

House File 2455

H-8173

1 Amend House File 2455 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. 521I.1 Definitions.

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

7 1. "*Assets*" means property whether real, personal, mixed,
8 tangible, or intangible and any right or interest therein,
9 including all rights under a contract or other agreement.

10 2. "*Capital*" means the capital stock component of a
11 statutory surplus as defined in the latest edition of the
12 national association of insurance commissioners' accounting
13 practices and procedures manual.

14 3. "*Commissioner*" means the commissioner of insurance.

15 4. "*Divide*" or "*division*" means a transaction in which
16 a domestic stock insurer splits into two or more resulting
17 domestic stock insurers.

18 5. "*Dividing insurer*" means a domestic stock insurer that
19 approves a plan of division.

20 6. "*Domestic stock insurer*" means a stock insurer domiciled
21 and organized under the law of this state other than a company
22 qualified and authorized by the commissioner to transact the
23 business of insurance in this state by certificate issued
24 pursuant to chapter 508, 512B, 514, 514B, 515, 515E, or 520.

25 7. "*Liability*" means a secured or contingent debt or
26 obligation arising in any manner.

27 8. "*Resulting insurer*" means a dividing domestic stock
28 insurer that survives a division or a new domestic stock
29 insurer that is created by a division.

30 9. "*Shareholder*" means the person in whose name shares are
31 registered in the records of a corporation or the beneficial
32 owner of shares to the extent of the rights granted by a
33 nominee certificate on file with a corporation.

34 10. "*Surplus*" means total statutory surplus less capital
35 stock calculated in accordance with the current national

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1 association of insurance commissioners' accounting practices
2 and procedures manual.

3 11. "Transfer" includes an assignment, assumption,
4 conveyance, sale, lease, encumbrance, security interest, gift,
5 or transfer by operation of law.

6 Sec. 2. NEW SECTION. 521I.2 Plan of division — general
7 requirements.

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

10 1. The name of the domestic stock insurer seeking to divide.

11 2. The name of each resulting insurer created by the
12 proposed division and for each resulting insurer a copy of all
13 of the following:

14 a. Proposed articles of incorporation.

15 b. Proposed bylaws.

16 3. The manner of allocating assets and liabilities,
17 including policy liabilities, between or among all resulting
18 insurers.

19 4. The manner of distributing shares in the resulting
20 insurers to the dividing insurer or the dividing insurer's
21 shareholders.

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

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

28 7. All other terms and conditions of the division. Terms of
29 a plan of division may be made dependent on facts objectively
30 ascertainable outside of the plan of division.

31 Sec. 3. NEW SECTION. 521I.3 Plan of division — dividing
32 insurer to survive division.

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

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

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

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

12 **Sec. 4. NEW SECTION. 521I.4 Plan of division — dividing**
13 **insurer not to survive division.**

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

21 **Sec. 5. NEW SECTION. 521I.5 Amending plan of division.**

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

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

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

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

9 2. A dividing insurer shall not amend the dividing insurer's
10 plan of division after the plan of division becomes effective.

11 Sec. 6. NEW SECTION. **521I.6 Abandoning plan of division.**

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

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

20 *b.* After the dividing insurer has filed a certificate
21 of division with the secretary of state pursuant to section
22 521I.10, the dividing insurer may file a signed certificate of
23 abandonment with the secretary of state and file a copy with
24 the commissioner. The certificate of abandonment shall be
25 effective on the date the certificate of abandonment is filed
26 with the secretary of state.

27 2. A dividing insurer shall not abandon the dividing
28 insurer's plan of division after the plan of division becomes
29 effective.

30 Sec. 7. NEW SECTION. **521I.7 Approval of plan of division —**
31 **articles of incorporation and bylaws.**

32 1. A dividing insurer shall not file a plan of division with
33 the commissioner until such plan of division has been approved
34 in accordance with all provisions of the dividing insurer's
35 articles of incorporation and bylaws. If the dividing

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

7 2. If a provision of a dividing insurer's articles of
8 incorporation or bylaws adopted before the effective date of
9 this Act requires that a specific number of or a percentage
10 of the board of directors or shareholders propose or adopt a
11 plan of merger or impose other procedures for the proposal or
12 adoption of a plan of merger, the dividing insurer shall adhere
13 to such provision in proposing or adopting a plan of division.
14 If any such provision of the articles of incorporation or
15 bylaws is amended on or after the effective date of this Act,
16 such provision shall apply to a division thereafter only in
17 accordance with its express terms.

