

House File 2455 - Introduced

HOUSE FILE 2455
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 600)

(COMPANION TO LSB 5520SV BY
COMMITTEE ON COMMERCE)

A BILL FOR

- 1 An Act relating to the division of domestic stock insurers into
- 2 two or more domestic stock insurers.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

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

12 4. "*Divide*" or "*division*" means a transaction in which
13 a domestic stock insurer splits into two or more resulting
14 domestic stock insurers.

15 5. "*Dividing insurer*" means a domestic stock insurer that
16 approves a plan of division.

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

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

24 8. "*Resulting insurer*" means a dividing domestic stock
25 insurer that survives a division or a new domestic stock
26 insurer that is created by a division.

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

31 10. "*Surplus*" means total statutory surplus less capital
32 stock calculated in accordance with the latest edition of the
33 national association of insurance commissioners' accounting
34 practices and procedures manual.

35 11. "*Transfer*" includes an assignment, assumption,

1 conveyance, sale, lease, encumbrance, security interest, gift,
2 or transfer by operation of law.

3 Sec. 2. NEW SECTION. 521I.2 Plan of division — general
4 requirements.

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

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

8 2. The name of each resulting insurer created by the
9 proposed division and for each resulting insurer a copy of all
10 of the following:

11 a. Proposed articles of incorporation.

12 b. Proposed bylaws.

13 3. The manner of allocating assets and liabilities,
14 including policy liabilities, between or among all resulting
15 insurers.

16 4. The manner of distributing shares in the resulting
17 insurers to the dividing insurer or the dividing insurer's
18 shareholders.

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

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

25 7. All other terms and conditions of the division. Terms of
26 a plan of division may be made dependent on facts objectively
27 ascertainable outside of the plan of division.

28 Sec. 3. NEW SECTION. 521I.3 Plan of division — dividing
29 insurer to survive division.

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

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

35 2. If the dividing insurer intends to cancel some but not

1 all shares in the dividing insurer, the manner in which the
2 dividing insurer intends to cancel such shares.

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

9 Sec. 4. NEW SECTION. 521I.4 Plan of division — dividing
10 insurer not to survive division.

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

18 Sec. 5. NEW SECTION. 521I.5 Amending plan of division.

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

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

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

1 the shareholders of the resulting insurer under such articles
2 of incorporation or bylaws.

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

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

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

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

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

17 b. After the dividing insurer has filed a certificate
18 of division with the secretary of state pursuant to section
19 521I.10, the dividing insurer may file a signed certificate of
20 abandonment with the secretary of state and file a copy with
21 the commissioner. The certificate of abandonment shall be
22 effective on the date the certificate of abandonment is filed
23 with the secretary of state.

24 2. A dividing insurer shall not abandon the dividing
25 insurer's plan of division after the plan of division becomes
26 effective.

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

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

1 such plan of division has been approved in accordance with all
2 provisions of the dividing insurer's articles of incorporation
3 and bylaws that provide for approval of a merger.

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

15 Sec. 8. NEW SECTION. 521I.8 Commissioner approval of plan
16 of division.

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

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

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

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

35 b. The financial condition of the resulting insurers will

1 not jeopardize the financial stability of a dividing insurer
2 or the resulting insurers or prejudice the interests of the
3 policyholders of such insurers.

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

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

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

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

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

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

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

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

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

29 4. In determining if the standards set forth in subsection
30 3, paragraphs "*c*" through "*g*" are satisfied, the commissioner
31 may consider all proposed assets of the resulting insurer
32 including without limitation reinsurance agreements, parental
33 guarantees, support agreements, keepwell agreements, and
34 capital maintenance of contingent capital agreements regardless
35 of whether such qualify as an admitted asset under state law.

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

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

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

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

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

1 or otherwise made a part of such plan of division shall not be
2 confidential and shall be available for public inspection.

3 Sec. 10. NEW SECTION. **521I.10 Certificate of division.**

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

8 *a.* The name of the dividing insurer.

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

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

16 *d.* The date on which the division is effective.

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

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

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

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

34 2. A dividing insurer's certificate of division is
35 effective on the date the dividing insurer files the

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

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

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

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

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

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

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

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

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

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

35 (2) All capital, surplus, and other assets of the dividing

1 insurer that are not allocated by the plan of division shall
2 remain vested in the dividing insurer if the dividing insurer
3 survives the division and shall be allocated to and vest pro
4 rata in the resulting insurers individually if the dividing
5 insurer does not survive the division.

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

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

13 f. All liabilities of a dividing insurer are allocated
14 between or among any resulting insurers as provided in section
15 521I.10 and each resulting insurer to which liabilities are
16 allocated is liable only for those liabilities, including
17 policy liabilities, allocated as a successor to the dividing
18 insurer by operation of law.

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

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

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

35 4. Unless otherwise provided in the plan of division,

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

6 Sec. 12. NEW SECTION. 521I.12 Resulting insurers liability
7 for allocated assets, debts, and liabilities.

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

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

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

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

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

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

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

35 b. Any liabilities, including policy liabilities, of the

1 dividing insurer that are allocated to or remain the liability
2 of another resulting insurer under the plan of division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 NEW PARAGRAPH. *g.* Consummation of a division pursuant
35 to chapter 521I to which the corporation is a party if the

1 corporation does not survive such division.

