

2017 Illinois House Bill No. 5160, Illinois One Hundredth General Assembly - Second Regular Session

ILLINOIS BILL TEXT

TITLE: INS CD-DOMESTIC STOCK COMPANY

VERSION: Introduced
February 16, 2018
House, Rep. Lou Lang

 [Image 1 within document in PDF format.](#)

SUMMARY: Amends the Illinois Insurance Code. Creates the Domestic Stock Company Division Article in the Code. Provides that a domestic stock company may divide into 2 or more resulting companies pursuant to a plan of division. Contains provisions concerning the contents of the plan of division, approval of the plan of division by the Director of Insurance, effects of a division, certificates of division, liabilities, and shareholder rights. Makes conforming changes in provisions concerning mergers and consolidations.

TEXT:

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5160

Introduced , by Rep. Lou Lang

SYNOPSIS AS INTRODUCED: 215 ILCS 5/Art. IIB heading new 215 ILCS 5/35B-1 new 215 ILCS 5/35B-5 new 215 ILCS 5/35B-10 new 215 ILCS 5/35B-15 new 215 ILCS 5/35B-20 new 215 ILCS 5/35B-25 new 215 ILCS 5/35B-30 new 215 ILCS 5/35B-35 new 215 ILCS 5/35B-40 new 215 ILCS 5/35B-45 new 215 ILCS 5/35B-50 new 215 ILCS 5/156 from Ch. 73, par. 768

Amends the Illinois Insurance Code. Creates the Domestic Stock Company Division Article in the Code. Provides that a domestic stock company may divide into 2 or more resulting companies pursuant to a plan of division. Contains provisions concerning the contents of the plan of division, approval of the plan of division by the Director of Insurance, effects of a division, certificates of division, liabilities, and shareholder rights. Makes conforming changes in provisions concerning mergers and consolidations.

A BILL FOR

AN ACT concerning regulation.

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

Section 5. The Illinois Insurance Code is amended by adding

Article IIB and by changing Section 156

as follows: (215 ILCS 5/Art. IIB heading new) **ARTICLE IIB. DOMESTIC STOCK COMPANY DIVISION** (215 ILCS 5/35B-1 new)

Sec. 35B-1. Short title. This Article may be cited as the Domestic Stock Company Division.

(215 ILCS 5/35B-5 new)

Sec. 35B-5. Purpose. The purpose of this Article is to stimulate economic development in the State of Illinois by creating and sustaining employment opportunities and increasing and sustaining taxable revenue, through improving the competitive position of domestic stock companies, maintaining the competitiveness of this State as a state of domicile for domestic stock companies, and enhancing the desirability of this State as a jurisdiction of domicile for newly incorporating and existing foreign stock companies.

(215 ILCS 5/35B-10 new)

Sec. 35B-10. Definitions. As used in this Article: “Assets” means all assets or property, whether real, personal or mixed, tangible or intangible, and any right or interest therein, including all rights under contracts and other agreements.

”Capital” means the capital stock component of statutory surplus, as defined in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, version effective January 1, 2001, and subsequent revisions.

”Divide” or “division” means the act by operation of law by which a domestic stock company divides into 2 or more resulting companies in accordance with a plan of division and this Article;

”Dividing company” means a domestic stock company that approves a plan of division pursuant to Section 35B-20;

”Domestic stock company” means a domestic stock company transacting or being organized to transact any of the kinds of insurance business enumerated in Section 4.

”Liability” means a liability or obligation of any kind, character, or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, determined, determinable, or otherwise.

”New company” means a domestic stock company that is created by a division occurring on or after the effective date of this amendatory Act of the 100th General Assembly.

”Plan of division” means a plan of division approved by a dividing company in accordance Section 35B-20.

”Policy liability” means a liability as defined in this Section arising out of or related to an insurance policy, contract of insurance, or reinsurance agreement.

”Recorder” means the office of the recorder of the county where the principal office of a domestic stock company is located.

”Resulting company” means a domestic stock company created by a division or a dividing company that survives a division.

”Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

”Sign” or “signature” includes a manual, facsimile, or conformed or electronic signature.

”Surplus” means total statutory surplus less capital, calculated in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, version effective January 1, 2001, and subsequent revisions.

”Transfer” includes an assignment, assumption, conveyance, sale, lease, encumbrance, including a mortgage or security interest, gift, or transfer by operation of law.

(215 ILCS 5/35B-15 new)

Sec. 35B-15. Plan of division.

(a) A domestic stock company may, in accordance with the requirements of this Article, divide into 2 or more resulting companies pursuant to a plan of division.

