

## THE INSURANCE CODE OF 1956 (EXCERPT)

### Act 218 of 1956

#### CHAPTER 59

#### CONVERSION OF DOMESTIC MUTUAL INSURER TO DOMESTIC STOCK INSURER

##### **500.5901 Definitions.**

Sec. 5901. As used in this chapter:

(a) "Converted stock company" means a Michigan domiciled stock insurance company that converted from a Michigan domiciled mutual company or a stock business corporation resulting from conversion of a mutual holding company pursuant to this chapter.

(b) "Eligible member" except as otherwise provided in section 5915, means a member whose policy is in force on the date the mutual company's board of directors adopts a plan of conversion. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the board of directors adopts the plan but before the plan's effective date is not an eligible member but has the rights established under section 5919.

(c) "Plan of conversion" or "plan" means a plan adopted by a Michigan domestic mutual company's or mutual holding company's board of directors pursuant to this chapter to convert the mutual company into a Michigan domiciled stock company.

**History:** Add. 1987, Act 22, Imd. Eff. Apr. 24, 1987;—Am. 1995, Act 215, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 121, Imd. Eff. June 10, 1998;—Am. 2000, Act 8, Imd. Eff. Feb. 25, 2000.

**Popular name:** Act 218

##### **500.5903 Conversion plan; vote to amend or withdraw; submission of documents to commissioner; time period for approval or disapproval; conditions; review by qualified expert; notice of meeting; vote; adoption; filing certain documents; confidentiality.**

Sec. 5903. (1) A mutual company seeking to convert to a stock company shall adopt, by the affirmative vote of not less than 2/3 of its board of directors, a plan of conversion consistent with the requirements of sections 5905 to 5915. At any time before approval of a plan by the commissioner, the mutual company, by the affirmative vote of not less than 2/3 of its board of directors, may amend or withdraw the plan.

(2) Before a mutual company's eligible members may vote on approval of a plan, a mutual company whose board of directors has adopted a plan shall submit all of the following documents to the commissioner:

(a) The plan of conversion, including the independent evaluation of pro forma market value required by section 5905.

(b) The form of notice required by subsection (5).

(c) Any proxies to be solicited from eligible members pursuant to subsection (6).

(d) The form of notice required by section 5919(1) to persons whose policies are issued after adoption of the plan but before its effective date.

(e) The proposed articles of incorporation and bylaws of the converted stock company.

(f) A business plan for the converted company that describes anticipated changes in the postconversion business of the company, if any, and the company's plan to deploy capital acquired in the conversion.

(3) The commissioner shall approve or disapprove the plan by not later than 90 days after the filing of the documents under subsection (2). The commissioner shall approve the plan if he or she finds all of the following:

(a) The plan complies with this chapter.

(b) The plan will not prejudice the interests of the members.

(c) The plan's method of allocating subscription rights is fair and equitable.

(d) A substantial reason for and effect of the plan is to benefit the members of the company or additional capital is needed to implement the business plan filed pursuant to subsection (2)(f).

(4) The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing the plan and the independent evaluation of the pro forma market value required under section 5905.

(5) All eligible members shall be given notice of the members' meeting to vote upon the plan. The notice shall briefly but fairly describe the proposed conversion plan, shall inform the member of his or her right to vote upon the plan, and shall be mailed to each member's last known address, as shown on the mutual company's records, at least 21 days before the time fixed for the meeting. If the meeting to vote upon the plan is held during the mutual company's annual meeting of policyholders, only 1 combined notice of meeting is required.

(6) The plan shall be adopted upon receiving the affirmative vote of at least 2/3 of the votes cast by eligible members. Members entitled to vote upon the proposed plan may vote in person or by proxy. Any proxies to be solicited from eligible members shall be filed with and approved by the commissioner. The number of votes each eligible member may cast shall be determined by the mutual company's bylaws. If the bylaws are silent, each eligible member may cast 1 vote.

(7) The revised articles shall be considered at the meeting of the policyholders called for the purpose of adopting the plan of conversion and shall require for adoption the affirmative vote of at least 2/3 of the votes cast by eligible members.

(8) After the eligible members have approved the plan, the converted stock company shall file both of the following documents with the commissioner:

(a) Unless the commissioner has issued a waiver pursuant to section 5927(2), the minutes of the meeting of the members at which the plan was voted upon.

