

Sec. 38a-156r. Definitions. As used in this section and sections 38a-156s to 38a-156z, inclusive:

(1) “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;

(2) “Commissioner” means the Insurance Commissioner;

(3) “Divide” or “division” means a transaction in which a domestic insurer divides into two or more resulting insurers;

(4) “Dividing insurer” means a domestic insurer that approves a plan of division pursuant to section 38a-156t;

(5) “Entity”, unless the context otherwise requires, means: (A) A business corporation; (B) a nonprofit corporation; (C) a general partnership, including a limited liability partnership; (D) a limited partnership, including a limited liability limited partnership; (E) a limited liability company; (F) a business trust or statutory trust entity; (G) an unincorporated nonprofit association; (H) a cooperative; or (I) any other person who has a separate legal existence or the power to acquire an interest in real property in his or her own name other than: (i) An individual; (ii) a testamentary, inter vivos or charitable trust, with the exception of a business trust, statutory trust entity or similar trust; (iii) an association or relationship that is not a partnership solely by reason of the law of any other state or jurisdiction; (iv) a decedent's estate; or (v) a government, governmental subdivision, agency, instrumentality or a quasi-governmental instrumentality;

(6) “Filing entity” means an entity that is created by filing a public organic document;

(7) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee or proxy, to: (A) Receive or demand access to information concerning, or the books and records of, the entity; (B) vote for the election of the governors of the entity; or (C) receive notice of or vote on issues involving the internal affairs of the entity;

(8) “Governor”, with respect to an entity, means a person: (A) By or under whose authority the powers of an entity are exercised; and (B) under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity;

(9) “Interest”, unless the context otherwise requires, means: (A) A governance interest in an unincorporated entity; (B) a transferable interest in an unincorporated entity; or (C) a share or membership in a corporation;

(10) “Interest holder” means a direct holder of an interest;

(11) “Liability” means a debt, obligation or any other liability arising in any manner, regardless of whether it is secured or contingent;

(12) “New insurer” means a domestic insurer that is created by a division occurring on or after October 1, 2017;

(13) “Organic law” means the section of the general statutes, if any, other than this section and sections 38a-156s to 38a-156z, inclusive, and sections 34-601 to 34-646, inclusive, governing the internal affairs of an entity;

(14) “Organic rules” means the private organic rules and public organic document of an entity;

(15) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders and are not part of its public organic document, if any;

(16) “Property” means all property, whether real, personal or mixed, tangible or intangible, or any right or interest therein, including rights under contracts and other binding agreements;

(17) “Public organic document” means the public record, the filing of which creates an entity, and any amendment to or restatement of such public record;

(18) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(19) “Resulting insurer” means a new insurer or a dividing insurer that survives a division;

(20) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(21) “Sign” or “signature” includes any manual, facsimile, conformed or electronic signature;

(22) “Surplus” means total statutory surplus less capital stock, adjusted for the par value of any treasury stock, calculated in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, version effective January 1, 2001, and subsequent revisions;

(23) “Transfer” includes an assignment, conveyance, sale, lease, encumbrance, including a mortgage or security interest, gift or transfer by operation of law; and

(24) “Transferable interest” means the right under an entity's organic law to receive distributions from the entity.

(P.A. 17-2, S. 1.)

Sec. 38a-156s. Division of domestic insurer. Plan of division. Amendment and abandonment. (a) Any domestic insurer may, in accordance with the requirements of sections 38a-156r to 38a-156z, inclusive, divide into two or more resulting insurers pursuant to a plan of division.

(b) (1) Each plan of division shall include: (A) The name of the domestic 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, its: (i) Proposed public organic document, if the new insurer will be a filing entity; and (ii) proposed private organic rules; (D) the manner of allocating between or among the resulting insurers: (i) The property of the domestic insurer that will not be owned by all of the resulting insurers as tenants in common pursuant to section 38a-156w; and (ii) those policies and other liabilities of the domestic insurer to which not all of the resulting insurers will be jointly and severally liable pursuant to subdivision (3) of subsection (a) of section 38a-156x; (E) the manner of distributing interests in the new insurers to the dividing insurer or its interest holders; (F) a reasonable description of policies or other liabilities, items of capital, surplus or other property the domestic insurer proposes to allocate to a 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 organic rules of the domestic insurer; and (H) all other terms and conditions of the division.

