

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 602

Introduced by Lindstrom, 18.

Read first time January 23, 2019

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to relating to insurance; to amend section
- 2 44-224.04, Revised Statutes Cumulative Supplement, 2018; to adopt
- 3 the Domestic Stock Insurance Company Division Act; to harmonize
- 4 provisions; to repeal the original section; and to declare an
- 5 emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known and may be
2 cited as the Domestic Stock Insurance Company Division Act.

3 Sec. 2. The purpose of the Domestic Stock Insurance Company
4 Division Act is to stimulate economic development in the state by
5 creating and sustaining employment opportunities and fostering economic
6 growth through improving the competitive position of domestic stock
7 insurance companies, maintaining the competitiveness of this state as a
8 state of domicile for domestic stock insurance companies, and enhancing
9 the desirability of this state as a jurisdiction of domicile for newly
10 incorporating and existing foreign stock companies.

11 Sec. 3. Unless otherwise specified in section 44-103, as used in
12 the Domestic Stock Insurance Company Division Act:

13 (1) Assets means all assets or property, whether real, personal or
14 mixed, tangible or intangible, and any right or interest therein,
15 including all rights under contracts and other agreements;

16 (2) Capital means the capital stock component of statutory surplus,
17 as defined in the National Association of Insurance Commissioners
18 Accounting Practices and Procedures Manual;

19 (3) Department means the Department of Insurance;

20 (4) Director means the Director of Insurance;

21 (5) Divide or division means the act by operation of law by which a
22 domestic stock insurance company divides into two or more resulting
23 companies in accordance with a plan of division and the act;

24 (6) Dividing company means a domestic stock insurance company that
25 approves a plan of division pursuant to the act;

26 (7) Domestic stock insurance company means a domestic stock
27 insurance company transacting or being organized to transact any of the
28 kinds of insurance businesses enumerated in section 44-201;

29 (8) Liability means a liability or obligation of any kind,
30 character, or description, whether known or unknown, absolute or
31 contingent, accrued or unaccrued, disputed or undisputed, liquidated or

1 unliquidated, secured or unsecured, joint or several, due or to become
2 due, determined, determinable, or otherwise;

3 (9) New company means a domestic stock insurance company that is
4 created by a division occurring on or after the effective date of the
5 act;

6 (10) Plan of division means a plan of division approved by a
7 dividing company in accordance with the act;

8 (11) Policy liability means a liability as defined in the act
9 arising out of or related to an insurance policy, contract of insurance,
10 or reinsurance agreement;

11 (12) Resulting company means a domestic stock insurance company
12 created by a division or a dividing company that survives a division;

13 (13) Secretary of State means the office of the Nebraska Secretary
14 of State;

15 (14) Shareholder means the person in whose name shares are
16 registered in the records of a corporation or the beneficial owner of
17 shares to the extent of the rights granted by a nominee certificate on
18 file with a corporation;

19 (15) Sign or signature includes a manual, facsimile, or conformed or
20 electronic signature which complies with section 86-611;

21 (16) Surplus means total statutory surplus less capital, calculated
22 in accordance with the National Association of Insurance Commissioners
23 Accounting Practices and Procedures Manual; and

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

27 Sec. 4. (1) A domestic stock insurance company may, in accordance
28 with the requirements of the Domestic Stock Insurance Company Division
29 Act, divide into two or more resulting companies pursuant to a plan of
30 division.

