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National Council of Insurance Legislators (NCOIL)

Insurer Division Model Act

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**To be discussed and considered during the Financial Services & Multi-Lines Issues Committee on April 17, 2021.*

******NOTE --- This document serves as an amendment to the prior version of the Model by way of a Committee substitute.******

Table of Contents

Section 1.	Title
Section 2.	Definitions
Section 3.	Plan of division - general requirements
Section 4.	Plan of division - dividing insurer to survive division
Section 5.	Plan of division - dividing insurer to not survive division
Section 6.	Amending plan of division
Section 7.	Abandoning plan of division
Section 8.	Approval of plan of division - articles of incorporation and bylaws
Section 9.	Commissioner approval of plan of division
Section 10.	Confidentiality – records
Section 11.	Certificate of division
Section 12.	After division is effective
Section 13.	Resulting insurers' liability for allocated assets and debts
Section 14.	Shareholder appraisal rights
Section 15.	Rules
Section 16.	Enforcement by commissioner

- Section 17. Merger or consolidation effective with division
Section 18. Effective Date

Section 1. Title

This Act shall be known and may be cited as the “[State] Insurer Division Act.”

Section 2. Definitions.

As used in this Act, the following words and phrases have the meanings given to them in this Section unless the context clearly indicates otherwise:

(A) “Asset” means property, whether real, personal, mixed, tangible, or intangible, and any right or interest in the property, including all rights under a contract or other agreement.

(B) “Capital” means the capital stock component of a statutory surplus, as defined in the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual, version effective January 1, 2001, as revised.

(C) “Commissioner” means the State Insurance Commissioner

(D) (1) “Contract holder” means the owner of an annuity contract.

(2) “Contract holder” does not mean a certificate holder of a group annuity contract or any other covered person under a group annuity contract.

(E) “Divide” or “Division” means the act by operation of law by which a domestic stock insurer splits into two or more resulting domestic stock insurers in accordance with a plan of division and this Act.

(F) “Dividing insurer” means a domestic stock insurer that approves a plan of division.

(G) “Domestic stock insurer” means an insurance company that has capital stock and is incorporated under the laws of this state.

(H) “Liability” means any liability or obligation arising in any manner.

(I) “Plan of division” means a plan of division that is approved by a dividing insurer pursuant to section 8.

(J) (1) “Policyholder” means the owner of an insurance policy.

(2) "Policyholder" does not mean a certificate holder of a group insurance policy or any other covered person under a group insurance policy.

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

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

(M) "Surplus" means the total statutory surplus minus capital, calculated in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, version effective January 1, 2001, as revised.

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

Section 3. Plan of division - general requirements.

(A) A domestic stock insurer may, in accordance with this Act, divide into two or more resulting insurers pursuant to a plan of division. A domestic stock insurer's plan of division must include:

- (1) The name of the domestic stock insurer seeking to divide;
- (2) The name of each resulting insurer created by the proposed division and, for each resulting insurer, a copy of the resulting insurer's:
 - (a) Proposed articles of incorporation; and
 - (b) Proposed bylaws;
- (3) The manner of allocating assets and liabilities including policy liabilities, between or among all resulting insurers;
- (4) The manner of distributing shares in the resulting insurers to the dividing insurer or the dividing insurer's shareholders;
- (5) A reasonable description of all liabilities and all assets that the dividing insurer proposes to allocate to each resulting insurer, including the manner by which the dividing insurer proposes to allocate all reinsurance contracts;
- (6) All terms and conditions required by the laws of this state and the articles of incorporation and bylaws of the dividing insurer; and
- (7) All other terms and conditions required by the division.

Section 4. Plan of division - dividing insurer to survive division.

