

The Senate Committee on Insurance and Labor offered 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:

15

SECTION 1.

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."

33

SECTION 2.

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.

37

SECTION 3.

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) 'State insurance guaranty association' means the Georgia Insurers Insolvency Pool,
135 created by Chapter 36 of this title, the Georgia Life and Health Insurance Guaranty
136 Association, created by Chapter 38 of this title, or any similar organization in another
137 state.

138 (16) 'Subject business' means the policy or policies designated for transfer and novation
139 pursuant to a corresponding insurance business transfer plan.

140 (17) 'Transfer and novation' means the transfer of insurance obligations, risks, rights, or
141 any combination thereof, of existing or in-force policies from a transferring insurer to an
142 assuming insurer, with the result that the assuming insurer becomes directly liable to the

143 policyholders of the transferring insurer on the transferred policies and the transferring
144 insurer's insurance obligations, risks, rights, or any combination thereof, under the
145 transferred policies are extinguished.

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

150 33-52-13.

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

156 33-52-14.

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

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

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

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

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

- 168 (A) Holds or has ever held a certificate of authority; and
169 (B) In which policies that are part of the subject business were issued or policyholders
170 currently reside;
171 (3) To reinsurers of the transferring insurer pursuant to the notice provisions of the
172 reinsurance agreements applicable to the policies that are part of the subject business, or
173 where an agreement has no provision for notice, by internationally recognized delivery
174 service;
175 (4) To all policyholders holding policies that are part of the subject business at their last
176 known address as indicated by the records of the transferring insurer or to the address to
177 which premium notices or other policy documents are sent. Notice shall also be sent to
178 the transferring insurer's agents or brokers of record on the subject business; and
179 (5) By publication in a newspaper or other publication of general circulation in the state
180 in which the transferring insurer has its principal place of business and in such other
181 publications that the Commissioner requires.
182 (b) When notice is given in accordance with this Code section, any information or orders
183 under this article shall be conclusive with respect to all intended recipients of the notice,
184 whether or not the intended recipients receive actual notice.
185 (c) When notice is required by an applicant or petitioner but a receiver of the insurer has
186 been appointed pursuant to the laws of the insurer's home jurisdiction, the receiver shall
187 provide the required notice.

188 33-52-15.

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

- 191 (1) An insurance business transfer plan shall be filed by the applicant with the
192 Commissioner for review and approval. The plan shall contain the information set forth
193 below or an explanation as to why such information is not included. The plan may be

194 supplemented or revised with additional, updated, or other information when deemed
195 necessary by the Commissioner and as it becomes available:

196 (A) The name, address, and telephone number of the transferring insurer and the
197 assuming insurer and their respective direct and indirect controlling persons, if any;

198 (B) A summary of the insurance business transfer plan;

199 (C) Identification and description of the subject business;

200 (D) The most recent audited financial statements and annual and quarterly reports of
201 the transferring insurer and assuming insurer filed with their respective domiciliary
202 regulator;

203 (E) The most recent actuarial report and actuarial opinion that quantify the liabilities
204 associated with the subject business;

205 (F) Pro-forma financial statements showing the projected statutory balance sheet,
206 results of operations, and cash flows of the assuming insurer for the three years
207 following the proposed transfer and novation;

208 (G) Officers' certificates of the transferring insurer and the assuming insurer attesting
209 that each has obtained all required internal approvals and authorizations regarding the
210 insurance business transfer plan and completed all necessary and appropriate actions
211 relating thereto;

212 (H) Proposal for plan implementation and administration;

213 (I) Form of notice to be provided under the plan to any policyholder whose policy is
214 part of the subject business, including a full description as to how such notice shall be
215 provided and whether certificates of assumption shall be issued to policyholders;

216 (J) Description of any reinsurance arrangements that will pass to the assuming insurer
217 under the insurance business transfer plan;

218 (K) Description of any guarantees or additional reinsurance that will cover the subject
219 business following the transfer and novation;

