

The House Committee on Insurance offers the following substitute to HB 1049:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapters 36 and 52 of Title 33 of the Official Code of Georgia Annotated, relating
2 to the Georgia Insurers Solvency Pool and assumption reinsurance agreements, respectively,
3 so as to enact the "Insurance Business Transfer Act"; to provide for definitions; to provide
4 for a short title; to provide for legislative intent; to provide for court authority; to provide for
5 notice requirements; to provide for an application procedure; to provide for court review of
6 a petition; to provide for ongoing jurisdiction by the court; to provide for court approval; to
7 provide for appeal; to provide for confidentiality; to provide for ongoing oversight by the
8 Commissioner; to provide for certain fees and costs to be borne by the applicant; to provide
9 for compensation, costs, and expenses of the independent expert and any consultants to be
10 borne jointly by the transferring insurer and assuming insurer; to provide for dismissal of
11 petition; to provide for suspension or revocation of certificate; to provide for construction;
12 to make conforming changes; to provide for related matters; to provide for an effective date;
13 to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

15
16 Chapter 36 of Title 33 of the Official Code of Georgia Annotated, relating to the Georgia
17 Insurers Insolvency Pool, is amended in paragraph (4) of Code Section 33-36-3, relating to
18 definitions, by adding new subparagraphs to read as follows:

19 "(O) Notwithstanding any other provision of this chapter, an insurance policy issued
20 by a member insurer and later allocated, transferred, or assumed by, or otherwise made
21 the sole responsibility of another insurer, pursuant to any provision of law of this state
22 providing for the division of an insurance company or the statutory assumption or
23 transfer of designated policies and under which there is no remaining obligation to the
24 transferring entity, shall be considered to have been issued by a member insurer which
25 is an insolvent insurer for the purposes of this chapter in the event that the insurer to
26 which the policy has been allocated, transferred, assumed by, or otherwise made the
27 sole responsibility of is placed in liquidation.

28 (P) An insurance policy that was issued by a nonmember insurer and later allocated,
29 transferred, assumed by, or otherwise made the sole responsibility of a member insurer
30 under any provision of law of this state described in subparagraph (O) of this paragraph
31 shall not be considered to have been issued by a member insurer for the purposes of this
32 chapter."

SECTION 2.

33
34 Chapter 52 of Title 33 of the Official Code of Georgia Annotated, relating to assumption
35 reinsurance agreements, is amended by designating Code Sections 33-52-1 through 33-52-6
36 as Article 1.

SECTION 3.

37
38 Said chapter is further amended by replacing "chapter" with "article" wherever the former
39 term occurs in:

- 40 (1) Code Section 33-52-1, relating to applicability of chapter;
41 (2) Code Section 33-52-2, relating to definitions; and
42 (3) Code Section 33-52-4, relating to rejection of transaction by policyholders, receipt of
43 notice, and transfers involving companies deemed to be in hazardous condition.

44 **SECTION 4.**

45 Said chapter is further amended by enacting a new article to read as follows:

46 "ARTICLE 2

47 33-52-10.

48 This Act shall be known and may be cited as the 'Insurance Business Transfer Act.'

49 33-52-11.

50 This article is adopted to provide options to address the limitations in the current methods
51 available to insurers to transfer or assume blocks of insurance business in an efficient and
52 cost-effective manner that: provides needed legal finality for such transfers in order to
53 provide for improved operational and capital efficiency for insurance companies;
54 stimulates the economy by attracting segments of the insurance industry to this state; makes
55 this state an attractive home jurisdiction for insurance companies; encourages economic
56 growth and increased investment in the financial services sector; and increases the
57 availability of quality insurance industry jobs in this state. These purposes are
58 accomplished by providing a basis and procedures for the transfer and novation of policies
59 from a transferring insurer to an assuming insurer by way of an insurance business transfer
60 plan without the affirmative consent of policyholders or reinsureds. The novation is
61 effected by court order. This article establishes the requirements for notice and disclosure
62 and standards and procedures for the approval of the transfer and novation by the

63 Commissioner and the Superior Court of Fulton County pursuant to an insurance business
64 transfer plan. This article shall not limit or restrict other means of effecting a transfer or
65 novation.