31 (2) Nothing in this subsection (2) shall expand or reduce the

1 allocation and assignment of reinsurance as stated in the reinsurance
2 contract. Each plan of division shall include:

3 (a) The name of the domestic stock insurance company seeking to
4 divide;

5 (b) A statement disclosing whether the dividing company will survive
6 the division;

7 (c) The name of each new company that will result from the division;

8 (d) For each new company that will result from the proposed
9 division:

10 (i) A copy of its proposed articles of incorporation;

11 (ii) A copy of its proposed bylaws; and

12 (iii) A statement of the kinds of insurance businesses enumerated in
13 section 44-201 that the new company will be authorized to conduct;

14 (e) The manner of allocating between or among the resulting
15 companies:

16 (i) The assets of the domestic stock insurance company that will not
17 be owned by all of the resulting companies as tenants in common; and

18 (ii) The liabilities of the domestic stock insurance company,
19 including policy liabilities, to which not all of the resulting companies
20 will become jointly and severally liable pursuant to sections 44-223,
21 44-350, 44-2149, and 44-2713;

22 (f) The manner of distributing shares in the new companies to the
23 dividing company or its shareholders;

24 (g) A reasonable description of the liabilities, including policy
25 liabilities, and items of capital, surplus, or other assets, in each
26 case, that the domestic stock insurance company proposes to allocate to
27 each resulting company, including specifying the reinsurance contract,
28 reinsurance coverage obligations, and related claims that are applicable
29 to those policies;

30 (h) All terms and conditions required by the laws of this state or
31 the articles of incorporation and bylaws of the domestic stock insurance

1 company;

2 (i) Evidence demonstrating that the interest of all classes of
3 policyholders of the dividing company will be properly protected; and

4 (j) All other terms and conditions of the division.

5 (3) If the domestic stock insurance company survives the division,
6 the plan of division shall include, in addition to the information
7 required by subsection (2) of this section:

8 (a) All proposed amendments to the dividing company's articles of
9 incorporation and bylaws, if any;

10 (b) If the dividing company desires to cancel some, but less than
11 all, shares in the dividing company, the manner in which it will cancel
12 such shares; and

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

18 (4) If the domestic stock insurance company does not survive the
19 proposed division, the plan of division shall contain, in addition to the
20 information required by subsection (2) of this section, the manner in
21 which the dividing company will cancel or convert shares in the dividing
22 company into shares, securities, obligations, money, other property,
23 rights to acquire shares or securities, or any combination thereof.

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

26 (6) A dividing company may amend a plan of division in accordance
27 with any procedures in the plan of division or, if no such procedures are
28 in the plan of division, in any manner determined by the board of
29 directors of the dividing company, except that a shareholder that was
30 entitled to vote on or consent to approval of the plan of division is
31 entitled to vote on or consent to any amendment of the plan of division

1 that will change:

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

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

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

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

17 (8) A dividing company may abandon a plan of division after it has
18 filed a certificate of division with the Secretary of State by filing
19 with the Secretary of State, with a concurrent copy to the Director of
20 Insurance, a certificate of abandonment signed by the dividing company.
21 The certificate of abandonment shall be effective on the date it is filed
22 with the Secretary of State and the dividing company shall be deemed to
23 have abandoned its plan of division on such date.

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

26 Sec. 5. (1) A domestic stock insurance company shall not file a
27 plan of division with the director until such domestic stock insurance
28 company approves the plan of division in accordance with:

29 (a) Its articles of incorporation and bylaws; and

30 (b) All laws of this state governing the internal affairs of a
31 domestic stock company that provide for approval of a merger.

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

10 Sec. 6. (1) A division shall not become effective until it is
11 approved by the director after reasonable notice and a public hearing,
12 unless the director determines that the public interest does not require
13 notice and a public hearing. The director shall hold a public hearing if
14 one is requested by the dividing company. A hearing conducted under this
15 section shall be conducted in accordance with section 84-913.

16 (2) The director shall approve a plan of division unless the
17 director finds that:

18 (a) The interest of any class of policyholder or shareholder of the
19 dividing company will not be properly protected;

20 (b) Each new company created by the proposed division, except a new
21 company that is a nonsurviving party to a merger pursuant to subsection
22 (2) of section 44-224.04, would be ineligible to receive a license to do
23 insurance business in this state;

24 (c) The proposed division violates any provision of the Uniform
25 Fraudulent Transfer Act;

26 (d) The division is being made for purposes of hindering, delaying,
27 or defrauding any policyholders or other creditors of the dividing
28 company;

29 (e) One or more resulting companies will not be solvent upon the
30 consummation of the division; or

31 (f) The remaining assets of one or more resulting companies will be,

1 upon consummation of a division, unreasonably small in relation to the
2 business and transactions in which the resulting company was engaged or
3 is about to engage.

