

CHAPTER 313
FORMERLY
HOUSE BILL NO. 382

AN ACT TO AMEND CHAPTER 49A, TITLE 18 OF THE DELAWARE CODE RELATING TO DELAWARE INSURANCE COMPANY MUTUAL-TO-STOCK CONVERSION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4972, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

(1) "Capital stock" means common or preferred stock or any hybrid security or other equity security issued by a converted stock insurer or other company or entity pursuant to the exercise of subscription rights granted pursuant to the provisions of § 4975(a)(3) of this title.

(2) "Commissioner" means the Insurance Commissioner of this State.

(3) "Converted stock company" means a stock insurer that converted from a mutual insurer under this chapter, or under the laws of any other jurisdiction, or any successor thereto provided that not less than a majority of the shares of voting stock of such successor are owned by a mutual holding company.

(4) "Department" means the Department of Insurance of this State.

(5) "Domestic mutual company" means a mutual insurer domiciled in this State.

(6) "Eligible member" means a member of a mutual company whose policy is in force on the date the mutual company's governing body adopts a plan of conversion or such earlier date as the mutual company may establish with the consent of the Commissioner. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the governing body adopts the plan but before the plan's effective date is not an eligible member but shall have those rights established under § 4980 of this title.

(7) "Foreign mutual insurer" means a mutual insurer domiciled in a jurisdiction other than this State.

(8) "Mutual company" means a mutual insurer that is seeking to convert to a stock insurer under this chapter, including a captive insurance company (notwithstanding § 6916 of this title) that is incorporated as a nonstock corporation and including a foreign mutual insurer that has applied to redomesticate to this State with an intent to file an application to convert from mutual to stock form under this chapter.

(9) "Mutual holding company" means:

i. a nonstock corporation resulting from a reorganization of a mutual ~~company~~ insurer under this chapter; or

ii. a nonstock corporation resulting from a reorganization of a mutual insurer under the laws of any other jurisdiction, which subsequently redomesticated to Delaware by conversion under § 265, title 8 of the Delaware Code or any other lawful method, or a Delaware nonstock corporation that is the immediate successor thereto; or

iii. a Delaware nonstock corporation surviving or resulting from a merger or consolidation with a nonstock corporation that resulted from a reorganization of a mutual insurer under the laws of any other jurisdiction.

A mutual holding company may convert to stock form under this chapter, and shall be subject to the provisions of this chapter and to any other provisions of this title applicable to ~~mutual insurance holding~~ companies, except as otherwise provided in this chapter. It is the policy of this chapter to enable and facilitate such a conversion of a mutual holding company to stock form, and this chapter shall be interpreted accordingly. The certificate of incorporation of a mutual holding company shall include provisions setting forth the following:

a. That it is a mutual holding company ~~organized~~ under this chapter;

b. That the mutual holding company may hold not less than a majority of the shares of voting stock of a converted stock company or intermediate holding company, which in turn holds, directly or indirectly, all of the voting stock of a converted stock company;

c. That it is not authorized to issue any capital stock except pursuant to a conversion in accordance with the provisions of this chapter;

d. That its members shall have the rights specified in this chapter and its certificate of incorporation and bylaws; and

e. That its assets shall be subject to inclusion in the estate of the converted company in any rehabilitation or insolvency proceedings initiated by the Commissioner.

(10) "Participating policy" means a policy that grants a holder the right to receive dividends if, as and when declared by the mutual company.

(11) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a similar entity, or a combination of the foregoing acting in concert.

(12) "Plan of conversion" or "plan" means a plan adopted by a mutual company's governing body to convert the mutual company into a stock company in accordance with the requirements of this chapter.

(13) "Policy" means an insurance policy, including an annuity contract.

(14) "Standby investor" means any person that has agreed in writing to purchase all or a portion of the capital stock to be sold in a conversion that is not subscribed by eligible members.

(15) "Stock company" means a stock insurer that meets all of the current requirements for admission to do business as a domestic Delaware insurer.

~~(16)~~ "Voting member" means a member who is an eligible member and is also a member of the mutual insurer as of a date not more than 90 days prior to the date of the meeting at which the plan shall be voted upon by members.

