

House Study Bill 35 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON CARLSON)

A BILL FOR

1 An Act relating to the division of domestic stock insurers.
2 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 laws of this state pursuant to chapter
19 508, 514B, or 515, including domestic stock insurers affiliated
20 with a mutual insurance holding company organized pursuant to
21 section 521A.14, and including those insurers which confer
22 membership rights in the mutual insurance holding company.

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

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

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

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

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

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

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

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

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

12 a. Proposed articles of incorporation.

13 b. Proposed bylaws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 b. The articles of incorporation or bylaws of any resulting
35 insurer that become effective when the division becomes

1 effective except for changes that do not require approval of
2 the shareholders of the resulting insurer under such articles
3 of incorporation or bylaws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of whether such qualify as an admitted asset under state law.

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

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

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

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

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

1 chapter 22. The plan of division shall not be confidential and
2 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 2019, 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 2019, 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 2019, 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.

19 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 domestic stock
23 insurers.

24 The bill defines a domestic stock insurer as a stock insurer
25 domiciled and organized under the laws of this state pursuant
26 to Code chapter 508, 514B, or 515, including domestic stock
27 insurers affiliated with a mutual insurance holding company
28 organized pursuant to Code section 521A.14, and including those
29 insurers which confer membership rights in the mutual insurance
30 company. A dividing insurer is defined as a domestic stock
31 insurer that approves a plan of division (plan). A resulting
32 insurer is defined as a dividing insurer that survives a
33 division, or a new domestic stock insurer that is created by
34 a division.

35 The bill requires a dividing insurer to develop a plan that

1 identifies the dividing insurer's name, the proposed resulting
2 insurers and their articles of incorporation and bylaws, the
3 allocation of the dividing insurer's assets, liabilities,
4 and reinsurance contracts to the resulting insurers, and the
5 manner in which the shares in the resulting insurers will be
6 distributed to the dividing insurer or its shareholders.

7 If the dividing insurer will survive the division, the plan
8 must also include any proposed amendments to the dividing
9 insurer's articles of incorporation and bylaws and the manner
10 in which the dividing insurer proposes to cancel or convert
11 some of its shares. If the dividing insurer will not survive
12 the division, the plan of division must include details on how
13 the dividing insurer will cancel or convert its shares.

14 The bill allows a dividing insurer to amend or cancel a plan
15 under certain conditions as detailed in the bill.

16 The bill requires that prior to filing a plan with the
17 commissioner, a dividing insurer must obtain approval in
18 accordance with its articles of incorporation and bylaws. If
19 the articles of incorporation and bylaws do not provide for
20 such approval, 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 is not effective until
24 approved by the commissioner after reasonable notice and
25 a public hearing. The commissioner may approve a plan
26 if the commissioner determines that the interests of the
27 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 a
13 plan of division and to issue a certificate of authority to the
14 resulting insurers.

15 A dividing insurer may submit a written request to the
16 commissioner that confidentiality be maintained regarding all
17 business and other proprietary information submitted to the
18 commissioner in connection with the dividing insurer's plan of
19 division. The commissioner must make a determination regarding
20 the dividing insurer's request prior to issuing a notice of
21 a public hearing. If the commissioner grants the request,
22 any information the commissioner determines shall remain
23 confidential is not available for public inspection and shall
24 not be subject to Code chapter 22. The plan of division is not
25 confidential and shall be available for public inspection.

26 If the commissioner approves a dividing insurer's plan, an
27 officer of the dividing insurer must sign a certificate of
28 division that sets forth information, as detailed in the bill,
29 related to the dividing insurer's post-division status and any
30 resulting insurer's post-division status. A certificate of
31 division is effective on the date the dividing insurer files
32 the certificate with the secretary of state as specified in
33 the plan of division. The certificate of division becomes
34 effective not later than 90 days after it is filed.

35 When a division becomes effective and the dividing insurer

1 survives, the bill provides that the dividing insurer continues
2 to exist and that the articles of incorporation and the bylaws
3 of the dividing insurer must be amended as provided in the
4 plan. If the dividing insurer does not survive, the dividing
5 insurer's separate existence ceases to exist and any resulting
6 insurers created by the plan come into existence. The bill
7 provides that all resulting insurers hold any capital, surplus,
8 and other assets allocated to each as a successor to the
9 dividing insurer by operation of law, and not by transfer. All
10 capital, surplus, and other assets of the dividing insurer
11 that are allocated by the plan of division either vest in the
12 applicable resulting insurer or remain vested in the dividing
13 insurer as provided in the plan. All capital, surplus, and
14 other assets that are not allocated by the plan remain vested
15 in the dividing insurer if the dividing insurer survives the
16 division, are allocated to the resulting insurers individually
17 if the dividing insurer does not survive the division, or vest
18 as otherwise provided in the bill.

19 A resulting insurer to which a cause of action is allocated
20 may be substituted or added in any pending action to which
21 the dividing insurer is a party when the division becomes
22 effective. All liabilities of a dividing insurer are allocated
23 between or among any resulting insurers and each resulting
24 insurer to which liabilities are allocated is liable only for
25 those liabilities, including policy liabilities, allocated as a
26 successor to the dividing insurer.

27 The bill also provides that when a division becomes
28 effective any shares in the dividing insurer that are converted
29 or canceled entitle the shareholders of those shares to
30 the rights provided under the plan of division and per any
31 appraisal rights they may have as detailed in the bill.

32 Unless otherwise provided in the plan, the shares and
33 securities of each resulting insurer are distributed to the
34 dividing insurer if it survives the division, or pro rata to
35 any shareholders of the dividing insurer that do not assert

1 appraisal rights.

2 The bill provides that after a division becomes effective,
3 each resulting insurer is individually liable for all
4 liabilities that such resulting insurer issues, undertakes, or
5 incurs in its own name; each resulting insurer is individually
6 liable for the liabilities of the dividing insurer that are
7 allocated to or remain the liability of such resulting insurer
8 as specified in the plan; and the dividing insurer remains
9 responsible for all liabilities of the dividing insurer that
10 are not allocated by the plan if the dividing insurer survives
11 the division. If the dividing insurer does not survive the
12 division, each resulting insurer is pro rata individually
13 liable for all liabilities of the dividing insurer that are not
14 allocated by the plan.

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

19 In a division, a direct or indirect allocation of capital,
20 surplus, assets, or liabilities, including policy liabilities,
21 occurs automatically by operation of law and is not treated
22 as a distribution or transfer for any purpose with respect to
23 either the dividing insurer or any of the resulting insurers.

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

32 The bill requires the commissioner to adopt rules pursuant
33 to Code chapter 17A to administer the requirements of the
34 bill and allows the commissioner to take any action under the
35 commissioner's authority to enforce compliance with the bill.

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