CHAPTER 521I

DIVISION OF DOMESTIC STOCK INSURERS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

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521I.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Assets"* means property whether real, personal, mixed, tangible, or intangible and any right or interest therein, including all rights under a contract or other agreement.
2. *"Capital"* means the capital stock component of a statutory surplus as defined in Iowa law.
3. *"Commissioner"* means the commissioner of insurance.
4. *"Divide"* or *"division"* means a transaction in which a domestic stock insurer splits into two or more resulting domestic stock insurers.
5. *"Dividing insurer"* means a domestic stock insurer that approves a plan of division.
6. *"Domestic stock insurer"* means a stock insurer domiciled and organized under the laws of this state pursuant to chapter 508, 514B, or 515, including domestic stock insurers affiliated with a mutual insurance holding company organized pursuant to section 521A.14, and including those insurers which confer membership rights in the mutual insurance holding company.
7. *"Liability"* means a secured or contingent debt or obligation arising in any manner.
8. *"Resulting insurer"* means a dividing domestic stock insurer that survives a division or a new domestic stock insurer that is created by a division.
9. *"Shareholder"* means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
10. *"Surplus"* means total statutory surplus less capital stock calculated in accordance with the current national association of insurance commissioners' accounting practices and procedures manual.
11. *"Transfer"* includes an assignment, assumption, conveyance, sale, lease, encumbrance, security interest, gift, or transfer by operation of law.

2019 Acts, ch 20, §1
Referred to in §521.1

521I.2 Plan of division — general requirements.

A domestic stock insurer's plan of division shall include all of the following:

1. The name of the domestic stock insurer seeking to divide.
2. The name of each resulting insurer created by the proposed division and for each resulting insurer a copy of all of the following:
   a. Proposed articles of incorporation.
   b. Proposed bylaws.
3. The manner of allocating assets and liabilities, including policy liabilities, between or among all resulting insurers.
4. The manner of distributing shares in the resulting insurers to the dividing insurer or the dividing insurer's shareholders.

5. A description of all liabilities and all assets that the dividing insurer proposes to allocate to each resulting insurer, including the manner by which the dividing insurer proposes to allocate all reinsurance contracts.

6. All terms and conditions required by the laws of this state and the articles and bylaws of the dividing insurer.

7. All other terms and conditions of the division.

2019 Acts, ch 20, §2
Referred to in §521I.3, 521I.4

521I.3 Plan of division — dividing insurer to survive division.

If a dividing insurer will survive a division, the plan of division shall include, in addition to the requirements pursuant to section 521I.2, all of the following:

1. All proposed amendments to the dividing insurer's articles of incorporation and bylaws.

2. If the dividing insurer intends to cancel some but not all shares in the dividing insurer, the manner in which the dividing insurer intends to cancel such shares.

3. If the dividing insurer intends to convert some but not all shares in the dividing insurer into securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof, a statement disclosing the manner in which the dividing insurer intends to convert such shares.

2019 Acts, ch 20, §3

521I.4 Plan of division — dividing insurer not to survive division.

If a dividing insurer will not survive a division, the plan of division shall include, in addition to the requirements pursuant to section 521I.2, the manner in which the dividing insurer will cancel or convert shares in the dividing insurer's shares into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof.

2019 Acts, ch 20, §4

521I.5 Amending plan of division.

1. A dividing insurer may amend the dividing insurer's plan of division in accordance with any procedures set forth in the plan of division, or if no such procedures are set forth in the plan of division, in a manner determined by the board of directors of the dividing insurer. A shareholder that is entitled to vote on or consent to approval of the plan of division shall be entitled to vote on or consent to an amendment of the plan of division that will affect any of the following:

a. The amount or kind of shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof to be received by any of the shareholders of the dividing insurer under the plan of division.

b. The articles of incorporation or bylaws of any resulting insurer that become effective when the division becomes effective except for changes that do not require approval of the shareholders of the resulting insurer under such articles of incorporation or bylaws.

c. Any other terms or conditions of the plan of division if the change may adversely affect the shareholders in any material respect.

