

LEGISLATIVE BILL 740

Approved by the Governor May 27, 1997

Introduced by Landis, 46

AN ACT relating to insurance; to adopt the Mutual Insurance Holding Company Act; and to provide a duty for the Revisor of Statutes.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 21 of this act shall be known and may be cited as the Mutual Insurance Holding Company Act.

Sec. 2. The Legislature finds and declares that it is in the public interest that a domestic mutual insurer be permitted to reorganize in a manner that preserves attributes of its mutuality while facilitating capital raising abilities and corporate affiliations on terms and conditions that are fair and equitable to the mutual insurer's policyholders. The Legislature further finds that because policyholders of a mutual insurer have membership interests in the mutual insurer, the director should have broad authority in reviewing a reorganization and the procedures and criteria to be applied by the director should be flexible within the parameters of the Mutual Insurance Holding Company Act. The act shall be liberally construed to effect the legislative intent set forth in this section and shall not be interpreted to limit the powers granted to the director by other provisions of the law.

Sec. 3. For purposes of the Mutual Insurance Holding Company Act:

(1) Director means the Director of Insurance;

(2) Intermediate stock holding company means a holding company of which at least a majority of the voting securities are owned by a mutual insurance holding company and which directly owns all of the voting securities of a reorganized stock insurer;

(3) Mutual insurance holding company means a holding company based on a mutual plan which at all times owns a majority of the voting securities of a single intermediate stock holding company or, if no such intermediate stock holding company exists, which owns a majority of the voting securities of a reorganized stock insurer;

(4) Reorganized stock insurer means a stock insurer subsidiary which results from a reorganization of a domestic mutual insurer pursuant to subsection (1) or (2) of section 4 of this act and in compliance with the act; and

(5) Voting securities means securities of any class or any ownership interest having voting power for the election of directors, trustees, or management, other than securities having voting power only because of the occurrence of a contingency.

Sec. 4. (1) A domestic mutual insurer, upon approval of the director, may reorganize (a) by forming a mutual insurance holding company, (b) by merging its policyholders' membership interests into the mutual insurance holding company, and (c) by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(2) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subsection (1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(3) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subsection (1) or (2) of this section shall be issued to the mutual insurance holding company or to a single intermediate stock holding company.

(4) Policyholders of a domestic mutual insurer which has reorganized as described in subsection (1) or (2) of this section shall be members of the mutual insurance holding company and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization. The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals comprising management any unfair advantage through or connected with the reorganization.

(5)(a) A mutual insurance holding company or an intermediate stock holding company formed under the Mutual Insurance Holding Company Act shall

not be authorized to transact the business of insurance.

(b) A mutual insurance holding company formed under the act shall not issue stock.

(c) The director shall have jurisdiction over a mutual insurance holding company and an intermediate stock holding company to ensure that policyholder interests are protected.

(d) A mutual insurance holding company and an intermediate stock holding company shall be treated as domestic insurers subject to the Insurers Demutualization Act, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, Chapter 44, article 2, and section 44-301.

(e) The aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized stock insurer.

(f) At least fifty percent of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers.

(g) If any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings. All of the assets of the mutual insurance holding company and intermediate stock holding company are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy claims against the reorganized stock insurer.

(h) No distribution to members of a mutual insurance holding company may occur without prior written approval of the director and only upon the director's satisfaction that such distribution is fair and equitable to policyholders as members of the mutual insurance holding company.

(i) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the director's prior written approval.

(j) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the director.

Sec. 5. A domestic mutual insurer shall file a proposed plan of reorganization approved by a vote of not less than two-thirds of the members of its board of directors for review and approval with the director. The proposed plan of reorganization shall be accompanied by a nonrefundable fee of one thousand dollars. A plan of reorganization shall include the following at a minimum:

(1) An analysis of the benefits and risks attendant to the proposed reorganization, including the rationale and comparative benefits and risks of a demutualization;

(2) A statement of how the plan is fair and equitable to the policyholders;

(3) Information sufficient to demonstrate that the financial condition of the mutual insurer will not be diminished upon reorganization;

(4) Provisions to ensure immediate membership in the mutual insurance holding company for all existing policyholders of the mutual insurer;

(5) Provisions for membership interests for future policyholders of the reorganized stock insurer;

(6) Provisions to ensure that, in the event of proceedings for rehabilitation or liquidation involving a stock insurer subsidiary of the mutual insurance holding company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurer subsidiary;

