

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 adding  
5 Article IIB and by changing Section 156 as follows:

6 (215 ILCS 5/Art. IIB heading new)

7 ARTICLE IIB. DOMESTIC STOCK COMPANY DIVISION

8 (215 ILCS 5/35B-1 new)

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

11 (215 ILCS 5/35B-5 new)

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

1 (215 ILCS 5/35B-10 new)

2 Sec. 35B-10. Definitions. As used in this Article:

3 "Assets" means all assets or property, whether real,  
4 personal or mixed, tangible or intangible, and any right or  
5 interest therein, including all rights under contracts and  
6 other agreements.

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

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

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

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

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

26 "New company" means a domestic stock company that is

1 created by a division occurring on or after the effective date  
2 of this amendatory Act of the 100th General Assembly.

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

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

8 "Recorder" means the office of the recorder of the county  
9 where the principal office of a domestic stock company is  
10 located.

11 "Resulting company" means a domestic stock company created  
12 by a division or a dividing company that survives a division.

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

17 "Sign" or "signature" includes a manual, facsimile, or  
18 conformed or electronic signature.

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

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

1 (215 ILCS 5/35B-15 new)

2 Sec. 35B-15. Plan of division.

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

6 (b) Each plan of division shall include:

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

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

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

13 (A) proposed articles of incorporation;

14 (B) proposed bylaws; and

15 (C) the kinds of insurance business enumerated in  
16 Section 4 that the new company would be authorized to  
17 conduct;

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

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

23 (B) the liabilities of the domestic stock company,  
24 including policy liabilities, to which not all of the  
25 resulting companies will become jointly and severally

1           liable pursuant to paragraph (3) of subsection (a) of  
2           Section 35B-40;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the plan of division that will change:

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

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

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

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

21 (h) A dividing company may abandon a plan of division after  
22 it has filed a certificate of division with the recorder by  
23 filing with the recorder, with concurrent copy to the director,  
24 a certificate of abandonment signed by the dividing company.  
25 The certificate of abandonment shall be effective on the date  
26 it is filed with the recorder and the dividing company shall be

1 deemed to have abandoned its plan of division on such date.

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

4 (215 ILCS 5/35B-20 new)

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

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

9 (1) any applicable provisions of its articles of  
10 incorporation and bylaws; and

11 (2) all laws of this State governing the internal  
12 affairs of a domestic stock company that provide for  
13 approval of a merger.

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



1 (215 ILCS 5/35B-25 new)

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

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

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

12 (1) the interest of any class of policyholder or  
13 shareholder of the dividing company will not be properly  
14 protected;

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

20 (3) the proposed division violates a provision of the  
21 Uniform Fraudulent Transfer Act;

22 (4) the division is being made for purposes of  
23 hindering, delaying, or defrauding any policyholders or  
24 other creditors of the dividing company;

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

1           (6) the remaining assets of one or more resulting  
2           companies will be, upon consummation of a division,  
3           unreasonably small in relation to the business and  
4           transactions in which the resulting company was engaged or  
5           is about to engage.

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

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

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

24                   (1) the resulting company as a debtor;

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

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

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

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

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

26           (h) All expenses incurred by the Director in connection

1 with proceedings under this Section, including expenses for the  
2 services of any attorneys, actuaries, accountants, and other  
3 experts as may be reasonably necessary to assist the Director  
4 in reviewing the proposed division, shall be paid by the  
5 dividing company filing the plan of division. A dividing  
6 company may allocate expenses described in this subsection in a  
7 plan of division in the same manner as any other liability.

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

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

18 (215 ILCS 5/35B-30 new)

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

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

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

24 (1) the name of the dividing company;

25 (2) a statement disclosing whether the dividing

1 company will survive the division;

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

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

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

11 (6) a statement that the division was approved by the  
12 Director in accordance with Section 35B-25;

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

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

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

26 (9) a reasonable description of the capital, surplus,

1 other assets and liabilities, including policy  
2 liabilities, of the dividing company that are to be  
3 allocated to each resulting company.

