



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3781

Introduced 1/21/2022, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

New Act

Creates the Insurance Business Transfer Act. Provides that notwithstanding any other provision of law, a court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Act. Sets forth provisions concerning notice requirements, application procedure, application to a court for approval of a plan, approval and denial of insurance business transfer plans, and fees and costs. Provides that the Department of Insurance shall adopt rules that are consistent with the provisions and that no insurance business transfer plan shall be approved in the State unless and until such rules are adopted. Provides that the portion of the application for an insurance business transfer that would otherwise be confidential, including any documents, materials, communications, or other information submitted to the Director of Insurance in contemplation of an application, shall not lose such confidentiality. Provides that insurers consent to the jurisdiction of the Director with regard to ongoing oversight of operations, management, and solvency relating to the transferred business. Defines terms.

LRB102 23230 BMS 32394 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Insurance Business Transfer Act.

6 Section 3. Purpose and intent. The purpose of this Act is
7 to provide options to address the significant limitations in
8 the current methods available to insurers to transfer or
9 assume blocks of insurance business in an efficient and
10 cost-effective manner that provides needed legal finality for
11 such transfers in order to provide for improved operational
12 and capital efficiency for insurance companies, stimulates the
13 economy by attracting segments of the insurance industry to
14 this State, makes this State an attractive home jurisdiction
15 for insurance companies, encourages economic growth and
16 increased investment in the financial services sector, and
17 increases the availability of quality insurance industry jobs
18 in this State. These purposes are accomplished by providing a
19 basis and procedures for the transfer and statutory novation
20 of policies from a transferring insurer to an assuming insurer
21 by way of an insurance business transfer without the
22 affirmative consent of policyholders or reinsureds. This Act
23 establishes the requirements for notice and disclosure and

1 standards and procedures for the approval of the transfer and
2 novation by the Director and a court pursuant to an insurance
3 business transfer plan. This Act does not limit or restrict
4 other means of effecting a transfer or novation.

5 Section 5. Definitions. As used in this Act:

6 "Affiliate" means a person that directly or indirectly,
7 through one or more intermediaries, controls, is controlled
8 by, or is under common control with the person specified.

9 "Applicant" means a transferring insurer or reinsurer
10 applying under this Act.

11 "Assuming insurer" means an insurer domiciled in this
12 State that assumes or seeks to assume policies from a
13 transferring insurer pursuant to this Act.

14 "Department" means the Department of Insurance.

15 "Director" means the Director of Insurance.

16 "Implementation order" means an order issued by a court
17 under this Act.

18 "Insurance business transfer" means a transfer and
19 novation that, once approved pursuant to this Act, transfers
20 insurance obligations or risks, or both, of existing or
21 in-force contracts of insurance or reinsurance from a
22 transferring insurer to an assuming insurer, and effects a
23 novation of the transferred contracts of insurance or
24 reinsurance with the result that the assuming insurer becomes
25 directly liable to the policyholders of the transferring

1 insurer and the transferring insurer's insurance obligations
2 or risks, or both, under the contracts are extinguished.

3 "Insurance business transfer plan" means the plan
4 submitted to the Department to accomplish the transfer and
5 novation pursuant to an insurance business transfer, including
6 any associated transfer of assets and rights from or on behalf
7 of the transferring insurer to the assuming insurer.

8 "Independent expert" means an impartial person who has no
9 financial interest in either the assuming insurer or
10 transferring insurer, has not been employed by or acted as an
11 officer, director, consultant, or other independent contractor
12 for either the assuming insurer or transferring insurer within
13 the past 12 months, is not appointed by the Director to assist
14 in any capacity in any insurer rehabilitation or delinquency
15 proceeding, is receiving no compensation in connection with
16 the transaction governed by this Act other than a fee based on
17 a fixed or hourly basis that is not contingent on the approval
18 or consummation of an insurance business transfer, and
19 provides proof of insurance coverage that is satisfactory to
20 the Director.

21 "Insurer" means an insurance, surety, or reinsurance
22 company, corporation, partnership, association, society,
23 order, individual, or aggregation of individuals engaging in
24 or proposing or attempting to engage in any kind of insurance
25 or surety business, including the exchanging of reciprocal or
26 inter-insurance contracts between individuals, partnerships,

1 and corporations.