66 33-52-12.

67 As used in this article, the term:

68 (1) 'Affiliate' means a person that directly, or indirectly through one or more
69 intermediaries, controls, is controlled by, or is under common control with the person
70 specified.

71 (2) 'Applicant' means an assuming insurer, transferring insurer, or reinsurer applying to
72 the Commissioner for the approval of an insurance business transfer plan as provided for
73 in Code Section 33-52-15.

74 (3) 'Approval order' means an order issued by the court approving an insurance business
75 transfer plan as provided for in Code Section 33-52-15.

76 (4) 'Assuming insurer' means an insurer domiciled in this state that assumes or seeks to
77 assume policies from a transferring insurer pursuant to this article. An assuming insurer
78 may be a company established pursuant to Chapter 41 of this title.

79 (5) 'Court' means the Superior Court of Fulton County.

80 (6) 'Implementation order' means an order issued by the court implementing an insurance
81 business transfer plan as provided for in Code Section 33-52-15.

82 (7) 'Independent expert' means an impartial individual who assists the Commissioner and
83 the court in connection with their review of a proposed transfer and novation of insurance
84 business. The Commissioner shall select such expert from a list of at least two nominees
85 submitted jointly by the transferring insurer and the assuming insurer; provided, however,
86 that, if the Commissioner, in his or her sole discretion, rejects such nominees, the
87 Commissioner may appoint another person to serve as an independent expert. An
88 independent expert or nominee shall:

- 89 (A) Hold no financial interest in either the assuming insurer or transferring insurer or
90 any of their respective affiliates;
- 91 (B) Not have been employed by or acted as an officer, director, consultant, or other
92 independent contractor for either the assuming insurer or transferring insurer within the
93 previous twelve months;
- 94 (C) Not be simultaneously appointed by the Commissioner to assist in any capacity in
95 any insurer rehabilitation or delinquency proceeding;
- 96 (D) Not receive or be promised compensation in connection with the insurance
97 business transfer for which he or she is selected to serve as an independent expert;
98 provided, however, that a fee may be approved by the Commissioner that is not
99 contingent upon the approval, implementation, or consummation of an insurance
100 business transfer plan; and
- 101 (E) Provide proof of insurance covering the services provided as an independent expert
102 as determined by the Commissioner.
- 103 (8) 'Insurance business transfer' means a transfer and novation in accordance with this
104 article. An approved insurance business transfer transfers insurance obligations, risks,
105 rights, or any combination thereof, of existing or in-force contracts of insurance or
106 reinsurance from a transferring insurer to an assuming insurer. An approval order and
107 an implementation order of an insurance business transfer plan will effect a transfer and
108 novation of the transferred contracts of insurance or reinsurance with the result that the
109 assuming insurer becomes directly liable to the policyholders of the transferring insurer
110 and the transferring insurer's insurance obligations, risks, rights, or any combination
111 thereof, under the contracts are extinguished.
- 112 (9) 'Insurance business transfer plan' or 'plan' means the plan submitted to the department
113 to accomplish the transfer and novation pursuant to an insurance business transfer,
114 including any associated transfer of assets and rights from or on behalf of the transferring
115 insurer to the assuming insurer.

116 (10) 'Insurer' means an insurance or surety company, including a reinsurance company,
117 and includes a corporation, company, partnership, association, society, order, individual,
118 or aggregation of individuals engaging in or proposing or attempting to engage in any
119 kind of insurance or surety business, including the exchanging of reciprocal or
120 interinsurance contracts between individuals, partnerships, and corporations.

121 (11) 'Notice' means written notice, telephone notice, electronic notice, or substitute
122 notice, as consented to in an agreement included in or related to the subject business, or
123 as provided by rules and regulations promulgated by the Commissioner.

124 (12) 'Petitioner' means an assuming insurer, transferring insurer, or reinsurer petitioning
125 a court for an approval order and an implementation order of a plan pursuant to this
126 article.