(2) If the domestic insurer will survive the division, the plan of division shall include, in addition to the information required by subdivision (1) of this subsection: (A) All proposed amendments to the dividing insurer's public organic document and private organic rules, if any; (B) if the dividing insurer desires to cancel some, but less than all,

interests in the dividing insurer, the manner in which it will cancel such interests; and (C) if the dividing insurer desires to convert some, but less than all, interests in the dividing insurer into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination thereof, a statement disclosing the manner in which it will convert such interests.

(3) If the domestic insurer will not survive the proposed division, the plan of division shall contain, in addition to the information required by subdivision (1) of this subsection, the manner in which the dividing insurer will cancel or convert interests in the dividing insurer into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination thereof.

(c) Terms of a plan of division may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (l) of section 33-608.

(d) A dividing insurer may amend a plan of division in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in any manner determined by the governors of the dividing insurer, except that an interest holder 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 that will change: (1) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination thereof, to be received by any of the interest holders of the dividing insurer under the plan; (2) the public organic document, if any, or private organic rules of any resulting insurer that will be in effect when the division becomes effective, except for changes that do not require approval of the interest holders of the resulting insurer under its organic law or organic rules; or (3) any other terms or conditions of the plan, if the change would adversely affect the interest holders in any material respect.

(e) (1) A dividing insurer may abandon a plan of division after it has approved the plan without any action by the interest holders and in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in a manner determined by the governors of the dividing insurer.

(2) A dividing insurer may abandon a plan of division after it has delivered a certificate of division to the Secretary of the State by delivering to the Secretary of the State a certificate of abandonment signed by the dividing insurer. The certificate of abandonment shall be effective on the date it is filed with the Secretary of the State, and the dividing insurer shall be deemed to have abandoned its plan of division on such date.

(3) A dividing insurer may not abandon its plan of division once the division becomes effective.

(P.A. 17-2, S. 2.)

Sec. 38a-156t. Plan of division. Approval by interest holders and governors. (a) Except as provided in subsection (b) or (c) of this section, a domestic insurer shall not file a plan of division with the commissioner unless such plan has been approved in accordance with: (1) All provisions of its organic rules; or (2) if its organic rules do not provide for approval of a division, all provisions of its organic law and organic rules that provide for approval of a merger.

(b) Interest holder approval of a plan of division is not required unless: (1) The organic rules of the domestic insurer require such approval; (2) the plan makes an amendment to the organic rules requiring such approval; or (3) either: (A) The domestic insurer will not survive the proposed division and all interests and other securities and obligations, if any, of the new insurers will be owned solely by the dividing insurer; or (B) the domestic insurer has only one class of interests outstanding and the interests and other securities and obligations, if any, of each new insurer will not be distributed pro rata to the interest holders.

(c) (1) If any provision of the organic rules of a domestic insurer adopted before October 1, 2017, requires that a specific number or percentage of governors or interest holders approve the proposal or adoption of a plan of merger, or imposes other special procedures for the proposal or adoption of a plan of merger, such insurer shall adhere to such provision in proposing or adopting a plan of division.

(2) 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 insurer before October 1, 2017, requires the consent of the obligee to a merger of the insurer or treats such a merger as a default, that provision applies to a division of the insurer as if such division were a merger.

(3) If any provision described in subdivision (1) or (2) of this subsection is amended on or after October 1, 2017, such provision shall thereafter apply to a division only in accordance with its express terms.

(P.A. 17-2, S. 3.)

Sec. 38a-156u. Plan of division. Approval by commissioner. Notice and hearing. Certificate of approval. (a) A division shall not become effective until it is approved by the commissioner after reasonable notice and a public hearing, if such notice and hearing are deemed by the commissioner to be in the public interest. Except as set forth in this section, any hearing conducted under this section shall be conducted in accordance with chapter 54.

(b) (1) The commissioner shall approve a plan of division unless the commissioner finds that: (A) The interest of any policyholder or interest holder will not be adequately protected; or (B) the proposed division constitutes a fraudulent transfer under sections 52-552a to 52-552l, inclusive.