2 "Policy" means a policy, annuity contract, certificate of
3 insurance, or a contract of reinsurance pursuant to which an
4 insurer agrees to assume an obligation or risk, or both, of the
5 policyholder or to make payments on behalf of, or to, the
6 policyholder or its beneficiaries, including property,
7 casualty, life, health, and any other line of insurance the
8 Director approves by rule as suitable for an insurance
9 business transfer.

10 "Policyholder" means an insured or a reinsured under a
11 policy that is part of the subject business.

12 "Subject business" means the policy or policies that are
13 the subject of the insurance business transfer plan.

14 "Transfer and novation" means the transfer of insurance
15 obligations or risks, or both, of existing or in-force
16 policies from a transferring insurer to an assuming insurer
17 that is intended to effect a novation of the transferred
18 policies with the result that the assuming insurer becomes
19 directly liable to the policyholders of the transferring
20 insurer on the transferred policies and the transferring
21 insurer's obligations or risks, or both, under the transferred
22 policies are extinguished.

23 "Transferring insurer" means an insurer or reinsurer that
24 transfers and novates or seeks to transfer and novate
25 obligations or risks, or both, under one or more policies to an
26 assuming insurer pursuant to an insurance business transfer

1 plan.

2 Section 10. Court authority. Notwithstanding any other
3 provision of law, a court may issue any order, process, or
4 judgment that is necessary or appropriate to carry out the
5 provisions of this Act. No provision of this Act shall be
6 construed to preclude a court from, on its own motion, taking
7 any action or making any determination necessary or
8 appropriate to enforce or implement court orders or rules or
9 to prevent an abuse of power.

10 Section 15. Notice requirements.

11 (a) Whenever notice is required to be given by an
12 applicant under this Act, except as otherwise permitted by a
13 court or the Director, the applicant shall within 15 days
14 after the event triggering the requirement transmit the
15 notice:

16 (1) to the chief insurance regulator in each
17 jurisdiction :

18 (A) in which the applicant holds or has ever held a
19 certificate of authority; and

20 (B) in which policies that are part of the subject
21 business were issued or policyholders currently
22 reside;

23 (2) to the National Conference of Insurance Guaranty
24 Funds, the National Organization of Life and Health

1 Insurance Guaranty Associations, and all state insurance
2 guaranty associations for the states:

3 (A) in which the applicant holds or has ever held a
4 certificate of authority; and

5 (B) in which policies that are part of the subject
6 business were issued or policyholders currently
7 reside;

8 (3) to reinsurers of the applicant pursuant to the
9 notice provisions of the reinsurance agreements applicable
10 to the policies that are part of the subject business or,
11 where an agreement has no provision for notice, by
12 internationally recognized delivery service;

13 (4) to all policyholders holding policies that are
14 part of the subject business at their last known address
15 as indicated by the records of the applicant or to the
16 address to which premium notices or other policy documents
17 are sent. A notice of transfer shall also be sent to the
18 transferring insurer's agents or brokers of record on the
19 subject business; and

20 (5) by publication in a newspaper of general
21 circulation in the state in which the applicant has its
22 principal place of business and in such other publications
23 that the Director requires.

24 (b) If notice is given in accordance with this Section,
25 any orders under this Act shall be conclusive with respect to
26 all intended recipients of the notice whether or not they

1 receive actual notice.

2 (c) If this Act requires that the applicant provide notice
3 but the Director has been named receiver of the applicant, the
4 Director shall provide the required notice.

5 (d) Notice under this Section may take the form of
6 first-class mail, facsimile, or electronic notice.

7 Section 20. Application procedure.

8 (a) An insurance business transfer plan shall be filed by
9 the applicant with the Director for his or her review and
10 approval. The plan may be supplemented by other information
11 deemed necessary by the Director, and shall contain the
12 following information or an explanation as to why the
13 following information is not included:

14 (1) the name, address, and telephone number of the
15 transferring insurer and the assuming insurer and their
16 respective direct and indirect controlling persons, if
17 any;

18 (2) a summary of the insurance business transfer plan;

19 (3) an identification and description of the subject
20 business;

21 (4) the most recent audited financial statements and
22 statutory annual and quarterly reports of the transferring
23 insurer and the assuming insurer filed with their
24 domiciliary regulator;

25 (5) the most recent actuarial report and opinion that

1 quantify the liabilities associated with the subject
2 business;