- 220 (L) A statement describing the assuming insurer's proposed investment policies and
221 any contemplated third-party claims management and administration arrangements;
- 222 (M) A statement of whether any policyholder or group of policyholders shall lose or
223 gain coverage of a state insurance guaranty association and a description of how the
224 transferring and assuming insurers shall be licensed for the purpose of state insurance
225 guaranty association coverage;
- 226 (N) Evidence of approval or nonobjection of the transfer from the chief insurance
227 regulatory official of the jurisdiction of the transferring insurer's domicile; and
- 228 (O) An opinion report from an independent expert. Such report shall provide the
229 following:
- 230 (i) A statement of the independent expert's professional qualifications and experience
231 that qualify him or her as an expert suitable for the engagement;
- 232 (ii) The scope of the report;
- 233 (iii) A summary of the terms of the insurance business transfer plan relevant to the
234 report;
- 235 (iv) A list of and summaries for documents, reports, and other material information
236 the independent expert has considered in preparing the report and whether any
237 information requested was not provided;
- 238 (v) The extent to which the independent expert has relied on information and
239 judgment provided by others;
- 240 (vi) The persons upon whom the independent expert has relied and why such reliance
241 is reasonable;
- 242 (vii) The independent expert's opinion of the likely effects of the insurance business
243 transfer plan on policyholders, reinsurers, and claimants, distinguishing between:
- 244 (I) Transferring policyholders, reinsurers, and claimants;
- 245 (II) Policyholders, reinsurers, and claimants of the transferring insurer whose
246 policies will not be transferred; and

247 (III) Policyholders, reinsurers, and claimants of the assuming insurer;
248 (viii) For each opinion that the independent expert expresses in the report, the facts
249 and circumstances supporting such opinion; and
250 (ix) Consideration as to whether the security position of any policyholder or group
251 of policyholders affected by the insurance business transfer are materially adversely
252 affected by the transfer, including, but not limited to, coverage by a state insurance
253 guaranty association.

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

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

258 (B) Analysis of the financial condition of the transferring insurer and of the assuming
259 insurer and the effect the insurance business transfer shall have on the financial
260 condition of each insurance company;

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

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

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

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

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

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

278 (5) When the Commissioner determines that the insurance business transfer will likely
279 have a material adverse effect on the interests of policyholders, reinsurers, or claimants
280 that are part of the subject business, the Commissioner shall notify the applicant and
281 specify any modifications, supplements, or amendments, and any additional information
282 or documentation with respect to the plan that shall be provided to the Commissioner
283 before he or she will authorize the filing of such insurance business transfer plan with the
284 court.

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

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

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

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

303 (1) Within 30 days of the Commissioner's order determining an insurance business
304 transfer plan satisfies the requirements of this article, the assuming insurer, transferring
305 insurer, or reinsurer may file a petition with the court seeking an approval order and an
306 implementation order of such plan. Upon written request by the applicant to the
307 Commissioner, the period for filing a petition with the court may be extended for an
308 additional 30 days.

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

310 (A) The relief sought;

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

314 (C) The insurance business transfer plan;

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

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

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

325 (4) Within 30 days after the filing of the petition provided for in paragraph (1) of this
326 subsection, the petitioner shall file a request for a preliminary scheduling order, which
327 shall include a date and time for a status conference. The status conference shall occur

328 no fewer than 14 days after the conclusion of the 60 day comment period provided in
329 paragraph (7) of this subsection.

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

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

334 (A) The date and time of the status conference;

335 (B) The name, address and telephone number of the assuming insurer, transferring
336 insurer, and Commissioner;

337 (C) A statement regarding whether any policyholder or group of policyholders may or
338 shall lose or gain coverage by a state insurance guaranty association as a result of the
339 transfer and the implication of losing or gaining such coverage;

340 (D) Procedures and deadlines for policyholders, claimants, and third parties to submit
341 comments, objections, or requests to be heard at the trial regarding the plan;

342 (E) The procedure for a policyholder that is unable to access or acquire an electronic
343 copy of the plan and associated information to request the petitioner to provide one free
344 hard copy to a policyholder;

345 (F) A summary of the order entered by the Commissioner, including the effect the plan
346 shall have on policyholders, if any;

347 (G) The name and location of the court in which the petition is filed;

348 (H) The case number, parties, and other identifying information of the matter in the
349 petition;

350 (I) The relief sought in the petition;

351 (J) The procedure to access an electronic copy of the insurance business transfer plan
352 and associated information, if any;

353 (K) Further notice of filings, schedules, orders, and other information, as provided in
354 paragraph (9) of this subsection; and

355 (L) If the plan is approved by the court, the court shall enter a judgment consistent with
356 paragraph (3) of subsection (c) of this Code section.

