

**5211.8 Commissioner approval of plan of division.**

1. After a dividing insurer approves a plan of division pursuant to [section 5211.7](#), the dividing insurer shall file the plan of division with the commissioner. Within ten business days of filing the plan of division with the commissioner, the dividing insurer shall provide notice of the filing to each reinsurer that is a party to a reinsurance contract allocated in the plan of division.

2. a. A division shall not become effective until approved by the commissioner after reasonable notice and a public hearing. Notice and public hearing required under [this section](#) shall be conducted as a contested case pursuant to [chapter 17A](#).

b. The commissioner shall require the dividing insurer to mail written notice of the public hearing to the dividing insurer's policyholders stating that a plan of division has been filed with the commissioner and providing the date, time, and location of the public hearing.

c. The commissioner shall select and retain an independent expert who shall review the dividing insurer's plan of division and issue a report to the commissioner.

3. The commissioner may approve a plan of division if the commissioner finds that all of the following apply:

a. The interest of the policyholders, creditors, or shareholders of the dividing insurer will be adequately protected and the plan of division is not unfair or unreasonable to the policyholders of the dividing insurer and is not contrary to the public interest.

b. The financial condition of the resulting insurers will not jeopardize the financial stability of a dividing insurer or the resulting insurers or prejudice the interests of the policyholders of such insurers.

c. All resulting insurers created by the proposed division will be qualified and eligible to receive a certificate of authority to transact the business of insurance in this state.

d. The proposed division does not violate a provision of [chapter 684](#). In a division in which the dividing insurer will survive, the commissioner shall apply [chapter 684](#) to the dividing insurer in its capacity as a resulting insurer. In applying the provisions of [chapter 684](#) to a resulting insurer, the commissioner shall do all of the following:

(1) Treat the resulting insurer as a debtor.

(2) Treat a liability allocated to the resulting insurer as a liability incurred by a debtor.

(3) Treat the resulting insurer as receiving unequal value in exchange for incurring allocated obligations.

(4) Treat assets allocated to the resulting insurer as remaining assets.

e. The proposed division is not being made for the purpose of hindering, delaying, or defrauding any policyholders or other creditors of the dividing insurer.

f. All resulting insurers will be solvent when the division becomes effective.

g. The remaining assets of a resulting insurer will not be unreasonably small in relation to the business and transactions such resulting insurer has been engaged in or will engage in after completion of the division.

4. In determining if the standards set forth in [subsection 3](#), paragraphs "c" through "g" are satisfied, the commissioner may consider all proposed assets of the resulting insurer including without limitation reinsurance agreements, parental guarantees, support agreements, keepwell agreements, and capital maintenance of contingent capital agreements regardless of whether such qualify as an admitted asset under state law.

5. All expenses incurred by the commissioner in connection with proceedings under [this section](#) including expenses for attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing a proposed plan of division shall be paid by the dividing insurer filing such plan. A dividing insurer may allocate such expense in a plan of division in the same manner as any other liability.

6. If the commissioner approves a plan of division the commissioner shall issue an order which shall be accompanied by findings of fact and conclusions of law. The commissioner shall also issue a certificate of authority authorizing the resulting insurers to transact the business of insurance in this state.

7. The conditions in [this section](#) for freeing one or more of the resulting insurers from

the liabilities of the dividing insurer and for allocating some or all of the liabilities of the dividing insurer shall be deemed to have been satisfied if the plan of division is approved by the commissioner in a final order.

[2019 Acts, ch 20, §8](#)

Referred to in [§5211.5](#), [5211.9](#), [5211.10](#)