



HR0352

LRB102 18598 MST 26926 r

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HOUSE RESOLUTION

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WHEREAS, Effective November 27, 2018, the Illinois General Assembly passed an Article entitled The Domestic Stock Division Law (215 ILCS 5/35B-1 et.seq.); this law allows an Illinois domestic stock insurance company to divide itself into two or more resulting companies; and

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WHEREAS, Since its enactment, the Illinois Life and Health Insurance Guaranty Association has been very concerned with certain aspects of the law that could allow for non-transparent transactions and materially deficient resulting insurance companies; and

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WHEREAS, The Illinois Life and Health Insurance Guaranty Association has proposed amendments to the law in 2019, 2020, and 2021 on various key deficiencies found within the law; the law allows an existing Illinois domestic insurance company to divide into two or more companies under a Division Plan; the legislation could be used by an insurance company to segregate an unprofitable book of business from the remainder of the company's profitable business and supporting assets; only the new company would be responsible for fulfilment of contractual obligations to policy holders transferred to the new company, not the original insurance company; together, those policy holders and the Association would then bear the risk of

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1 insufficient assets or unpredictable liabilities transferred
2 to the new company without the support of the original
3 insurance company's financial strength; and

4 WHEREAS, The Division Plan can be approved without a
5 hearing; all documents supporting the Division Plan and the
6 Division Plan itself are deemed confidential, unless the
7 Director of Insurance elects otherwise; even if a hearing is
8 held at the Director's discretion, only the Division Plan will
9 become public, not the supporting financial and actuarial
10 information and documents, which remain confidential and not
11 subject to public disclosure through typical discovery such as
12 interrogatories and request for production of documents,
13 subpoena, or even a Freedom of Information Act request; a new
14 company's obligations to policy holders can be supported by
15 inferior assets; the legislation requires that the Director
16 "shall approve" the Plan unless certain conditions are not
17 met; some of the conditions include that the Plan will not
18 create a new company that will be insolvent and the remaining
19 assets of the new company will not be unreasonably small in
20 relation to the business and transactions in which the new
21 company will engage; and

22 WHEREAS, In determining if these two conditions have been
23 met, the Director may consider inferior assets transferred to
24 the new company; the financial safety of an existing insurance

1 company must be judged on the basis of "admitted assets",
2 i.e., assets defined and deemed as high quality under existing
3 insurance law and regulations; under the Division Law, the
4 financial safety and solvency of the new company can be
5 measured using non-admitted assets, assets which are inferior
6 and do not meet the criteria of high quality of admitted
7 assets; the Division Law specifies that non-admitted assets
8 can include, "without limitation", (1) Reinsurance Agreements,
9 (2) Parental Guarantees, (3) Support Agreements, (4) Keep Well
10 Agreements, (5) Capital Maintenance Agreements, (6) Contingent
11 Capital Agreements, and (7) Other; since the original company
12 cannot use such non-admitted assets to support policy holder
13 liabilities, the provision whereby a new unproven resulting
14 company can use such non-admitted assets is inappropriate; and

15 WHEREAS, The Division Law allows a Plan to be filed and
16 approved without notice to the public or to policy holders,
17 without a hearing and without public disclosure of the
18 Division Plan or the documents justifying the Division Plan;
19 the policy holders have no right to opt out of the Plan that
20 segregates their policies from the company they chose as their
21 insurance company; the practical effect of the Division Plan
22 is to have the policies assumed by a new, unproven company
23 without affording policy holders the option of staying with
24 the original company they selected when buying insurance; and

1 WHEREAS, The NAIC has created a group to study Division
2 Plans and other forms of insurance business transfers;
3 provisions in the Illinois Division Law have been heavily
4 criticized by various parties during those proceedings; the
5 concerns are so great among the life insurance industry that
6 the ACLI has adopted principles and guidelines with respect to
7 proposed division laws and actively lobbies against numerous
8 provisions currently contained in the Illinois Division Law;
9 the ACLI Principles and Guidelines specifically provide that
10 all transactions be subject to public notice and public
11 hearing with notice to policy holders, reinsurers, state
12 regulators, Guaranty Associations, and other interested
13 parties; the ACLI provisions include a robust review by the
14 regulator of the entire transaction, its impact on policy
15 holders, the solvency of the new company, asset liability
16 matching, and other significant provisions; an independent
17 expert must be utilized as part of the process before approval
18 of the Division Plan can be made; the independent expert must
19 have access to documents concerning the business purpose of
20 the proposed transaction, capital adequacy and risk-based
21 capital considerations, cash flow and reserve testing, the
22 impact, if any, of concentrations of lines of business
23 following the transaction, business plans, management
24 confidence, experience, and integrity; the Illinois Division
25 Law does not meet even the basic provisions of the ACLI
26 Principles and Guidelines; and

1 WHEREAS, For three legislative sessions, the Illinois Life
2 and Health Insurance Guaranty Association has proposed simple
3 and straightforward amendments to correct the most serious of
4 the problems with the Illinois Division Law; those amendments
5 include addressing the requirement that public notice be
6 given, actual notice given to policy holders, regulators,
7 reinsurers, and Guaranty Associations, and a requirement for a
8 public hearing; the amendments provide for discovery of key
9 financial documents supporting the Division Plan, such as
10 financial analysis and actuarial studies; the amendments also
11 eliminate the use of inferior non-admitted assets to support
12 policy holder liabilities transferred to the resulting
13 company; and

14 WHEREAS, Since the passage of the Division Law in 2018,
15 the Illinois Life and Health Insurance Guaranty Association
16 representatives have been actively, transparently, and
17 diligently engaged with interested parties to seek resolution
18 of the four proposed amendments: (1) provide notice, (2)
19 provide public hearing, (3) exclude the use of non admitted
20 assets, and (4) provide certain information (i.e. actuarial,
21 financial); and

22 WHEREAS, The Illinois Division Law contains provisions
23 that are contrary to the interests of Illinois consumers and

1 policy holders; the failure of the Illinois Division Law to
2 require notice of the Division Plan, a public hearing,
3 discovery of key documents, and the use of inferior assets to
4 support policy holder liabilities results in the potential for
5 serious disruption and harm to Illinois consumers; therefore,
6 be it

7 RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE ONE
8 HUNDRED SECOND GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that
9 we urge the Department of Insurance not to approve of any
10 divisions under the Illinois Division Law without the consumer
11 protections detailed in the above amendments; and be it
12 further

13 RESOLVED, That a suitable copy of this resolution be
14 delivered to the Illinois Department of Insurance.