127 (13) 'Policy' means a policy, contract or certificate of insurance or a contract of
128 reinsurance pursuant to which an insurer agrees to assume an insurance obligation or risk,
129 or both, of a policyholder or to make payments on behalf of, or to, such policyholder or
130 its beneficiaries, and shall include property, casualty, life, health, and any other line of
131 insurance the Commissioner deems appropriate for an insurance business transfer.

132 (14) 'Policyholder' means an insured or a reinsured under a policy that is part of the
133 subject business.

134 (15) 'Subject business' means the policy or policies designated for transfer and novation
135 pursuant to a corresponding insurance business transfer plan.

136 (16) 'Transfer and novation' means the transfer of insurance obligations, risks, rights, or
137 any combination thereof, of existing or in-force policies from a transferring insurer to an
138 assuming insurer, with the result that the assuming insurer becomes directly liable to the
139 policyholders of the transferring insurer on the transferred policies and the transferring
140 insurer's insurance obligations, risks, rights, or any combination thereof, under the
141 transferred policies are extinguished.

142 (17) 'Transferring insurer' means an insurer or reinsurer that seeks to or has
143 accomplished a transfer and novation of insurance obligations, risks, rights, or any
144 combination thereof, under one or more policies to an assuming insurer pursuant to an
145 insurance business transfer plan and the provisions of this article.

146 33-52-13.

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

152 33-52-14.

153 (a) When notice is required under this article and except as otherwise permitted or directed
154 by the court or the Commissioner, such notice shall be transmitted within 45 days of the
155 event triggering such requirement:

156 (1) To the chief insurance regulatory official in each jurisdiction in which the
157 transferring insurer:

158 (A) Holds or has ever held a certificate of authority; and

159 (B) In which policies that are part of the subject business were issued or policyholders
160 currently reside;

161 (2) To the National Conference of Insurance Guaranty Funds, the National Organization
162 of Life and Health Insurance Guaranty Associations, and all state insurance guaranty
163 associations for the states in which the transferring insurer:

164 (A) Holds or has ever held a certificate of authority; and

165 (B) In which policies that are part of the subject business were issued or policyholders
166 currently reside;

167 (3) To reinsurers of the transferring insurer pursuant to the notice provisions of the
168 reinsurance agreements applicable to the policies that are part of the subject business, or
169 where an agreement has no provision for notice, by internationally recognized delivery
170 service;

171 (4) To all policyholders holding policies that are part of the subject business at their last
172 known address as indicated by the records of the transferring insurer or to the address to
173 which premium notices or other policy documents are sent. Notice shall also be sent to
174 the transferring insurer's agents or brokers of record on the subject business; and

175 (5) By publication in a newspaper or other publication of general circulation in the state
176 in which the transferring insurer has its principal place of business and in such other
177 publications that the Commissioner requires.

178 (b) When notice is given in accordance with this Code section, any information or orders
179 under this article shall be conclusive with respect to all intended recipients of the notice,
180 whether or not the intended recipients receive actual notice.

181 (c) When notice is required by an applicant or petitioner but a receiver of the insurer has
182 been appointed pursuant to the laws of the insurer's home jurisdiction, the receiver shall
183 provide the required notice.

184 33-52-15.

185 **(a) Application to the Commissioner for approval of an insurance business transfer**
186 **plan.**

187 (1) An insurance business transfer plan shall be filed by the applicant with the
188 Commissioner for review and approval. The plan shall contain the information set forth
189 below or an explanation as to why such information is not included. The plan may be
190 supplemented or revised with additional, updated, or other information when deemed
191 necessary by the Commissioner and as it becomes available:

