

MUTUAL INSURANCE COMPANY CONVERSIONS

515G.1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. "*Affiliate*" of a mutual insurer means a person who controls, is controlled by, or is under common control with, the mutual insurer being converted.
2. "*Control*" has the meaning assigned to it in section 521A.1, subsection 3.
3. "*Holder of a surplus note agreement*" means the holder of a guaranty fund or contribution certificate issued pursuant to section 515.20 or its equivalent which has been approved by the commissioner of insurance.
4. "*Mutual insurer*" means a domestic mutual property and casualty insurance company organized and licensed under chapter 515.

90 Acts, ch 1083, §1

515G.2 Mutual insurer becoming stock company authorization.

A mutual insurer may become a stock insurance company pursuant to a plan established and approved in the manner provided by this chapter. The plan shall be adopted by the board of directors of the insurer to become effective on a future stated date. If conversion from a mutual insurer to a stock company is to be undertaken by a transaction which would be governed by chapter 521 or 521A, but the plan adopted by the board of directors of the insurer includes approval of an acquisition of control, merger, consolidation, or reinsurance, then chapter 521 or 521A shall not be applicable to the transaction. However, in that case, the commissioner may require any information from the person or persons acquiring control of the insurer as could be required under chapter 521 or 521A, and may disapprove the transaction on any basis on which it could be disapproved under chapter 521 or 521A.

90 Acts, ch 1083, §2

515G.3 Plan of conversion.

A plan of conversion shall include all of the following:

1. The proposed articles of incorporation and bylaws of the mutual insurer as a stock company.
2. The manner of treating a holder of a surplus note agreement, if any. The holder of a surplus note agreement, if otherwise qualified, may, at its option, exchange the agreement for an equitable share of the securities or other consideration, or both, of the corporation into which the insurer is to be converted.
3. The manner and basis of exchanging the equitable share of each mutual policyholder with a policy in force as provided in section 515G.4 for securities or other consideration, or both, of the stock corporation or an affiliate into which the mutual insurer is to be converted and the disposition of any unclaimed shares. The plan shall also provide that each person who had a policy of insurance in effect on the date of adoption of the plan is entitled to receive in exchange for an equitable share, without additional payment, consideration payable in voting common shares of the insurer, or other consideration, or both. The equitable share of the policyholder in the mutual insurer may include a base value for each policyholder in recognition of the voting rights of the policyholder and the balance of such equitable share of its statutory surplus, plus any adjustments for nonadmitted assets permitted by the commissioner, shall be determined by the ratio which

the net earned premiums the policyholder has properly and timely paid to the insurer on insurance policies in effect during the three years immediately preceding the adoption of the plan bears to the total net earned premiums received by the mutual insurer from policyholders during that three-year period. If the equitable share of the policyholder entitles the policyholder to the purchase of a fractional share of stock, the policyholder has the option to receive the value of the fractional share in cash or purchase a full share by paying the balance in cash. However, policyholders due a de minimus amount, as established by the commissioner, need not be offered the value of the fractional share or the option to purchase a full share.

4. The number of voting common shares proposed to be authorized for the stock corporation, their par value, and the price at which they shall be offered.

A plan of conversion for an insurer organized on the mutual plan under chapter 491, shall also provide for conversion to a stock company as follows: the insurer organized on the mutual plan under chapter 491 shall amend its articles pursuant to chapter 491 as necessary to become a stock company, and shall immediately convert to a chapter 490 corporation as provided in section 490.1701 upon becoming a stock company.

90 Acts, ch 1083, §3

515G.4 Eligible policyholders participation.

The policyholders who are entitled to notice of and to vote upon approval of a plan of conversion and entitled to notice of a public hearing are the policyholders whose policies are in force on the date of the adoption of the plan by the board of directors.

90 Acts, ch 1083, §4

515G.5 Appointment of consultant.

A plan may provide for the appointment by the mutual insurer of a person as defined in section 4.1, subsection 20, who is qualified to act as a consultant. The appointment of the consultant shall be reviewed by the commissioner and unless the commissioner finds the consultant unqualified, the consultant shall carry out the duties required by the mutual insurer and this chapter.

The consultant may assist in determining the equity or value of the policyholders and the mutual insurer. The consultant may consider the value of the consideration to be given to the participating policyholders in exchange for their membership interests or into which the membership interest is to be converted and may consider any valuations necessary to carry out the plans provided for in section 515G.3. Valuations shall be made taking into account the latest filed annual statement of the mutual insurer and any significant developments occurring subsequent to the date of the statement.

The findings of the consultant may be modified by the mutual insurer at any time so long as the results are not unfair or inequitable to policyholders.

If it can be shown by the mutual insurer to the commissioner that an underwriter of the shares is a qualified person, the underwriter may be appointed as the consultant.

