

**THE INSURANCE CODE OF 1956 (EXCERPT)**

**Act 218 of 1956**

**CHAPTER 55**

**DOMESTIC STOCK INSURER DIVISION**

**500.5500 Definitions.**

Sec. 5500. As used in this chapter:

(a) "Assets" means property, whether real, personal, mixed, tangible, or intangible, and any right or interest in the property, including all rights under contracts and other agreements.

(b) "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.

(c) "Divide" or "division" means the act by operation of law by which a domestic stock insurer divides into 2 or more resulting insurers in accordance with a plan of division and this chapter.

(d) "Dividing insurer" means a domestic stock insurer that approves a plan of division pursuant to section 5505.

(e) "Domestic stock insurer" means a domestic stock insurer organized or created under the laws of this state.

(f) "Insurer" means a corporation engaged or attempting to engage in the business of making insurance or surety contracts.

(g) "Liability" means any 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.

(h) "New insurer" means a domestic stock insurer that is created by a division occurring on or after the effective date of the amendatory act that added this chapter.

(i) "Plan of division" means a plan of division approved by a dividing insurer in accordance with section 5505.

(j) "Resulting insurer" means a domestic stock insurer created by a division or a dividing insurer that survives a division.

(k) "Shareholder" means the person in whose name a share is registered in the records of a corporation or the beneficial owner of a share to the extent of the rights granted by a nominee certificate on file with a corporation.

(l) "Sign" or "signature" includes a manual, facsimile, conformed, or electronic signature.

(m) "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.

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

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

**500.5503 Domestic stock insurer; division into 2 or more insurers; plan of division; requirements; amendment procedures; abandonment of plan.**

Sec. 5503. (1) A domestic stock insurer may, in accordance with the requirements of this chapter, divide into 2 or more resulting insurers pursuant to a plan of division.

(2) Each plan of division must include all of the following:

(a) The name of the domestic stock insurer seeking to divide.

(b) The name of each resulting insurer that will be created by the proposed division.

(c) For each new insurer that will be created by the proposed division, a copy of both of the following:

(i) Its proposed articles of incorporation.

(ii) Its proposed bylaws.

(d) The manner of allocating between or among the resulting insurers both of the following:

(i) The assets of the domestic stock insurer that will not be owned by, if the dividing insurer survives the division, the dividing insurer, or, if the dividing insurer does not survive the division, all of the resulting insurers as tenants in common under section 5511.

(ii) The liabilities of the domestic stock insurer, including policy liabilities, to which not all of the resulting insurers will become jointly and severally liable under section 5513(1)(c).

- (e) The manner of distributing shares in the new insurers to the dividing insurer or its shareholders.
- (f) A reasonable description of the liabilities, including policy liabilities, and items of capital, surplus, or other assets, in each case, that the domestic stock insurer proposes to allocate to each resulting insurer, including the manner by which each reinsurance contract is to be allocated.
- (g) All terms and conditions required by the laws of this state or the articles of incorporation and bylaws of the domestic stock insurer.
- (h) All other terms and conditions of the division.
- (3) If the domestic stock insurer will survive the division, the plan of division must include, in addition to the information required by subsection (2), all of the following:
  - (a) All proposed amendments to the dividing insurer's articles of incorporation and bylaws, if any.
  - (b) If the dividing insurer desires to cancel some, but fewer than all, shares in the dividing insurer, the manner in which it will cancel the shares.
  - (c) If the dividing insurer desires to convert some, but fewer than all, shares in the dividing insurer 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.
  - (4) If the domestic stock insurer will not survive the proposed division, the plan of division must contain, in addition to the information required by subsection (2), the manner in which the dividing insurer will cancel or convert shares in the dividing insurer into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof.
  - (5) A dividing insurer may amend a plan of division in accordance with any procedures set forth in the plan of division or, if no procedures are set forth in the plan of division, in any manner determined by the board of directors of the dividing insurer, 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 any of the following:
    - (a) 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 insurer under the plan of division.
    - (b) The articles of incorporation or bylaws of any resulting insurer that will be in effect when the division becomes effective, except for changes that do not require approval of the shareholders of the resulting insurer under its articles of incorporation or bylaws.
    - (c) Any other terms or conditions of the plan of division, if the change would adversely affect the shareholders in any material respect.
  - (6) A dividing insurer 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 procedures are set forth in the plan of division, in a manner determined by the board of directors of the dividing insurer.
  - (7) A dividing insurer may abandon a plan of division after it has filed a certificate of division with the department by filing with the department a notice of abandonment signed by the dividing insurer. The notice of abandonment is effective on the date it is filed with the department and the dividing insurer is considered to have abandoned its plan of division on that date.
  - (8) A dividing insurer shall not abandon or amend its plan of division once the division becomes effective.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

#### **500.5505 Filing plan of division with the department; approval by board of directors and shareholders; effectiveness of certain provisions; reasonable notice.**

Sec. 5505. (1) A domestic stock insurer shall not file a plan of division with the director of the department unless the plan of division has been approved in accordance with all provisions of its articles of incorporation and bylaws and by the board of directors and shareholders of the dividing insurer.