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

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

17 (215 ILCS 5/35B-35 new)

18 Sec. 35B-35. Effects of division.

19 (a) When a division becomes effective pursuant to Section  
20 35B-30:

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

22 (A) it continues to exist;

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

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

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

5           (3) each new company:

6                 (A) comes into existence;

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

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

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

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

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

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

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

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

26                    (ii) is allocated to and vests equally in the

1           resulting companies as tenants in common, if the  
2           dividing company does not survive the division; or  
3           (C) otherwise vests as provided in this subsection  
4           without transfer, reversion, or impairment;

5           (5) a resulting company to which a cause of action is  
6           allocated as provided in paragraph (4) of this subsection  
7           (a) may be substituted or added in any pending action or  
8           proceeding to which the dividing company is a party when  
9           the division becomes effective;

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

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

25           (b) Except as provided in the articles of incorporation or  
26           bylaws of the dividing company, the division does not give rise



1 to any rights that a shareholder, director of a domestic stock  
2 company, or third party would have upon a dissolution,  
3 liquidation, or winding up of the dividing company.

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

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

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

13 or

14 (2) shareholders of the dividing company that do not  
15 assert any appraisal rights that they may have pursuant to  
16 Section 35B-45, pro rata.

17 (215 ILCS 5/35B-40 new)

18 Sec. 35B-40. Resulting company liabilities.

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

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

25 (2) individually, the liabilities, including policy

1 liabilities, of the dividing company that are allocated to  
2 or remain the liability of the resulting company to the  
3 extent specified in the plan of division; and

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

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

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

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

19 (c) If a provision of a debt security, note, or similar  
20 evidence of indebtedness for money borrowed, whether secured or  
21 unsecured, indenture or other contract relating to  
22 indebtedness, or a provision of any other type of contract  
23 other than an insurance policy, annuity, or reinsurance  
24 agreement, that was issued, incurred, or executed by the  
25 domestic stock company before requires the consent of the  
26 obligee to a merger of the dividing company or treats the

1 merger as a default, that provision applies to a division of  
2 the dividing company as if the division was a merger.

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

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

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

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

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

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

8 or

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

11 (215 ILCS 5/35B-45 new)

12 Sec. 35B-45. Shareholder rights. If the dividing company  
13 does not survive the division, an objecting shareholder of a  
14 dividing company is entitled to appraisal rights and to obtain  
15 payment of the fair value of that shareholder's shares, in the  
16 same manner and to the extent provided for pursuant to Section  
17 167.

18 (215 ILCS 5/35B-50 new)

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

21 (215 ILCS 5/156) (from Ch. 73, par. 768)

22 Sec. 156. Merger and consolidation permitted.

23 (a) Upon complying with the provisions of this article, any

1 domestic company, except a Lloyds, is hereby authorized and  
2 empowered to merge or consolidate with any domestic company or  
3 with any foreign or alien company, except a Lloyds if the  
4 surviving company meets the requirements for authorization to  
5 engage in the insurance business in this state and, if such  
6 merger or consolidation is authorized by the laws of the state  
7 or country under which such foreign or alien company is  
8 incorporated or organized.

9 (b) The Director may permit the formation of a domestic  
10 stock company that is established for the sole purpose of  
11 merging or consolidating with an existing stock company  
12 simultaneously with the effectiveness of a division authorized  
13 by this Code. Upon request of the dividing company, the  
14 Director may waive the requirements of Section 131.8 of this  
15 Code. Each domestic stock company formed under this subsection  
16 shall be deemed to exist before a merger and division under  
17 this Section becomes effective, but solely for the purpose of  
18 being a party to such merger and division. The Director shall  
19 not require that such domestic stock company be licensed to  
20 transact insurance business in this state before such merger  
21 and division. All insurance policies, annuities, or  
22 reinsurance agreements allocated to such domestic stock  
23 company shall become the obligation of the domestic stock  
24 company that survives the merger simultaneously with the  
25 effectiveness of the merger and division. The plan of merger or  
26 consolidation shall be deemed to have been authorized and

1 approved by such domestic stock company if the dividing company  
2 authorized and approved such plan. The certificate of merger  
3 shall state that it was approved by the domestic stock company  
4 formed under this subsection.

5 (Source: Laws 1967, p. 1760.)