4 (3) In determining whether the standards in subdivision (2)(c) of
5 this section have been satisfied, the director shall only apply the
6 Uniform Fraudulent Transfer Act to a dividing company in its capacity as
7 a resulting company and shall not apply the Uniform Fraudulent Transfer
8 Act to any dividing company that is not proposed to survive the division.

9 (4) In determining whether the standards in subdivisions (2)(c),
10 (d), (e), and (f) of this section have been satisfied, the director may
11 consider all proposed assets of the resulting company, including, without
12 limitation, reinsurance agreements, parental guarantees, support or keep-
13 well agreements, or capital maintenance or contingent capital agreements,
14 in each case, regardless of whether the same would qualify as an admitted
15 asset.

16 (5) In determining whether the standards in subdivision (2)(c) of
17 this section have been satisfied, with respect to each resulting company,
18 the director shall, in applying the Uniform Fraudulent Transfer Act,
19 treat:

20 (a) The resulting company as a debtor;

21 (b) Liabilities allocated to the resulting company as obligations
22 incurred by a debtor;

23 (c) The resulting company as not having received reasonably
24 equivalent value in exchange for incurring the obligations; and

25 (d) Assets allocated to the resulting company as remaining property.

26 (6) All information, documents, materials, and copies thereof
27 submitted to, obtained by, or disclosed to the director in connection
28 with a plan of division or in contemplation thereof, including any
29 information, documents, materials, or copies provided by or on behalf of
30 a domestic stock insurance company in advance of its adoption or
31 submission of a plan of division, shall be confidential and shall be

1 subject to the same protection and treatment as documents and reports
2 disclosed to or filed with the director pursuant to section 44-154 until
3 such time, if any, that a notice of public hearing is issued under
4 subsection (1) of this section.

5 (7) From and after the issuance of any notice of public hearing
6 issued under subsection (1) of this section, all business, financial, and
7 actuarial information that the domestic stock insurance company requests
8 to be confidential, other than the plan of division, shall continue to be
9 confidential and shall not be available for public inspection and shall
10 be subject to the same protection and treatment as documents and reports
11 disclosed to or filed with the director pursuant to section 44-154.

12 (8) If the director approves a plan of division, the director shall
13 issue an order that includes findings of fact and conclusions of law.

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

20 Sec. 7. (1) After a plan of division has been adopted and approved,
21 an officer or duly authorized representative of the dividing company
22 shall sign a certificate of division.

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

24 (a) The name of the dividing company;

25 (b) A statement disclosing whether the dividing company will survive
26 the division;

27 (c) The name of each new company that will result from the division;

28 (d) The kinds of insurance businesses enumerated in section 44-201
29 that the new company will be authorized to conduct;

30 (e) The date that the division is to be effective, which shall not
31 be more than ninety days after the dividing company has filed the

1 certificate of division with the Secretary of State, with a concurrent
2 copy to the director;

3 (f) A statement that the division was approved by the director in
4 accordance with the Domestic Stock Insurance Company Division Act;

5 (g) A statement that the dividing company provided, no later than
6 ten business days after the dividing company filed the plan of division
7 with the director, reasonable notice to each reinsurer that is party to a
8 reinsurance contract that is applicable to the policies included in the
9 plan of division;

10 (h) If the dividing company will survive the division, any amendment
11 to its articles of incorporation or bylaws approved as part of the plan
12 of division;

13 (i) For each new company created by the division, its articles of
14 incorporation and bylaws, except that the articles of incorporation and
15 bylaws need not state the name or address of an incorporator; and

16 (j) A reasonable description of the capital, surplus, other assets
17 and liabilities, including policy liabilities, of the dividing company
18 that are to be allocated to each resulting company.