90 Acts, ch 1083, §5

515G.6 Approval of plan by policyholders notice of election effective date.

After the plan has been approved by the commissioner as provided in section 515G.7, the plan of conversion shall be submitted to and shall not take effect until approved by two-thirds of the policyholders of the mutual insurer voting on the plan or such greater vote, if any, as is required by the articles of incorporation or bylaws

of the mutual insurer. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with notice provisions in the articles of incorporation or bylaws of the mutual insurer. Each policyholder entitled to vote may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual insurer. Voting shall be by ballot, in person, or by proxy. A quorum consists of a quorum as defined in the articles of incorporation or bylaws of the mutual insurer. A copy of the plan of conversion, or a summary of the plan of conversion, shall accompany the notice of meeting and election. An approved plan of conversion shall take effect on the date specified in the plan.

90 Acts, ch 1083, §6

515G.7 Review of plan by commissioner hearing authorized approval.

The commissioner of insurance shall review the plan. The commissioner shall approve the plan if the commissioner finds the plan complies with all provisions of law, the plan is fair and equitable to the mutual insurer and its policyholders, and that the reorganized company will have the amount of capital and surplus deemed by the commissioner to be reasonably necessary for its future solvency. The commissioner may order a hearing on the fairness and equity of the terms of the plan after giving written notice of the hearing to the mutual insurer, and its policyholders, all of whom have the right to appear at the hearing.

90 Acts, ch 1083, §7; 2000 Acts, ch 1023, §33

515G.8 Payment of fees, salaries, and costs.

A director, officer, agent, or employee of the mutual insurer shall not receive a fee, commission, or other valuable consideration, other than regular salary and compensation, for aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. However, this section does not prohibit the payment of reasonable fees and compensation to a consultant, attorneys at law, accountants, actuaries, or other persons specifically employed for services performed in the practice of their professions while completing the plan of conversion, even if these persons are directors of the mutual insurer.

90 Acts, ch 1083, §8

515G.9 Act of conversion continuation of company.

When the commissioner and the policyholders approve the conversion plan as provided in this chapter, the commissioner shall issue a new certificate of authority to the successor stock company effective on the date specified in the plan. The successor stock company is a continuation of the mutual insurer and the conversion does not annul or modify any of the mutual insurer's existing suits, contracts, or liabilities except as provided in the approved conversion plan. All rights, franchises, and interests of the mutual insurer in and to property, assets, and other interests shall be transferred to and shall vest in the successor stock company and the successor stock company shall assume all obligations and liabilities of the mutual insurer.

The successor stock company shall exercise all rights and powers and perform all duties conferred or imposed by law on insurance companies writing the classes of insurance written by it, and shall retain the rights and contracts existing before conversion, subject to provisions of the plan.

90 Acts, ch 1083, §9

515G.10 Continuation of officers.

The directors and officers of the mutual insurer shall serve the reorganized company until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the reorganized

company.

90 Acts, ch 1083, §10

515G.11 Rules.

The commissioner may issue rules pursuant to chapter 17A to carry out the provisions of this chapter.

90 Acts, ch 1083, §11

515G.12 Amendments withdrawal.

At any time before approval of the plan of conversion and pursuant to rules issued by the commissioner, the board of directors of a mutual insurer may amend the conversion plan. The board of directors of a mutual insurer may withdraw the plan of conversion at any time prior to the approval of the plan of conversion by either the commissioner or the policyholders.

90 Acts, ch 1083, §12

515G.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, an officer or director, including family members and their spouses, of the mutual insurer or the successor stock company, shall not directly or indirectly offer to acquire or acquire control of the successor stock company unless the acquisition is made pursuant to a stock option or other plan approved by the commissioner, made pursuant to the plan of conversion, or made after the initial public offering from a broker or dealer of registered securities with the securities and exchange commission at the quoted price on the date of purchase, or made in connection with the defense against an acquisition of control of the reorganized company pursuant to any proposal not approved by the board of directors. As used in this section, "*family member*" includes a brother, sister, spouse, parent, grandparent, ancestor, or descendant of the officer or director.

90 Acts, ch 1083, §13

515G.14 Limitation of actions security for attorney fees.

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than thirty days following the date of approval by the commissioner, unless an application for rehearing is filed pursuant to section 17A.16, subsection 2. If an application for rehearing is filed, then such action must be filed within thirty days after that application is denied or deemed denied or, if the application is granted, within thirty days after the issuance of the commissioner's final decision on rehearing.

90 Acts, ch 1083, §14; 2000 Acts, ch 1023, §34

515G.15 Duties of secretary of state.

After approval of the conversion plan by the commissioner and the policyholders, the secretary of state shall accept for filing a verified copy of the amended articles of incorporation.

90 Acts, ch 1083, §15