- 192 (A) The name, address, and telephone number of the transferring insurer and the
193 assuming insurer and their respective direct and indirect controlling persons, if any;
194 (B) A summary of the insurance business transfer plan;
195 (C) Identification and description of the subject business;
196 (D) The most recent audited financial statements and annual and quarterly reports of
197 the transferring insurer and assuming insurer filed with their respective domiciliary
198 regulator;
199 (E) The most recent actuarial report and actuarial opinion that quantify the liabilities
200 associated with the subject business;
201 (F) Pro-forma financial statements showing the projected statutory balance sheet,
202 results of operations, and cash flows of the assuming insurer for the three years
203 following the proposed transfer and novation;
204 (G) Officers' certificates of the transferring insurer and the assuming insurer attesting
205 that each has obtained all required internal approvals and authorizations regarding the
206 insurance business transfer plan and completed all necessary and appropriate actions
207 relating thereto;
208 (H) Proposal for plan implementation and administration;
209 (I) Form of notice to be provided under the plan to any policyholder whose policy is
210 part of the subject business, including a full description as to how such notice shall be
211 provided;
212 (J) Description of any reinsurance arrangements that will pass to the assuming insurer
213 under the insurance business transfer plan;
214 (K) Description of any guarantees or additional reinsurance that will cover the subject
215 business following the transfer and novation;
216 (L) A statement describing the assuming insurer's proposed investment policies and
217 any contemplated third-party claims management and administration arrangements;

218 (M) Evidence of approval or nonobjection of the transfer from the chief insurance
219 regulatory official of the jurisdiction of the transferring insurer's domicile; and
220 (N) An opinion report from an independent expert. Such report shall provide the
221 following:

- 222 (i) A statement of the independent expert's professional qualifications and experience
223 that qualify him or her as an expert suitable for the engagement;
- 224 (ii) The scope of the report;
- 225 (iii) A summary of the terms of the insurance business transfer plan relevant to the
226 report;
- 227 (iv) A list of and summaries for documents, reports, and other material information
228 the independent expert has considered in preparing the report and whether any
229 information requested was not provided;
- 230 (v) The extent to which the independent expert has relied on information and
231 judgment provided by others;
- 232 (vi) The persons upon whom the independent expert has relied and why such reliance
233 is reasonable;
- 234 (vii) The independent expert's opinion of the likely effects of the insurance business
235 transfer plan on policyholders, reinsurers, and claimants, distinguishing between:
 - 236 (I) Transferring policyholders, reinsurers, and claimants;
 - 237 (II) Policyholders, reinsurers, and claimants of the transferring insurer whose
238 policies will not be transferred; and
 - 239 (III) Policyholders, reinsurers, and claimants of the assuming insurer;
- 240 (viii) For each opinion that the independent expert expresses in the report, the facts
241 and circumstances supporting such opinion; and
- 242 (ix) Consideration as to whether the security position of policyholders that are
243 affected by the insurance business transfer are materially adversely affected by the
244 transfer.

245 (2) The independent expert's opinion report as required by subparagraph (a)(1)(N) of this
246 Code section shall include, but shall not be limited to, a review of the following:

247 (A) Analysis of the transferring insurer's actuarial review of reserves for the subject
248 business to determine the reserve adequacy;

249 (B) Analysis of the financial condition of the transferring insurer and of the assuming
250 insurer and the effect the insurance business transfer shall have on the financial
251 condition of each insurance company;

252 (C) The plans or proposals the assuming insurer has with respect to the administration
253 of the subject business;

254 (D) Whether the proposed transfer will likely have a material adverse effect on the
255 policyholders, reinsurers, or claimants of the transferring insurer and the assuming
256 insurer;

257 (E) Analysis of the assuming insurer's corporate governance structure to ensure proper
258 board and management oversight and expertise to manage the subject business; and

259 (F) Any other information the Commissioner deems necessary to review the insurance
260 business transfer plan.

261 (3) The Commissioner shall have 60 business days from the date of receipt of a complete
262 insurance business transfer plan to review such plan to determine if the applicant is
263 authorized to submit such plan to the court. The Commissioner may extend such review
264 period for an additional 30 business days.

265 (4) The Commissioner shall authorize the submission of the plan to the court unless he
266 or she finds that the insurance business transfer will likely have a material adverse effect
267 on the interests of policyholders, reinsurers, or claimants that are part of the subject
268 business.

269 (5) When the Commissioner determines that the insurance business transfer will likely
270 have a material adverse effect on the interests of policyholders, reinsurers, or claimants
271 that are part of the subject business, the Commissioner shall notify the applicant and

272 specify any modifications, supplements, or amendments, and any additional information
273 or documentation with respect to the plan that shall be provided to the Commissioner
274 before he or she will authorize the filing of such insurance business transfer plan with the
275 court.