2. A dividing insurer shall not amend the dividing insurer's plan of division after the plan of division becomes effective under section 521I.10, subsection 2.

3. A dividing insurer shall not amend the dividing insurer's plan of division after the plan of division is approved by the commissioner under section 521I.8.

2019 Acts, ch 20, §5; 2020 Acts, ch 1063, §293

521I.6 Abandoning plan of division.

1. A dividing insurer may abandon the dividing insurer's plan of division in any of the following circumstances:

a. After the dividing insurer has approved the plan of division without any action by the shareholders and in accordance with any procedures set forth in the plan of division, or if no such procedures are set forth in the plan of division, in a manner determined by the board of directors of the dividing insurer.

b. After the dividing insurer has filed a certificate of division with the secretary of state pursuant to section 521I.10, the dividing insurer may file a signed certificate of abandonment with the secretary of state and file a copy with the commissioner. The certificate of abandonment shall be effective on the date the certificate of abandonment is filed with the secretary of state.

2. A dividing insurer shall not abandon the dividing insurer's plan of division after the plan of division becomes effective under section 521I.10, subsection 2.

3. If a dividing insurer elects to abandon the dividing insurer's plan of division, the dividing insurer shall notify the commissioner.

2019 Acts, ch 20, §6; 2020 Acts, ch 1063, §294

521I.7 Approval of plan of division — articles of incorporation and bylaws.

1. A dividing insurer shall not file a plan of division with the commissioner until such plan of division has been approved in accordance with all provisions of the dividing insurer's articles of incorporation and bylaws. If the dividing insurer's articles of incorporation and bylaws do not provide for approval of a plan of division, the dividing insurer shall not file the plan of division with the commissioner unless such plan of division has been approved in accordance with all provisions of the dividing insurer's articles of incorporation and bylaws that provide for approval of a merger.

2. If a provision of a dividing insurer's articles of incorporation or bylaws adopted before July 1, 2019, requires that a specific number of or a percentage of the board of directors or shareholders propose or adopt a plan of merger or impose other procedures for the proposal or adoption of a plan of merger, the dividing insurer shall adhere to such provision in proposing or adopting a plan of division. If any such provision of the articles of incorporation or bylaws is amended on or after July 1, 2019, the amended provision shall apply to a division occurring after adoption of the amendment only in accordance with the express terms of the provision as amended.

2019 Acts, ch 20, §7; 2020 Acts, ch 1063, §295

Referred to in §521I.8

521I.8 Commissioner approval of plan of division.

1. After a dividing insurer approves a plan of division pursuant to section 521I.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 §521I.5, 521I.9, 521I.10

521I.9 Confidentiality.

A dividing insurer may submit a written request to the commissioner that confidentiality be maintained regarding all business, financial, actuarial, and other proprietary information submitted to, obtained by, or disclosed to the commissioner in connection with the dividing insurer's plan of division. The commissioner shall make a determination regarding the dividing insurer's request prior to issuing a notice of a public hearing pursuant to section 521I.8, subsection 2. If the commissioner grants the dividing insurer's request in whole or in part, such information as the commissioner determines shall remain confidential, shall not be available for public inspection, and shall not be subject to chapter 22. The plan of division shall not be confidential and shall be available for public inspection.

2019 Acts, ch 20, §9

521I.10 Certificate of division.