(A) If a dividing insurer will survive a division, the plan of division must include, in addition to the requirements described in section 3:

- (1) All proposed amendments to the dividing insurer's articles of incorporation and bylaws;
- (2) If the dividing insurer intends to cancel some but not all shares in the dividing insurer, the manner in which the dividing insurer intends to cancel the shares; and
- (3) If the dividing insurer intends to convert some but not all shares in the dividing insurer into shares, securities, obligations, rights to acquire shares or securities, cash, property, or an combination thereof, a statement disclosing the manner in which the dividing insurer intends to convert the shares.

Section 5. Plan of division - dividing insurer to not survive division.

If a dividing insurer will not survive a division, the plan of division must include, in addition to the requirements described in section 3, the manner in which the dividing insurer will cancel or convert shares in the dividing insurer into shares, securities, obligations, rights to acquire shares or securities, cash, property, or any combination thereof.

Section 6. Amending plan of division.

(A) A dividing insurer may amend the dividing insurer's plan of division in accordance with any procedures set forth in the plan of division, or, if no such procedures are set forth in the plan of division, in a manner determined by the board of directors of the dividing insurer. A shareholder that is entitled to vote on or consent to approval of the plan of division is entitled to vote on or consent to an amendment of the plan of division that will affect:

- (1) The amount or kind of shares, securities, obligations, rights to acquire shares or securities, cash, property, or any combination thereof to be received by any of the shareholders of the dividing insurer under the plan of division;
- (2) The articles of incorporation or bylaws of any resulting insurer that become effective 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; or
- (3) Any other terms or conditions of the plan of division that effect a change that may adversely affect the shareholders in any material respect.

Section 7. Abandoning plan of division.

(A) A dividing insurer may abandon its plan of division only as follows:

(1) After the dividing insurer 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 such procedures are set forth in the plan of division, the dividing insurer may abandon its plan of division in a manner determined by the board of directors of the dividing insurer; or

(2) After the dividing insurer has filed a certificate of division with the secretary of state pursuant to section 11, the dividing insurer may file a signed certificate of abandonment with the secretary of state and file a copy with the commissioner. The certificate of abandonment is effective on the date it is filed with the secretary of state.

(B) A dividing insurer shall not abandon its plan of division after the plan of division becomes effective.

(C) If a dividing insurer elects to abandon its plan of division after the plan has been filed with the commissioner but before it becomes effective, the dividing insurer shall notify the commissioner.

Section 8. Approval of plan of division - articles of incorporation and bylaws.

(A) A dividing insurer shall not file a plan of division with the commissioner until the plan of division has been approved in accordance with all provisions of the dividing insurer's articles of incorporation and bylaws. If the dividing insurer's articles of incorporation and bylaws do not provide for approval of a plan of division, the dividing insurer shall not file the plan of division with the commissioner unless the plan of division has been approved in accordance with all provisions of the dividing insurer's articles of incorporation and bylaws that provide for approval of a merger.

(B) If a provision of a dividing insurer's articles of incorporation or bylaws adopted before the effective date of this Act requires that a specific number of or percentage of the board of directors or shareholders propose or adopt a plan of merger or impose other procedures for the proposal or adoption of a plan of merger, the dividing insurer shall adhere to the provision in proposing or adopting a plan of division. If any such provision of the articles of incorporation or bylaws is amended on or after the effective date of this Act, the provision applies to a division thereafter only in accordance with its express terms.

Section 9. Commissioner approval of plan of division.

(A) After a dividing insurer approves a plan of division pursuant to section 8, the dividing insurer shall file the plan of division with the commissioner. Within ten business days after filing the plan of division with the commissioner, the dividing insurer shall provide notice

of the filing to each reinsurer that is a party to a reinsurance contract allocated in the plan of division.

(B) (1) A division does not become effective until it is approved by the commissioner in accordance with this section.

