

103^D CONGRESS
2^D SESSION

S. 1989

To prohibit the transfer and novation of an insurance policy without the prior informed written consent of the policyholder, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25 (legislative day, FEBRUARY 22), 1994

Mr. METZENBAUM (for himself and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the transfer and novation of an insurance policy without the prior informed written consent of the policyholder, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insurance Policy
5 Transfer Act”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to prohibit the transfer
8 and novation of a contract of insurance without the prior
9 informed written consent of the policyholder.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

3 (1) ASSUMING INSURER.—The term “assuming
4 insurer” means an insurer that assumes an insur-
5 ance obligation or risk, or both, from a transferring
6 insurer pursuant to a transfer agreement.

7 (2) TRANSFERRING INSURER.—The term
8 “transferring insurer” means an insurer that trans-
9 fers insurance obligations or risks, or both, of exist-
10 ing or in-force contracts of insurance to an assuming
11 insurer pursuant to a transfer agreement.

12 (3) TRANSFER AGREEMENT.—The term “trans-
13 fer agreement” means a contract that—

14 (A) transfers insurance obligations or
15 risks, or both, of existing or in-force contracts
16 of insurance from a transferring insurer to an
17 assuming insurer; and

18 (B) is intended to effect a novation of the
19 transferred contract of insurance with the re-
20 sult that—

21 (i) the assuming insurer becomes di-
22 rectly liable to the policyholders of the
23 transferring insurer; and

24 (ii) the insurance obligations or risks,
25 or both, of the transferring insurer under
26 the contract are extinguished.

1 (4) CONTRACT OF INSURANCE.—The term
2 “contract of insurance” means a written agreement
3 between an insurer and a policyholder pursuant to
4 which the insurer, in exchange for a premium or
5 other consideration, agrees to assume an obligation
6 or risk, or both, of the policyholder, or to make pay-
7 ments on behalf of, or to, the policyholder or his or
8 her beneficiaries. The term includes all property,
9 casualty, life, health, accident, surety, title, and an-
10 nuity business authorized to be written pursuant to
11 the laws of any State.

12 **SEC. 4. NOTICE.**

13 (a) REQUIREMENT.—Except as provided in section 6,
14 no insurer shall enter into a transfer agreement or trans-
15 fer a contract of insurance pursuant to a transfer agree-
16 ment unless the transferring insurer has first provided or
17 caused to be provided to each policyholder of the insurer
18 affected by the agreement a notice of the intent of the
19 insurer to transfer the contract of insurance held by such
20 policyholder in accordance with this section.

21 (b) FORM OF NOTICE.—The notice shall be sent by
22 first-class mail, addressed to the last known address of
23 the policyholder or to the address to which premium no-
24 tices or other policy documents are sent or, with respect
25 to home service business, by personal delivery with ac-

1 knowledged receipt. A notice of intent to transfer shall
2 also be sent to the transferring insurer's agent or broker
3 of record on the affected policy.

4 (c) CONTENT OF NOTICE.—The notice required by
5 subsection (a) shall state or provide—

6 (1) the date the intended transfer and novation
7 of the contract of insurance of the policyholder is
8 proposed to take place and become effective;

9 (2) the name, address, and telephone number of
10 the transferring insurer and the assuming insurer
11 under the proposed transfer agreement;

12 (3) that the transfer and novation of the insur-
13 ance contract of the policyholder cannot take effect
14 without the written consent of the policyholder, ex-
15 cept as provided in section 5 of this Act;

16 (4) the procedures and any time limitation for
17 consenting to the transfer and novation;

18 (5) a summary informing the policyholder re-
19 garding any adverse effect that the policyholder
20 might experience as a result of consenting to the
21 transfer and novation;

22 (6) a statement that, without the written con-
23 sent of the policyholder, the transferring insurer will
24 remain as the insurance company of the policyholder

1 or beneficiary, except as provided in section 5 of this
2 Act;

3 (7) a statement that the assuming insurer is li-
4 censed to write the type of business being trans-
5 ferred in the State where the policyholder resides, or
6 is otherwise authorized, under applicable law, to as-
7 sume such business;

8 (8) the name, address, and telephone number of
9 the person designated by the transferring insurer as
10 the person for receiving the written consent of the
11 policyholder affected by the proposed transfer and
12 novation;

13 (9) the address and telephone number of the
14 chief insurance regulatory official of the State in
15 which the policyholder resides;

16 (10) financial data for the transferring insurer
17 and the assuming insurer involved in the proposed
18 transfer agreement, including—

19 (A)(i) the ratings, together with enough in-
20 formation to understand where the ratings fall
21 within the range of rating categories of each
22 rating agency, for the last 5 years, if available,
23 or if not available for 5 years, for such lesser
24 period as is available, from each nationally rec-
25 ognized insurance company rating organization

1 that has rated the insurer, including an expla-
2 nation of the meaning of each rating category
3 of each rating organization;

4 (ii) if ratings are unavailable for any year
5 of the 5-year period, a disclosure of this fact;
6 and

7 (iii) a statement that any or all of the
8 above insurance company rating organization
9 reports may be obtained at no cost by writing
10 or calling an address or phone number listed in
11 the statement;

