

AN ACT concerning regulation.

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

Section 5. The Illinois Insurance Code is amended by changing Sections 35B-25 and 35B-30 as follows:

(215 ILCS 5/35B-25)

Sec. 35B-25. Plan of division approval.

(a) A division shall not become effective until it is approved by the Director after reasonable notice and a public hearing, if the notice and hearing are deemed by the Director to be in the public interest. Any decision by the Director on whether or not to hold a public hearing on either a plan of division or an amended plan of division may be made independently by the Director. The Director shall hold a public hearing if one is requested by the dividing company. A hearing conducted under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act.

(b) The Director shall approve a plan of division unless the Director finds that:

(1) the interest of any class of policyholder or shareholder of the dividing company will not be properly protected;

(2) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, would be ineligible to receive a license to do insurance business in this State pursuant to Section 5;

(2.5) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, that will be a member insurer of the Illinois Life and Health Insurance Guaranty Association and that will have policy liabilities allocated to it will not be licensed to do insurance business in each state where such policies were written by the dividing company;

(3) the proposed division violates a provision of the Uniform Fraudulent Transfer Act;

(4) the division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing company;

(5) one or more resulting companies will not be solvent upon the consummation of the division; or

(6) the remaining assets of one or more resulting companies will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the resulting company was engaged or is about to engage.

(c) In determining whether the standards set forth in

paragraph (3) of subsection (b) have been satisfied, the Director shall only apply the Uniform Fraudulent Transfer Act to a dividing company in its capacity as a resulting company and shall not apply the Uniform Fraudulent Transfer Act to any dividing company that is not proposed to survive the division.

(d) In determining whether the standards set forth in paragraphs (3), (4), (5), and (6) of subsection (b) have been satisfied, the Director may consider all proposed assets of the resulting company, including, without limitation, reinsurance agreements, parental guarantees, support or keep well agreements, or capital maintenance or contingent capital agreements, in each case, regardless of whether the same would qualify as an admitted asset as defined in Section 3.1.

(e) In determining whether the standards set forth in paragraph (3) of subsection (b) have been satisfied, with respect to each resulting company, the Director shall, in applying the Uniform Fraudulent Transfer Act, treat:

- (1) the resulting company as a debtor;
- (2) liabilities allocated to the resulting company as obligations incurred by a debtor;
- (3) the resulting company as not having received reasonably equivalent value in exchange for incurring the obligations; and
- (4) assets allocated to the resulting company as remaining property.

(f) All information, documents, materials, and copies

thereof submitted to, obtained by, or disclosed to the Director in connection with a plan of division or in contemplation thereof, including any information, documents, materials, or copies provided by or on behalf of a domestic stock company in advance of its adoption or submission of a plan of division, shall be confidential and shall be subject to the same protection and treatment in accordance with Section 131.22 as documents and reports disclosed to or filed with the Director pursuant to subsection (a) of Section 131.14b until such time, if any, as a notice of the hearing contemplated by subsection (a) is issued.

(g) From and after the issuance of a notice of the hearing contemplated by subsection (a), all business, financial, and actuarial information that the domestic stock company requests confidential treatment, other than the plan of division, shall continue to be confidential and shall not be available for public inspection and shall be subject to the same protection and treatment in accordance with Section 131.22 as documents and reports disclosed to or filed with the Director pursuant to subsection (a) of Section 131.14b.

(h) All expenses incurred by the Director in connection with proceedings under this Section, including expenses for the services of any attorneys, actuaries, accountants, and other experts as may be reasonably necessary to assist the Director in reviewing the proposed division, shall be paid by the dividing company filing the plan of division. A dividing

company may allocate expenses described in this subsection in a plan of division in the same manner as any other liability.

(i) If the Director approves a plan of division, the Director shall issue an order that shall be accompanied by findings of fact and conclusions of law.

(j) The conditions in this Section for freeing one or more of the resulting companies from the liabilities of the dividing company and for allocating some or all of the liabilities of the dividing company shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Director in a final order that is not subject to further appeal.