(b) The revised articles of incorporation and bylaws of the converted stock company.

(9) Upon the company's request, a business plan filed pursuant to subsection (2)(f) may be granted confidential treatment by the commissioner. A business plan granted confidential treatment is not subject to disclosure by the commissioner under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5904 Plan of conversion; prohibited conduct.**

Sec. 5904. Prior to the completion of a plan of conversion filed by a mutual company with the commissioner, a person shall not knowingly acquire, make an offer for, or make any announcement of an offer for any security issued or to be issued by the converting mutual company in connection with its plan of conversion filed under this chapter or any security issued or to be issued by any other company authorized in section 5905(1)(c)(i) and organized for purposes of effecting the conversion, except in compliance with the maximum purchase limitations imposed by section 5909 or the terms of the plan of conversion as approved by the commissioner.

**History:** Add. 1998, Act 457, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 218

#### **500.5905 Conversion plan; contents; provisions applicable to subscription rights.**

Sec. 5905. (1) The following provisions shall be included in the plan:

(a) The reasons for the proposed conversion.

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

(i) 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 any voting rights of the policyholders provided for under the policies or under this chapter are extinguished on the effective date of the conversion.

(ii) A provision that holders of participating policies in effect on the date of conversion continue to have the right to receive dividends as provided in the participating policies, if any.

(iii) A provision that, except for the mutual company's life policies, guaranteed renewable accident and health policies, and guaranteed renewable, noncancelable accident and health policies, 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.

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

(i) A provision that each eligible member is to receive, without payment, subscription rights to purchase a portion of the capital stock of the converted stock company. Subscription rights shall be nontransferable unless otherwise provided in the plan. A plan providing for transferable subscription rights shall include whatever terms, conditions, and restrictions on transfers that the commissioner determines are reasonably necessary to protect the member's interests. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, subscription rights to purchase a portion of the capital stock of 1 of the following:

(A) A corporation organized for the purpose of purchasing and holding all the stock of the converted stock company.

(B) An unaffiliated corporation that will purchase all the stock of the converted stock company.

(C) A stock insurance company into which the mutual company will be merged.

(ii) A provision that the subscription rights shall be allocated in whole shares among the eligible members using a fair and equitable formula. This formula may but need not 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.

(2) 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 subsection (1)(c).

(3) The plan shall provide that any shares of capital stock not subscribed to by persons exercising subscription rights received under subsection (1)(c) shall be sold in a public offering through an underwriter. If the number of shares of capital stock not subscribed by eligible members is so small in number that it does not warrant the expense of a public offering, the plan of conversion may provide for purchasing unsubscribed shares by a private placement or other alternative method approved by the commissioner that is fair and equitable to eligible members.

(4) The plan shall set the total price of the capital stock equal to the estimated pro forma market value of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (1)(c)(i)(A), (B), or (C) 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.

(5) The plan shall set the purchase price per share of capital stock equal to any reasonable amount.

(6) The plan shall provide for notice and a clear explanation to eligible members of their right to subscribe to stock of the converted stock company or the stock of another corporation that is participating in the conversion plan.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995;—Am. 2000, Act 8, Imd. Eff. Feb. 25, 2000.

**Popular name:** Act 218

#### **500.5907 Conversion plan; provisions applicable to operation as closed block of business.**

Sec. 5907. (1) The plan shall provide that a mutual life insurance company's participating life policies in force on the effective date of the conversion shall be operated by the converted stock company for dividend purposes as a closed block of participating business, except that any and all classes of group participating policies may be excluded from the closed block.

(2) The plan shall establish 1 or more segregated accounts for the benefit of the closed block of business and shall allocate to those segregated accounts enough assets of the mutual company so that the assets together with the revenue from the closed block of business are sufficient to support the closed block, including, but not limited to, the payment of claims, expenses, taxes, and any dividends that are provided for under the terms of the participating policies, with appropriate adjustments in the dividends for experience changes. The assets allocated to the closed block of business at its establishment shall be at least equal to the amount of reserves then held in connection with the closed block of business or the minimum reserve permitted by statute or regulation for the closed block of business, whichever is greater.

(3) The amount of assets allocated to the segregated accounts of the closed block shall be based upon the mutual life insurance company's last annual statement, updated to the effective date of the conversion.