(7) Provisions for periodic distribution of accumulated mutual insurance holding company earnings;

(8) Certified copies of the proposed articles of incorporation and bylaws of the mutual insurance holding company, intermediate stock holding company, and reorganized stock insurer or proposed amendments thereto as necessary to effectuate reorganization;

(9) A certification that the plan of reorganization has been duly adopted by a vote of not less than two-thirds of the members of the board of directors of the mutual insurer;

(10) A certification adopted by not less than two-thirds of the members of the board of directors of the mutual insurer that the plan of reorganization is fair and equitable to the policyholders;

(11) The names, addresses, and occupational information of all corporate officers and all members of the board of directors of the proposed mutual insurance holding company in the case of a reorganization described in

subsection (1) of section 4 of this act;

(12) A description of the nature and content of the annual report and financial statement to be sent by the mutual insurance holding company to each member;

(13) A description of the number of members of the board of directors of the mutual insurance holding company required to be policyholders;

(14) A description of any plans for the initial sale of stock of the intermediate stock holding company or reorganized stock insurer;

(15) A form of the proposed notice to be mailed by the mutual insurer to its policyholders as required in section 8 of this act; and

(16) Any other information requested by the director.

Sec. 6. The director shall conduct a public hearing regarding a proposed plan of reorganization within one hundred twenty days after the date the completed proposed plan of reorganization is filed pursuant to section 5 of this act unless extended by the director for good cause. Any interested person may appear or otherwise be heard at the public hearing. The director may in his or her discretion continue the public hearing for a reasonable period of time not to exceed sixty days. The mutual insurer shall give such reasonable notice of the public hearing as the director in his or her discretion may require.

Sec. 7. (1) The director shall issue an order approving or disapproving a proposed plan of reorganization within thirty days after the close of the public hearing as required by section 6 of this act.

(2) The director shall not approve a proposed plan of reorganization unless he or she finds that:

(a) The plan of reorganization is fair and equitable to the policyholders;

(b) The plan of reorganization does not deprive the policyholders of their property rights or due process of law; and

(c) The reorganized stock insurer would meet the minimum requirements to be issued a certificate of authority by the director to transact the business of insurance in this state and the continued operations of the reorganized stock insurer would not be hazardous to future policyholders and the public.

(3) If the director approves a plan of reorganization, the director shall also publish notification of the issuance of the order in a legal newspaper in Lancaster County and in the county of domicile of the mutual insurer if different than Lancaster County.

(4) If the director approves a plan of reorganization, the approval shall expire if the reorganization is not completed within one hundred eighty days after the date of approval unless extended by the director for good cause.

(5) If the director disapproves a plan of reorganization, the director shall issue an order setting forth specific findings for the disapproval.

Sec. 8. (1) Within forty-five days after the date of the director's approval of a plan of reorganization pursuant to section 7 of this act, unless extended by the director for good cause, the mutual insurer shall hold a meeting of its policyholders at a reasonable time and place to vote upon the plan of reorganization. The mutual insurer shall give notice at least thirty days before the time fixed for the meeting, by first-class mail to the last-known address of each policyholder, that the plan of reorganization will be voted upon at a regular or special meeting of the policyholders. The notice shall include a brief description of the plan of reorganization and a statement that the director has approved the plan of reorganization. The notice to each policyholder shall also include a written proxy permitting the policyholder to vote for or against the plan of reorganization. The entity to which any group insurance policy is issued, and not any person covered under the group insurance policy, shall be considered the policyholder for purposes of voting. A plan of reorganization shall be approved only if not less than two-thirds of the policyholders voting in person or by proxy at the meeting vote in favor of such plan of reorganization. Each policyholder shall be entitled to only one vote regardless of the number of policies owned by the policyholder. The director shall supervise and direct the conduct of the vote on the plan of reorganization as necessary to ensure that the vote is fair and consistent with the requirements of this section.

(2) If a mutual insurer complies substantially and in good faith with the notice requirements of this section, the mutual insurer's failure to give any policyholder any required notice does not impair the validity of any action taken under this section.

(3) If the meeting of policyholders to vote upon the plan of

reorganization is held coincident with the mutual insurer's annual meeting of the policyholders, only one combined notice of meeting is required.

(4) The form of any proxy shall be filed with and approved by the director.

(5) For purposes of voting, policyholders means the policyholders of the mutual insurer on the day the plan of reorganization is initially approved by the board of directors of the mutual insurer.

