ASSEMBLY, No. 130

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MAY 28, 1998

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN District 16 (Morris and Somerset) Assemblyman JOSEPH V. DORIA, JR. District 31 (Hudson)

Co-Sponsored by:

Assemblymen Talarico, Thompson, Senators Cardinale, Codey, Singer and Furnari

SYNOPSIS

Provides for the conversion of domestic mutual life insurers to domestic stock life insurers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/23/1998)

1 AN ACT to provide for the conversion of domestic mutual life insurers 2 to domestic stock life insurers.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State 5 of New Jersey:

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1. As used in this act:

"Adoption date" means the date as of which the board of directors of the mutual insurer initially approves and adopts the plan of reorganization;

"Closed block" means a block of participating business operated for the exclusive benefit of the policies included therein for policyholder dividend purposes only;

"Effective date" means the date upon which the reorganization of the mutual insurer is effective, as provided in section 9 of this act;

"Eligible policyholder" means a policyholder who owns, or is deemed by the plan of reorganization to own, a policy that is, or that is deemed by the plan of reorganization to be, in force on the adoption date, or a policyholder who is deemed eligible by the plan of reorganization, including as a result of reinstatement in accordance with the terms of the policy or the plan of reorganization, or otherwise:

"Fair and equitable" means that any action undertaken pursuant to this act with respect to a plan of reorganization, provides for full and proper consideration of the aggregate membership interests and corresponding values of eligible policyholders, in no manner discriminates improperly among eligible policyholders appropriately protects the interests of eligible policyholders before and subsequent to the reorganization;

"Membership interest" means all rights and interests of a policyholder as a member of a mutual insurer arising under the mutual insurer's charter or certificate of incorporation and bylaws, by law or otherwise, which rights include, but are not limited to, the right, if any, to vote and the right, if any, with regard to the surplus of the mutual insurer not apportioned or declared by the board of directors for policyholder dividends;

"Mutual insurance holding company" means a holding company based on a mutual plan which at all times owns, directly or indirectly through one or more intermediate stock holding companies, a majority of the voting securities of a reorganized insurer;

"Mutual insurer" means, in the case of a plan of reorganization under this act, a domestic mutual insurer authorized to write the kind of business defined in N.J.S.17B:17-3 and is reorganizing pursuant to 44 a plan of reorganization;

"Parent corporation" means a stock corporation that is or has been organized for the purpose of acquiring, directly or indirectly, pursuant

1 to the plan of reorganization, all or substantially all of the common 2 shares of the reorganized insurer;

3 "Person" means an individual, partnership, firm, association, 4 corporation, joint-stock company, limited liability company, limited liability partnership, trust, government or governmental agency, state 5 6 or political subdivision of a state, board, estate, trustee or fiduciary, 7 or any other legal entity;

"Plan of reorganization" means the plan of reorganization adopted by the mutual insurer in compliance with section 3 of this act;

"Policy" means an individual or group policy of insurance or annuity contract issued, or deemed by the plan of reorganization to have been issued, by the mutual insurer. If a policy is a group policy, the individual certificates or other evidences of interests in the group policy shall not be treated as separate policies; provided, however, that in the case of a policy or contract that was issued to a trust or group established or deemed by the plan of reorganization to have been established by the mutual insurer, the mutual insurer may provide in its plan of reorganization that each certificate or other evidence of interest is deemed to be a policy for the sole purpose of determining the rights, if any, of the holders of those certificates to receive consideration under the plan of reorganization;

"Policyholder" means the owner or deemed owner of a policy, as determined in accordance with the definition of "policyholder" set forth in N.J.S.17B:18-13 or N.J.S.17B:18-23, as applicable, and any additional rules as are set forth in the plan of reorganization;

"Qualified voter" has the meaning set forth in N.J.S. 17B:18-13 or N.J.S.17B:18-23, as applicable; and

"Reorganized insurer" means the domestic stock insurer into which a mutual insurer has been reorganized in accordance with this act.

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2. A domestic mutual life insurer authorized to write the kind of business defined in N.J.S.17B:17-3, which life insurer may also be authorized to write other kinds of business under Title 17B of the New Jersey Statutes, may pursuant to the provisions of this act reorganize into a domestic stock life insurer that may be or become a subsidiary of another stock corporation that is or has been organized for the purpose of acquiring, directly or indirectly, all or substantially all of the common stock of the reorganized insurer, provided that the use of a mutual insurance holding company shall not be permitted.