3 (6) pro forma financial statements showing the
4 projected statutory balance sheet, results of operation,
5 and cash flows of the assuming insurer for the 3 years
6 following the proposed transfer and novation;

7 (7) officers' certificates of the transferring insurer
8 and the assuming insurer attesting that each has obtained
9 all required internal approvals and authorizations
10 regarding the insurance business transfer plan and
11 completed all necessary and appropriate actions relating
12 thereto;

13 (8) a proposal for plan implementation and
14 administration, including the form of notice to be
15 provided under the insurance business transfer plan to any
16 policyholder whose policy is part of the subject business;

17 (9) a full description as to how notice under the
18 insurance business transfer plan shall be provided;

19 (10) a description of any reinsurance arrangements
20 that would pass to the assuming insurer under the
21 insurance business transfer plan;

22 (11) a description of any guarantees or additional
23 reinsurance that will cover the subject business following
24 the transfer and novation;

25 (12) a statement describing the assuming insurer's
26 proposed investment policies and any contemplated

1 third-party claims management and administration
2 arrangements;

3 (13) a description of how the transferring and
4 assuming insurers will be licensed for the following
5 guaranty association coverage purposes:

6 (A) guaranty association coverage;

7 (B) the financial implications of the transaction
8 including solvency, capital adequacy, cash flow,
9 reserves, asset quality, and risk-based capital;

10 (C) an analysis of the assuming insurer's
11 corporate governance structure to ensure that there is
12 proper board management oversight and expertise to
13 manage the subject business;

14 (D) the competency, experience, and integrity of
15 the persons who would control the operation of an
16 involved insurer; and

17 (E) ensuring the transaction is not being made for
18 improper purposes, including fraud.

19 (14) evidence of approval or nonobjection of the
20 transfer from the chief insurance regulator of the state
21 of the transferring insurer's domicile; and

22 (15) a report from an independent expert, selected by
23 the Director from a list of at least 2 nominees submitted
24 jointly by the transferring insurer and the assuming
25 insurer, to assist the Director and a court in connection
26 with their review of the proposed transaction. If the

1 Director, in his or her sole discretion, rejects the
2 nominees, he or she may appoint the independent expert.

3 The report shall provide the following:

4 (A) a statement of the independent expert's
5 professional qualifications and descriptions of the
6 experience that qualifies him or her as an expert
7 suitable for the engagement;

8 (B) whether the independent expert has, or has
9 had, direct or indirect interest in the transferring
10 or assuming insurer or any of their respective
11 affiliates;

12 (C) the scope of the report;

13 (D) a summary of the terms of the insurance
14 business transfer plan to the extent relevant to the
15 report;

16 (E) a listing and summaries of documents, reports,
17 and other material information the independent expert
18 has considered in preparing the report and whether any
19 information requested was not provided;

20 (F) the extent to which the independent expert has
21 relied on information provided by and judgment of
22 others;

23 (G) the people on whom the independent expert has
24 relied and why, in his or her opinion, such reliance is
25 reasonable;

26 (H) the independent expert's opinion of the likely

1 effects of the insurance business transfer plan on
2 policyholders and claimants, distinguishing between:

3 (i) transferring policyholders and claimants;

4 (ii) policyholders and claimants of the
5 transferring insurer whose policies will not be
6 transferred; and

7 (iii) policyholders and claimants of the
8 assuming insurer;

9 (I) the facts and circumstances supporting each
10 opinion that the independent expert expresses in the
11 report; and

12 (J) consideration as to whether the security
13 position of policyholders that are affected by the
14 insurance business transfer are materially adversely
15 affected by the transfer.

16 (b) The independent expert's report as required by
17 paragraph (15) of subsection (a) shall include, but not be
18 limited to, a review of the following:

19 (1) analysis of the transferring insurer's actuarial
20 review of resources for the subject business to determine
21 the reserve adequacy;

22 (2) analysis of the financial condition of the
23 transferring and assuming insurers and the effect the
24 transfer will have on the financial condition of each
25 company;

26 (3) review of the plans or proposals the assuming

1 insurer has with respect to the administration of the
2 policies subject to the proposed transfer;

3 (4) whether the proposed transfer has a material,
4 adverse impact on the policyholders and claimants of the
5 transferring and the assuming insurers;

6 (5) analysis of the assuming insurer's corporate
7 governance structure to ensure that there is proper board
8 and management oversight and expertise to manage the
9 subject business; and

10 (6) any other information that the Director requests
11 in order to review the insurance business transfer.

