

Senate File 2316 - Enrolled

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AN ACT

RELATING TO TRANSACTIONS BY DOMESTIC STOCK INSURERS, SMALL
EMPLOYER GROUP HEALTH INSURERS, AND UNIVERSAL LIFE
INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 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 the latest edition of the
national association of insurance commissioners' accounting
practices and procedures manual.

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 law of this state other than a company
qualified and authorized by the commissioner to transact the
business of insurance in this state by certificate issued
pursuant to chapter 508, 512B, 514, 514B, 515, 515E, or 520.

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.

Sec. 2. NEW SECTION. 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 reasonable 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. Terms of

a plan of division may be made dependent on facts objectively ascertainable outside of the plan of division.

Sec. 3. NEW SECTION. 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.

Sec. 4. NEW SECTION. 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.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. 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.

Sec. 7. NEW SECTION. 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 the effective date of this Act 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 the effective date of this Act, such provision shall apply to a division thereafter only in accordance with its express terms.

Sec. 8. NEW SECTION. 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 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.

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.

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

All information and documents submitted to, obtained by, or disclosed to the commissioner in connection with a dividing insurer's plan of division shall be confidential and shall not be available for public inspection until notice of a public hearing is provided pursuant to section 521I.8, subsection 1. After issuance of a notice of such hearing, the dividing insurer may submit a written request to the commissioner requesting that confidentiality be maintained regarding all business, financial, and actuarial information. If the commissioner grants the dividing insurer's request, such confidential information shall not be available for public inspection and shall not be subject to chapter 22. The plan of division and any materials incorporated by reference into or otherwise made a part of such plan of division shall not be confidential and shall be available for public inspection.

Sec. 10. NEW SECTION. 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.

Sec. 11. NEW SECTION. 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.

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.

Sec. 12. NEW SECTION. 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 the effective date of this Act, 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.

Sec. 13. NEW SECTION. 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.

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

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

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

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

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

(2) "*Plan*" means a plan of merger or, a plan of share

exchange, or a plan of division pursuant to chapter 521I.

Sec. 17. Section 490.1302, subsection 1, Code 2018, is amended by adding the following new paragraph:

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

Sec. 18. Section 513B.2, subsections 10 and 18, Code 2018, are amended to read as follows:

10. "*Eligible employee*" means an employee who works on a full-time basis and has a normal workweek of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under health insurance coverage of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis. An internal revenue service form W-2 wage and tax statement shall not be required to qualify as an eligible employee under this subsection.

18. "*Small employer*" means a person, other than a limited liability company, a partner of a partnership, an S corporation, a C corporation, or an independent contractor, actively engaged in business who, on at least fifty percent of the employer's working days during the preceding year, employed at least one and not more than fifty full-time equivalent eligible employees. A limited liability company, a partner of a partnership, an S corporation, a C corporation, or an independent contractor shall not be required to employ an eligible employee to qualify as a small employer under this subsection. "*Small employer*" includes a self-employed individual. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

Sec. 19. NEW SECTION. **508.25A Rules — termination of universal life insurance policy.**

The commissioner of insurance shall adopt rules pursuant to chapter 17A that require a written notice be sent to a policyholder at least thirty calendar days prior to termination of coverage of a universal life insurance policy in an envelope

that includes language on the outside of the envelope, or that is viewable through the envelope window, indicating that the envelope contains important information.

Sec. 20. Section 521.1, Code 2018, is amended by adding the following new subsections:

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

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

Sec. 21. NEW SECTION. 521.19 **Merger or consolidation effective with division.**

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

CHARLES SCHNEIDER
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2316, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2018

KIM REYNOLDS
Governor