1. If the commissioner approves a dividing insurer's plan of division pursuant to section 521I.8, an officer or duly authorized representative of the dividing insurer shall sign a certificate of division that sets forth all of the following:

a. The name of the dividing insurer.

b. A statement disclosing whether the dividing insurer survived the division. If the dividing insurer survived the division, the certificate of division shall include any amendments to the dividing insurer's articles of incorporation or bylaws as approved as part of the plan of division.

c. The name of each resulting insurer that is created by the division.

d. The date on which the division is effective.

e. A statement that the division was approved by the commissioner under section 521I.8.

f. A statement that the dividing insurer provided reasonable notice to each reinsurer that is a party to a reinsurance contract allocated in the plan of division.

g. The resulting insurer's articles of incorporation and bylaws for each resulting insurer created by the division. The articles of incorporation and bylaws of each resulting insurer must comply with the applicable requirements of the laws of this state. The articles of incorporation and bylaws may state the name or address of an incorporator, may be signed, and may include any provision that is not required in a restatement of the articles of incorporation or bylaws.

h. A reasonable description of the capital, surplus, other assets and liabilities, including policy liabilities, of the dividing insurer that are to be allocated to each resulting insurer.

2. A dividing insurer's certificate of division is effective on the date the dividing insurer files the certificate with the secretary of state and provides a concurrent copy to the commissioner, or on another date as specified in the plan of division, whichever is later. However, the certificate of division shall become effective not later than ninety calendar days after it is filed with the secretary of state. A division shall be effective when the relevant certificate of division is effective.

2019 Acts, ch 20, §10
Referred to in §521.19, 521I.5, 521I.6, 521I.11

521I.11 Division effective.

1. On the effective date of a division pursuant to section 521I.10, the following apply:

a. If the dividing insurer survives, all of the following apply:

(1) The dividing insurer shall continue to exist.

(2) The articles of incorporation of the dividing insurer shall be amended, if at all, if provided for in the plan of division.

(3) The bylaws of the dividing insurer shall be amended, if at all, if provided for in the plan of division.

b. If the dividing insurer does not survive, the dividing insurer's separate existence shall cease to exist and any resulting insurer created by the plan of division shall come into existence.

c. Each resulting insurer shall hold any capital, surplus, and other assets allocated to such resulting insurer by the plan of division as a successor to the dividing insurer by operation of law, and not by transfer, whether directly or indirectly. The articles of incorporation and bylaws, if any, of each resulting insurer shall be effective when the resulting insurer comes into existence.

d. (1) All capital, surplus, and other assets of the dividing insurer that are allocated by the plan of division shall vest in the applicable resulting insurer as provided in the plan of division or shall remain vested in the dividing insurer as provided in the plan of division.

(2) All capital, surplus, and other assets of the dividing insurer that are not allocated by the plan of division shall remain vested in the dividing insurer if the dividing insurer survives the division and shall be allocated to and vest pro rata in the resulting insurers individually if the dividing insurer does not survive the division.

(3) All capital, surplus, and other assets of the dividing insurer otherwise vest as provided in this section without transfer, reversion, or impairment.

e. A resulting insurer to which a cause of action is allocated may be substituted or added in any pending action or proceeding to which the dividing insurer is a party when the division becomes effective.

f. All liabilities of a dividing insurer are allocated between or among any resulting insurers as provided in section 521I.10 and each resulting insurer to which liabilities are allocated is liable only for those liabilities, including policy liabilities, allocated as a successor to the dividing insurer by operation of law.

g. Any shares in the dividing insurer that are to be converted or canceled in the division are converted or canceled and the shareholders of those shares are entitled only to the rights

provided to such shareholders under the plan of division and any appraisal rights that such shareholders may have pursuant to section 521I.13.

2. Except as provided in the dividing insurer's articles of incorporation or bylaws, the division does not give rise to any rights that a shareholder, director of a domestic stock insurer, or third party would have upon a dissolution, liquidation, or winding up of the dividing insurer.

3. The allocation to a resulting insurer of capital, surplus, or other asset that is collateral covered by an effective financing statement shall not be effective until a new effective financing statement naming the resulting insurer as a debtor is effective under the uniform commercial code, chapter 554.