18 **Sec. 8. NEW SECTION. 521I.8 Commissioner approval of plan**
19 **of division.**

20 1. After a dividing insurer approves a plan of division
21 pursuant to section 521I.7, the dividing insurer shall file the
22 plan of division with the commissioner. Within ten business
23 days of filing the plan of division with the commissioner, the
24 dividing insurer shall provide notice of the filing to each
25 reinsurer that is a party to a reinsurance contract allocated
26 in the plan of division.

27 2. A division shall not become effective until approved by
28 the commissioner after reasonable notice and a public hearing.
29 Notice and public hearing required under this section shall be
30 conducted as a contested case pursuant to chapter 17A.

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

33 a. The interest of the policyholders, creditors, or
34 shareholders of the dividing insurer will be adequately
35 protected and the plan of division is not unfair or

1 unreasonable to the policyholders of the dividing insurer and
2 is not contrary to the public interest.

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

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

10 *d.* The proposed division does not violate a provision of
11 chapter 684. In a division in which the dividing insurer
12 will survive, the commissioner shall apply chapter 684 to the
13 dividing insurer in its capacity as a resulting insurer. In
14 applying the provisions of chapter 684 to a resulting insurer,
15 the commissioner shall do all of the following:

16 (1) Treat the resulting insurer as a debtor.

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

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

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

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

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

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

32 4. In determining if the standards set forth in subsection
33 3, paragraphs "c" through "g" are satisfied, the commissioner
34 may consider all proposed assets of the resulting insurer
35 including without limitation reinsurance agreements, parental

1 guarantees, support agreements, keepwell agreements, and
2 capital maintenance of contingent capital agreements regardless
3 of whether such qualify as an admitted asset under state law.

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

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

19 7. The conditions in this section for freeing one or more
20 of the resulting insurers from the liabilities of the dividing
21 insurer and for allocating some or all of the liabilities of
22 the dividing insurer shall be deemed to have been satisfied if
23 the plan of division is approved by the commissioner in a final
24 order.

25 **Sec. 9. NEW SECTION. 521I.9 Confidentiality.**

26 All information and documents submitted to, obtained by, or
27 disclosed to the commissioner in connection with a dividing
28 insurer's plan of division shall be confidential and shall not
29 be available for public inspection until notice of a public
30 hearing is provided pursuant to section 521I.8, subsection
31 1. After issuance of a notice of such hearing, the dividing
32 insurer may submit a written request to the commissioner
33 requesting that confidentiality be maintained regarding
34 all business, financial, and actuarial information. If the
35 commissioner grants the dividing insurer's request, such

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1 confidential information shall not be available for public
2 inspection and shall not be subject to chapter 22. The plan
3 of division and any materials incorporated by reference into
4 or otherwise made a part of such plan of division shall not be
5 confidential and shall be available for public inspection.

6 Sec. 10. NEW SECTION. 521I.10 Certificate of division.

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

- 11 a. The name of the dividing insurer.
- 12 b. A statement disclosing whether the dividing insurer
13 survived the division. If the dividing insurer survived
14 the division, the certificate of division shall include any
15 amendments to the dividing insurer's articles of incorporation
16 or bylaws as approved as part of the plan of division.
- 17 c. The name of each resulting insurer that is created by
18 the division.
- 19 d. The date on which the division is effective.
- 20 e. A statement that the division was approved by the
21 commissioner under section 521I.8.
- 22 f. A statement that the dividing insurer provided reasonable
23 notice to each reinsurer that is a party to a reinsurance
24 contract allocated in the plan of division.
- 25 g. The resulting insurer's articles of incorporation and
26 bylaws for each resulting insurer created by the division. The
27 articles of incorporation and bylaws of each resulting insurer
28 must comply with the applicable requirements of the laws of
29 this state. The articles of incorporation and bylaws may state
30 the name or address of an incorporator, may be signed, and may
31 include any provision that is not required in a restatement of
32 the articles of incorporation or bylaws.
- 33 h. A reasonable description of the capital, surplus, other
34 assets and liabilities, including policy liabilities, of the
35 dividing insurer that are to be allocated to each resulting

1 insurer.