Section 2. Amend § 4973(a), Title 18 of the Delaware Code by making insertions as shown by underlining as follows:

(a) No plan of conversion shall become effective unless the mutual company seeking to convert to a stock company shall have adopted, by the affirmative vote of not less than 2/3 of its governing body and otherwise in accordance with law, a plan of conversion consistent with the requirements of §§ 4975, 4976 and 4977, or of §4978, of this title. At any time before approval of a plan by the Commissioner, the mutual company, by the affirmative vote of not less than a majority of its governing body, may amend or withdraw the plan.

Section 3. Amend § 4974, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

(a) A foreign mutual insurer or foreign mutual holding company that has filed an application for redomestication may file an application for conversion under this chapter promptly after completion of the redomestication or upon such earlier date as the Commissioner may permit, but in no event prior to the approval of the redomestication by the members of the foreign mutual ~~insurance~~ insurer or foreign mutual holding company if such a member vote is required under the laws of the ~~foreign mutual insurance company's~~ state of domicile of the foreign mutual insurer or foreign mutual holding company. A redomestication application shall contain such information as the Commissioner may require. If the redomestication is approved by the state of domicile of the foreign mutual insurer or foreign mutual holding company and the members of the foreign mutual insurer or foreign mutual holding company, to the extent required, then no redomestication application of a foreign mutual insurer or foreign mutual holding company will be denied solely because the applicant has indicated its intention to avail itself of the provisions of this chapter.

(b) In addition to any requirements imposed by the existing state of domicile with respect to approval of redomestication by its voting members, a foreign mutual insurer that files an application for redomestication under this section also shall provide to its voting members a comparison of the method of mutual to stock conversion in its existing state of domicile and the ~~method~~ methods of mutual to stock conversion established by this chapter.

(c) Any order approving the redomestication of a foreign mutual insurer or foreign mutual holding company may contain such terms and conditions as the Commissioner shall require.

(d) Any foreign mutual insurer or foreign mutual holding company that redomesticates under the provisions of this section, within 10 days of the date of redomestication, shall adopt resolutions ratifying any previously adopted plan of conversion and file such resolutions as an amendment to the application for conversion. The Commissioner may deem any failure to file such ratifying resolutions as a withdrawal of the application for conversion.

(e) Nothing contained in this chapter is intended or shall be deemed to supersede or conflict with the requirements of the state of domicile of any foreign mutual insurer or foreign mutual holding company.

(f) Except to the extent specifically provided by this section, a plan of conversion shall be adopted as required by § 4973 of this title and shall be consistent with the requirements of §§ 4975, 4976, and 4977, or of §4978, of this title.

Section 4. Amend § 4975, Title 18 of the Delaware Code by making the deletions as shown by strike through and insertions as shown by underlining as follows:

(a) The following provisions shall be included in the plan:

(1) The reasons for proposed conversion.

(2) The effect of conversion on existing policies, including all of the following:

a. A provision that all policies in force on the effective date of conversion continue to remain in force under the terms of the policies, except that the following rights, to the extent they existed in the mutual company, shall be extinguished on the effective date of the conversion:

1. Any voting rights of the policyholders provided under the policies.

2. Except as provided under paragraph (a)(2)b. of this section, any right to share in the surplus of the mutual company, unless such right is expressly provided for under the provisions of the existing policy.

3. Any assessment provisions provided for under certain types of policies.

b. Except as provided in paragraph (a)(2)c. of this section, a provision that holders of participating policies in effect on the date of conversion continue to have a right to receive dividends as provided in the participating policies, if any.

c. Except for the mutual company's life policies, participating guaranteed renewable accident and health policies, and participating guaranteed renewable non-cancelable accident and health policies, a provision that upon the renewal date of a participating policy, the converted stock company may issue the insured a nonparticipating policy as a substitute for the participating policy. Nothing contained herein shall be construed to permit the substitution, during the term of a policy, of a non-experience rated policy for an experience rated policy.

(3) The grant of subscription rights to eligible members, including both of the following:

a. A provision that each eligible member is to receive, without payment, nontransferable subscription rights to purchase the capital stock of the converted stock company and that, in the aggregate, all eligible members shall have the right, prior to the right of any other party, to purchase 100% of the capital stock of the converted stock company, exclusive of any shares of capital stock required to be sold or distributed to the holders of surplus notes, if any, and capital stock purchased by the company's tax-qualified employee stock benefit plan that is in excess of the total price of the capital stock established under subsection (d) of this section, as permitted by § 4977(c) of this title. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

1. A corporation or entity organized for the purpose of purchasing and holding all the stock of the converted stock company; provided however, that the Commissioner may, in the Commissioner's discretion, require that such corporation or entity be incorporated or formed in this State;

2. A stock insurer owned by the mutual company into which the mutual company will be merged; or

3. An unaffiliated stock insurer or other corporation or entity that will purchase all the stock of the converted stock company.