276 (6) The applicant shall have 30 days from the date the Commissioner notifies him or her,
277 as provided in paragraph (5) of this subsection, to file an amended plan providing the
278 modifications, supplements, or amendments, and additional information or
279 documentation as requested by the Commissioner. If necessary, the applicant may
280 request in writing an extension of up to 30 days. If the applicant does not make an
281 amended filing within the time period provided for in this paragraph, including any
282 extension of time granted by the Commissioner, the plan filing shall terminate and a
283 subsequent filing by the applicant shall be considered a new filing which shall require
284 compliance with all provisions of this article as if the prior filing had never been made.

285 (7) The Commissioner's review period provided for in paragraph (3) of this subsection
286 shall recommence upon receipt of the amended plan providing the modification,
287 supplement, amendment, and the additional information or documentation requested in
288 paragraph (5) of this subsection.

289 (8) When the Commissioner authorizes the applicant to proceed with filing a petition
290 with the court seeking approval and implementation of the plan, the Commissioner shall
291 confirm such determination in writing to the applicant.

292 **(b) Petition to the court for approval of the insurance business transfer plan and an**
293 **implementation order.**

294 (1) Within 30 days of the Commissioner's order determining an insurance business
295 transfer plan satisfies the requirements of this article, the assuming insurer, transferring
296 insurer, or reinsurer may file a petition with the court seeking an approval order and an
297 implementation order of such plan. Upon written request by the applicant to the

298 Commissioner, the period for filing a petition with the court may be extended for an
299 additional 30 days.

300 (2) The petition provided for in paragraph (1) of this subsection shall include:

301 (A) The relief sought;

302 (B) Information, arguments, and authorities supporting the requested relief, including
303 information and analysis in support of the court's finding that the plan will not likely
304 have a material adverse effect to any policyholder, reinsurer, or claimant;

305 (C) The insurance business transfer plan;

306 (D) A preliminary list of witnesses and exhibits that the petitioner reasonably intends
307 to present to the court; and

308 (E) A request for the court to enter judgment in favor of the petitioner and that such
309 judgment shall include findings of fact, conclusions of law, an approval order, an
310 implementation order, and the court's retention of jurisdiction to allow the parties to
311 request any orders regarding incidental, consequential, and supplementary matters
312 necessary to assure the full and effective implementation of such plan.

313 (3) The Commissioner shall be a party to the proceeding before the court concerning the
314 petition and shall be served with copies of all filings. The Commissioner's position in the
315 proceeding shall not be limited by his or her initial review of the plan.

316 (4) Within 30 days after the filing of the petition provided for in paragraph (1) of this
317 subsection, the petitioner shall file a request for a preliminary scheduling order, which
318 shall include a date and time for a status conference. The status conference shall occur
319 no fewer than 14 days after the conclusion of the 60 day comment period provided in
320 paragraph (7) of this subsection.

321 (5) Within 45 days after the court enters the preliminary scheduling order, the petitioner
322 shall cause the transmission and publication of a notice of the matter before the court in
323 accordance with the notice provisions of Code Section 33-52-14.

324 (6) The notice provided for in paragraph (5) of this subsection shall include:

- 325 (A) The date and time of the status conference;
326 (B) The name, address and telephone number of the assuming insurer, transferring
327 insurer, and Commissioner;
328 (C) Procedures and deadlines for policyholders, claimants, and third parties to submit
329 comments, objections, or requests to be heard at the trial regarding the plan;
330 (D) The procedure for a policyholder that is unable to access or acquire an electronic
331 copy of the plan and associated information to request the petitioner to provide one free
332 hard copy to a policyholder;
333 (E) A summary of the order entered by the Commissioner, including the effect the plan
334 shall have on policyholders, if any;
335 (F) The name and location of the court in which the petition is filed;
336 (G) The case number, parties, and other identifying information of the matter in the
337 petition;
338 (H) The relief sought in the petition;
339 (I) The procedure to access an electronic copy of the insurance business transfer plan
340 and associated information, if any;
341 (J) Further notice of filings, schedules, orders, and other information, as provided in
342 paragraph (9) of this subsection; and
343 (K) If the plan is approved by the court, the court shall enter a judgment consistent
344 with paragraph (3) of subsection (c) of this Code section.
345 (7) The last date of the transmission and publication of the notice shall be followed by
346 a comment period of no fewer than 60 days.
347 (8) Any person, including by their legal representative, that provides written notice
348 within the 60 day comment period provided for in paragraph (7) of this subsection and
349 that asserts to be materially adversely affected by the approval and implementation of a
350 plan may present comment or evidence to the court at the trial; provided, however, that
351 such comment or evidence shall not confer standing as a party on any person. Any