(b) Each plan of division shall include:

(1) the name of the domestic stock company seeking to divide;

(2) the name of each resulting company that will be created by the proposed division;

(3) for each new company that will be created by the proposed division, a copy of its:

(A) proposed articles of incorporation;

(B) proposed bylaws; and

(C) the kinds of insurance business enumerated in

Section 4 that the new company would be authorized to conduct;

(4) the manner of allocating between or among the resulting companies:

(A) the assets of the domestic stock company that will not be owned by all of the resulting companies as tenants in common pursuant to Section 35B-35; and

(B) the liabilities of the domestic stock company, including policy liabilities, to which not all of the resulting companies will become jointly and severally liable pursuant to paragraph (3) of subsection (a) of

Section 35B-40;

(5) the manner of distributing shares in the new companies to the dividing company or its shareholders;

(6) a reasonable description of the liabilities, including policy liabilities, and items of capital, surplus, or other assets, in each case, that the domestic stock company proposes to allocate to each resulting company, including specifying the reinsurance contract, reinsurance coverage obligations, and related claims that are applicable to those policies;

(7) all terms and conditions required by the laws of this State or the articles of incorporation and bylaws of the domestic stock company;

(8) evidence demonstrating that the interest of all classes of policyholders of the dividing company will be properly protected; and

(9) all other terms and conditions of the division.

Nothing in this subsection (b) shall expand or reduce the allocation and assignment of reinsurance as stated in the reinsurance contract.

(c) If the domestic stock company survives the division, the plan of division shall include, in addition to the information required by subsection (b):

(1) all proposed amendments to the dividing company's articles of incorporation and bylaws, if any;

(2) if the dividing company desires to cancel some, but less than all, shares in the dividing company, the manner in which it will cancel such shares; and

(3) if the dividing company desires to convert some, but less than all, shares in the dividing company into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof, a statement disclosing the manner in which it will convert the shares.

(d) If the domestic stock company does not survive the proposed division, the plan of division shall contain, in addition to the information required by subsection (b), the manner in which the dividing company will cancel or convert shares in the dividing company into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof.

(e) Terms of a plan of division may be made dependent on facts objectively ascertainable outside of the plan of division.

(f) A dividing company may amend a plan of division in accordance with any procedures set forth in the plan of division or, if no such procedures are set forth in the plan of division, in any manner determined by the board of directors of the dividing company, except that a shareholder that was entitled to vote on or consent to approval of the plan of division is entitled to vote on or consent to any amendment of the plan of division that will change:

(1) the amount or kind of shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof, to be received by any of the shareholders of the dividing company under the plan of division;

(2) the articles of incorporation or bylaws of any resulting company that will be in effect when the division becomes effective, except for changes that do not require approval of the shareholders of the resulting company under its articles of incorporation or bylaws; or

(3) any other terms or conditions of the plan of division, if the change would adversely affect the shareholders in any material respect.

(g) A dividing company may abandon a plan of division after it has approved the plan of division without any action by the shareholders and in accordance with any procedures set forth in the plan of division or, if no such procedures are set forth in the plan of division, in a manner determined by the board of directors of the dividing company.

(h) A dividing company may abandon a plan of division after it has filed a certificate of division with the recorder by filing with the recorder, with concurrent copy to the director, a certificate of abandonment signed by the dividing company. The certificate of abandonment shall be effective on the date it is filed with the recorder and the dividing company shall be deemed to have abandoned its plan of division on such date.

(i) A dividing company may not abandon or amend its plan of division once the division becomes effective.

(215 ILCS 5/35B-20 new)

Sec. 35B-20. Requirements of a plan of division.

(a) A domestic stock company shall not file a plan of division with the Director unless the plan of division has been approved in accordance with:

- (1) any applicable provisions of its articles of incorporation and bylaws; and
- (2) all laws of this State governing the internal affairs of a domestic stock company that provide for approval of a merger.

(b) If any provision of the articles of incorporation or bylaws of a domestic stock company requires that a specific number or percentage of board of directors or shareholders approve the proposal or adoption of a plan of merger, or imposes other special procedures for the proposal or adoption of a plan of merger, such domestic stock company shall adhere to such provision in proposing or adopting a plan of division. If any provision of the articles of incorporation or bylaws of a domestic stock company is amended, such amendment shall thereafter apply to a division only in accordance with its express terms.

(215 ILCS 5/35B-25 new)

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

(a) A division shall not become effective until it is approved by the Director after reasonable notice and a public hearing, if the notice and hearing are deemed by the Director to be in the public interest. The Director shall hold a public hearing if one is requested by the dividing company. A hearing conducted under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act.

