



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB4372

Introduced 1/29/2020, by Rep. Thaddeus Jones

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/35B-25

Amends the Illinois Insurance Code. In provisions concerning approval of a plan of division of a domestic stock company, removes language limiting the requirements of notice and a public hearing to situations in which the Director of Insurance deems them to be in the public interest or occasions where a public hearing is requested by the dividing company. Requires the Director to hold a public hearing regarding the plan of division. Provides that the dividing company shall give notice of the filing of the plan of division and of the date of the hearing to all policyholders and to each guaranty association and guaranty fund of which the dividing company is a member. Removes a provision that allows the use of proposed assets to support a determination of solvency or adequacy of assets of the new companies created by the division, and a provision treating business, financial, and actuarial information as confidential in order to allow a domestic stock company to make that information available for public inspection.

LRB101 16385 BMS 65763 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Section 35B-25 as follows:

6 (215 ILCS 5/35B-25)

7 Sec. 35B-25. Plan of division approval.

8 (a) A division shall not become effective until it is  
9 approved by the Director after reasonable notice and a public  
10 hearing, ~~if the notice and hearing are deemed by the Director~~  
11 ~~to be in the public interest.~~ The dividing company shall give  
12 notice of the filing of a plan of division and of the date of  
13 the hearing to all policyholders and to each guaranty  
14 association and guaranty fund of which the dividing company is  
15 a member. The Director shall hold a public hearing ~~if one is~~  
16 ~~requested by the dividing company.~~ A hearing conducted under  
17 this Section shall be conducted in accordance with Article 10  
18 of the Illinois Administrative Procedure Act.

19 (b) The Director shall approve a plan of division unless  
20 the Director finds that:

21 (1) the interest of any class of policyholder or  
22 shareholder of the dividing company will not be properly  
23 protected;

1           (2) each new company created by the proposed division,  
2           except a new company that is a nonsurviving party to a  
3           merger pursuant to subsection (b) of Section 156, would be  
4           ineligible to receive a license to do insurance business in  
5           this State pursuant to Section 5;

6           (2.5) each new company created by the proposed  
7           division, except a new company that is a nonsurviving party  
8           to a merger pursuant to subsection (b) of Section 156, that  
9           will be a member insurer of the Illinois Life and Health  
10          Insurance Guaranty Association and that will have policy  
11          liabilities allocated to it will not be licensed to do  
12          insurance business in each state where such policies were  
13          written by the dividing company;

14          (3) the proposed division violates a provision of the  
15          Uniform Fraudulent Transfer Act;

16          (4) the division is being made for purposes of  
17          hindering, delaying, or defrauding any policyholders or  
18          other creditors of the dividing company;

19          (5) one or more resulting companies will not be solvent  
20          upon the consummation of the division; or

21          (6) the remaining assets of one or more resulting  
22          companies will be, upon consummation of a division,  
23          unreasonably small in relation to the business and  
24          transactions in which the resulting company was engaged or  
25          is about to engage.

26          (c) In determining whether the standards set forth in

1 paragraph (3) of subsection (b) have been satisfied, the  
2 Director shall only apply the Uniform Fraudulent Transfer Act  
3 to a dividing company in its capacity as a resulting company  
4 and shall not apply the Uniform Fraudulent Transfer Act to any  
5 dividing company that is not proposed to survive the division.

6 (d) In determining whether the standards set forth in  
7 paragraphs (3) and, (4), ~~(5)~~, and ~~(6)~~ of subsection (b) have  
8 been satisfied, the Director may consider all proposed assets  
9 of the resulting company, including, without limitation,  
10 reinsurance agreements, parental guarantees, support or keep  
11 well agreements, or capital maintenance or contingent capital  
12 agreements, in each case, regardless of whether the same would  
13 qualify as an admitted asset as defined in Section 3.1.

14 (e) In determining whether the standards set forth in  
15 paragraph (3) of subsection (b) have been satisfied, with  
16 respect to each resulting company, the Director shall, in  
17 applying the Uniform Fraudulent Transfer Act, treat:

18 (1) the resulting company as a debtor;

19 (2) liabilities allocated to the resulting company as  
20 obligations incurred by a debtor;

21 (3) the resulting company as not having received  
22 reasonably equivalent value in exchange for incurring the  
23 obligations; and

24 (4) assets allocated to the resulting company as  
25 remaining property.

26 (f) All information, documents, materials, and copies

1       thereof submitted to, obtained by, or disclosed to the Director  
2       in connection with a plan of division or in contemplation  
3       thereof, including any information, documents, materials, or  
4       copies provided by or on behalf of a domestic stock company in  
5       advance of its adoption or submission of a plan of division,  
6       shall be confidential and shall be subject to the same  
7       protection and treatment in accordance with Section 131.14d as  
8       documents and reports disclosed to or filed with the Director  
9       pursuant to Section 131.14b until such time, ~~if any,~~ as a  
10      notice of the hearing contemplated by subsection (a) is issued.

11      (g) (Blank). ~~From and after the issuance of a notice of the~~  
12      ~~hearing contemplated by subsection (a), all business,~~  
13      ~~financial, and actuarial information that the domestic stock~~  
14      ~~company requests confidential treatment, other than the plan of~~  
15      ~~division, shall continue to be confidential and shall not be~~  
16      ~~available for public inspection and shall be subject to the~~  
17      ~~same protection and treatment in accordance with Section~~  
18      ~~131.14d as documents and reports disclosed to or filed with the~~  
19      ~~Director pursuant to Section 131.14b.~~

20      (h) All expenses incurred by the Director in connection  
21      with proceedings under this Section, including expenses for the  
22      services of any attorneys, actuaries, accountants, and other  
23      experts as may be reasonably necessary to assist the Director  
24      in reviewing the proposed division, shall be paid by the  
25      dividing company filing the plan of division. A dividing  
26      company may allocate expenses described in this subsection in a

1 plan of division in the same manner as any other liability.

2 (i) If the Director approves a plan of division, the  
3 Director shall issue an order that shall be accompanied by  
4 findings of fact and conclusions of law.

5 (j) The conditions in this Section for freeing one or more  
6 of the resulting companies from the liabilities of the dividing  
7 company and for allocating some or all of the liabilities of  
8 the dividing company shall be conclusively deemed to have been  
9 satisfied if the plan of division has been approved by the  
10 Director in a final order that is not subject to further  
11 appeal.

12 (Source: P.A. 100-1118, eff. 11-27-18; 101-549, eff. 1-1-20.)