(2) With respect to the dividing insurer, the commissioner shall: (A) Apply sections 52-552a to 52-552l, inclusive, to the dividing insurer only in its capacity as a resulting insurer if the dividing insurer will survive the proposed division; and (B) not apply sections 52-552a to 52-552l, inclusive, to the dividing insurer if the dividing insurer will not survive the proposed division.

(3) With respect to each resulting insurer, the commissioner shall, in applying sections 52-552a to 52-552l, inclusive, treat: (A) The resulting insurer as a debtor; (B) liabilities allocated to the resulting insurer as obligations incurred by a debtor; (C) the resulting insurer as not having received a reasonably equivalent value in exchange for incurring such obligations; and (D) property allocated to the resulting insurer as remaining property.

(c) Except for a plan of division and any materials incorporated by reference into or otherwise made a part of such plan, all information, documents, materials and copies thereof submitted to, obtained by or disclosed to the commissioner in connection with proceedings under this section shall be confidential and shall not be available for public inspection.

(d) All expenses incurred by the commissioner 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 commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed division, shall 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.

(e) If the commissioner approves a plan of division, the commissioner shall issue a certificate of approval to the dividing insurer on a form prescribed by the commissioner.

(f) The commissioner shall not approve a plan of division unless the commissioner issues to each new insurer that will be created by the proposed division a license to transact insurance business in this state pursuant to section 38a-41. The commissioner may waive application of this subsection to a new insurer that will not survive a merger under subsection (d) of section 38a-153.

(P.A. 17-2, S. 4.)

Sec. 38a-156v. Certificate of division. (a) After a plan of division has been adopted and approved under sections 38a-156r to 38a-156u, inclusive, an officer or duly authorized representative of the dividing insurer shall sign a certificate of division.

(b) The certificate of division shall set forth: (1) The name of the dividing insurer; (2) a statement disclosing whether the dividing insurer will survive the division; (3) the name of each new insurer that will be created by the division; (4) the date on which the division is to be effective, which shall not be more than ninety days after the dividing insurer has filed the certificate of division with the Secretary of the State; (5) a statement that the division was approved by the dividing insurer in accordance with section 38a-156t; (6) a statement that the division was approved by the commissioner in accordance with section 38a-156u; (7) a statement that the dividing insurer provided, not later than ten business days after the dividing insurer filed the plan of division with the commissioner, reasonable notice to each reinsurer that is party to a reinsurance contract allocated in the plan of division; (8) if the dividing insurer is a filing entity and will survive the division, any amendment to its public organic document approved as part of the plan of division; (9) for each new insurer created by the division that is a filing entity, its public organic document, provided the public organic document need not state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity; (10) if a new insurer is a domestic limited liability partnership, its certificate of limited liability partnership; and (11) a reasonable description of the capital, surplus, other property and policies and other liabilities of the dividing insurer that are to be allocated to each resulting insurer.

(c) The public organic document, if any, of each new insurer must satisfy the requirements of the laws of this state, provided such document need not be signed or include any provision that need not be included in a restatement of such document.

(d) A certificate of division is effective when filed with the Secretary of the State or on such other date specified in the plan of division, whichever is later, provided a certificate of division shall become effective not more than ninety days after it is filed with the Secretary of the State. A division is effective when the relevant certificate of division is effective.

(P.A. 17-2, S. 5.)