12 (c) The Director shall have 60 business days after the
13 date of receipt of a complete insurance business transfer plan
14 to review the plan to determine if the applicant is authorized
15 to submit it to a court. The Director may extend the 60-day
16 review period for an additional 30 business days.

17 (d) The Director shall authorize the submission of the
18 insurance business transfer plan to a court unless he or she
19 finds that the insurance business transfer would have a
20 material adverse impact on the interests of policyholders or
21 claimants that are part of the subject business.

22 (e) If the Director determines that the insurance business
23 transfer would have a material adverse impact on the interests
24 of policyholders or claimants that are part of the subject
25 business, he or she shall notify the applicant and specify any
26 modifications, supplements, or amendments and any additional

1 information or documentation with respect to the plan that
2 must be provided to the Director before he or she shall allow
3 the applicant to proceed with the court filing.

4 (f) The applicant shall have 30 days following the date
5 the Director notifies him or her of a determination under
6 subsection (e) to file an amended insurance business transfer
7 plan providing the modifications, supplements, or amendments
8 and additional information or documentation as requested by
9 the Director. If necessary, the applicant may request in
10 writing an extension of time of 30 days. If the applicant does
11 not make an amended filing within the time period provided in
12 this subsection, including any extension of time granted by
13 the Director, the insurance business transfer plan filing
14 shall terminate and a subsequent filing by the applicant shall
15 be considered a new filing which shall require compliance with
16 all provisions of this Act as if the prior filing had never
17 been made.

18 (g) The Director's review period in subsection (c) shall
19 recommence when the modification, supplement, amendment, or
20 additional information requested in subsection (e) is
21 received.

22 (h) If the Director determines that the plan may proceed
23 with the court filing, the Director shall confirm that fact in
24 writing to the applicant.

25 Section 25. Application to the court for approval of a

1 plan.

2 (a) Within 30 days after notice from the Director that the
3 applicant may proceed with the court filing, the applicant
4 shall apply to the court for approval of the insurance
5 business transfer plan. Upon written request by the applicant,
6 the Director may extend the period for filing an application
7 with the court for an additional 30 days.

8 (b) The applicant shall inform the court of the reasons
9 why he or she petitions the court to find no material adverse
10 impact to policyholders or claimants affected by the proposed
11 transfer.

12 (c) The application shall be in the form of a verified
13 petition for implementation of the insurance business transfer
14 plan in the court. The petition shall include the insurance
15 business transfer plan and shall identify any documents and
16 witnesses which the applicant intends to present at a hearing
17 regarding the petition.

18 (d) The Director shall be a party to the proceedings
19 before the court concerning the petition and shall be served
20 with copies of all filings. The Director's position in the
21 proceeding shall not be limited by his or her initial review of
22 the plan.

23 (e) Following the filing of the petition, the applicant
24 shall file a motion for a scheduling order setting a hearing on
25 the petition.

26 (f) Within 15 days after receipt of the scheduling order,

1 the applicant shall cause notice of the hearing to be provided
2 in accordance with the notice provisions of Section 15 of this
3 Act. Following the date of distribution of the notice, there
4 shall be a 60-day comment period.

5 (g) The notice to policyholders shall state or provide:

6 (1) the date and time of the approval hearing;

7 (2) the name, address, and telephone number of the
8 assuming insurer and transferring insurer;

9 (3) that a policyholder may comment on or object to
10 the transfer and novation;

11 (4) the procedures and deadline for submitting
12 comments or objections on the plan;

13 (5) a summary of any effect that the transfer and
14 novation will have on the policyholder's rights;

15 (6) a statement that the assuming insurer is
16 authorized to assume the subject business and that court
17 approval of the plan shall extinguish all rights of
18 policyholders under policies that are part of the subject
19 business against the transferring insurer;

20 (7) that policyholders shall not have the opportunity
21 to opt out of or otherwise reject the transfer and
22 novation;

23 (8) contact information for the Department where the
24 policyholder may obtain further information; and

25 (9) information on how an electronic copy of the
26 insurance business transfer plan may be accessed. If

1 policyholders are unable to readily access electronic
2 copies, the applicant shall provide hard copies by
3 first-class mail.