(4) The converted stock company shall keep a separate accounting for the closed block and shall make and include in the annual statement to be filed with the commissioner each year a separate statement showing the gains, losses, and expenses properly attributable to the closed block.

(5) The commissioner may waive the requirement for establishing a closed block of business if it is in the best interests of policyholders to do so. The commissioner may permit discontinuing a segregated account if its size does not warrant the expense of maintaining the segregated account.

(6) This section applies only to mutual life insurance companies.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5909 Acquisition of capital stock of converted stock company or stock of participating corporation; limitations; prohibitions.**

Sec. 5909. (1) The plan shall provide that any person or group of persons acting in concert shall not acquire, through public offering or 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 section 5905(1)(c)(i)(A), (B), or (C), for 5 years from the effective date of the plan, 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 company as part of the plan of conversion approved by the commissioner.

(2) 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 section 5905(1)(c)(i)(A), (B), or (C), 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 purchasing stock through subscription rights received in the plan pursuant to section 5911(1) or from participating in a tax qualified stock benefit plan pursuant to section 5913.

(3) Stock options for the converted stock insurance company or the stock of another corporation that is participating in the conversion plan, as provided in section 5905(1)(c)(i)(A), (B), or (C), shall not be made available to the directors or officers of the company during the 2-year period following the effective date of the plan if the aggregate stock holdings of directors and officers exceed, or would exceed if the options were exercised, 25% of the total number of shares issued by the converted company if total assets of the company are less than \$50,000,000.00, or 15% of the total number of shares issued for the converted company if total assets are more than \$500,000,000.00. For converted companies with total assets of or between \$50,000,000.00 and \$500,000,000.00, the company size threshold for limiting stock options shall be interpolated.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5911 Receipt of subscription rights by directors and officers of mutual company.**

Sec. 5911. (1) The plan may provide that the directors and officers of the mutual company shall receive, without payment, subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 5905(1)(c)(i)(A), (B), or (C). These subscription rights shall be allocated among the directors and officers by a fair and equitable formula.

(2) The total number of shares that may be purchased under subsection (1) shall not exceed 25% of the total number of shares to be issued for a mutual company if total assets of the company are less than \$50,000,000.00 or 15% of the total number of shares to be issued for a mutual company if total assets of the company are more than \$500,000,000.00. For mutual companies with total assets of or between \$50,000,000.00 and \$500,000,000.00, the percentage of the total number of shares that may be purchased shall be interpolated.

(3) Stock purchased by a director or officer under subsection (1) may not be sold within 1 year after the effective date of the conversion.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995;—Am. 2000, Act 8, Imd. Eff. Feb. 25, 2000.

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#### **500.5913 Allocation of subscription rights to employee benefit plan.**

Sec. 5913. The plan may allocate to a tax-qualified employee benefit plan subscription rights to purchase up to 10% 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 section 5905(1)(c)(i)(A), (B), or (C). This employee benefit plan is entitled to exercise its subscription rights regardless of the total number of shares purchased by other persons.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995;—Am. 2000, Act 8, Imd. Eff. Feb. 25, 2000.

**Popular name:** Act 218

#### **500.5915 Adoption of plan not relying on issuance of subscription rights; alternative plan; retaining qualified expert; "eligible member" and "U.S. branch" defined.**

Sec. 5915. (1) The board of directors may adopt a plan of conversion that does not rely in whole or in part upon issuing 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. An alternative plan may include the merger of a domestic mutual insurer into a domestic or foreign stock insurer, issuing stock or cash to policyholders instead of subscription rights, or another plan approved by the commissioner. The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the plan may be approved by the commissioner.

(2) For an alternative plan submitted under subsection (1) by a U.S. branch of an alien insurer, "eligible member" means a policyholder eligible to receive a benefit upon demutualization in accordance with the plan of demutualization approved in, and the demutualization statute and regulations of, the jurisdiction in which the alien insurer is domiciled, and approved by the commissioner as consistent with the purposes of this chapter. As used in this subsection, "U.S. branch" means a business unit through which insurance is transacted

within the United States by an alien insurer that uses this state as a state of entry.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 121, Imd. Eff. June 10, 1998;—Am. 2000, Act 8, Imd. Eff. Feb. 25, 2000.