Sec. 38a-156w. Effect of division. (a) When a division becomes effective pursuant to subsection (d) of section 38a-156v: (1) If the dividing insurer has survived the division: (A) It continues to exist; (B) its public organic document, if any, shall be amended as provided in the certificate of division; and (C) its private organic rules, if any, shall be amended as provided in the plan of division; (2) if the dividing insurer has not survived the division, its separate existence ceases to exist; (3) each new insurer: (A) Comes into existence; (B) shall hold any capital, surplus and other property allocated to it as a successor to the dividing insurer, and not by transfer, whether directly or indirectly; (C) its public organic document, if any, and private organic rules, if any, shall be effective; and (D) if it is a limited liability partnership, its certificate of limited liability partnership shall be effective; (4) capital, surplus and other property of the dividing insurer: (A) That is allocated by the plan of division either: (i) Vests in the new insurers as provided in the plan of division; or (ii) remains vested in the dividing insurer; (B) that is not allocated by the plan of division: (i) Remains vested in the dividing insurer, if the dividing insurer survives the division; or (ii) is allocated to and vests equally in the resulting insurers as tenants in common, if the dividing insurer does not survive the division; or (C) vests as provided in this subsection without transfer, reversion or impairment; (5) a resulting insurer to which a cause of action is allocated as provided in subdivision (4) of this subsection may be substituted or added in any pending action or proceeding to which the dividing insurer is a party when the division becomes effective; (6) the policies and other liabilities of the dividing insurer are allocated between or among the resulting insurers as provided in section 38a-156x and the resulting insurers to which policies or other liabilities are allocated are liable for those policies and other liabilities as successors to the dividing insurer, and not by transfer, whether directly or indirectly; and (7) the interests in the dividing insurer that are to be converted or canceled in the division are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan of division and any appraisal rights they may have pursuant to section 38a-156y.

(b) Except as provided in the organic law or organic rules of the dividing insurer, the division does not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the dividing insurer.

(c) The allocation to a new insurer of capital, surplus or other property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new insurer as a debtor is effective under sections 42a-9-101 to 42a-9-809, inclusive.

(d) Unless otherwise provided in the plan of division, the interests in and any securities of each new insurer shall be distributed to: (1) The dividing insurer, if it survives the division; or (2) the holders of the common interest or other residuary interest of the dividing insurer that do not assert appraisal rights, pro rata, if the dividing insurer does not survive the division.

(P.A. 17-2, S. 6.)

Sec. 38a-156x. Responsibility and liability of resulting insurers. (a) Except as provided in this section, when a division becomes effective, a resulting insurer is responsible: (1) Individually for the policies and other liabilities the resulting insurer issues, undertakes or incurs in its own name after the division; (2) individually for the policies and other liabilities of the dividing insurer that are allocated to or remain the liability of that resulting insurer to the extent specified in the plan of division; and (3) jointly and severally with the other resulting insurers for the policies and other liabilities of the dividing insurer that are not allocated by the plan of division.

(b) If a division breaches an obligation of the dividing insurer, all of the resulting insurers are liable, jointly and severally, for the breach, but the validity and effectiveness of the division shall not be affected by the breach.

(c) A direct or indirect allocation of capital, surplus, property, or policies or other liabilities in a division is not a distribution for purposes of the organic law of the dividing insurer or any of the resulting insurers.

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

(e) If the dividing insurer is bound by a security agreement governed by Article 9 of title 42a, or Article 9 of the Uniform Commercial Code as 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.

(f) Except as provided in the plan of division and specifically approved by the commissioner, an allocation of a policy or other liability does not: (1) Affect the rights under other law of a policyholder or creditor owed payment on the policy, or payment of any other type of liability or performance of the obligation that creates the liability, except that those rights are available only against a resulting insurer responsible for the policy, liability or obligation under this section; or (2) release or reduce the obligation of a reinsurer, surety or guarantor of the policy, liability or obligation.

(P.A. 17-2, S. 7.)

Sec. 38a-156y. Appraisal rights. (a) A shareholder of a dividing insurer is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, pursuant to sections 33-855 to 33-868, inclusive, if the dividing insurer is a business corporation.

(b) (1) An interest holder of a dividing insurer that is not a business corporation is entitled to contractual appraisal rights in connection with a division to the extent provided: (A) In the dividing insurer's organic rules; (B) in the plan of division; or (C) by action of its governors.

(2) If an interest holder is entitled to contractual appraisal rights under subdivision (1) of this subsection and the organic law of the dividing insurer does not provide procedures for the conduct of an appraisal rights proceeding, sections 33-855 to 33-868, inclusive, shall apply to the extent practicable or as otherwise provided in the insurer's organic rules or plan of division.

(P.A. 17-2, S. 8.)

Sec. 38a-156z. Regulations. The commissioner may adopt such regulations, in accordance with chapter 54, as are necessary to carry out the provisions of sections 38a-156r to 38a-156y, inclusive.

