



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1494

Introduced 2/7/2023, by Sen. Napoleon Harris, III

SYNOPSIS AS INTRODUCED:

215 ILCS 5/35B-25
215 ILCS 5/35B-30

Amends the Domestic Stock Company Division Article of the Illinois Insurance Code. In provisions concerning plan of division approval, provides that any decision by the Director of Insurance on whether or not to hold a public hearing on either a plan of division or an amended plan of division may be made independently by the Director. Provides that if a dividing company amends its plan of division at any time before the plan of division becomes effective, then the dividing company shall file the amended plan of division for approval by the Director. Provides that if a hearing is conducted on the amended plan of division after the Director has approved a previous plan of division, then the hearing shall not be considered a rehearing. Provides that the fee assessed for filing a plan of division shall not apply to the filing of an amended plan of division. In provisions concerning certificates of division, provides that if the dividing company files an amended plan of division with the Director after a certificate of division has been filed for a previous plan, then the dividing company shall file a certificate of stay with the recorder. Provides that the certificate of stay shall identify the certificate of division being stayed and the date on which the amended plan of division was filed with the Director. Makes other changes. Effective immediately.

LRB103 25196 BMS 51537 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 Sections 35B-25 and 35B-30 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. Any decision by the Director on
12 whether or not to hold a public hearing on either a plan of
13 division or an amended plan of division may be made
14 independently by the Director. The Director shall hold a
15 public hearing if one is requested by the dividing company. A
16 hearing conducted under this Section shall be conducted in
17 accordance with Article 10 of the Illinois Administrative
18 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
5 in 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
8 party to a merger pursuant to subsection (b) of Section
9 156, that will be a member insurer of the Illinois Life and
10 Health Insurance Guaranty Association and that will have
11 policy liabilities allocated to it will not be licensed to
12 do insurance business in each state where such policies
13 were 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
20 solvent 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), (4), (5), and (6) of subsection (b) have been
8 satisfied, the Director may consider all proposed assets of
9 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
2 Director in connection with a plan of division or in
3 contemplation thereof, including any information, documents,
4 materials, or copies provided by or on behalf of a domestic
5 stock company in advance of its adoption or submission of a
6 plan of division, shall be confidential and shall be subject
7 to the same protection and treatment in accordance with
8 Section 131.22 as documents and reports disclosed to or filed
9 with the Director pursuant to subsection (a) of Section
10 131.14b until such time, if any, as a notice of the hearing
11 contemplated by subsection (a) is issued.

12 (g) From and after the issuance of a notice of the hearing
13 contemplated by subsection (a), all business, financial, and
14 actuarial information that the domestic stock company requests
15 confidential treatment, other than the plan of division, shall
16 continue to be confidential and shall not be available for
17 public inspection and shall be subject to the same protection
18 and treatment in accordance with Section 131.22 as documents
19 and reports disclosed to or filed with the Director pursuant
20 to subsection (a) of Section 131.14b.

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

1 company may allocate expenses described in this subsection in
2 a plan of division in the same manner as any other liability.

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

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

13 (k) If a dividing company amends its plan of division at
14 any time before the plan of division becomes effective,
15 including after the Director's approval of the plan or after
16 any hearing has been conducted under this Section, then the
17 dividing company shall file the amended plan of division for
18 approval by the Director pursuant to the provisions of this
19 Section. If the Director has already issued an order approving
20 the dividing company's previous plan of division under
21 subsection (i), then that order shall not be rescinded by the
22 Director's subsequent disapproval of an amended plan.

23 (1) If a hearing is conducted on the amended plan of
24 division after the Director has approved a previous plan
25 of division, then the hearing shall not be considered a
26 rehearing or a reopening of any hearing conducted on the

1 previous plan. Nothing in this Section shall prohibit the
2 dividing company from requesting a rehearing or reopening
3 of any hearing conducted on any disapproved plan of
4 division, amended or otherwise.

5 (2) Whether under direct review or in a hearing, the
6 Director may rely on information already submitted or
7 developed in connection with the previous plan of
8 division, as well as any findings of fact or conclusions
9 of law if a hearing has been conducted or an approval order
10 has been issued on the previous plan, to the extent the
11 information, findings, or conclusions remain relevant to
12 the amended plan of division, and the Director shall
13 collect any other information necessary to make a
14 determination under subsection (b).

15 (3) The fee assessed under Section 408 for filing a
16 plan of division shall not apply to the filing of an
17 amended plan of division, but subsection (h) shall apply
18 to all proceedings related to the amended plan.

19 (Source: P.A. 101-549, eff. 1-1-20; 102-394, eff. 8-16-21;
20 102-578, eff. 7-1-22 (See Section 5 of P.A. 102-672 for
21 effective date of P.A. 102-578).)

22 (215 ILCS 5/35B-30)

23 Sec. 35B-30. Certificate of division.

24 (a) After a plan of division has been adopted and
25 approved, an officer or duly authorized representative of the

1 dividing company shall sign a certificate of division.

2 (b) The certificate of division shall set forth:

3 (1) the name of the dividing company;

4 (2) a statement disclosing whether the dividing
5 company will survive the division;

6 (3) the name of each new company that will be created
7 by the division;

8 (4) the kinds of insurance business enumerated in
9 Section 4 that the new company will be authorized to
10 conduct;

11 (5) the date that the division is to be effective,
12 which shall not be more than 90 days after the dividing
13 company has filed the certificate of division with the
14 recorder, with a concurrent copy to the Director;

15 (6) a statement that the division was approved by the
16 Director in accordance with Section 35B-25, including the
17 date when approval was served on the dividing company;

18 (7) a statement that the dividing company provided, no
19 later than 10 business days after the dividing company
20 filed the plan of division with the Director, reasonable
21 notice to each reinsurer that is party to a reinsurance
22 contract that is applicable to the policies included in
23 the plan of division;

24 (8) if the dividing company will survive the division,
25 an amendment to its articles of incorporation or bylaws
26 approved as part of the plan of division;

1 (9) for each new company created by the division, its
2 articles of incorporation and bylaws, provided that the
3 articles of incorporation and bylaws need not state the
4 name or address of an incorporator; and

5 (10) a reasonable description of the capital, surplus,
6 other assets and liabilities, including policy
7 liabilities, of the dividing company that are to be
8 allocated to each resulting company.

9 (c) The articles of incorporation and bylaws of each new
10 company must satisfy the requirements of the laws of this
11 State, provided that the documents need not be signed or
12 include a provision that need not be included in a restatement
13 of the document.

14 (d) A certificate of division is effective when filed with
15 the recorder, with a concurrent copy to the Director, as
16 provided in this Section or on another date specified in the
17 plan of division, whichever is later, provided that a
18 certificate of division shall become effective not more than
19 90 days after it is filed with the recorder. A division is
20 effective when the relevant certificate of division is
21 effective.

22 (e) If the dividing company files an amended plan of
23 division with the Director after a certificate of division has
24 been filed for a previous plan, then the dividing company
25 shall file a certificate of stay with the recorder, with a
26 concurrent copy to the Director. The certificate of stay shall

1 identify the certificate of division being stayed and the date
2 on which the amended plan of division was filed with the
3 Director. If the Director issues an order on the amended plan,
4 or if the dividing company withdraws the amended plan before
5 an order is issued, then the dividing company shall file an
6 amended certificate of division pursuant to this Section.
7 Nothing in this subsection (e) shall allow a dividing company
8 to amend its plan of division under Section 35B-15 on or after
9 the effective date specified in a certificate of division that
10 is active or that has been stayed.

11 (Source: P.A. 102-775, eff. 5-13-22.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.