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- 3. The reorganization of a mutual insurer shall be accomplished pursuant to a plan of reorganization that complies with the following requirements:
- 44 a. The plan of reorganization shall have been duly adopted by action of not less than three-fourths of the members of the entire board of directors of the mutual insurer. 46

- b. The plan of reorganization shall: (1) specify the manner in which the proposed reorganization shall occur and the reasons for the proposed reorganization; (2) be fair and equitable to the policyholders of the mutual insurer; (3) promote the best interest of the mutual insurer and its policyholders; (4) provide for the enhancement of the operations of the reorganized insurer; (5) not be contrary to law; and (6) not be detrimental to the public.
- c. The plan of reorganization shall provide that all membership interests in the mutual insurer shall be extinguished as of the effective date; shall require the distribution of consideration, in a fair and equitable manner, to all eligible policyholders upon extinguishment of their membership interests; shall specify the manner in which the aggregate value of the consideration shall be determined and the method by which the consideration shall be allocated among eligible policyholders; and shall provide for the reasonable dividend expectations of policyholders.
- (1) With respect to that consideration, eligible policyholders shall be allocated in the aggregate one hundred per centum (100%) of the common stock of the reorganized insurer or its parent corporation, provided, however, that the commissioner may approve the sale of additional shares of stock of the reorganized insurer or its parent corporation if the mutual insurer demonstrates: (a) a need for additional capital, or (b) that the sale would not significantly dilute the value of the shares distributed to the policyholders.
- (2) The method for allocating consideration among eligible policyholders shall be fair and equitable. The method shall provide for each eligible policyholder to receive (a) a fixed component of consideration or a variable component of consideration, or both; or (b) any other component of consideration acceptable to the commissioner. Any component shall reflect, based upon fair and equitable formulas, methods and assumptions, factors such as estimated proportionate contributions of classes or groupings of policies and contracts to the aggregate component of consideration being distributed to eligible policyholders or other factors the commissioner may approve.
- (3) The consideration to be distributed to eligible policyholders shall consist of cash, stock of the reorganized insurer or the parent corporation, or if appropriate for tax or other reasons, additional life insurance or annuity benefits, any combination of these forms of consideration, or other forms of consideration acceptable to the commissioner. The form or forms of consideration to be distributed to a class or category of eligible policyholders may differ from the form or forms of consideration to be distributed to another class or category of eligible policyholders. The choice of the form or forms of consideration to be distributed to a class or category of eligible policyholders shall take into account such factors as the type of policy with respect to which the consideration is being distributed, the

country of residence or tax status of the eligible policyholders or other appropriate factors; provided, however, that, if the consideration to be distributed to one or more classes or categories of eligible policyholders will be in a form other than common stock of a publicly traded company, the plan of reorganization shall include a provision for determining, in a reasonable manner, the value of the consideration by means of reference to (a) the estimated market value of the reorganized insurer based upon an independent evaluation by a qualified expert; (b) the per share public market value of the registered common stock of the reorganized insurer or its parent corporation; or (c) by another method acceptable to the commissioner.

- (4) If the plan of reorganization does not provide for registration and public trading of the common stock of the reorganized insurer or the parent corporation as of the effective date, the plan of reorganization shall require the reorganized insurer or the parent corporation, as applicable, to use good faith efforts, to encourage and assist in the establishment of a market for the common stock of the reorganized insurer or the parent corporation as soon as reasonably possible and in any event not later than two years after the effective date of the reorganization, including obtaining a listing for the stock on a national exchange, facilitating coverage by research analysts, conducting management presentations to potential investors and analysts and securing the commitment of at least one market maker, which may be a specialist firm, to make a market in the common stock.
- (5) Within two years after the effective date of the reorganization, the reorganized insurer or its parent corporation, as applicable, shall make available to each eligible policyholder who received and retained shares of stock with minimal aggregate value upon reorganization, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees under a plan approved by the commissioner. The plan of reorganization shall include a provision for determining, in a reasonable manner, the market value of the shares by means of reference to (a) the estimated market value of the reorganized insurer based upon an independent evaluation by a qualified expert; (b) the per share public market value of the registered common stock of the reorganized insurer or its parent corporation; or (c) by another method acceptable to the commissioner.
- d. (1) The plan of reorganization of a mutual insurer shall provide for the reasonable dividend expectations of policyholders through establishment of a closed block or other method acceptable to the commissioner. The sole purpose of any dividend protection provision shall be to provide for reasonable policyholder dividend expectations, and it is not intended that the provision shall provide in any way for the distribution of consideration to eligible policyholders for the extinguishment of membership interests as set forth in subsection c. of this section. If a closed block is utilized, (a) the closed block shall be

