



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB1961

Introduced 2/9/2023, by Sen. Bill Cunningham

#### SYNOPSIS AS INTRODUCED:

New Act  
215 ILCS 5/534.4

from Ch. 73, par. 1065.84-4

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 may adopt rules that are consistent with the provisions. 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. Provides that at the time of filing its application for review and approval of an insurance business transfer plan, an applicant shall pay a nonrefundable fee of \$10,000 to the Department. Provides that the Director may direct the applicant to retain parties to assist Department personnel. Defines terms. Amends the Illinois Insurance Code. Changes the definition of "insolvent company" to include any company which has assumed or has been allocated a policy obligation through an approved insurance business transfer plan.

LRB103 28001 BMS 54380 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 authorized to transact  
12 business in Class 2 or Class 3 of Section 4 of the Illinois  
13 Insurance Code that is domiciled in this State that assumes or  
14 seeks to assume policies from a transferring insurer pursuant  
15 to this Act.

16 "Department" means the Department of Insurance.

17 "Director" means the Director of Insurance.

18 "Implementation order" means an order issued by a court  
19 under this Act.

20 "Independent expert" means an impartial person who has no  
21 financial interest in either the assuming insurer or  
22 transferring insurer, has not been employed by or acted as an  
23 officer, director, consultant, or other independent contractor  
24 for either the assuming insurer or transferring insurer within  
25 the past 12 months, is not appointed by the Director to assist

1 in any capacity in any insurer rehabilitation or delinquency  
2 proceeding, is receiving no compensation in connection with  
3 the transaction governed by this Act other than a fee based on  
4 a fixed or hourly basis that is not contingent on the approval  
5 or consummation of an insurance business transfer, and  
6 provides proof of insurance coverage that is satisfactory to  
7 the Director.

8 "Insurance business transfer" means a transfer and  
9 novation that, once approved pursuant to this Act, transfers  
10 insurance obligations or risks, or both, of existing or  
11 in-force contracts of insurance or reinsurance from a  
12 transferring insurer to an assuming insurer, and effects a  
13 novation of the transferred contracts of insurance or  
14 reinsurance with the result that the assuming insurer becomes  
15 directly liable to the policyholders of the transferring  
16 insurer and the transferring insurer's insurance obligations  
17 or risks, or both, under the contracts are extinguished.

18 "Insurance business transfer plan" means the plan  
19 submitted to the Department to accomplish the transfer and  
20 novation pursuant to an insurance business transfer, including  
21 any associated transfer of assets and rights from or on behalf  
22 of the transferring insurer to the assuming insurer.

23 "Insurer" means an insurance, surety, or reinsurance  
24 company, corporation, partnership, association, society,  
25 order, individual, or aggregation of individuals engaging in  
26 or proposing or attempting to engage in nonlife and accident

1 and health insurance or surety business, including the  
2 exchanging of reciprocal or inter-insurance contracts between  
3 individuals, partnerships, and corporations.

4 "Policy" means a policy, certificate of insurance, or a  
5 contract of reinsurance pursuant to which an insurer agrees to  
6 assume an obligation or risk, or both, of the policyholder or  
7 to make payments on behalf of, or to, the policyholder or its  
8 beneficiaries, including property and casualty insurance.  
9 "Policy" does not include any policy, contract, or certificate  
10 of insurance as defined in clause (a) or (b) of Class 1 of  
11 Section 4 of the Illinois Insurance Code.

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

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

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

25 "Transferring insurer" means an insurer or reinsurer that  
26 transfers and novates or seeks to transfer and novate

1 obligations or risks, or both, under one or more policies to an  
2 assuming insurer pursuant to an insurance business transfer  
3 plan.

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

12 Section 15. Notice requirements.

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

18 (1) to the chief insurance regulator in each  
19 jurisdiction:

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

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

1           (2) to the National Conference of Insurance Guaranty  
2 Funds and all state insurance guaranty associations for  
3 the states:

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

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

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

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

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

25           (b) If notice is given in accordance with this Section,  
26 any orders under this Act shall be conclusive with respect to

1 all intended recipients of the notice whether or not they  
2 receive actual notice.

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

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

8 Section 20. Application procedure.

9 (a) An insurance business transfer plan shall be filed by  
10 the applicant with the Director for his or her review and  
11 approval no sooner than January 1, 2024. The plan may be  
12 supplemented by other information deemed necessary by the  
13 Director, and shall contain the following information or an  
14 explanation as to why the following information is not  
15 included:

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

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

21 (3) an identification and description of the subject  
22 business;

23 (4) the most recent audited financial statements and  
24 statutory annual and quarterly reports of the transferring  
25 insurer and the assuming insurer filed with their



1 domiciliary regulator;

2 (5) the most recent actuarial report and opinion that  
3 quantify the liabilities associated with the subject  
4 business;