(P.A. 17-2, S. 9.)

Secs. 38a-157 to 38a-159. Reserved for future use.

Sec. 38a-153. (Formerly Sec. 38-42). Merger or consolidation of companies. (a) Any domestic insurance company may, with the prior approval of the commissioner, merge or consolidate with one or more other domestic insurance companies or with one or more foreign or alien insurance companies that are either authorized to do an insurance business in this state, or are not authorized to do an insurance business in this state provided the resulting corporation is a corporation of this state and the laws of the other jurisdictions so permit. Prior to approving any such merger or consolidation, the commissioner may hold a hearing upon the fairness of the terms and conditions of the proposed merger or consolidation after such notice as, under the circumstances, the commissioner deems appropriate and shall find that the interests of the policyholders and the interests of the stockholders, if any, are protected. Such merger or consolidation may be effected either in accordance with the provisions of the general statutes relating to merger or consolidation of corporations organized under the general statutes or in accordance with any provisions in the charters of the companies merging or consolidating relating to merger or consolidation. All expenses in connection with the proceedings shall be borne by the resulting corporation.

(b) The domestic or foreign subsidiary of an existing domestic mutual holding company, as defined in section 38a-156, may, with the prior approval of the commissioner, merge with a foreign mutual insurer in accordance with the provisions of this section.

(c) In the event of any merger or consolidation that is for the purpose or has the effect of acquiring control of a domestic insurance company, the provisions of sections 38a-129 to 38a-140, inclusive, shall apply.

(d) The commissioner may permit the formation of a domestic insurance company that is established for the sole purpose of merging or consolidating with an existing domestic insurer simultaneously with a division authorized by section 38a-156s. Upon request of the dividing insurer, as defined in section 38a-156r, the commissioner may waive the requirements of subsections (a) to (c), inclusive, of this section and section 38a-41. Each insurer formed under this subsection shall be deemed to exist before a merger and division under this section becomes effective, but solely for the purpose of being a party to such merger and division. The commissioner shall not require that such insurer be licensed to transact insurance business in this state before such merger and division. All insurance policies, annuities or reinsurance agreements allocated to such insurer shall become the obligation of the insurer that survives the merger simultaneously with the effectiveness of the merger and division. The plan of merger shall be deemed to have been approved by such insurer if the dividing insurer approved such plan. The certificate of merger shall state that it was approved by the insurer formed under this subsection.

(1949 Rev., S. 6118-6121, 6162-6165; 1955, S. 2813d; 1957, P.A. 124, S. 1; 1963, P.A. 103, S. 2; P.A. 90-243, S. 15; Nov. Sp. Sess. P.A. 91-4, S. 1, 2; P.A. 92-112, S. 33, 35; P.A. 01-139, S. 4; P.A. 14-123, S. 15; P.A. 17-2, S. 10.)

History: 1963 act made provisions applicable to domestic insurance companies generally where previously applicable to domestic insurance companies with capital stock; P.A. 90-243 inserted references to “foreign” and “alien” insurance companies; Sec. 38-42 transferred to Sec. 38a-153 in 1991; Nov. Sp. Sess. P.A. 91-4 deleted the requirement that a merged or incorporated insurance company result in a domestic corporation; P.A. 92-112 divided the section into Subsecs., adding new Subsec. (b) re proposed merger or consolidation of stock to acquire control of a domestic insurance company; P.A. 01-139 amended Subsec. (a) to permit mergers or consolidations with foreign or alien insurance companies that are not authorized to do insurance business in this state if the resulting corporation is a corporation of this state and made technical changes, including changes for the purpose of gender neutrality; P.A. 14-123 added new Subsec. (b) re merger of domestic or foreign subsidiary of existing domestic mutual holding company with a foreign mutual insurer, and redesignated existing Subsec. (b) as Subsec. (c) and made a technical change therein, effective June 6, 2014; P.A. 17-2 added Subsec. (d) re domestic insurance company established to merge or consolidate with domestic insurer.

See chapter 601, parts X, XI and XII re merger, share exchange, sale of assets and business combinations of business corporations.

See Sec. 38a-73 re limitation of risks.