operated for the exclusive benefit of policies and contracts included therein, (b) no costs or expenses incurred in connection with the reorganization shall be charged to the closed block, and (c) subject to termination of the closed block pursuant to paragraph (3) of this subsection d., none of the assets, including the revenue therefrom, allocated to the closed block shall revert to the benefit of the stockholders of the reorganized insurer.

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- (2) Any provision for dividend expectations may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of reorganization on the effective date of the plan of reorganization for which the mutual insurer has an experience-based dividend scale due, paid or accrued by action of the board of directors of the mutual insurer in the year in which the plan of reorganization is adopted; provided, however, that (a) policies that would be includible but for the fact that their recent issuance results in no dividends for an initial period, may be included, and (b) policies that are in force as extended term insurance may be included, and (c) other categories of policies and benefits not described in this subparagraph may be included or excluded, subject to the approval of the commissioner.
- 21 (3) If a closed block is utilized, the assets allocated therein, 22 together with the revenue from the closed block, shall be reasonably 23 sufficient to support the business in the closed block until the time the 24 last policy in the closed block has terminated, including payment of 25 claims and those expenses and taxes as are specified in the plan of 26 reorganization, and to provide for continuation of dividend scales in 27 effect on the adoption date, if the experience underlying those scales 28 continues, and for appropriate adjustments in the scales if the 29 experience changes. The plan of reorganization shall provide that the 30 assets assigned to a closed block will consist of: (a) a list of 31 designated assets of the mutual insurer's general account or specified 32 segments thereof, which list shall change periodically to reflect the acquisition and disposition of assets, or (b) a designated portion of 33 34 each and every asset of the mutual insurer's general account or specified segments thereof, which portion shall change periodically to 35 reflect the cash flows of the closed block, or (c) a combination of 36 37 both. The plan of operation for any closed block that is established 38 shall specify which of the methods of assignment of closed block 39 assets is being used, and shall set forth the methods by which the 40 designations referred to in subparagraphs (a), (b) and (c) of this 41 paragraph are changed during the course of closed block operations. 42 The plan of reorganization shall: require the reorganized insurer to 43 submit to the commissioner periodic reports, in a form acceptable to 44 the commissioner, that account for and describe the operations of the 45 closed block; and as specified in the plan, provide for periodic reviews of, and reports on, the closed block by an independent actuary in 46

accordance with paragraph (4) of this subsection d. The plan of reorganization may provide for conditions under which the reorganized insurer, with the approval of the commissioner, may cease to maintain the closed block.

- (4) Both the mutual insurer and the commissioner shall each appoint one or more qualified and independent actuaries for the purpose of providing actuarial certifications with respect to:
- (a) The reasonableness and sufficiency of the assets allocated to the closed block, if a closed block is provided; and
- (b) The reasonableness and appropriateness of the methodology and underlying assumptions used to allocate consideration among eligible policyholders.

13 The actuaries shall be members of the American Academy of 14 Actuaries. The certifications provided shall be in a form satisfactory 15 to the commissioner and shall be made in accordance with professional standards and practices generally accepted by the actuarial profession 16 and those other factors as the actuary in his professional judgment 17 believes are reasonable and appropriate at the time the certification is 18 19 made. The certification shall be accompanied by a memorandum of the 20 actuary, in a form satisfactory to the commissioner, describing the 21 calculations made in support of the certification and the assumptions 22 used in the calculations. The memoranda shall be and remain 23 confidential and shall not be subject to public inspection or copying pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). 24