(2) If a provision of the articles of incorporation or bylaws of a domestic stock insurer adopted before the effective date of the amendatory act that added this chapter requires that a specific number or percentage of the 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 division, the domestic stock insurer shall adhere to the provision in proposing or adopting a plan of division. If a provision of the articles of incorporation or bylaws of a domestic stock insurer is amended on or after the effective date of the amendatory act that added this chapter, the provision applies to a division only in accordance with its express terms.

(3) Within 10 business days after filing the plan of division with the director of the department, the dividing insurer shall provide reasonable notice of the filing to each reinsurer that is a party to a reinsurance

contract allocated in the plan of division.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

**500.5507 Notice and hearing of plan required; approval and filing with department; conditions of approval; confidentiality of certain financial information; payment of department expenses; order.**

Sec. 5507. (1) A division does not become effective until it is approved by the director of the department after reasonable notice and a public hearing. A hearing conducted under this section must be conducted as a contested case subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Subject to subsection (12), the director of the department shall approve a plan of division unless the director of the department finds any of the following:

(a) The interest of the policyholders of the dividing insurer that may become policyholders of a resulting insurer will not be adequately protected by the resulting insurer or acquiring party of a resulting insurer, if any.

(b) After the division, any resulting insurer would not be able to satisfy the requirements for the issuance of a certificate of authority.

(c) The division would substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

(d) The financial condition of an acquiring party of a resulting insurer, if any, is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining shareholder that is unaffiliated with the acquiring party.

(e) The terms of the plan of division are unfair and unreasonable to the dividing insurer's policyholders or shareholders.

(f) An acquiring party of a resulting insurer, if any, has plans or proposals to liquidate the resulting insurer, sell its assets, or consolidate or merge the resulting insurer with a person, or to make any other material change in its business or corporate structure or management, that are unfair and unreasonable to the resulting insurer's policyholders, and not in the public interest.

(g) The competence, experience, and integrity of the persons who would control the operation of a resulting insurer are such that it would not be in the interest of the resulting insurer's policyholders or the general public to permit the division.

(h) The division is likely to be hazardous or prejudicial to the insurance-buying public.

(i) The proposed division violates the uniform voidable transactions act, 1998 PA 434, MCL 566.31 to 566.45.

(j) The division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing insurer.

(k) One or more resulting insurers will not be solvent on the consummation of the division.

(l) The assets allocated to 1 or more resulting insurers will be, on consummation of a division, unreasonably small in relation to the business and transactions in which the resulting insurer was engaged or is about to engage.

(3) If a division is undertaken in conjunction with the divestiture of 1 of the resulting insurers, the director shall not approve the division until the potential acquiring party has received the necessary approvals under section 1315 or 7604, as applicable.

(4) In determining whether the standards set forth in subsection (2)(i) have been satisfied, the director of the department shall only apply the uniform voidable transactions act, 1998 PA 434, MCL 566.31 to 566.45, to a dividing insurer in its capacity as a resulting insurer and shall not apply the uniform voidable transactions act, 1998 PA 434, MCL 566.31 to 566.45, to any dividing insurer that is not proposed to survive the division.

(5) In determining whether the standards set forth in subsection (2)(i), (j), (k), and (l) have been satisfied, the director of the department may consider, among other things, all assets, liabilities, and cash flows.

(6) In determining whether the standards set forth in subsection (2)(i) have been satisfied, with respect to each resulting insurer, the director of the department shall, in applying the uniform voidable transactions act, 1998 PA 434, MCL 566.31 to 566.45, do all of the following:

(a) Treat the resulting insurer as a debtor.

(b) Treat liabilities allocated to the resulting insurer as obligations incurred by a debtor.

(c) Treat the resulting insurer as not having received reasonably equivalent value in exchange for incurring the obligations.

(d) Treat assets allocated to the resulting insurer as remaining property.