(2) Before approving a plan of division, the commissioner shall:

(a) In large or complex divisions, hold a public hearing on the terms and conditions of the proposed division;

***Drafting Note:** Although this Model Act requires the commissioner to hold a public hearing in especially large or complex divisions, some state insurer division statutes provide the commissioner discretion to hold such a hearing regardless of the size or complexity of the division. When considering whether or not to require a public hearing, legislatures should take note that state insurance departments are situated and staffed differently with varying degrees of expertise across the country, and, as such, the size, public interests affected and level of complexity of a division necessary to warrant public hearings may vary from state to state.*

(b) Provide notice of the public hearing required pursuant to subsection (B)(2)(a) of this section to state insurance regulators and appropriate state guaranty associations in state in which the dividing insurer is authorized to do business; and

(c) Be satisfied that the dividing insurer has made reasonable efforts to provide all policyholders, contract holders, reinsurers, and other persons with an interest in the proposed plan of division at least thirty days prior notice of the public hearing if the commissioner determines that it would be unreasonable or unfair to not provide such notice to such other persons. For the purposes of this subsection (B)(2)(c), a notice must:

(i) Provide information regarding the proposed division under consideration and the location, date, and time of the public hearing; and

(ii) If the dividing insurer has the last-known address or last-known e-mail address of the policyholder, contract holder, reinsurer, or other person on file, either be mailed to the last-known address of such person or sent via electronic means to the last-known e-mail address of such person.

(3) The commissioner shall:

(a) Consider any simultaneous merger or acquisition of a resulting insurer as part of the plan of division;

(b) In the case of a simultaneous merger, apply to the resulting insurer involved in the simultaneous merger the requirements of this Act that are applicable to the resulting insurer as merged into the surviving entity in the merger and not to the resulting insurer prior to the merger;

(c) Consider, among other things, all assets, liabilities, and cash flows, the nature and composition of the assets proposed to be transferred in support of the plan of division, and all proposed assets of the resulting insurer, which consideration must include an assessment of the risks and quality, including the liquidity and marketability, of the proposed portfolio of the resulting insurer; consideration of asset and liability matching; and the treatment of the material element of the portfolio based on statutory accounting practices.

(4) After making the considerations described in subsection (B)(3) of this section, the commissioner shall approve a plan of division if the commissioner finds that the following requirements are met:

(a) The financial condition of a dividing insurer, a resulting insurer, or an acquiring party of a resulting insurer, if any, will not jeopardize the financial stability of the dividing insurer or prejudice the interests of its policyholders, contract holders, or reinsurers, in each case, in a manner that is unfair to its policyholders, contract holders, or reinsurers;

(b) The terms of the plan of division are fair and reasonable to the dividing insurer's and any resulting insurer's policyholders, contract holders, or reinsurers;

(c) Neither a dividing insurer, a resulting insurer, nor an acquiring party of a resulting insurer, if any, has plans or proposals to liquidate the dividing insurer or any resulting insurer, sell assets of the dividing insurer or of any resulting insurer, consolidate or merge the dividing insurer or any resulting insurer with a person, or make any other material change in the dividing insurer's or any resulting insurer's business or corporation structure or management that is unfair or unreasonable to the dividing insurer's or resulting insurers' policyholders, contract holders, or reinsurers and not in the public interest;

(d) The competence, experience, and integrity of the persons who would control the operation of a dividing insurer if it survives the division, and any resulting insurer are such that it would be consistent with the interest of the dividing insurer's and any resulting insurers' policyholders, contract holders or reinsurers and the general public to permit the division;

(e) The division is not likely to be hazardous or prejudicial to the insurance-buying public;

(f) The interest of the policyholders of the dividing insurer that may become policyholders of a resulting insurer will be adequately protected by the resulting insurer or acquiring party of a resulting insurer, if any;

(g) The dividing insurer, if it survives the division, and the resulting insurer will be solvent upon the consummation of the division;

(h) The assets allocated to the dividing insurer, if it survives the division, and to resulting insurers will not, upon the consummation of the division, be unreasonably small in relation to the business and transactions in which the insurers were engaged or are about to engage;

(i) The proposed division is not being made for the purpose of hindering, delaying, or defrauding any policyholders, contract holders, or reinsurers;