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- 4. a. Upon the affirmative vote of not less than three-fourths of the members of the entire board of directors of the mutual insurer, the mutual insurer shall file with the commissioner an application for approval of, and permission to reorganize pursuant to, a plan of reorganization. The application shall include the following:
- (1) The plan of reorganization and exhibits thereto which shall include:
- (a) an explanation of the manner and basis upon which the reorganization shall occur;
- (b) the method of allocation of the consideration to be distributed to policyholders, including an actuarial certification of the reasonableness and appropriateness of the methodology used to allocate consideration among eligible policyholders; and
- (c) the method by which the dividend expectations of policyholders will be preserved including, if the plan utilizes a closed block, the plan of operation of the closed block and an actuarial certification of the reasonableness and sufficiency of the assets allocated to the closed block:
- 44 (2) A fairness opinion addressed to the board of directors of the 45 mutual insurer from a qualified, nationally recognized investment 46 banker that the provision of common stock, cash and policy benefits

- upon the extinguishment of the policyholders' membership interests pursuant to the plan of reorganization is fair to the eligible policyholders, as a group, from a financial point of view;
 - (3) A business plan of the reorganized insurer including five-year financial projections;

- (4) A certification that the plan of reorganization has been duly adopted by action of not less than three-fourths of the members of the entire board of directors of the mutual insurer;
- (5) The actuarial memoranda accompanying the certifications of the independent actuary appointed by the mutual insurer as required by paragraph (4) of subsection d. of section 3 of this act;
- (6) Certified copies of the proposed charter or certificate of incorporation and bylaws of the reorganized insurer;
- (7) The proposed forms of the notice of hearing to policyholders and for publication required by subsection d. of this section and the notice of the meeting of policyholders required by subsection c. of section 5 of this act, and any other notices required by the plan of reorganization;
- (8) Any information provided to the board of directors of the mutual insurer in connection with its review and approval of the plan of reorganization, except materials that are protected by attorney-client privilege;
- (8) Any other additional information that the mutual insurer believes is necessary; and
- (9) Any other additional information that the commissioner in his sole discretion deems necessary.
- b. The commissioner in his sole discretion shall determine, within thirty days of submission of the application, whether the application is complete and whether the forms of notice submitted pursuant to paragraph (7) of subsection a. of this section are adequate and may be provided to policyholders.
- c. The application and supporting documents shall be public documents except that the business plan, the financial projections, the actuarial memoranda and any other information that the commissioner determines could result in harm to the mutual insurer, harm to the reorganized insurer, or a reduction of values to eligible policyholders, if disclosed, shall be considered confidential. This confidentiality will not extend to information provided by the mutual insurer that the commissioner deems necessary to be provided to policyholders to evaluate the plan of reorganization.
- d. Upon determining that the application is complete and the forms of notice are adequate, the commissioner shall designate a date for a public hearing on the plan of reorganization. The public hearing may be held on one or more days, the first commencing within 90 days after the date on which the commissioner determines the application is complete, unless the mutual insurer requests, and the commissioner

agrees to, a longer period for the purpose of preparing and distributing the notices required by this subsection and subsection c. of section 5 of this act. The hearing shall be in the nature of a legislative hearing and shall not constitute or be considered, a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The mutual insurer shall provide policyholders with at least 45 days' notice of the hearing, the notice to be in the form, and provided in the manner, that the commissioner approves pursuant to subsection b. of this section. The mutual insurer shall cause notice of the time and place of the public hearing to be published at least two times at intervals of not less than one week, the first publication to be not more than 45 days and the last publication not less than 15 days prior to the public hearing in at least two newspapers of general circulation throughout the United States. The notice of the hearing shall state the purpose thereof and the time and the place where the hearing will occur. The purpose of the hearing shall be to receive comments and information for the purpose of aiding the commissioner in making a decision on the plan of reorganization. Persons wishing to make comments and submit information may submit written statements prior to the public hearing and may appear and be heard at the hearing.

e. The hearing shall be conducted by the commissioner or, at the commissioner's discretion, his designee, who shall report to and advise the commissioner on the matter, and the determination or order issued by the commissioner shall have the same force and effect as if the commissioner had conducted the hearing personally. The commissioner's order or determination shall be issued within 45 days after the closing of the record of the hearing by the commissioner or the hearing officer, as applicable, which record shall not be closed until the time it includes certification of the vote on the plan of reorganization by the mutual insurer's qualified voters as required by section 5 of this act. The commissioner shall issue a written decision detailing the reasons why the mutual insurer's plan of reorganization is approved or disapproved.