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

11 Sec. 11. NEW SECTION. 521I.11 **Division effective.**

12 1. On the effective date of a division pursuant to section
13 521I.10, the following apply:

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

16 (1) The dividing insurer shall continue to exist.

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

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

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

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

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

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1 the plan of division or shall remain vested in the dividing
2 insurer as provided in the plan of division.

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

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

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

16 f. All liabilities of a dividing insurer are allocated
17 between or among any resulting insurers as provided in section
18 521I.10 and each resulting insurer to which liabilities are
19 allocated is liable only for those liabilities, including
20 policy liabilities, allocated as a successor to the dividing
21 insurer by operation of law.

22 g. Any shares in the dividing insurer that are to be
23 converted or canceled in the division are converted or canceled
24 and the shareholders of those shares are entitled only to
25 the rights provided to such shareholders under the plan of
26 division and any appraisal rights that such shareholders may
27 have pursuant to section 521I.13.

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

33 3. The allocation to a resulting insurer of capital,
34 surplus, or other asset that is collateral covered by an
35 effective financing statement shall not be effective until a

1 new effective financing statement naming the resulting insurer
2 as a debtor is effective under the uniform commercial code.

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

9 Sec. 12. NEW SECTION. 521I.12 **Resulting insurers liability**
10 **for allocated assets, debts, and liabilities.**

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

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

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

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

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

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

35 a. Any liabilities, including policy liabilities, that

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1 another resulting insurer issues, undertakes, or incurs in such
2 resulting insurer's own name after the division.

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

6 3. If a provision of any evidence of indebtedness, whether
7 secured or unsecured, or a provision of any contract other than
8 an insurance policy, annuity, or reinsurance agreement that was
9 issued, incurred, or executed by the dividing insurer before
10 the effective date of this Act, requires the consent of the
11 obligee to a merger of the dividing insurer, or treats such a
12 merger as a default, such provision shall apply to a division
13 of the dividing insurer as if such division were a merger.

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

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

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

30 7. If the dividing insurer is bound by a security agreement
31 governed by chapter 554 or article 9 of the uniform commercial
32 code as enacted in any other jurisdiction, and the security
33 agreement provides that the security interest attaches to
34 after-acquired collateral, a resulting insurer shall be bound
35 by the security agreement.

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

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

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

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

17 Sec. 13. NEW SECTION. 521I.13 **Shareholder appraisal rights.**

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

24 Sec. 14. NEW SECTION. 521I.14 **Rules.**

25 The commissioner shall adopt rules pursuant to chapter 17A
26 to administer this chapter.

27 Sec. 15. NEW SECTION. 521I.15 **Enforcement.**

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

31 Sec. 16. Section 490.120, subsection 12, paragraph c,
32 subparagraph (2), Code 2018, is amended to read as follows:

33 (2) "Plan" means a plan of merger ~~or~~, a plan of share
34 exchange, or a plan of division pursuant to chapter 521I.

35 Sec. 17. Section 490.1302, subsection 1, Code 2018, is

1 amended by adding the following new paragraph:

2 NEW PARAGRAPH. *g.* Consummation of a division pursuant
3 to chapter 521I to which the corporation is a party if the
4 corporation does not survive such division.

5 Sec. 18. Section 521.1, Code 2018, is amended by adding the
6 following new subsections:

7 NEW SUBSECTION. 5. "*Dividing insurer*" means the same as
8 defined in section 521I.1.

9 NEW SUBSECTION. 6. "*Resulting insurer*" means the same as
10 defined in section 521I.1.

11 Sec. 19. NEW SECTION. **521.19 Merger or consolidation**
12 **effective with division.**

13 A dividing insurer and the dividing insurer's officers,
14 directors, and shareholders shall have the authority to adopt
15 and execute a plan of merger or consolidation on behalf of a
16 resulting insurer, to execute and deliver documents, plans,
17 certificates, and resolutions, and to make any filings on
18 behalf of such resulting insurer. If provided in a plan of
19 merger or consolidation, the merger or consolidation shall be
20 effective simultaneously with the effectiveness of a division
21 pursuant to 521I.10.>

PETTENGILL of Benton