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

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

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

8 Sec. 19. NEW SECTION. 521.19 Merger or consolidation
9 effective with division.

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

EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
21 the explanation's substance by the members of the general assembly.

22 This bill relates to the division of a domestic stock insurer
23 into two or more domestic stock insurers.

24 The bill defines a dividing insurer as a domestic stock
25 insurer that approves a plan of division. A resulting insurer
26 is defined as a dividing insurer that survives a division, or a
27 new domestic stock insurer that is created by a division.

28 The bill requires a dividing insurer to develop a plan
29 of division that identifies the dividing insurer's name, the
30 proposed resulting insurers and their articles of incorporation
31 and bylaws, the allocation of the dividing insurer's assets,
32 liabilities, and reinsurance contracts to the resulting
33 insurers, and the manner in which the shares in the resulting
34 insurers will be distributed to the dividing insurer or its
35 shareholders. The plan of division must also comply with all

1 terms of the dividing insurer's articles of incorporation and
2 bylaws.

3 If the dividing insurer will survive the division, the plan
4 of division must also include any proposed amendments to the
5 dividing insurer's articles of incorporation and bylaws and
6 the manner in which the dividing insurer proposes to cancel or
7 convert some of its shares. If the dividing insurer will not
8 survive the division, the plan of division must include details
9 on how the dividing insurer will cancel or convert its shares
10 into securities, obligations, other property, or rights to
11 acquire shares or securities.

12 The bill allows a dividing insurer to amend or cancel a plan
13 of division, and allows a shareholder to vote or consent to an
14 amendment, under certain conditions as detailed in the bill.

15 The bill requires that prior to filing a plan of division
16 with the commissioner, a dividing insurer must obtain approval
17 in accordance with all provisions of the dividing insurer's
18 articles of incorporation and bylaws. If the articles of
19 incorporation and bylaws do not provide for approval of a plan
20 of division, the dividing insurer must obtain approval in
21 accordance with all provisions of such that apply to approval
22 of a merger.

23 The bill provides that a division shall not become effective
24 until approved by the commissioner after reasonable notice
25 and a public hearing. The commissioner may approve a plan of
26 division if the commissioner determines that the interests of
27 the policyholders, creditors, or shareholders of the dividing
28 insurer are adequately protected and the proposed division is
29 not unfair or unreasonable to the policyholders of the dividing
30 insurer; that the division is not contrary to public policy;
31 that the financial condition of the resulting insurers will
32 not jeopardize the financial stability of a dividing insurer
33 or the resulting insurers or prejudice the interests of the
34 policyholders of such insurers; that all resulting insurers
35 created by the proposed division are qualified and eligible to

1 receive a certificate of authority to transact the business
2 of insurance in this state; that the proposed division does
3 not violate the state's voidable transactions statute; that
4 the proposed division is not for the purpose of hindering,
5 delaying, or defrauding any policyholders or other creditors
6 of the dividing insurer; that all resulting insurers will be
7 solvent; and that the remaining assets of a resulting insurer
8 will not be unreasonably small in relation to the business and
9 transactions in which such resulting insurer has been engaged
10 in or will engage in after completion of the division.

11 The bill requires the commissioner to issue an order,
12 including findings of fact and conclusions of law, to approve
13 a plan of division. The commissioner is required to issue a
14 certificate of authority to the resulting insurers. If the
15 plan of division has been approved by the commissioner in a
16 final order, any conditions required to remove liabilities of
17 the dividing insurer from the resulting insurer, or to allocate
18 some or all of the liabilities of the dividing insurer to the
19 resulting insurers, are deemed satisfied.

20 All information and documents submitted to, obtained by, or
21 disclosed to the commissioner in connection with a dividing
22 insurer's plan of division are confidential and not available
23 for public inspection until the commissioner has provided
24 notice of a public hearing. After issuance of such notice,
25 the dividing insurer may submit a written request to the
26 commissioner to continue treating all business, financial,
27 and actuarial information as confidential. The bill requires
28 that the plan of division and any materials incorporated by
29 reference into or otherwise made a part of such plan shall not
30 be confidential and shall be available for public inspection.

31 If the commissioner approves a dividing insurer's plan
32 of division, an officer of the dividing insurer shall sign
33 a certificate of division that sets forth information, as
34 detailed in the bill, related to the dividing insurer's
35 post-division status and any resulting insurer's post-division

1 status. A dividing insurer's certificate of division
2 is effective on the date the dividing insurer files the
3 certificate with the secretary of state or on another date
4 as specified in the plan of division, whichever is later.
5 However, the certificate of division shall become effective
6 not later than 90 days after it is filed with the secretary of
7 state.