19 (3) The articles of incorporation and bylaws of each new company
20 must satisfy the requirements of the laws of this state, except that the
21 documents need not be signed or include a provision that need not be
22 included in a restatement of the document.

23 (4) A certificate of division is effective when filed with the
24 Secretary of State with a concurrent copy to the director, as provided in
25 this section or on another date specified in the plan of division,
26 whichever is later, so long as a certificate of division shall become
27 effective not more than ninety days after it is filed with the Secretary
28 of State. A division is effective when the relevant certificate of
29 division is effective.

30 Sec. 8. (1) When a division becomes effective pursuant to section 7
31 of this act:

1 (a) If the dividing company has survived the division:
2 (i) It continues to exist;
3 (ii) Its articles of incorporation shall be amended, if necessary,
4 as provided in the plan of division; and
5 (iii) Its bylaws shall be amended, if necessary, as provided in the
6 plan of division;
7 (b) If the dividing company has not survived the division, its
8 separate existence ceases;
9 (c) Each new company:
10 (i) Comes into existence;
11 (ii) Shall hold any capital, surplus, and other assets allocated to
12 such new company by the plan of division as a successor to the dividing
13 company, automatically, by operation of law and not by transfer, whether
14 directly or indirectly; and
15 (iii) Its articles of incorporation, if any, and bylaws, if any,
16 shall be effective;
17 (d) Capital, surplus, and other assets of the dividing company:
18 (i) That is allocated by the plan of division either:
19 (A) Vests in the applicable new company as provided in the plan of
20 division; or
21 (B) Remains vested in the dividing company as provided in the plan
22 of division;
23 (ii) That is not allocated by the plan of division either:
24 (A) Remains vested in the dividing company, if the dividing company
25 survives the division; or
26 (B) Is allocated to and vests equally in the resulting companies as
27 tenants in common, if the dividing company does not survive the division;
28 or
29 (iii) Otherwise vests as provided in this subsection without
30 transfer, reversion, or impairment;
31 (e) A resulting company to which a cause of action is allocated as

1 provided in subdivision (1)(d) of this section may be substituted or
2 added in any pending action or proceeding to which the dividing company
3 is a party when the division becomes effective;

4 (f) The liabilities, including policy liabilities, of the dividing
5 company are allocated between or among the resulting companies as
6 provided in section 9 of this act and each resulting company to which the
7 liabilities are allocated is liable only for those liabilities, including
8 policy liabilities, so allocated as successors to the dividing company,
9 automatically, by operation of law, and not by transfer, or, for the
10 avoidance of doubt, assumption, whether directly or indirectly; and

11 (g) The shares in the dividing company that are to be converted or
12 canceled in the division are converted or canceled, and the shareholders
13 of those shares are entitled only to the rights provided to them under
14 the plan of division and any appraisal rights that they may have pursuant
15 to section 10 of this act.

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

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

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

27 (a) The dividing company, if it survives the division; or

28 (b) Shareholders of the dividing company that do not assert any
29 appraisal rights that they may have pursuant to section 10 of this act,
30 pro rata.

31 Sec. 9. (1) Except as otherwise expressly provided in this section,

1 when a division becomes effective, each resulting company is responsible,
2 automatically, by operation of law, for:

3 (a) Individually, the liabilities, including policy liabilities,
4 that the resulting company issues, undertakes, or incurs in its own name
5 after the division;

6 (b) Individually, the liabilities, including policy liabilities, of
7 the dividing company that are allocated to or remain the liability of the
8 resulting company to the extent specified in the plan of division; and

9 (c) Jointly and severally with the other resulting companies, the
10 liabilities, including policy liabilities, of the dividing company that
11 are not allocated by the plan of division.