For purposes of any plan, the transfer of subscription rights from: (i) an individual to such individual and his or her spouse or children or to a trust or other estate or wealth planning entity established for the benefit of such individual, his or her spouse or children, (ii) an individual to such individual's joint or individual IRA account, or other tax-qualified retirement plan, (iii) an entity to the shareholders, partners or

members of such entity, or (iv) the holder of such rights to the mutual insurance company or its proposed holding company, shall not be deemed an unpermitted transfer for purposes of this chapter.

b. A provision that the subscription rights shall be allocated in whole shares among the eligible members using a fair and equitable formula. The formula need not allocate subscription rights to eligible members on a pro rata basis based on premium payments or contributions to surplus, but may take into account how the different classes of policies of the eligible members contributed to the surplus of the mutual company or any other factors that may be fair or equitable. In accordance with § 4973(e) of this title, the Commissioner may retain an independent consultant to assist in the determination that the allocation of subscription rights is fair and equitable.

(b) The plan shall provide a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights received under paragraph (a)(3) of this section.

(c) The plan shall provide that any shares of capital stock not subscribed to by eligible members exercising subscription rights received under paragraph (a)(3) of this section shall be sold in a public offering or to another corporation or entity that is participating in the conversion plan, as provided in (a)(3)a of this section. If the number of shares of capital stock not subscribed by eligible members is so small in number or other factors exist that:

(1) Do not warrant the time or expense of a public offering, or

(2) Warrant the participation of standby investors to facilitate completion of the conversion, the plan of conversion may provide for sale of the unsubscribed shares through a private placement or other alternative method approved by the Commissioner that is fair and equitable to eligible members.

(d) The plan shall set the dollar amount of the capital stock for which subscription rights must be granted pursuant to paragraph (a)(3) of this section equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by a qualified expert. This pro forma market value may be that value that is estimated to be necessary to attract full subscription for the shares, as indicated by the independent evaluation, and may be stated as a range of pro forma market value.

(e) The plan shall set the purchase price per share of capital stock equal to any reasonable amount. However, the minimum subscription amount required of any eligible member cannot exceed \$500, but the plan may provide that the minimum number of shares any person may purchase pursuant to the plan is 25 shares. The purchase price per share at which capital stock is offered to persons who are not eligible members may be greater than but not less than the purchase price per share at which capital stock is offered to eligible members.

(f) The plan shall provide that any person or group of persons acting in concert shall not acquire, in the public offering or pursuant to the exercise of subscription rights, more than 5% of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in paragraph (a)(3)a. of this section, except with the approval of the Commissioner. This limitation does not apply to any entity that is to purchase 100% of the capital stock of the converted stock company as part of the plan of conversion approved by the Commissioner or to any person that acts as a standby investor of the capital stock of the converted stock company for an amount equal to 10% or more of the capital stock of the converted stock company, provided that in each case such purchase by a standby investor of 10% or more of the capital stock of the converted stock company is approved by the Commissioner in accordance with the provisions of Delaware law following the filing of an acquisition of control statement pursuant to § 5003 of this title.

(g) The plan shall provide that no director or officer or person acting in concert with a director or officer of the mutual company shall acquire any capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in paragraph (a)(3)a. of this section, for 3 years after the effective date of the plan, except through a broker-dealer, without the permission of the Commissioner. This provision does not prohibit the directors and officers from:

(1) Making block purchases of 1% or more of the outstanding common stock other than through a broker-dealer if approved in writing by the Department;

(2) Exercising subscription rights received under the plan; or

(3) Participating in a stock benefit plan permitted by § 4977(c) of this title, or approved by shareholders pursuant to § 4982(b) of this title.