**Popular name:** Act 218

#### **500.5917 Effectiveness of plan; conditions.**

Sec. 5917. A plan is effective when the commissioner has approved the plan, the eligible members have approved the plan, and the revised articles of incorporation have been adopted.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5919 Notice of adoption of conversion plan; right of member to rescind or cancel policy.**

Sec. 5919. (1) All members whose policies become effective after the proposed plan has been adopted by the board of directors and before the effective date of the plan shall be given written notice of the plan of conversion on or before the forty-fifth day after the effective date of the plan. The notice shall specify the member's right to rescind or cancel the member's policy, as provided in subsection (2). A copy of the description of the plan provided to members pursuant to section 5903(5) shall accompany the notice. The form of the notice shall be filed with and approved by the commissioner.

(2) A member of a life or health insurance company entitled to receive the notice described in subsection (1) is entitled to rescind the member's policy and receive a full refund of any amounts paid for the policy or contract within 10 days after he or she has received the notice. Each member of a property or casualty insurance company entitled to receive the notice provided for in subsection (1) shall be advised of the member's right of cancellation and to a pro rata refund of unearned premiums.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5921 Conversion plan; continuation of corporate existence; transfer of rights, franchises, and interests; assumption of obligations and liabilities; service and election of directors and officers.**

Sec. 5921. (1) Upon converting a mutual company to a converted stock company under this chapter, the corporate existence of the mutual company is continued in the converted stock company. All the rights, franchises, and interests of the mutual company in and to every species of property, real, personal, and mixed, and any accompanying things in action, are transferred to and vested in the converted stock company, without any deed or transfer. In addition, the converted stock company has assumed all the obligations and liabilities of the mutual company.

(2) The directors and officers of the mutual company, unless otherwise specified in the plan of conversion, shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are duly elected pursuant to the articles of incorporation and bylaws of the converted stock company.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5923 Payment of fee, commission, or consideration to director, officer, agent, or employee; costs and expenses.**

Sec. 5923. (1) A director, officer, agent, or employee of the mutual company or any other person shall not receive any fee, commission, or other valuable consideration, other than his or her usual regular salary or compensation, for aiding, promoting, or assisting in a conversion under this chapter except as provided for in the plan approved by the commissioner.

(2) All the costs and expenses connected with a plan of conversion shall be paid for or reimbursed by the mutual company or the converted stock company. However, if the plan provides either for an unaffiliated corporation to purchase and hold all the stock of the converted stock company or for the merger of the mutual company into a stock company, the unaffiliated corporation or stock company shall pay for or reimburse all the costs and expenses connected with the plan.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

**Popular name:** Act 218

#### **500.5925 Validity of actions.**

Sec. 5925. (1) If the mutual company complies substantially and in good faith with the notice requirements



of this chapter, the mutual company's failure to give a member the required notice does not impair the validity of any action taken under this chapter.

(2) Except as otherwise provided, an action challenging the validity of or arising out of acts taken or proposed to be taken under this chapter, other than an action challenging the commissioner's decision approving or disapproving the plan, shall be commenced within 30 days after the eligible members have approved the plan. An action based upon noncompliance with a business plan submitted under section 5903(2)(f) shall be commenced in Ingham county circuit court within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered or should reasonably have been discovered by the complainant, whichever occurs first.

(3) Notwithstanding section 244, an action challenging the validity of the commissioner's decision approving or disapproving the plan shall be commenced within 30 days after the commissioner's decision.

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 121, Imd. Eff. June 10, 1998.

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#### **500.5927 Petition to waive notice and approval requirements.**

Sec. 5927. (1) If a mutual insurer becomes insolvent, its board of directors by a majority vote may request in its petition that the commissioner waive the requirements imposing notice to and policyholder approval of the planned conversion. The petition shall specify both of the following:

(a) The method and basis for the issuance of the converted insurer's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the insurer to a sound financial condition.

(b) That the conversion shall be accomplished without consideration to the past, present, or future policyholders, if the commissioner finds that the value of the insurer, due to the insolvency, is insufficient to warrant consideration.

(2) If the commissioner, upon review of the plan of conversion and after a financial examination, finds that the mutual insurer no longer meets statutory requirements with respect to capital, surplus, deposits, and assets, the commissioner may waive, by a written order, the requirements of section 5903(6).

**History:** Add. 1995, Act 215, Imd. Eff. Nov. 29, 1995.

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