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

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

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

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

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

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

1           (12) a statement describing the assuming insurer's  
2 proposed investment policies and any contemplated  
3 third-party claims management and administration  
4 arrangements;

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

8                   (A) guaranty association coverage;

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

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

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

19                   (E) ensuring the transaction is not being made for  
20 improper purposes, including fraud;

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

24           (15) a report from an independent expert, selected by  
25 the Director from a list of at least 2 nominees submitted  
26 jointly by the transferring insurer and the assuming

1 insurer, to assist the Director and a court in connection  
2 with their review of the proposed transaction. If the  
3 Director, in his or her sole discretion, rejects the  
4 nominees, he or she may appoint the independent expert.  
5 The report shall provide the following:

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

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

14 (C) the scope of the report;

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

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

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

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

1 reasonable;

2 (H) the independent expert's opinion of the likely  
3 effects of the insurance business transfer plan on  
4 policyholders, reinsurers, and claimants,  
5 distinguishing between:

6 (i) transferring policyholders, reinsurers,  
7 and claimants;

8 (ii) policyholders, reinsurers, and claimants  
9 of the transferring insurer whose policies will  
10 not be transferred; and

11 (iii) policyholders, reinsurers, and claimants  
12 of the assuming insurer;

13 (I) the facts and circumstances supporting each  
14 opinion that the independent expert expresses in the  
15 report; and

16 (J) consideration as to whether the security  
17 position of policyholders that are affected by the  
18 insurance business transfer are materially adversely  
19 affected by the transfer.

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

23 (1) analysis of the transferring insurer's actuarial  
24 review of resources for the subject business to determine  
25 the reserve adequacy;

26 (2) analysis of the financial condition of the

1           transferring and assuming insurers and the effect the  
2           transfer will have on the financial condition of each  
3           company;

4           (3) review of the plans or proposals the assuming  
5           insurer has with respect to the administration of the  
6           policies subject to the proposed transfer;

7           (4) whether the proposed transfer has a material,  
8           adverse impact on the policyholders, reinsurers, and  
9           claimants of the transferring and the assuming insurers;

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

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

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

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

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

4 (e) The applicant shall have 30 days following the date  
5 the Director notifies him or her of a determination under  
6 subsection (d) 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 (f) The Director's review period shall recommence when the  
19 modification, supplement, amendment, or additional information  
20 requested in subsection (d) is received.

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

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

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

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

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

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

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

25           (f) Within 15 days after receipt of the scheduling order,  
26 the applicant shall cause notice of the hearing to be provided

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

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

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

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

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

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

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

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

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

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

24 (9) information on how an electronic copy of the  
25 insurance business transfer plan may be accessed. If  
26 policyholders are unable to readily access electronic



1           copies, the applicant shall provide hard copies by  
2           first-class mail.

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

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

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

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

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

25           (1) order implementation of the insurance business

1 transfer plan;

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

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

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

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

26 (6) make such other provisions with respect to

1 incidental, consequential, and supplementary matters as  
2 are necessary to assure the insurance business transfer  
3 plan is fully and effectively carried out.

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

7 (1) deny the petition; or

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

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

12 Section 35. Rules. The Department may adopt rules that are  
13 consistent with the provisions of this Act.

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

20 Section 45. Ongoing oversight. Insurers subject to this  
21 Act consent to the jurisdiction of the Director with regard to  
22 ongoing oversight of operations, management, and solvency  
23 relating to the transferred business, including the authority

1 of the Director to conduct financial analysis and  
2 examinations.

3 Section 50. Fees and costs.

4 (a) At the time of filing its application with the  
5 Director for review and approval of an insurance business  
6 transfer plan, an applicant shall pay a nonrefundable fee of  
7 \$10,000 to the Department.

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

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

24 (d) Failure to pay any of the requisite fees or costs  
25 within 30 days after demand shall be grounds for the Director

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

7 Section 90. The Illinois Insurance Code is amended by  
8 changing Section 534.4 as follows:

9 (215 ILCS 5/534.4) (from Ch. 73, par. 1065.84-4)

10 Sec. 534.4. "Insolvent company" means a company organized  
11 as a stock company, mutual company, reciprocal or Lloyds (a)  
12 which holds a certificate of authority to transact insurance  
13 in this State either at the time the policy was issued or when  
14 the insured event occurred, or any company which has assumed  
15 or has been allocated such policy obligation through merger,  
16 division, consolidation, ~~or~~ reinsurance, or an approved  
17 insurance business transfer plan, whether or not such assuming  
18 company held a certificate of authority to transact insurance  
19 in this State at the time such policy was issued or when the  
20 insured event occurred; and (b) against which a final Order of  
21 Liquidation with a finding of insolvency to which there is no  
22 further right of appeal has been entered by a court of  
23 competent jurisdiction in the company's State of domicile  
24 after the effective date of this Article.

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1 (Source: P.A. 100-1190, eff. 4-5-19.)