f. The commissioner shall approve the application and permit the reorganization pursuant to the plan of reorganization if he finds, following a public hearing, that: (1) the application conforms to the requirements of this section; (2) the plan is fair and equitable to the policyholders of the mutual insurer; (3) the plan promotes the best interest of the mutual insurer and its policyholders; (4) the plan provides for the enhancement of the operations of the reorganized insurer; (5) the plan is not contrary to law; (6) the plan is not detrimental to the public; and (7) after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the commissioner deems to be reasonably necessary for its future solvency.

g. The commissioner may engage the services of advisors and consultants, which may include, but are not limited to, lawyers, actuaries, accountants, investment bankers, compensation and employee benefit plan consultants or any combination thereof, to advise him on any matters related to the reorganization. All reasonable costs related to the development and examination of, and deliberations concerning, a plan of reorganization and other related matters, including those reasonable costs attributable to the use by the commissioner of advisors and consultants, shall be paid by the mutual insurer that makes the filing or initiates the discussions about a plan of reorganization for services prior to the effective date and by the reorganized insurer for services after the effective date.

h. The commissioner's order approving or disapproving a plan of reorganization shall be a final agency decision subject to appeal in accordance with, and within the time periods specified by, the Rules Governing the Courts of the State of New Jersey.

- 5. a. Subject to the provisions of subsection b. of this section, the plan of reorganization shall be approved by a vote of not less than two-thirds of the votes of the mutual insurer's qualified voters voting thereon in person or by attorney or proxy, except in the case of a mutual insurer that holds its elections pursuant to N.J.S. 17B:18-18 to 17B:18-28, inclusive, in which case voting shall be in person or by ballot, at a meeting of policyholders called for that purpose. The meeting of policyholders shall occur after the hearing required pursuant to subsection e. of section 4 of this act. Pursuant to N.J.S. 17B:18-14 or subsection d. of N.J.S. 17B:18-26, as applicable, each qualified voter shall be entitled to cast only one vote, irrespective of the number or value of policies held, unless the mutual insurer's charter or bylaws provide otherwise. The commissioner shall have the power to supervise and direct and prescribe rules governing the procedure for the conduct of voting on the plan of reorganization to the extent, consistent with the provisions of this section, he deems necessary to insure a fair and accurate vote. These powers shall include, but not be limited to, power to examine, supervise and approve: (1) the determination of qualified voters entitled to notice of and to vote on the plan of reorganization; (2) the giving of notice of the policyholders' meeting; (3) the content of the proxy form or ballot; (4) the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots; and (5) the resolution of any disputes.
 - b. The number of qualified voters who vote on the plan of reorganization shall equal or exceed, in the aggregate, (1) one million qualified voters, or (2) that lesser number of qualified voters as the commissioner shall approve.
 - c. All qualified voters shall be given notice of their opportunity to vote on the plan of reorganization, which notice shall be in a form

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1 approved by the commissioner and accompanied by a copy of the plan 2 of reorganization or a summary thereof which shall also be in a form 3 approved by the commissioner, and any other explanatory information 4 that the commissioner approves or requires. The notice shall be mailed, or provided by some other method or methods as may be 5 6 approved by the commissioner, not less than 45 days before the date of the meeting of policyholders to vote on the plan of reorganization. 7 8 The notice may be combined with the notice of the hearing described 9 in subsection d. of section 4 of this act.

d. The mutual insurer shall use good faith efforts to encourage qualified voters to vote on the plan of reorganization. These efforts shall be specified in the plan of reorganization and may include, but need not be limited to, establishing a toll-free call center, establishing an Internet site, adding messages to routine policy statements, providing written communications to qualified voters, and advertising in national publications.

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Except as otherwise specifically provided in the plan of reorganization, prior to and for a period of three years following the effective date of the reorganization, no person or persons acting in concert, other than the reorganized insurer or any employee benefit plans or trusts sponsored by the reorganized insurer, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of the reorganized insurer or any person that owns or controls a majority or all of the voting securities of the reorganized insurer without the prior approval by the commissioner of an application for acquisition filed by that person with the commissioner. The application for acquisition shall contain the information required by subsection b. of section 2 of P.L.1970, c.22 (C.17:27A-2) and any other information required by the commissioner. The commissioner shall not approve an application for acquisition unless he finds that the requirements of subsection d. of section 2 of P.L. 1970, c. 22 (C.17:27A-2) will be satisfied and, additionally, that: a. the acquisition would not frustrate the plan of reorganization as approved by the policyholders and the commissioner; b. the board of directors of the reorganized insurer or its parent corporation, as applicable, has approved the acquisition or extraordinary circumstances not contemplated in the plan of reorganization have arisen that would warrant their approval of the acquisition; and c. the acquisition would be in the interest of the policyholders of the reorganized insurer. No security that is the subject of any agreement or arrangement regarding acquisition or that is acquired or to be acquired in contravention of this section or of an order of the commissioner may be voted at any shareholders' meeting, and any action of shareholders requiring the affirmative vote of a

