

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

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.

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