4 (h) Any person, including by their legal representative,
5 who considers himself, herself, or itself to be adversely
6 affected can present evidence or comments to the court at the
7 approval hearing. However, such comment or evidence shall not
8 confer standing on any person. Any person participating in the
9 approval hearing must follow the process established by the
10 court and shall bear his or her own costs and attorney's fees.

11 Section 30. Approval; denial; insurance business transfer
12 plans.

13 (a) After the comment period pursuant to subsection (f) of
14 Section 25 has ended the insurance business transfer plan
15 shall be presented by the applicant for approval by the court.

16 (b) At any time before the court issues an order approving
17 the insurance business transfer plan, the applicant may
18 withdraw the insurance business transfer plan without
19 prejudice.

20 (c) If the court finds that the implementation of the
21 insurance business transfer plan would not materially
22 adversely affect the interests of policyholders or claimants
23 that are part of the subject business, the court shall enter a
24 judgment and implementation order. The judgment and
25 implementation order shall:

1 (1) order implementation of the insurance business
2 transfer plan;

3 (2) order a statutory novation with respect to all
4 policyholders or reinsureds and their respective policies
5 and reinsurance agreements under the subject business,
6 including the extinguishment of all rights of
7 policyholders under policies that are part of the subject
8 business against the transferring insurer, and providing
9 that the transferring insurer shall have no further
10 rights, obligations, or liabilities with respect to such
11 policies, and that the assuming insurer shall have all
12 such rights, obligations, and liabilities as if it were
13 the original insurer of such policies;

14 (3) release the transferring insurer from all
15 obligations or liabilities under policies that are part of
16 the subject business;

17 (4) authorize and order the transfer of property or
18 liabilities, including, but not limited to, the ceded
19 reinsurance of transferred policies and contracts on the
20 subject business, notwithstanding any non-assignment
21 provisions in any such reinsurance contracts. The subject
22 business shall vest in and become liabilities of the
23 assuming insurer;

24 (5) order that the applicant provide notice of the
25 transfer and novation in accordance with the notice
26 provisions in Section 15; and

1 (6) make such other provisions with respect to
2 incidental, consequential, and supplementary matters as
3 are necessary to assure the insurance business transfer
4 plan is fully and effectively carried out.

5 (d) If the court finds that the insurance business
6 transfer plan should not be approved, the court by its order
7 may:

8 (1) deny the petition; or

9 (2) provide the applicant leave to file an amended
10 insurance business transfer plan and petition.

11 (e) Nothing in this Section in any way effects the right of
12 appeal of any party.

13 Section 35. Rules. The Department shall adopt rules that
14 are consistent with the provisions of this Act. No insurance
15 business transfer plan shall be approved in this State unless
16 and until such rules are adopted.

17 Section 40. Confidentiality. The portion of the
18 application for an insurance business transfer that would
19 otherwise be confidential, including any documents, materials,
20 communications, or other information submitted to the Director
21 in contemplation of such application, shall not lose such
22 confidentiality.

23 Section 45. Ongoing oversight. Insurers subject to this

1 Act consent to the jurisdiction of the Director with regard to
2 ongoing oversight of operations, management, and solvency
3 relating to the transferred business, including the authority
4 of the Director to conduct financial analysis and
5 examinations.

6 Section 50. Fees and costs.

7 (a) At the time of filing its application with the
8 Director for review and approval of an insurance business
9 transfer plan, an applicant shall pay a nonrefundable fee to
10 the Department.

11 (b) The Director may retain independent attorneys,
12 appraisers, actuaries, certified public accountants,
13 authorized consultants, or other professionals and specialists
14 to assist Department personnel in connection with the review
15 required by this Act. The cost of retaining professionals and
16 specialists shall be borne by the applicant.

17 (c) The transferring insurer and the assuming insurer
18 shall jointly be obligated to pay any compensation, costs, and
19 expenses of the independent expert and any consultants
20 retained by the independent expert and approved by the
21 Department incurred in fulfilling the obligations of the
22 independent expert under this Act. Nothing in this Act shall
23 be construed to create any duty for the independent expert to
24 any party other than the Department or a court.

25 (d) Failure to pay any of the requisite fees or costs

1 within 30 days after demand shall be grounds for the Director
2 to request that a court dismiss the petition for approval of
3 the insurance business transfer plan before the filing of an
4 implementation order by the court or, if after the filing of an
5 implementation order, the Director may suspend or revoke the
6 assuming insurer's certificate of authority to transact
7 insurance business in this State.