4. Unless otherwise provided in the plan of division, the shares in and any securities of each resulting insurer shall be distributed to the dividing insurer if it survives the division, or pro rata to the shareholders of the dividing insurer that do not assert any appraisal rights pursuant to section 521I.13.

2019 Acts, ch 20, §11; 2020 Acts, ch 1062, §59

521I.12 Resulting insurers liability for allocated assets, debts, and liabilities.

1. Except as expressly provided in this section, when a division becomes effective, by operation of law all of the following apply:

a. A resulting insurer is individually liable for the liabilities, including policy liabilities, that the resulting insurer issues, undertakes, or incurs in its own name after the division.

b. A resulting insurer is individually liable for the liabilities, including policy liabilities, of the dividing insurer that are allocated to or remain the liability of the resulting insurer to the extent specified in the plan of division.

c. The dividing insurer remains responsible for the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division if the dividing insurer survives the division.

d. A resulting insurer is liable pro rata individually for the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division if the dividing insurer does not survive the division.

2. Except as otherwise expressly provided in this section, when a division becomes effective a resulting insurer is not responsible for and shall not have liability for any of the following:

a. Any liabilities, including policy liabilities, that another resulting insurer issues, undertakes, or incurs in such resulting insurer's own name after the division.

b. Any liabilities, including policy liabilities, of the dividing insurer that are allocated to or remain the liability of another resulting insurer under the plan of division.

3. If a provision of any evidence of indebtedness, whether secured or unsecured, or a provision of any contract other than an insurance policy, annuity, or reinsurance agreement that was issued, incurred, or executed by the dividing insurer before July 1, 2019, requires the consent of the obligee to a merger of the dividing insurer, or treats such a merger as a default, such provision shall apply to a division of the dividing insurer as if such division were a merger.

4. If a division breaches a contractual obligation of the dividing insurer, all resulting insurers are jointly and severally liable for the breach. The validity and effectiveness of the division shall not be affected by the breach.

5. A direct or indirect allocation of capital, surplus, assets, or liabilities, including policy liabilities, shall occur automatically, by operation of law, and shall not be treated as a distribution or transfer for any purpose with respect to either the dividing insurer or any resulting insurer.

6. Liens, security interests, and other charges on the capital, surplus, or other assets of the dividing insurer shall not be impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities, including policy liabilities, of the dividing insurer.

7. If the dividing insurer is bound by a security agreement governed by chapter 554 or article 9 of the uniform commercial code as enacted in any other jurisdiction, and the security

agreement provides that the security interest attaches to after-acquired collateral, a resulting insurer shall be bound by the security agreement.

8. Unless provided in the plan of division and specifically approved by the commissioner, an allocation of a policy or other liability is prohibited from doing any of the following:

a. Affecting the rights that a policyholder or creditor has under any other law with respect to such policy or other liability, except that such rights shall be available only against a resulting insurer responsible for the policy or liability under this section.

b. Releasing or reducing the obligation of a reinsurer, surety, or guarantor of the policy or liability.

9. A resulting insurer shall only be liable for the liabilities allocated to the resulting insurer in accordance with the plan of division and this section and shall not be liable for any other liabilities under the common law doctrine of successor liability or any other theory of liability applicable to transferees or assignees of assets.

2019 Acts, ch 20, §12

521I.13 Shareholder appraisal rights.

If a dividing insurer does not survive a division, an objecting shareholder of the dividing insurer is entitled to appraisal rights and to obtain payment of the fair value of such shareholder's shares in the same manner and to the extent provided for a corporation as a party to a merger pursuant to section 490.1302.

2019 Acts, ch 20, §13

Referred to in §521I.11

521I.14 Rules.

The commissioner may adopt rules pursuant to chapter 17A to administer this chapter.

2019 Acts, ch 20, §14

521I.15 Enforcement.

The commissioner may take any action under the commissioner's authority to enforce compliance with this chapter.

2019 Acts, ch 20, §15