(j) Each resulting insurer that will be a member insurer of [cite state insurance guaranty fund statute], will be licensed in each line of business in each state where the dividing insurer was licensed with respect to the insurance policies or annuity contracts issued by the dividing insurer that are allocated to that resulting insurer as part of the plan of division; except that, the resulting insurer need not be licensed with respect to any line of business in any state where, at the time of division:

(i) The dividing insurer is not licensed with respect to the line of business; or

(ii) The state does not provide guaranty association coverage or similar coverage with respect to the allocated policies or contracts; and

(k) If the plan of division allocates policies of long-term care insurance, as defined in [insert citation to state insurance code definition of long-term care insurance], the liabilities associated with the allocated policies do not constitute more than a de minimus amount of the insurance liabilities allocated to the dividing insurer, if it survives the division, or to any resulting insurer.

(5) A dividing insurer that files a plan of division shall pay all expenses incurred by the commissioner in connection with proceedings under this section, including expenses for 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 plan of division. A dividing insurer may

allocate the expenses in the plan of division in the same manner as any other liability.

(6) In large or complex divisions, the commissioner shall select and retain an independent expert who shall review the plan of division and issue a report to the commissioner, which report addresses the following:

Drafting Note: *Although this Model Act requires the commissioner to select and retain an independent expert in especially large or complex divisions, some state insurer division statutes provide the commissioner discretion to retain an independent expert regardless of the size or complexity of the transaction. When considering whether or not to require the retention of an independent expert, legislatures should take note that state insurance departments are situated and staffed differently with varying degrees of expertise across the country, and, as such, the size, public interests affected and level of complexity of a division necessary to warrant independent experts may vary from state to state.*

- (a) The business purposes of the proposed division;
 - (b) Capital adequacy and risk-based capital, including consideration of the effects of asset quality, non-admitted assets, and actuarial stresses to reserve assumptions;
 - (c) Cash flow and reserve adequacy testing, including consideration of the effects of diversification on policy liabilities;
 - (d) Business plans;
 - (e) The impact, if any, of concentration of lines of business following the proposed division; and
 - (f) Management's competence, experience, and integrity.
- (7) If the commissioner approves a plan of division, the commissioner shall issue:
- (a) An order that is accompanied by findings of fact and conclusions of law; and
 - (b) A certificate of authority authorizing the resulting insurers to transact the business of insurance in this state; except that the commissioner may waive this requirement if a resulting insurer will not survive a merger simultaneous with the division in accordance with the plan of division.
- (8) The conditions in this section for freeing one 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 deemed to have been satisfied if the commissioner approves the plan of division in a final order.

Section 10. Confidentiality - records.

(A) All information, documents, materials, and copies of documents and materials submitted to, obtained by, or disclosed to the commissioner 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 subject to the same protection and treatment described in [insert citation to state insurance holding company systems law] for information and documents disclosed to or obtained by the commissioner in the course of an examination or investigation made under [insert citation to state insurance holding company systems law], until the time, if any, that a notice of the hearing contemplated by section 9 is issued.

(B) After the issuance of a notice of the hearing contemplated by section 9, all business, financial, actuarial, and other proprietary 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, is not available for public inspection, and is subject to the same protection and treatment as described in [insert citation to state insurance holding company systems law] for information and documents disclosed to or obtained by the commissioner in the course of an examination or investigation made under [insert citation to state insurance holding company systems law]. However, if the commissioner determines that the public's interest in making the information available for public inspection outweighs the interest of the dividing insurer in keeping the information confidential, the commissioner may, after notice and an opportunity to be heard, make the information available to public inspection in accordance with [insert citation to state public/open records law].

Section 11. Certificate of division.

