resulting insurer(s) are such that it would be in the interest of the resulting insurer(s)' policyholders and the general public to permit the division. [Sec. 5507(2)g]</p>

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	merger or other acquisition of control.							
Independent expert report	No requirement, but the regulator can retain outside advisors at applicant's expense	No requirement	<p>Required</p> <p>An extensive independent expert report must support the review of the regulator and the court. Expert must be approved by regulator, and actuarial and financial qualifications are thoroughly vetted</p>	<p>Required</p> <p>Report must include an analysis of the financial condition of the transferring and assuming insurers and the effect the transfer will have on the financial condition of each company, and a review of whether the proposed transfer has a material, adverse impact on policyholders</p>	<p>Required</p> <p>Report must include an opinion on the likely effects of the transfer plan on policyholders, and consideration as to whether the security position of policyholders or reinsureds of the transferring company are materially adversely affected by the transfer</p>	No requirement, but the regulator can retain outside advisors at the applicant's expense	No requirement, but the regulator can retain outside advisors at the applicant's expense	<p>No requirement, but the regulator can retain outside advisors at the applicant's expense, as follows:</p> <p>All expenses incurred by the director of the department in connection with proceedings under this section, including expenses for the services of any attorneys, actuaries, accountants, and other experts not otherwise a part of the director's</p>

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				and claimants of the transferring and assuming insurers Report must also contain an analysis of the assuming insurer's corporate governance structure to ensure that there is proper board and management oversight and expertise to manage the subject business				staff as may be reasonably necessary to assist the director in reviewing the proposed division, must be paid by the dividing insurer filing the plan of division. [Sec. 5507(9)]
Public hearing	Required Note: Certain states do not require public hearings	Not required	Required Court process includes hearings and other opportunities	Required	Required	No requirement, but the regulator could decide to hold a hearing if it is	No requirement, but the regulator could decide to hold a hearing if it is	Required [Sec. 5507(1)]

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			for public input			deemed to be in the public interest	deemed to be in the public interest	
Notice to policyholders and the general public	<p>Required</p> <p>Public notice must be provided and the acquisition application to the regulator is made public, subject to redaction to protect competitively sensitive information</p>	<p>Required to individual policyholders and transferring insurers agents/ brokers of record</p> <p>The notice of transfer shall be filed as part of the prior approval requirement. The Model provides sample notice language</p>	<p>Required</p> <p>Detailed public notice must be provided to policyholders and other interested parties. The form of notice must be approved</p>	<p>Required to be provided to individual policyholders, NOLHGA, NCICF, reinsurers, applicable state regulators and guaranty associations</p>	<p>Required</p>	<p>No requirement, unless the regulator decides to hold a hearing</p> <p>Company must notify its reinsurers</p>	<p>No requirement, unless the regulator decides to hold a hearing</p>	<p>Required [Sec. 5507(1)]</p>

	<p>NAIC Insurance Holding Company System Model Act & Reg. (Includes Form A)</p> <p>Link to Model Act Link to Model Reg</p>	<p>NAIC Assumption Reinsurance Model Act</p> <p>Link to Model</p>	<p>United Kingdom Part VII</p> <p>Link to Part VII</p>	<p>Oklahoma SB 1101</p> <p>Link to Bill</p>	<p>Rhode Island Regulation 68</p> <p>Link to Reg 68</p>	<p>Illinois SB 1737</p> <p>Link to Bill</p>	<p>Connecticut HB 7025</p> <p>Link to Bill</p>	<p>Michigan SB 1029</p> <p>Link to Statute</p>
<p>Licensing in other states</p>	<p>No requirement</p> <p>However, traditional mergers and acquisitions normally involve widely-licensed companies</p>	<p>Insurer cannot use assumption reinsurance to acquire policies in states where it is not licensed unless applicable state regulator consents</p>	<p>UK is a national regulator responsible for all UK residents, so out-of-state licensing is not an issue</p>	<p>No requirement</p>	<p>No requirement</p>	<p>No requirement</p>	<p>No requirement</p>	<p>No requirement</p>