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

15 (a) Any liabilities, including policy liabilities, that another
16 resulting company issues, undertakes, or incurs in its own name after the
17 division; or

18 (b) Any liabilities, including policy liabilities, of the dividing
19 company that are allocated to or remain the liability of another
20 resulting company in accordance with the plan of division.

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

30 (4) If the act of dividing breaches a contractual obligation of the
31 dividing company at the time the division becomes effective, all of the

1 resulting companies are liable, jointly and severally, for the
2 contractual breach, however, the validity and effectiveness of the
3 dividing of the company, including, but not limited to, the allocation of
4 liabilities in accordance with the plan of division, shall not be
5 affected by the contractual breach.

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

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

15 (7) If the dividing company is bound by a security agreement
16 governed by article 9 of the Uniform Commercial Code or in any other
17 jurisdiction, and the security agreement provides that the security
18 interest attaches to after-acquired collateral, each resulting company is
19 bound by the security agreement.

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

21 (a) Except as provided in the plan of division and specifically
22 approved by the director, affect the rights that a policyholder or
23 creditor has under other law in respect of the policy or other liability,
24 except that those rights are available only against a resulting company
25 responsible for the policy or liability under this section; or

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

28 (9) A resulting company shall only be liable for the liabilities
29 allocated to it in accordance with the plan of division and this section
30 and shall not be liable for any other liabilities under the common law
31 doctrine of successor liability or a similar theory of liability

1 applicable to transferees or assignees of property.

2 Sec. 10. If the dividing company does not survive the division, an
3 objecting shareholder of a dividing company is entitled to appraisal
4 rights and to obtain payment of the fair value of that shareholder's
5 shares pursuant to a contested case hearing held under section 84-913. A
6 shareholder must request a contested case hearing from the department in
7 accordance with the Administrative Procedure Act no later than one
8 hundred twenty days after the director's approval of a plan division.

9 Sec. 11. The director may adopt and promulgate such rules and
10 regulations as are necessary or appropriate to carry out the Domestic
11 Stock Insurance Company Division Act.

12 Sec. 12. Section 44-224.04, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 44-224.04 (1) Any domestic stock insurance company may merge with
15 another stock insurer after the contract of merger is approved by the
16 director. The director shall not approve any such contract of merger
17 unless the interests of the policyholders or shareholders of both parties
18 thereto are properly protected. If the director does not approve the
19 contract of merger, he or she shall issue a written order of disapproval
20 setting forth his or her findings. After having obtained the approval of
21 the director, the contract of merger shall be consummated in the manner
22 set forth in the Nebraska Model Business Corporation Act for the merger
23 or consolidation of stock corporations.

24 (2) The director may permit the formation of a domestic stock
25 insurance company that is established for the sole purpose or merging or
26 consolidating with an existing stock company simultaneously with the
27 effectiveness of a division authorized by the Domestic Stock Insurance
28 Company Division Act. Upon request of the dividing company, the director
29 may waive the requirements of subsection (1) of this section. Each
30 domestic stock insurance company formed under this subsection shall be
31 deemed to exist before a merger and division under this section becomes

1 effective, but solely for the purpose of being a party to such merger and
2 division. The director shall not require that such domestic stock
3 insurance company be licensed to transact insurance business in this
4 state before such merger and division. All insurance policies, annuities,
5 or reinsurance agreements allocated to such domestic stock insurance
6 company shall become the obligation of the domestic stock insurance
7 company that survives the merger simultaneously with the effectiveness of
8 the merger and division. The plan of merger or consolidation shall be
9 deemed to have been authorized and approved by such domestic stock
10 insurance company if the dividing company authorized and approved such
11 plan. The certificate of merger shall state that it was approved by the
12 domestic stock insurance company formed under this subsection.

13 Sec. 13. Original section 44-224.04, Revised Statutes Cumulative
14 Supplement, 2018, is repealed.

15 Sec. 14. Since an emergency exists, this act takes effect when
16 passed and approved according to law.