357 (7) The last date of the transmission and publication of the notice shall be followed by
358 a comment period of no fewer than 60 days.

359 (8) Any person, including by their legal representative, that provides written notice
360 within the 60 day comment period provided for in paragraph (7) of this subsection and
361 that asserts to be materially adversely affected by the approval and implementation of a
362 plan may present comment or evidence to the court at the trial; provided, however, that
363 such comment or evidence shall not confer standing as a party on any person. Any
364 person participating in the pretrial proceeding or the trial of the petitioner's request for
365 an order of approval and an implementation order of the plan shall follow the process
366 established by the court and shall bear their own costs and attorney's fees.

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

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

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

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

378 (2) At any time before the court issues a judgment, the petitioner may withdraw the
379 petition without prejudice to refileing.

380 (3) When the court finds that the approval and implementation of the insurance business
381 transfer plan will not materially adversely affect the interests of policyholders or

382 claimants to policies that are part of the subject business, the court shall enter judgment
383 in favor of the petitioner and an implementation order. Such judgment and order shall
384 include and provide for:

385 (A) Findings of fact;

386 (B) Conclusions of law;

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

388 (i) The simultaneous transfer and novation from the transferring insurer to the
389 assuming insurer of the subject business with respect to all policyholders, reinsurers,
390 and claimants and their respective policies and reinsurance agreements under the
391 subject business;

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

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

402 (iv) Documentation that the policyholders' and claimants' obligations, risks, rights,
403 or any combination thereof, if any, under their respective policies which are part of
404 the subject business shall not be enlarged, extended, limited, or reduced; provided,
405 however, that the policyholders and claimants may not pursue or be pursued by the
406 transferring insurer to satisfy their respective obligations, risks, rights, or any
407 combination thereof, but rather, the policyholders and claimants may pursue or be
408 pursued by the assuming insurer;

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

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

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

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

420 (A) Deny the petition; or

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

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

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

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

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

436 (1) State insurance guaranty association coverage;
437 (2) The financial implications of the transaction, including solvency, capital adequacy,
438 cash flow, reserves, asset quality, and risk-based capital;
439 (3) An analysis of the assuming insurer's corporate governance structure to ensure
440 proper board management oversight and expertise to manage the subject business;
441 (4) The competency, experience, and integrity of the persons who would control the
442 operations of an involved insurer; and
443 (5) Ensuring the transaction is not being made for improper purposes, including fraud.
444 (g) All testimony, documents, exhibits, analysis, communications, or other information or
445 evidence submitted to the Commissioner or independent expert in contemplation of an
446 application, submitted to the court in support of a petition, or developed by the
447 Commissioner or independent expert in connection with such application or petition for an
448 approval order and an implementation order of a plan, shall be treated for purposes of
449 confidentiality as an examination of the financial condition or market conduct of the
450 transacting companies as provided in Code Section 33-2-14.

451 33-52-16.

452 Insurers subject to this article consent to the jurisdiction of the Commissioner with regard
453 to ongoing oversight of operations, management, and solvency relating to the transferred
454 business, including the authority of the Commissioner to conduct financial analysis and
455 examinations.

456 33-52-17.

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

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

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

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

473 (e) The transferring insurer and the assuming insurer shall jointly be obligated to pay any
474 compensation, costs, and expenses of the independent expert and any consultants retained
475 by the independent expert and approved by the department incurred in fulfilling the
476 obligations of the independent expert under this article. Nothing in this article shall be
477 construed to create any duty for the independent expert to any party other than the
478 department or the court.

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

485

SECTION 5.

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

488

SECTION 6.

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