(k) If a dividing company amends its plan of division at any time before the plan of division becomes effective, including after the Director's approval of the plan or after any hearing has been conducted under this Section, then the dividing company shall file the amended plan of division for approval by the Director pursuant to the provisions of this Section. If the Director has already issued an order approving the dividing company's previous plan of division under subsection (i), then that order shall not be rescinded by the Director's subsequent disapproval of an amended plan.

(1) If a hearing is conducted on the amended plan of division after the Director has approved a previous plan of division, then the hearing shall not be considered a rehearing or a reopening of any hearing conducted on the

previous plan. Nothing in this Section shall prohibit the dividing company from requesting a rehearing or reopening of any hearing conducted on any disapproved plan of division, amended or otherwise.

(2) Whether under direct review or in a hearing, the Director may rely on information already submitted or developed in connection with the previous plan of division, as well as any findings of fact or conclusions of law if a hearing has been conducted or an approval order has been issued on the previous plan, to the extent the information, findings, or conclusions remain relevant to the amended plan of division, and the Director shall collect any other information necessary to make a determination under subsection (b).

(3) The fee assessed under Section 408 for filing a plan of division shall not apply to the filing of an amended plan of division, but subsection (h) shall apply to all proceedings related to the amended plan.

(Source: P.A. 101-549, eff. 1-1-20; 102-394, eff. 8-16-21; 102-578, eff. 7-1-22 (See Section 5 of P.A. 102-672 for effective date of P.A. 102-578).)

(215 ILCS 5/35B-30)

Sec. 35B-30. Certificate of division.

(a) After a plan of division has been adopted and approved, an officer or duly authorized representative of the

dividing company shall sign a certificate of division.

(b) The certificate of division shall set forth:

(1) the name of the dividing company;

(2) a statement disclosing whether the dividing company will survive the division;

(3) the name of each new company that will be created by the division;

(4) the kinds of insurance business enumerated in Section 4 that the new company will be authorized to conduct;

(5) the date that the division is to be effective, which shall not be more than 90 days after the dividing company has filed the certificate of division with the recorder, with a concurrent copy to the Director;

(6) a statement that the division was approved by the Director in accordance with Section 35B-25, including the date when approval was served on the dividing company;

(7) a statement that the dividing company provided, no later than 10 business days after the dividing company filed the plan of division with the Director, reasonable notice to each reinsurer that is party to a reinsurance contract that is applicable to the policies included in the plan of division;

(8) if the dividing company will survive the division, an amendment to its articles of incorporation or bylaws approved as part of the plan of division;

(9) for each new company created by the division, its articles of incorporation and bylaws, provided that the articles of incorporation and bylaws need not state the name or address of an incorporator; and

(10) a reasonable description of the capital, surplus, other assets and liabilities, including policy liabilities, of the dividing company that are to be allocated to each resulting company.

(c) The articles of incorporation and bylaws of each new company must satisfy the requirements of the laws of this State, provided that the documents need not be signed or include a provision that need not be included in a restatement of the document.

(d) A certificate of division is effective when filed with the recorder, with a concurrent copy to the Director, as provided in this Section or on another date specified in the plan of division, whichever is later, provided that a certificate of division shall become effective not more than 90 days after it is filed with the recorder. A division is effective when the relevant certificate of division is effective.

(e) If the dividing company files an amended plan of division with the Director after a certificate of division has been filed for a previous plan, then the dividing company shall file a certificate of stay with the recorder, with a concurrent copy to the Director. The certificate of stay shall

identify the certificate of division being stayed and the date on which the amended plan of division was filed with the Director. If the Director issues an order on the amended plan, or if the dividing company withdraws the amended plan before an order is issued, then the dividing company shall file an amended certificate of division pursuant to this Section. Nothing in this subsection (e) shall allow a dividing company to amend its plan of division under Section 35B-15 on or after the effective date specified in a certificate of division that is active or that has been stayed.

(Source: P.A. 102-775, eff. 5-13-22.)

Section 99. Effective date. This Act takes effect upon becoming law.