percentage of shares may be taken as though the securities were not issued and outstanding; provided, however, that no action taken at a meeting shall be invalidated by the voting of those securities unless the action would materially affect control of the reorganized insurer or a person that owns or controls a majority or all of the voting securities of the reorganized insurer or unless the courts of this State have so ordered.

7. No director, officer, agent or employee of the mutual insurer shall receive any fee, commission or other valuable consideration, other than his usual regular salary and compensation, whatsoever, that is contingent upon the plan of reorganization becoming approved or effective or is based upon a director, officer, agent or employee aiding, promoting or assisting in the approval or effectuation of the plan of reorganization. Subject to the approval of the commissioner, the mutual insurer may provide in its plan of reorganization for employee benefit and compensation arrangements, including arrangements involving the use of the stock of the reorganized insurer or stock of its parent corporation, which are to become effective simultaneously with the plan of reorganization; provided, however, that no member of the board of directors may be included in any such arrangement that becomes effective at that time.

8. If the mutual insurer complies substantially and in good faith with the requirements of this act with respect to any required notice to policyholders, its failure in any case to give the notice to any person or persons entitled thereto shall not impair the validity of the actions and proceedings taken under this act or entitle a person to any injunctive or other relief with respect thereto.

9. The reorganization shall be effective upon the date when the specified requirements within the plan of reorganization are satisfied. On or prior to the effective date of the reorganization, the mutual insurer shall file with the commissioner a certificate stating that: a. all of the conditions set forth in the plan of reorganization, including a final order by the commissioner granting permission to reorganize in accordance with the plan pursuant to subsection f. of section 4 of this act and approval by policyholders pursuant to section 5 of this act, have been satisfied and b. the board of directors of the mutual insurer has not abandoned or amended the plan of reorganization pursuant to section 11 of this act.

10. Upon the effective date, the mutual insurer shall immediately become a stock insurer, all membership interests shall be extinguished, and the reorganized insurer will act in good faith to convey consideration to policyholders eligible to receive consideration under

the plan of reorganization within 45 days, pursuant to the terms of the plan of reorganization. The reorganized insurer shall be a continuation of the original mutual insurer, and the reorganization in no way shall annul, modify or change any of the original mutual insurer's existing suits, rights, contracts or liabilities, except as provided in the plan of reorganization. After reorganization, the reorganized insurer shall exercise all the rights and powers and perform all the duties conferred or imposed by law upon insurers writing the classes of insurance written by it, and shall be vested in all the rights, franchises and interests of the mutual insurer in and to every species of property without any deed or transfer and the reorganized insurer shall succeed to all the obligations and liabilities of the mutual insurer, and retain all rights and contracts existing prior to conversion, except as provided in the plan.

11. The mutual insurer may, by action of not less than three-fourths of its board of directors, abandon or amend the plan of reorganization at any time before the effective date. No amendment made after the public hearing required by subsection d. of section 4 of this act shall change the plan in a manner which the commissioner determines is materially disadvantageous to any of the policyholders unless a further public hearing is held on the plan as amended.

12. The commissioner may, in his discretion, promulgate rules and regulations to implement this act.

13. The directors and officers of the mutual insurer, unless otherwise specified in the plan of reorganization, shall serve as the directors and officers of the reorganized stock insurer until new directors and officers are duly elected pursuant to the articles of incorporation and bylaws of the reorganized stock insurer.

14. Within 90 days following the public announcement by a mutual insurer of its intent to demutualize pursuant to this act, the mutual insurer shall provide notice of its intent to demutualize to all former policyholders who are at the time of the notice eligible to reinstate their policies. The notice shall be in a form and distributed in a manner approved by the commissioner.