352 person participating in the pretrial proceeding or the trial of the petitioner's request for
353 an order of approval and an implementation order of the plan shall follow the process
354 established by the court and shall bear their own costs and attorney's fees.

355 (9) Only parties to this matter and those persons and other third parties that file a request
356 to provide comment or evidence as provided for in paragraph (8) of this subsection shall
357 receive further notice and copies of filings with the court.

358 (10) Within 45 days of the status conference required as provided for in paragraph (4)
359 of this subsection, the petitioner shall file a motion for a scheduling order and to enter this
360 matter on the court's trial docket.

361 **(c) Approval order by the court of an insurance business transfer plan and**
362 **implementation order.**

363 (1) Pursuant to the court's scheduling order or other orders by the court, the petitioner
364 shall present the insurance business transfer plan, evidence, and arguments to the court
365 for approval and implementation of the plan.

366 (2) At any time before the court issues a judgment, the petitioner may withdraw the
367 petition without prejudice to refiling.

368 (3) When the court finds that the approval and implementation of the insurance business
369 transfer plan will not materially adversely affect the interests of policyholders or
370 claimants to policies that are part of the subject business, the court shall enter judgment
371 in favor of the petitioner and an implementation order. Such judgment and order shall
372 include and provide for:

373 (A) Findings of fact;

374 (B) Conclusions of law;

375 (C) The approval order and the implementation order, including:

376 (i) The simultaneous transfer and novation from the transferring insurer to the
377 assuming insurer of the subject business with respect to all policyholders, reinsurers,

378 and claimants and their respective policies and reinsurance agreements under the
379 subject business;

380 (ii) The simultaneous transfer and novation from the transferring insurer and the
381 assuming insurer of all insurance obligations, risks, rights, or any combination
382 thereof, including, but not limited to, the ceded reinsurance of transferred policies and
383 contracts included in the subject business, notwithstanding any non-assignment
384 provisions in any such reinsurance contracts or other agreements;

385 (iii) Documentation that the assuming insurer shall have all of transferring insurer's
386 obligations, risks, rights, or any combination thereof, regarding the subject business
387 as if it were the original insurer of such policies, including the same standing as the
388 transferring insurer pursuant to contract, statute, and interpretation, relating back to
389 the issuance of such policies; and

390 (iv) Documentation that the policyholders' and claimants' obligations, risks, rights,
391 or any combination thereof, if any, under their respective policies which are part of
392 the subject business shall not be enlarged, extended, limited, or reduced; provided,
393 however, that the policyholders and claimants may not pursue or be pursued by the
394 transferring insurer to satisfy their respective obligations, risks, rights, or any
395 combination thereof, but rather, the policyholders and claimants may pursue or be
396 pursued by the assuming insurer;

397 (D) Notice of such judgment, including the resulting transfer and novation, shall be
398 provided by the petitioner in accordance with the notice requirements as provided in
399 Code Section 33-52-14;

400 (E) Other orders and provisions with respect to incidental, consequential, and
401 supplementary matters as are necessary to assure full and effective implementation of
402 the insurance business transfer plan; and

403 (F) The retention of jurisdiction of the matter so as to allow the parties to request such
404 additional orders regarding incidental, consequential, and supplemental matters
405 necessary to assure the full and effective implementation of the plan.

406 (4) When the court finds that the insurance business transfer plan should not be
407 approved, the court by its order may:

408 (A) Deny the petition; or

409 (B) Provide the petitioner leave to file an amended petition, including an amended
410 insurance business transfer plan.