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

- (1) the interest of any class of policyholder or shareholder of the dividing company will not be properly protected;
- (2) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, would be ineligible to receive a license to do insurance business in this State pursuant to Section 5;
- (3) the proposed division violates a provision of the

Uniform Fraudulent Transfer Act;

- (4) the division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing company;
- (5) one or more resulting companies will not be solvent upon the consummation of the division; or
- (6) the remaining assets of one or more resulting companies will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the resulting company was engaged or is about to engage.

(c) In determining whether the standards set forth in paragraph (3) of subsection (b) have been satisfied, the Director shall only apply the Uniform Fraudulent Transfer Act to a dividing company in its capacity as a resulting company and shall not apply the Uniform Fraudulent Transfer Act to any dividing company that is not proposed to survive the division.

(d) In determining whether the standards set forth in paragraphs (3), (4), (5), and (6) of subsection (b) have been satisfied, the Director may consider all proposed assets of the resulting company, including, without limitation, reinsurance agreements, parental guarantees, support or keep well agreements, or capital maintenance or contingent

capital agreements, in each case, regardless of whether the same would qualify as an admitted asset as defined in Section 3.1.

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

(1) the resulting company as a debtor;

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

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

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

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

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

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

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

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

(215 ILCS 5/35B-30 new)

Sec. 35B-30. Certificate of division.

(a) After a plan of division has been adopted and approved, an officer or duly authorized representative of the dividing company shall sign a certificate of division.

(b) The certificate of division shall set forth:

(1) the name of the dividing company;

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

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

(4) the kinds of insurance business enumerated in

Section 4 that the new company will be authorized to conduct;

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

(6) a statement that the division was approved by the

Director in accordance with Section 35B-25;

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

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

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

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

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

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

(215 ILCS 5/35B-35 new)

Sec. 35B-35. Effects of division.

(a) When a division becomes effective pursuant to Section 35B-30:

(1) if the dividing company has survived the division:

(A) it continues to exist;

(B) its articles of incorporation shall be amended, if necessary, as provided in the plan of division; and

(C) its bylaws shall be amended, if necessary, as provided in the plan of division;

(2) if the dividing company has not survived the division, its separate existence ceases to exist;

(3) each new company:

(A) comes into existence;

(B) shall hold any capital, surplus, and other assets allocated to such new company by the plan of division as a successor to the dividing company, automatically, by operation of law and not by transfer, whether directly or indirectly; and

(C) its articles of incorporation, if any, and bylaws, if any, shall be effective;

(4) capital, surplus, and other assets of the dividing company:

(A) that is allocated by the plan of division either:

(i) vests in the applicable new company as provided in the plan of division; or

(ii) remains vested in the dividing company as provided in the plan of division;

(B) that is not allocated by the plan of division either:

(i) remains vested in the dividing company, if the dividing company survives the division; or

(ii) is allocated to and vests equally in the resulting companies as tenants in common, if the dividing company does not survive the division; or

(C) otherwise vests as provided in this subsection without transfer, reversion, or impairment;

(5) a resulting company to which a cause of action is allocated as provided in paragraph (4) of this subsection

(a) may be substituted or added in any pending action or proceeding to which the dividing company is a party when the division becomes effective;

(6) the liabilities, including policy liabilities, of the dividing company are allocated between or among the resulting companies as provided in Section 35B-40 and each resulting company to which liabilities are allocated is liable only for those liabilities, including policy liabilities, so allocated as successors to the dividing company, automatically, by operation of law, and not by transfer (or, for the avoidance of doubt, assumption), whether directly or indirectly; and

(7) the shares in the dividing company that are to be converted or canceled in the division are converted or canceled, and the shareholders of those shares are entitled only to the rights provided to them under the plan of division and any appraisal rights that they may have pursuant to Section 35B-45.

(b) Except as provided in the articles of incorporation or bylaws of the dividing company, the division does not give rise to any rights that a shareholder, director of a domestic stock company, or third party would have upon a dissolution, liquidation, or winding up of the dividing company.

(c) The allocation to a new company of capital, surplus, or other assets that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new company as a debtor is effective under the Uniform Commercial Code.

(d) Unless otherwise provided in the plan of division, the shares in and any securities of each new company shall be distributed to:

(1) the dividing company, if it survives the division;

or

(2) shareholders of the dividing company that do not assert any appraisal rights that they may have pursuant to

Section 35B-45, pro rata.