15. This act shall take effect immediately.

43 STATEMENT

This bill provides for the reorganization (or conversion) of a domestic mutual life insurer to a domestic stock life insurer that may

be a subsidiary of another stock corporation that has been organized
for the purpose of acquiring all or substantially all of the common
stock of the reorganized insurer.

To reorganize a domestic mutual insurer, three-fourths of the members of its board of directors must adopt a plan of reorganization. The plan must: specify the manner in which the proposed reorganization shall occur and the reasons for the proposed reorganization; be fair and equitable to the policyholders of the mutual insurer; promote the best interest of the mutual insurer and its policyholders; provide for the enhancement of the operations of the reorganized insurer; not be contrary to law; and not be detrimental to the public. The plan must require the distribution of consideration, in a fair and equitable manner, to all eligible policyholders upon extinguishment of their membership interests and must specify the manner in which the aggregate value of that consideration is determined and the method of allocation among eligible policyholders. With certain exceptions, eligible policyholders must be allocated, in the aggregate, 100% of the common stock of the reorganized insurer or its parent corporation. The plan of reorganization of a mutual insurer must provide for the reasonable dividend expectations of policyholders through establishment of a closed block (a block of participating business operated for the exclusive benefit of the policies included in the block) or other method acceptable to the commissioner.

The insurer must file with the commissioner an application for approval of a plan of reorganization. The application must include, among other items: (1) the plan of reorganization which must include an explanation of the manner and basis upon which the reorganization will occur, the method of allocation of the consideration to be distributed to policyholders, and the method by which the dividend expectations of eligible policyholders will be preserved; (2) a fairness opinion from a qualified, nationally recognized investment banker that the provision of common stock, cash and policy benefits for policyholders in the plan of reorganization is fair to eligible policyholders, as a group, from a financial point of view; (3) a business plan with five-year financial projections; (4) actuarial memoranda; and (5) the certificate of incorporation and bylaws of the reorganized insurer.

After the commissioner determines that the application is complete, the commissioner shall set a date for a public hearing on the plan of reorganization, which shall occur within 90 days after the application is determined to be complete. The insurer must provide policyholders with at least 45 days' notice of the hearing and must have the notice published twice in at least two newspapers of general circulation throughout the United States. The hearing shall be conducted by the commissioner, or his designee, and the commissioner's order or

1 determination shall be issued within 45 days after the closing of the

2 record. The commissioner shall issue a written decision detailing the

3 reasons why the mutual insurer's plan to reorganize is approved or

disapproved. The commissioner may engage the services of advisors

5 and consultants to advise him on the reorganization, with the

6 reasonable cost thereof being paid for by the insurer.

The commissioner shall approve the application and permit the reorganization if he finds that: (1) the plan is fair and equitable to the policyholders of the mutual insurer; (2) the plan promotes the best interest of the mutual insurer and its policyholders; (3) the plan provides for the enhancement of the operations of the reorganized insurer; (4) the plan is not contrary to law; (5) the plan is not detrimental to the public; and (6) the reorganized insurer will have capital and surplus in an amount the commissioner deems to be reasonably necessary for its future solvency.

The commissioner's order approving or disapproving a plan of reorganization shall be a final agency decision subject to appeal to the court

After the hearing, the plan of reorganization shall be approved by a vote of not less than two-thirds of the votes of the mutual insurer's qualified voters voting and each qualified voter shall be entitled to cast only one vote, irrespective of the number or value of policies held, unless the mutual insurer's charter or by laws provide otherwise. The number of qualified voters who vote on the plan of reorganization must equal or exceed, in the aggregate, one million voters or such lesser number approved by the commissioner.

Except as otherwise specifically provided in the plan or reorganization, prior to and for a period of three years following the effective date of the reorganization, no person, other than the reorganized insurer, shall directly or indirectly offer to acquire or acquire the beneficial ownership of five percent or more of any class of a voting security of the reorganized insurer or any person that owns or controls a majority or all of the voting securities of the reorganized insurer without the prior approval by the commissioner. The commissioner shall not approve the acquisition unless it complies with current law, does not frustrate the plan of reorganization, is approved by the board of directors of the reorganized insurer or its parent corporation, and is in the interest of policyholders of the reorganized insurer.

The mutual insurer may, by action of not less than three-fourths of its board of directors, abandon or amend the plan of reorganization at any time before the effective date of that plan.