(7) All information, documents, materials, and copies of documents and materials submitted to, obtained

by, or disclosed to the director of the department in connection with a plan of division or in contemplation of a plan of division, including any information, documents, materials, or copies provided by or on behalf of a domestic stock insurer in advance of its adoption or submission of a plan of division, are confidential and are subject to the same protection and treatment in accordance with section 1355 as information and documents disclosed to or obtained by the director of the department in the course of an examination or investigation made under sections 1351 and 1357 until the time, if any, that a notice of the hearing contemplated by subsection (1) is issued.

(8) From and after the issuance of a notice of the hearing contemplated by subsection (1), all business, financial, and actuarial information for which the domestic stock insurer requests confidential treatment, other than the plan of division and any materials incorporated by reference into or otherwise made a part of the plan of division that must not be eligible for confidential treatment after the issuance of a notice of the hearing, continues to be confidential and is not available for public inspection and must be subject to the same protection and treatment in accordance with section 1355 as information and documents disclosed to or obtained by the director of the department in the course of an examination or investigation made under sections 1351 and 1357. However, if the director of the department determines that the interest of the public in making the information available for public inspection outweighs the interest of the dividing insurer in keeping the information confidential, the director of the department may, after notice and an opportunity to be heard, make the information available to public inspection in accordance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) All expenses incurred by the director of the department in connection with proceedings under this section, including expenses for the services of any attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff as may be reasonably necessary to assist the director in reviewing the proposed division, must be paid by the dividing insurer filing the plan of division. A dividing insurer may allocate expenses described in this subsection in a plan of division in the same manner as any other liability.

(10) If the director of the department approves a plan of division, the director of the department shall issue an order approving the plan of division that must be accompanied by findings of fact and conclusions of law.

(11) The conditions in this section for freeing 1 or more of the resulting insurers from the liabilities of the dividing insurer and for allocating some or all of the liabilities of the dividing insurer are conclusively satisfied if the plan of division has been approved by the director of the department in a final order, after all relevant appeals relating to the final order have been exhausted.

(12) The director may establish any additional procedures necessary or appropriate in connection with his or her review of a plan of division.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

#### **500.5509 Certificate of division; contents; effective date.**

Sec. 5509. (1) After a plan of division has been adopted and approved under sections 5503 to 5507, an officer or duly authorized representative of the dividing insurer shall sign a certificate of division. The certificate of division is a public document.

(2) The certificate of division must set forth all of the following:

(a) The name of the dividing insurer.

(b) A statement disclosing whether the dividing insurer will survive the division.

(c) The name of each new insurer that will be created by the division.

(d) The date on which the division is to be effective, which must not be more than 90 days after the dividing insurer has filed the certificate of division with the department.

(e) A statement that the division was approved by the director of the department in accordance with section 5507.

(3) The articles of incorporation and bylaws of each new insurer must satisfy the requirements of the laws of this state.

(4) A certificate of division is effective when filed with the department as provided in this section or on another date specified in the plan of division, whichever is later. However, a certificate of division must become effective not more than 90 days after the related plan of division has been approved by the department. A division is effective when the relevant certificate of division is effective.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

#### **500.5511 Division effectiveness; allocation and distribution of assets and liabilities.**

Sec. 5511. (1) When a division becomes effective under section 5509(4), all of the following apply:

- (a) If the dividing insurer has survived the division:
  - (i) It continues to exist.
  - (ii) Its articles of incorporation must be amended, if at all, as provided in the plan of division.
  - (iii) Its bylaws must be amended, if at all, as provided in the plan of division.
- (b) If the dividing insurer has not survived the division, its separate existence ceases to exist, subject to satisfying the other requirements of this state relating to the surrender of a certificate of authority to the extent applicable.
- (c) All of the following apply to each new insurer:
  - (i) It comes into existence.
  - (ii) It shall hold any capital, surplus, and other assets allocated to the new insurer by the plan of division as a successor to the dividing insurer, automatically, by operation of law and not by transfer, whether directly or indirectly.
  - (iii) Its articles of incorporation, if any, and bylaws, if any, are effective.
  - (iv) The director of the department shall issue a certificate of authority, subject to satisfying the other requirements of this state relating to the formation and licensure of new domestic stock insurers to the extent applicable.
- (d) Capital, surplus, and other assets of the dividing insurer are vested as follows:
  - (i) If it is allocated by the plan of division, it vests in the applicable resulting insurer as provided in the plan of division.
  - (ii) If it is not allocated by the plan of division, it vests, if the dividing insurer survives the division, in the dividing insurer or, if the dividing insurer does not survive the division, equally in the resulting insurers as tenants in common.
  - (iii) Otherwise it vests as provided in this section without transfer, reversion, or impairment.
- (e) A resulting insurer to which a cause of action is allocated as provided in subdivision (d) may be substituted or added in any pending action or proceeding to which the dividing insurer is a party when the division becomes effective.
- (f) The liabilities, including policy liabilities, of the dividing insurer are allocated between or among the resulting insurers as provided in section 5513 and each resulting insurer to which liabilities are allocated is liable only for those liabilities, including policy liabilities, so allocated as successors to the dividing insurer, automatically, by operation of law, and not by transfer or assumption, whether directly or indirectly.
- (g) The shares in the dividing insurer 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 under section 5515.
- (2) Except as provided in the articles of incorporation or bylaws of the dividing insurer, the division does not give rise to any rights that a shareholder, director of domestic stock insurer, or third party would have on a dissolution, liquidation, or winding up of the dividing insurer.
- (3) The allocation to a new insurer of capital, surplus, or other assets that is collateral covered by an effective financing statement is not effective until a new financing statement naming the new insurer as a debtor is effective under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994.
- (4) Unless otherwise provided in the plan of division, the shares in and any securities of each new insurer must be distributed to either of the following:
  - (a) The dividing insurer, if it survives the division.
  - (b) Shareholders of the dividing insurer that do not assert any appraisal rights that they may have under section 5515, pro rata.
- (5) A division that becomes effective under section 5509(4) is not an assignment of any insurance policy, annuity, or reinsurance agreement or any other type of contract.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