(A) If the commissioner approves a dividing insurer's plan of division pursuant to section 9, an officer or duly authorized representative of the dividing insurer shall sign a certificate of division that sets forth all of the following:

- (1) The name of the dividing insurer;
- (2) A statement disclosing whether the dividing insurer survived the division. If the dividing insurer survived the division, the certificate of division must include any amendments to the dividing insurer's articles of incorporation or bylaws as approved as part of the plan of division.
- (3) The name of each resulting insurer that is created by the division;

- (4) The date on which the division is effective;
- (5) A statement that the division was approved by the commissioner pursuant to section 9;
- (6) A statement that the dividing insurer provided reasonable notice to each reinsurer that is a party to a reinsurance contract allocated in the plan of division;
- (7) Articles of incorporation and bylaws for each resulting insurer created by the division. The articles of incorporation and bylaws of each resulting insurer must comply with the applicable requirements of the laws of this state. The articles of incorporation and bylaws may state the name or address of an incorporator, may be signed, and may include any provision that is not required in a restatement of the articles of incorporation or bylaws.
- (8) A reasonable description of the capital, surplus, or other assets and liabilities, including policy liabilities, of the dividing insurer that are to be allocated to each resulting insurer.

(B) A dividing insurer's certificate of division is effective on the date the dividing insurer files the certificate with the secretary of state and provides a concurrent copy to the commissioner, or on another date as specified in the plan of division, whichever is later. However, the certificate of division becomes effective not later than ninety calendar days after it is filed with the secretary of state. A division is effective when the relevant certificate of division is effective.

Section 12. After division is effective.

- (A) (1) On the effective date of a division pursuant to section 11, if the dividing insurer survives, all of the following apply:
 - (a) The dividing insurer continues to exist;
 - (b) The dividing insurer must amend its articles of incorporation if the amendments are provided for in the plan of division; and
 - (c) The dividing insurer must amend its bylaws if the amendments are provided for in the plan of division.
- (2) On the effective date of a division pursuant to section 11, if the dividing insurer does not survive, the dividing insurer ceases to exist and any resulting insurer created by the plan of division comes into existence.
- (3) Each resulting insurer holds any capital, surplus, and other assets allocated to the resulting insurer by the plan of division as a successor to the dividing insurer

by operation of law, and not by transfer, whether directly or indirectly. The articles of incorporation and bylaws, if any, of each resulting insurer are effective when the resulting insurer comes into existence.

(4) All capital, surplus, and other assets of the dividing insurer:

(a) That are allocated by the plan of division vest in the applicable resulting insurer as provided in the plan of division or remain vested in the dividing insurer as provided in the plan of division;

(b) That are not allocated by the plan of division remain vested in the dividing insurer if the dividing insurer survives the division and are allocated to, and vest pro rata in, the resulting insurer individually if the dividing insurer does not survive the division; and

(c) Otherwise vest as provided in this section without transfer, reversion, or impairment.

(5) A resulting insurer to which a cause of action is allocated 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) All liabilities, including policy liabilities, of a dividing insurer are allocated between or among any resulting insurers as provided in section 11, and each resulting insurer to which liabilities are allocated is liable only for those liabilities, including policy liabilities, allocated as a successor to the dividing insurer by operation of law, and not by transfer or assumption, whether directly or indirectly.

(7) Any 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 the shareholders under the plan of division and any appraisal rights that the shareholders may have pursuant to section 14.

(B) Except as provided in the dividing insurer's articles of incorporation or bylaws, a division does not give rise to any rights that a shareholder, director of a domestic stock insurer, or third party would have upon a dissolution, liquidation, or winding up on the dividing insurer.

(C) The allocation to a resulting insurer of capital, surplus, or other asset that is collateral covered by an effective financing statement is not effective until a new effective financing statement naming the resulting insurer as a debtor is effective under the "Uniform Commercial Code", title 4.

(D) Unless otherwise provided in the plan of division, the shares in, and any securities of, each resulting insurer are distributed to the dividing insurer, if it survives the division, or

are distributed pro rata to the shareholders of the dividing insurer that do not asset any appraisal rights pursuant to section 14.

(E) A division that becomes effective pursuant to this Act is not an assignment of any insurance policy, annuity, reinsurance agreement, or other type of contract.

