

## CHAPTER 515G

## MUTUAL INSURANCE COMPANY CONVERSIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 521.2, 521A.14, 669.14, 670.7

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**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. “Eligible policyholder” means a policyholder who had a policy in force with a mutual insurer at any time during the three-year period immediately preceding the date of the adoption of a plan of conversion by the mutual insurer’s board of directors, including the date of adoption of the plan of conversion, and who, therefore, is eligible to receive an equitable share of the remaining statutory surplus of the mutual insurer, after provision for the base value for voting policyholders, as a result of the conversion.
4. “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.
5. “Mutual insurer” means a domestic mutual property and casualty insurance company organized and licensed under chapter 515.
6. “Voting policyholder” means a policyholder who had a policy in force as provided in section 515G.4.

90 Acts, ch 1083, §1; 2006 Acts, ch 1117, §74

**515G.2 Mutual insurer becoming stock company — authorization.**

1. A mutual insurer may become a stock insurance company pursuant to a plan of conversion established and approved in the manner provided by this chapter. The plan of conversion shall be adopted by the board of directors of the insurer to become effective on a future stated date.

2. A plan of conversion may provide that a mutual insurance company may convert into a domestic stock insurance company, convert and merge, or convert and consolidate with a domestic stock insurance company, as provided in chapter 490 or chapter 491, whichever is applicable. However, a mutual insurance company is not required to comply with sections 490.1102 and 490.1104 or sections 491.102 through 491.105 relating to approval of merger or consolidation plans by boards of directors and shareholders.

3. 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 of conversion 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; 2006 Acts, ch 1117, §75

**515G.3 Plan of conversion.**

1. A plan of conversion shall include all of the following:

a. The proposed articles of incorporation and bylaws of the mutual insurer as a stock company.

b. 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.

c. The manner and basis of exchanging the rights of each voting policyholder and each eligible policyholder of the mutual insurer to be converted to a stock company pursuant to this chapter. Such exchange may include a base value for each voting policyholder in recognition of the voting policyholder's voting rights as a mutual policyholder as well as consideration to be provided to each eligible policyholder in exchange for the eligible policyholder's rights as a mutual policyholder of the mutual insurer to be converted. After determining the base value to be provided to each voting policyholder in recognition of the voting rights of the voting policyholder, the equitable share of each eligible policyholder in the remaining statutory surplus of the mutual insurer, plus any adjustments for nonadmitted assets or additional value permitted by the commissioner, to be provided to each eligible policyholder shall be determined by the ratio which the net earned premiums the eligible policyholder has properly and timely paid to the mutual insurer on insurance policies in effect during the three-year period immediately preceding the adoption of the plan of conversion, including the date of the adoption of the plan of conversion, bears to the total net earned premiums received by the mutual insurer from all eligible policyholders during that three-year period. The base value to be provided to each voting policyholder in recognition of voting rights and the equitable share of each eligible policyholder may be exchanged, without additional payment, for securities or other consideration, or both, of the stock corporation or an affiliate into which the mutual insurer is to be converted. If the base value for each voting policyholder or the equitable share of each eligible 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. The plan shall also provide for the disposition of any unclaimed shares.

d. 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.

2. 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; 2006 Acts, ch 1117, §76; 2012 Acts, ch 1023, §157

Referred to in §515G.5

[T] Code editor directive applied

**515G.4 Policyholders — voting rights.**

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

Referred to in §515G.1

**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

Referred to in §505.23, 515G.6

#### **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.

The successor stock company or any defendant may require the plaintiff in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

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

[Unnumbered paragraph 2 was inadvertently omitted from Code 2001 through Code 2007]

**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