(h) The plan shall provide that no director or officer may sell stock purchased pursuant to this section, or § 4977(a) of this title within 1 year after the effective date of the conversion, except that nothing contained in this section shall be deemed to restrict a transfer of stock by such director or officer if the stock is the stock of a corporation that is participating in the conversion plan as provided in (a)(3)a.3 of this section and has a class of stock registered under the Securities Exchange Act of 1934, as amended (15 U.S.C. §78a. et seq.), or if the transfer is to the spouse or minor children of such director or officer, or a to a trust or other estate or wealth planning entity established for the benefit of such director or officer, or the spouse or minor children of such director or officer.

(i) The plan shall provide that the rights of a holder of a surplus note to participate in the conversion, if any, shall be governed by the terms of the surplus note.

(j) The plan shall provide that, without the prior approval of the Commissioner, no converted stock company, or any corporation participating in the conversion plan pursuant to paragraph (a)(3)a.1. or (a)(3)a.2. of this section, shall, for a period of 3 years from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to either:

(1) A repurchase on a pro rata basis pursuant to an offer made to all shareholders of the converted stock company, or any corporation participating in the conversion plan pursuant to paragraph (a)(3)a.1. or (a)(3)a.2. of this section; or

(2) A purchase in the open market by a tax-qualified, or nontax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

Section 5. Amend § 4978, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

(a) The governing body may adopt a plan of conversion that does not rely in whole or in part upon issuing nontransferable subscription rights to members to purchase stock of the converted stock company if the Commissioner finds that the plan does not prejudice the interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent of this chapter. Subject to a finding of the Commissioner that an alternative plan is fair and equitable and is not inconsistent with the purpose and intent of this chapter, an alternative plan may:

(1) Include the merger of a domestic mutual insurer into a domestic or foreign stock insurer.

(2) Provide for issuing transferable or redeemable subscription rights.

(3) Provide for issuing stock, cash, policyholder credits, or other consideration, or any combination of the foregoing, to policyholders instead of subscription rights.

(4) Provide for partial conversion of the mutual company and formation of a mutual holding company in accordance with subsection (b) of this section. ~~For purposes of this chapter, a mutual holding company shall be a holding company organized in the mutual form which maintains direct or indirect voting control of an insurance company.~~

(5) Set forth another plan containing any other provisions approved by the Commissioner.

(b) The Commissioner may approve a partial conversion and formation of a mutual holding company provided that the mutual insurer is not insolvent or in hazardous financial condition according to information supplied in its most recent annual or quarterly statement filed with the Commissioner or as determined by a financial examination performed by the Commissioner pursuant to § 318 of this title. The Commissioner may retain, at the mutual company's expense, any qualified expert, including counsel and financial advisors, not otherwise a part of the Commissioner's staff to assist in reviewing whether the plan may be approved by the Commissioner.

(c) Conversion of mutual holding company. --

(1) A Any mutual holding company that has been formed pursuant to subsection (b) of this section may convert to stock form only in accordance with the provisions of this chapter. Solely for purposes of establishing the process for ~~the~~ enabling and facilitating any conversion of a mutual holding company to stock

form, references in this chapter to a mutual ~~insurer~~company shall be deemed to ~~include~~refer to a mutual holding company and other provisions of this chapter shall be interpreted accordingly.

(2) Any stock issued by a subsidiary insurance company or subsidiary holding company of a mutual holding company to persons other than the parent mutual holding company shall be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form or any corporation participating in the conversion of the mutual holding company pursuant to § 4975(a)(3)a. of this title. The parent mutual holding company and the subsidiary holding company or insurance company must demonstrate to the satisfaction of the Commissioner that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or insurance company has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to the entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required policyholder or shareholder votes.

Section 6. Amend § 4981, Title 18 of the Delaware Code by making insertions as shown by underlining as follows:

(a) On the effective date of the conversion, the corporate existence of the mutual company continues in the converted stock company. On the effective date of the conversion, all the assets, rights, franchises, and interests of the mutual company or the mutual holding company in and to every species of property, real, personal, and mixed, and any accompanying things in action, are vested in the converted stock company without any deed or transfer and the converted stock company assumes all the obligations and liabilities of the mutual company or the mutual holding company.

(b) Unless otherwise specified in the plan of conversion, the persons who are directors and officers of the mutual company or the mutual holding company on the effective date of the conversion shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are elected pursuant to the certificate of incorporation and bylaws of the converted stock company.

Approved July 05, 2012