(215 ILCS 5/35B-40 new)

Sec. 35B-40. Resulting company liabilities.

(a) Except as otherwise expressly provided in this Section, when a division becomes effective, each resulting company is responsible, automatically, by operation of law, for:

(1) individually, the liabilities, including policy liabilities, that the resulting company issues, undertakes, or incurs in its own name after the division;

(2) individually, the liabilities, including policy liabilities, of the dividing company that are allocated to or remain the liability of the resulting company to the extent specified in the plan of division; and

(3) jointly and severally with the other resulting companies, the liabilities, including policy liabilities, of the dividing company that are not allocated by the plan of division.

(b) Except as otherwise expressly provided in this Section, when a division becomes effective, no resulting company is responsible for or shall have any liability or obligation in respect of:

(1) any liabilities, including policy liabilities, that another resulting company issues, undertakes, or incurs in its own name after the division; or

(2) any liabilities, including policy liabilities, of the dividing company that are allocated to or remain the liability of another resulting company in accordance with the plan of division.

(c) If a provision of a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, indenture or other contract relating to indebtedness, or a provision of any other type of contract other than an insurance policy, annuity, or reinsurance agreement, that was issued, incurred, or executed by the domestic stock company before requires the consent of the obligee to a merger of the dividing company or treats the merger as a default, that provision applies to a division of the dividing company as if the division was a merger.

(d) If a division breaches a contractual obligation of the dividing company at the time the division becomes effective, all of the resulting companies are liable, jointly and severally, for the contractual breach, but the validity and effectiveness of the division, including, without limitation, the allocation of liabilities in accordance with the plan of division, shall not be affected by the contractual breach.

(e) A direct or indirect allocation of capital, surplus, assets, or liabilities, including policy liabilities, in a division shall occur automatically, by operation of law, and shall not be treated as a distribution or transfer for any purpose with respect to either the dividing company or any of the resulting companies.

(f) Liens, security interests, and other charges on the capital, surplus, or other assets of the dividing company are not impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities, including policy liabilities, of the dividing company.

(g) If the dividing company is bound by a security agreement governed by Article 9 of the Uniform Commercial Code as enacted in this State or in any other jurisdiction, and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting company is bound by the security agreement.

(h) An allocation of a policy or other liability does not:

(1) except as provided in the plan of division and specifically approved by the Director, affect the rights that a policyholder or creditor has under other law in respect of the policy or other liability, except that those rights are available only against a resulting company responsible for the policy or liability under this Section;

or

(2) release or reduce the obligation of a reinsurer, surety, or guarantor of the policy or liability.

(i) A resulting company shall only be liable for the liabilities allocated to it in accordance with the plan of division and this Section and shall not be liable for any other liabilities under the common law doctrine of successor liability or a similar theory of liability applicable to transferees or assignees of property.

(215 ILCS 5/35B-45 new)

Sec. 35B-45. Shareholder rights. If the dividing company does not survive the division, an objecting shareholder of a dividing company is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the same manner and to the extent provided for pursuant to Section 167.

(215 ILCS 5/35B-50 new)

Sec. 35B-50. Rules. The Director may adopt such rules as are necessary or appropriate to carry out this Article.

(215 ILCS 5/156) (from Ch. 73, par. 768)

Sec. 156. Merger and consolidation permitted.

(a) Upon complying with the provisions of this article, any domestic company, except a Lloyds, is hereby authorized and empowered to merge or consolidate with any domestic company or with any foreign or alien company, except a Lloyds if the surviving company meets the requirements for authorization to engage in the insurance business in this state and, if such merger or consolidation is authorized by the laws of the state or country under which such foreign or alien company is incorporated or organized.

(b) The Director may permit the formation of a domestic stock company that is established for the sole purpose of merging or consolidating with an existing stock company simultaneously with the effectiveness of a division authorized by this Code. Upon request of the dividing company, the Director may waive the requirements of Section 131.8 of this Code. Each domestic stock company formed under this subsection shall be deemed to exist before a merger and division under this Section becomes effective, but solely for the purpose of being a party to such merger and division. The Director shall not require that such domestic stock company be licensed to transact insurance business in this state before such merger and division. All insurance policies, annuities, or reinsurance agreements allocated to such domestic stock company shall become the obligation of the domestic stock company that survives the merger simultaneously with the effectiveness of the merger and division. The plan of merger or consolidation shall be deemed to have been authorized and approved by such domestic stock company if the dividing company authorized and approved such plan. The certificate of merger shall state that it was approved by the domestic stock company formed under this subsection. (Source: Laws 1967, p. 1760.)