### **500.5513 Responsibilities, liabilities, and obligations of resulting insurer.**

Sec. 5513. (1) Except as otherwise expressly provided in this section, when a division becomes effective, each resulting insurer is responsible, automatically, by operation of law, for all of the following:

- (a) Individually, the liabilities, including policy liabilities, that the resulting insurer issues, undertakes, or incurs in its own name after the division.
- (b) Individually, the liabilities, including policy liabilities, of the dividing insurer that are allocated to the resulting insurer to the extent specified in the plan of division.
- (c) Jointly and severally with the other resulting insurers, the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division.



(2) Except as otherwise expressly provided in this section, when a division becomes effective, a resulting insurer is not responsible for and does not have any liability or obligation in respect of either of the following:

(a) Any liabilities, including policy liabilities, that another resulting insurer issues, undertakes, or incurs in its own name after the division.

(b) Any liabilities, including policy liabilities, of the dividing insurer that are allocated to another resulting insurer in accordance with the plan of division.

(3) If a provision of any 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 insurer before the effective date of the amendatory act that added this chapter requires the consent of the obligee to a merger of the dividing insurer or treats the merger as a default and does not provide that a division of the insurer does not require the consent of the obligee, as applicable, that provision applies to a division of the dividing insurer as if the division were a merger.

(4) If, after the approval of a plan of division, it is found that the act of undertaking a division itself breached a contractual obligation of the dividing insurer when the division became effective, all of the resulting insurers 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, is not affected by the contractual breach.

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

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

(7) If the dividing insurer is bound by a security agreement under article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to 440.9994, or the substantial equivalent enacted in any other jurisdiction, and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting insurer is bound by the security agreement.

(8) An allocation of a policy or other liability does not do either of the following:

(a) 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 insurer responsible for the policy or liability under this section.

(b) Release or reduce the obligation of a reinsurer, surety, or guarantor of the policy or liability.

(9) A resulting insurer is only liable for the liabilities allocated to it in accordance with the plan of division and this section and is not liable for any other liabilities under the common law doctrine of successor liability or any similar theory of liability applicable to transferees or assignees of property.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

#### **500.5515 Record shareholder of non-surviving insurer right to dissent and obtain payment.**

Sec. 5515. If the dividing insurer does not survive the division, a record shareholder of a dividing insurer is entitled to dissent from and obtain payment of the fair value of that shareholder's shares, in the same manner and to the extent provided for under sections 1762 to 1774 of the business corporation act, 1972 PA 284, MCL 450.1762 to 450.1774.

**History:** Add. 2018, Act 421, Imd. Eff. Dec. 20, 2018.

**Popular name:** Act 218

#### **500.5517 Shareholder right to dissent and obtain payment in connection with division; application of MCL 450.1762 to shareholder actions.**

Sec. 5517. (1) A shareholder of a dividing insurer is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in connection with, a division under this chapter in which the dividing insurer does not survive the division, unless the shares are converted into or canceled solely for 1 or more of the following:

(a) Cash.

(b) Shares that are listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, on the record date fixed to vote on the plan of division.

(2) Section 1762 of the business corporation act, 1972 PA 284, MCL 450.1762, applies to a shareholder

exercising the rights in the same manner as would be applicable to a merger of a domestic corporation.

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