Sec. 9. The director shall issue a certificate of authority to a reorganized stock insurer when the mutual insurer files with the director (1) a certificate stating that all of the conditions set forth in the plan of reorganization have been satisfied so long as the board of directors of the mutual insurer has not abandoned the plan of reorganization pursuant to section 12 of this act and (2) a certificate from the mutual insurer setting forth the vote and certifying that the plan of reorganization was approved by not less than two-thirds of the policyholders voting in person or by proxy on the plan of reorganization. The reorganization shall be effective upon the issuance of a certificate of authority by the director. Upon issuance of the certificate of authority, the insurer's articles of incorporation shall be treated as amended in compliance with section 44-231.

Sec. 10. Any person affected by a final order issued pursuant to the Mutual Insurance Holding Company Act shall have the right to appeal such order to the district court of Lancaster County. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 11. Corporate existence of a mutual insurer reorganizing pursuant to the Mutual Insurance Holding Company Act shall not terminate, but the reorganized stock insurer shall be deemed to be a continuation of the mutual insurer and to have been organized on the date the mutual insurer was originally organized.

Sec. 12. A mutual insurer may, by not less than a two-thirds vote of the members of its board of directors and with the approval of the director, abandon a plan of reorganization at any time before the issuance of the certificate of authority by the director. Upon such abandonment, all rights and obligations arising out of the plan of reorganization shall terminate and the mutual insurer shall continue to conduct its business as a domestic mutual insurer as though no plan of reorganization had ever been adopted.

Sec. 13. A membership interest in a mutual insurance holding company does not constitute a security under the laws of this state.

Sec. 14. A mutual insurance holding company shall file with the director, by March 1 of each year, an annual statement consisting of an income statement, balance sheet, and cash flows prepared in accordance with generally accepted accounting practices and a confidential statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company. A mutual insurance holding company shall also have an annual audit by an independent certified public accountant in a form approved by the director and shall file such audit on or before June 1 of each year for the year ending December 31 immediately preceding.

Sec. 15. The director shall have the power to order production of any records, books, or other information and papers in the possession of a mutual insurance holding company or its affiliates as are reasonably necessary to ascertain the financial condition of the reorganized stock insurer or to determine compliance with Chapter 44.

Sec. 16. Nothing contained in the Mutual Insurance Holding Company Act shall be construed to prohibit demutualization of a mutual insurance holding company pursuant to the Insurers Demutualization Act.

Sec. 17. (1)(a) No director, officer, employee, or agent of the mutual insurer and no other person shall receive any fee, commission, or other valuable consideration whatsoever, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in a plan of reorganization except as set forth in the plan of reorganization approved by the director.

(b) Subdivision (1)(a) of this section shall not prohibit a management-incentive compensation program which is contained in the plan of reorganization and approved by the director to be adopted upon reorganization to the reorganized stock insurer or prohibit such a program to be later adopted by the reorganized stock insurer.

(c) All fees, commissions, compensation, and valuable consideration described in this subsection shall be subject to the restrictions on salary, compensation, and emoluments in section 44-213.

(2) Subdivision (1)(a) of this section shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys,

accountants, actuaries, and investment bankers for services performed in the independent practice of their professions even though any such person is also a member of the board of directors of the mutual insurer.

Sec. 18. For purposes of determining whether a plan of reorganization meets the requirements of the Mutual Insurance Holding Company Act or in connection with any other matters relating to development of a plan of reorganization, the director may engage the services of experts. All reasonable costs related to the review of a plan of reorganization or such other matters, including those costs attributable to the use of experts, shall be paid by the mutual insurer making the filing or initiating discussions with the director about such matters.

Sec. 19. All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of preparing, filing, and processing an application to reorganize pursuant to section 5 of this act, other than information or documents distributed to policyholders in connection with the meeting of policyholders under section 8 of this act or filed or submitted as evidence in connection with the public hearing under section 6 of this act, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Sec. 20. Whenever it appears to the director that any person or any director, officer, employee, or agent of the person has committed or is about to commit a violation of the Mutual Insurance Holding Company Act or of any rule, regulation, or order of the director, the director may apply to the district court of Lancaster County for an order enjoining such person, director, officer, employee, or agent from violating or continuing to violate the act or any such rule, regulation, or order and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

Sec. 21. The director may adopt and promulgate rules and regulations and issue orders to carry out the Mutual Insurance Holding Company Act.

Sec. 22. The Revisor of Statutes shall assign sections 1 to 21 of this act to Chapter 44, article 61.