8 When a division becomes effective and the dividing insurer
9 survives, the bill provides that the dividing insurer continues
10 to exist and that the articles of incorporation and the bylaws
11 of the dividing insurer must be amended as provided in the
12 plan of division. If the dividing insurer does not survive,
13 the dividing insurer's separate existence ceases to exist and
14 any resulting insurers created by the plan of division come
15 into existence. The bill provides that all resulting insurers
16 shall hold any capital, surplus, and other assets allocated
17 to each as a successor to the dividing insurer by operation
18 of law, and not by transfer. All capital, surplus, and other
19 assets of the dividing insurer that are allocated by the plan
20 of division either vest in the applicable resulting insurer
21 or remain vested in the dividing insurer as provided in the
22 plan of division. All capital, surplus, and other assets that
23 are not allocated by the plan of division remain vested in the
24 dividing insurer if the dividing insurer survives the division,
25 are allocated to the resulting insurers individually if the
26 dividing insurer does not survive the division, or vest as
27 otherwise provided in the bill.

28 A resulting insurer to which a cause of action is allocated
29 may be substituted or added in any pending action to which
30 the dividing insurer is a party when the division becomes
31 effective. All liabilities of a dividing insurer are allocated
32 between or among any resulting insurers and each resulting
33 insurer to which liabilities are allocated is liable only for
34 those liabilities, including policy liabilities, allocated as a
35 successor to the dividing insurer.

1 The bill also provides that when a division becomes
2 effective any shares in the dividing insurer that are to
3 be converted or canceled in the division are converted or
4 canceled, and the shareholders of those shares are entitled
5 only to the rights provided to such shareholders under the
6 plan of division and per any appraisal rights they may have
7 as detailed in the bill. Except as provided in the dividing
8 insurer's articles of incorporation or bylaws, the division
9 does not give any rights to a shareholder, director, or third
10 party that such would have upon a dissolution, liquidation, or
11 winding up of the domestic stock insurer.

12 Unless otherwise provided in the plan of division, the
13 shares and securities of each resulting insurer are distributed
14 to the dividing insurer if it survives the division, or pro
15 rata to any shareholders of the dividing insurer that do not
16 assert appraisal rights.

17 The bill provides that when a division becomes effective,
18 each resulting insurer is individually liable for all
19 liabilities that such resulting insurer issues, undertakes,
20 or incurs in its own name after the division; each resulting
21 insurer is individually liable for the liabilities of
22 the dividing insurer that are allocated to or remain the
23 liability of such resulting insurer as specified in the plan
24 of division; and the dividing insurer remains responsible for
25 all liabilities of the dividing insurer that are not allocated
26 by the plan of division if the dividing insurer survives
27 the division. If the dividing insurer does not survive the
28 division, each resulting insurer is pro rata individually
29 liable for all liabilities of the dividing insurer that are not
30 allocated by the plan of division.

31 The bill also provides that when a division becomes
32 effective, no resulting insurer is liable for any liabilities
33 that another resulting insurer issues, undertakes, or incurs in
34 its own name after the division, or for any liabilities of the
35 dividing insurer that are allocated to or remain the liability

1 of another resulting insurer per the plan of division. If
2 any provision of any evidence of indebtedness or a provision
3 of any contract other than an insurance policy, annuity, or
4 reinsurance agreement that was issued, incurred, or executed
5 by the dividing insurer before the effective date of the bill
6 requires the consent of the obligee to a merger of the dividing
7 insurer, or treats such a merger as a default, such provision
8 applies to a division of the dividing insurer as if such
9 division were a merger.

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

14 In a division, a direct or indirect allocation of capital,
15 surplus, assets, or liabilities, including policy liabilities,
16 occurs automatically by operation of law and shall not be
17 treated as a distribution or transfer for any purpose with
18 respect to either the dividing insurer or any of the resulting
19 insurers. Liens, security interests, and other charges on the
20 capital, surplus, or other assets of the dividing insurer are
21 not impaired by the division.

22 Except as provided in the plan of division and as
23 specifically approved by the commissioner, an allocation of a
24 policy or other liability does not affect the rights that a
25 policyholder or creditor has under any other law with respect
26 to such policy or other liability, except that such rights are
27 available only against a resulting insurer responsible for the
28 policy or liability. A reinsurer, surety, or guarantor of the
29 policy or liability is not released from their obligations
30 under the policy or other liability.

31 If a dividing insurer does not survive a division, an
32 objecting shareholder of the dividing insurer is entitled to
33 appraisal rights and to obtain payment of the fair value of
34 such shareholder's shares.

35 The bill requires the commissioner to adopt rules pursuant

1 to Code chapter 17A to administer the requirements of the
2 bill and allows the commissioner to take any action under the
3 commissioner's authority to enforce compliance with the bill.

4 The bill amends Code section 490.120 to add a plan of
5 division to the definition of plan. The bill amends Code
6 section 490.1302 to provide for shareholder appraisal rights
7 for a division to which a corporation is a party, if the
8 corporation does not survive such division. The bill amends
9 Code chapter 521 to allow a dividing insurer to adopt and
10 execute a plan of merger or consolidation on behalf of a
11 resulting insurer and if provided for in the plan of merger or
12 consolidation, the merger or consolidation shall be effective
13 simultaneously with the effectiveness of a division under the
14 bill.