Section 13. Resulting insurers' liability for allocated assets and debts.

(A) Except as expressly provided in this section, when a division becomes effective, by operation of law all of the following apply:

(1) A resulting insurer is individually liable for the liabilities, including policy liabilities:

(a) That the resulting insurer issues, undertakes, or incurs in its own name after the division; and

(b) Of the dividing insurer that are allocated to or remain the liability of the resulting insurer to the extent specified in the plan of division;

(2) The dividing insurer remains responsible for the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division if the dividing insurer survives the division; and

(3) A resulting insurer is liable pro rata individually for the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division if the dividing insurer does not survive the division.

(B) Except as otherwise expressly provided in this section, when a division becomes effective, a resulting insurer is not responsible for an does not have liability for:

(1) Any liabilities, including policy liabilities, that another resulting insurer issues, undertakes, or incurs in the resulting insurer's own name after the division; or

(2) Any liabilities, including policy liabilities, of the dividing insurer that are allocated to or remain the liability of another resulting insurer under the plan of division.

(C) If a provision of indebtedness, whether secured or unsecured, or a provision of any contract other than an insurance policy, annuity, or reinsurance agreement that was issued, incurred, or executed by the dividing insurer before the effective date of this Act, requires the consent of the obligee to a merger of the dividing insurer, or treats such a merger as a default, the provision applies to a division of the dividing insurer as if the division were a merger.

(D) If a division breaches a contractual obligation of the dividing insurer, all resulting insurers are jointly and severally liable for the breach. The validity and effectiveness of the division is not affected by the breach.

(E) A direct or indirect allocation of capital, surplus, assets, or liabilities, including policy liabilities, occurs automatically, by operation of law, and may not be treated as a distribution or transfer for any purpose with respect to either the dividing insurer or any resulting insurer.

(F) 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.

(G) If the dividing insurer is bound by a security agreement governed by Articles 5 or 9 of the Uniform Commercial Code, or by the substantial equivalent as enacted in any other jurisdiction, and the security agreement provides that the security interest attaches to after-acquired collateral, a resulting insurer is bound by the security agreement.

(H) Unless otherwise provided in the plan of division and specifically approved by the commissioner, an allocation of a policy or other liability may not:

(1) Affect the rights that a policyholder or creditor has under any other law with respect to the policy or other liability; except that the rights are available only against a resulting insurer responsible for the policy or liability under this section;
or

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

(I) A resulting insurer is liable only for the liabilities allocated to the resulting insurer 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 other theory of liability applicable to transferees or assignees of assets.

Section 14. Shareholder appraisal rights.

If a dividing insurer does not survive a division, a shareholder of the dividing insurer is entitled to appraisal rights and to obtain payment of the fair value of the shareholder's shares in the same manner and to the extent provided for a corporation as a party to a merger pursuant to [insert citation to state shareholder right of dissent law].

Section 15. Rules.

The commissioner may adopt rules to administer this Act.

Section 16. Enforcement by commissioner.

The commissioner may take any action within the commissioner's authority to enforce compliance with this Act.

Section 17. Merger or consolidation effective with division.

(A) To facilitate the merger or consolidation of any resulting insurer with and into another company simultaneously with the effectiveness of a division authorized by this Act, a dividing insurer, including its officers, directors, and shareholders, may:

- (1) Adopt and execute a plan of merger or consolidation on behalf of a resulting insurer;
- (2) Execute and deliver documents, plans, certificates, and resolutions; and
- (3) Make any filings, in each case, on behalf of the resulting insurer.

(B) If so provided in a plan of merger or consolidation described in this section, the merger or consolidation is effective simultaneously with the effectiveness of a division authorized by this Act.

(C) On request of the dividing insurer, the commissioner may waive the other requirements of this section with respect to any merger or consolidation involving only domestic stock insurers and may issue the commissioner's final approval of the merger or consolidation as part of the commissioner's approval of a plan of division under this Act.

Section 18. Effective Date

This Act shall take effect _____.