411 (5) Nothing in this Code section in any way affects the right of appeal of any party.

412 (d) An unexpired and in-force policy issued to a policyholder that resides in a state other
413 than this state shall not be transferred and novated unless or until the assuming insurer is
414 licensed, authorized, permitted, or otherwise legally allowed to administer the subject
415 business in the same manner as the transferring insurer in the state of such policyholder's
416 residence.

417 (e) The court may approve the requested transfer and novation of the subject business,
418 with effectiveness of all or part of the implementation deferred until the assuming insurer
419 is able to satisfy the requirements pursuant to subsection (d) of this Code section.

420 (f) The Commissioner shall promulgate rules and regulations to effectuate the provisions
421 of this article. No insurance business transfer plan shall be approved in this state unless
422 and until such rules and regulations are promulgated. Such rules and regulations may
423 address, but shall not be limited to, the following issues:

424 (1) Guaranty association coverage;

425 (2) The financial implications of the transaction, including solvency, capital adequacy,
426 cash flow, reserves, asset quality, and risk-based capital;

427 (3) An analysis of the assuming insurer's corporate governance structure to ensure
428 proper board management oversight and expertise to manage the subject business;

429 (4) The competency, experience, and integrity of the persons who would control the
430 operations of an involved insurer; and

431 (5) Ensuring the transaction is not being made for improper purposes, including fraud.

432 (g) All testimony, documents, exhibits, analysis, communications, or other information or
433 evidence submitted to the Commissioner or independent expert in contemplation of an
434 application, submitted to the court in support of a petition, or developed by the
435 Commissioner or independent expert in connection with such application or petition for an
436 approval order and an implementation order of a plan, shall be treated for purposes of
437 confidentiality as an examination of the financial condition or market conduct of the
438 transacting companies as provided in Code Section 33-2-14.

439 33-52-16.

440 Insurers subject to this article consent to the jurisdiction of the Commissioner with regard
441 to ongoing oversight of operations, management, and solvency relating to the transferred
442 business, including the authority of the Commissioner to conduct financial analysis and
443 examinations.

444 33-52-17.

445 (a) At the time of filing its application with the Commissioner for review and approval of
446 an insurance business transfer plan, an applicant shall pay a nonrefundable fee to the
447 department in the amount of \$10,000.00.

448 (b) In the Commissioner's discretion, in connection with the department's participation in
449 the proceedings undertaken pursuant to this article, an applicant shall reimburse the
450 department for any compensation and benefits paid to the personnel of the department for
451 time spent engaged in the proceedings, including, but not limited to, examiners, actuaries,
452 attorneys, managers, and paraprofessionals.

453 (c) The Commissioner may retain independent authorized consultants, including attorneys,
454 appraisers, actuaries, certified public accountants, or other professionals and specialists to
455 assist department personnel in connection with the review required by this article, the cost
456 of which shall be borne by the applicant.

457 (d) The applicant shall pay the expenses of the department and its authorized consultants
458 incurred in fulfilling their obligations under this article, including the actual expenses of
459 the department or the expenses and compensation of any consultants retained by the
460 department.

461 (e) The transferring insurer and the assuming insurer shall jointly be obligated to pay any
462 compensation, costs, and expenses of the independent expert and any consultants retained
463 by the independent expert and approved by the department incurred in fulfilling the
464 obligations of the independent expert under this article. Nothing in this article shall be
465 construed to create any duty for the independent expert to any party other than the
466 department or the court.

467 (f) Failure to pay any of the requisite fees or reimbursements within 30 days of demand
468 shall be grounds for the Commissioner to request that the court dismiss the petition for
469 approval of the insurance business transfer plan prior to the filing of an implementation
470 order by the court, or, if after the filing of an implementation order, the Commissioner may
471 suspend or revoke the assuming insurer's certificate of authority to transact insurance
472 business in this state."

473 **SECTION 5.**

474 This Act shall become effective upon its approval by the Governor or upon its becoming law
475 without such approval.

476 **SECTION 6.**

477 All laws and parts of laws in conflict with this Act are repealed.