12 (B) a balance sheet as of December 31 for
13 each of the 3 years immediately preceding the
14 notice, if available, or for such lesser period as
15 is available, and as of the date of the most re-
16 cent quarterly statement;

17 (C) a copy of the Management's Discus-
18 sion and Analysis that was filed as a supple-
19 ment to the annual statement of the preceding
20 year; and

21 (D) an explanation of the reason for the
22 proposed transfer signed by the highest execu-
23 tive official of the transferring insurer and the
24 assuming insurer;

1 (11) a statement setting forth the financial con-
2 dition of the transferring insurer and of the assum-
3 ing insurer under the proposed transfer agreement,
4 and the effect the transaction will have on the finan-
5 cial condition of each such insurer;

6 (12) an opinion by a disinterested third-party
7 expert, such as an actuary, finding that the transfer
8 is fair and in the best interests of the policyholders
9 affected by the transfer, and a statement that the
10 report on which the opinion is based is available at
11 no cost by writing or calling an address and phone
12 number listed in the statement;

13 (13)(A) a statement by the chief insurance reg-
14 ulatory official of the States of domicile of the trans-
15 ferring and accepting companies finding that—

16 (i) the proposed transfer is fair, reason-
17 able, and in the best interests of the policy-
18 holders of the transferring insurer and the as-
19 suming insurer; and

20 (ii) the notice of the proposed transfer re-
21 quired by this Act is fair, adequate, and not
22 misleading; and

23 (B) a statement that the report on which the
24 finding is based is available at no cost by writing or

1 calling an address and phone number listed in the
2 statement; and

3 (14) a statement describing the effect of the
4 transfer, if any, on the State insurance guaranty
5 fund coverage, if any, of the policyholder or bene-
6 ficiary.

7 **SEC. 5. CONSENT REQUIREMENT.**

8 (a) PROHIBITED TRANSFERS.—Except as provided in
9 subsection (b), no insurer shall enter into a transfer agree-
10 ment or transfer a contract of insurance pursuant to a
11 transfer agreement without the written consent of the pol-
12 icyholder or a beneficiary of the policyholder.

13 (b) IMPLIED CONSENT.—A transfer of an insurance
14 contract may take place without the written consent of the
15 insured if—

16 (1) the transferring insurer and the assuming
17 insurer are rated by the same 3 insurance company
18 rating organizations for each of the 3 years imme-
19 diately preceding the transfer;

20 (2) the rating by each of the 3 insurance com-
21 pany rating organizations for the assuming insurer
22 is the highest possible rating or is a higher rating
23 than the transferring insurer; and

24 (3) the policyholder or beneficiary—

1 (A) has been provided with the notice re-
2 quired by section 4 not sooner than February
3 28 and not later than May 1 of each of the 3
4 years immediately preceding the transfer pursu-
5 ant to this section; and

6 (B) has not responded to the notice with
7 an objection to the transfer or transaction prior
8 to the expiration of the 90-day-period beginning
9 on the date the third notice is sent pursuant to
10 subparagraph (A).

11 **SEC. 6. TRANSFERS NOT SUBJECT TO THE ACT.**

12 Subject to such regulations as the Secretary of Com-
13 merce shall issue, this Act shall not apply to—

14 (1) a transfer agreement or transaction in
15 which the transferring insurer continues to remain
16 directly liable for its insurance obligations or risks,
17 or both, under the contracts of insurance subject to
18 the transfer agreement;

19 (2) the substitution of one insurer for another
20 upon the expiration of insurance coverage pursuant
21 to statutory or contractual requirements and the
22 issuance of a new contract of insurance by another
23 insurer;

24 (3) the transfer of contracts of insurance pur-
25 suant to mergers or consolidations of 2 or more in-

1 surers to the extent that those transactions are reg-
2 ulated by the laws of the affected State or States;
3 and

4 (4) an insurer subject to a judicial order of liq-
5 uidation or rehabilitation.

6 **SEC. 7. REGULATIONS.**

7 The Secretary of Commerce shall promulgate such
8 regulations as may be necessary to carry out this Act.

9 **SEC. 8. CAUSE OF ACTION.**

10 (a) REMEDIES.—In any case in which an insurer vio-
11 lates this Act regarding a policyholder, the policyholder
12 or the Attorney General may bring an action for relief in
13 the appropriate United States district court.

14 (b) JURISDICTION.—The United States district court
15 for the judicial district in which a policyholder resides, or
16 in which a transferring insurer or assuming insurer is in-
17 corporated, or licensed to do business or is doing business,
18 shall have jurisdiction over an action brought pursuant to
19 this section.

20 (c) VENUE.—The judicial district in which a policy-
21 holder resides, or in which a transferring insurer or as-
22 suming insurer is incorporated, is licensed to do business,
23 or is doing business shall be regarded as the residence of
24 such corporation for venue purposes.

1 (d) RELIEF.—The district court shall have jurisdic-
2 tion to grant such relief as is necessary or appropriate
3 to redress a violation of this Act, including—

- 4 (1) permanent or temporary injunctive relief;
- 5 (2) compensatory damages;
- 6 (3) punitive damages; and
- 7 (4) costs, including reasonable attorneys' fees.

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