STATE OF NEW YORK

9021

IN SENATE

May 4, 2022

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the formation of mutual holding companies by certain domestic mutual property/casualty insurers and the reorganization in connection therewith of a domestic mutual property/casualty insurer into a domestic stock property/casualty insurer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new article 81 to read as follows:

ARTICLE 81

MUTUAL HOLDING COMPANY; PROPERTY/CASUALTY INSURER

Section 8101. Definitions.
8102. Reorganization of mutual property/casualty insurer through formation of a mutual holding company; contents of plan.
8103. Dividend practices.
8104. Adoption of plan; submission of plan to the superintendent.
8105. Amendment or withdrawal of plan.
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8107. Approval of plan by superintendent; hearing.
8108. Approval of plan by eligible members.
8109. Filing of plan; effective date of reorganization.
8110. Effect of reorganization.
8111. Corporate existence.
8112. Directors and officers.
8113. Notice of proposed reorganization.
8114. Failure to give notice.
8115. Limitations of actions; security.
8116. Prohibited transactions by officers, directors and employees.
8117. Requirements applicable to a mutual holding company.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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8118. Other requirements applicable to an intermediate stock holding company and a mutual holding company.
8119. Conversion of mutual holding company.
8120. Transfers of subsidiaries.

§ 8101. Definitions. As used in this article, the following terms shall have the following meanings:

(a) "Adoption date" means the date the board of directors of the mutual property/casualty insurer adopts the plan of reorganization.

(b) "Beneficial ownership" with respect to any security, means the sole or shared power to vote or direct the voting of, such security and/or the sole or shared power to dispose or direct the disposition of such security.

(c) "Effective date" means, in the case of the reorganization of a mutual property/casualty insurer, the date upon which the reorganization of the mutual property/casualty insurer shall be effective in accordance with section eight thousand one hundred nine of this article as a result of reorganization proceedings pursuant to this article.

(d) "Eligible member" with reference to a mutual property/casualty insurer, means a person who, by the records of the mutual property/casualty insurer, is deemed to be the "policyholder" of a policy or contract which is of a type of any one or more of the basic kinds of insurance specified in subsection (a) of section four thousand hundred one of this chapter for purposes of section four thousand one hundred sixteen of this chapter as of the adoption date. A person insured under a group policy is not an eligible member. A person whose policy becomes effective one calendar day after the board of directors adopts the plan of conversion but before the effective date of the plan of conversion is not an eligible member.

(e) "Member" means a member of such mutual holding company as provided in subsection (c) of section eight thousand one hundred seventeen of this article.

(f) "Membership interests" means, with reference to an institution that is a mutual property/casualty insurer or a mutual holding company, the rights as members arising under the charter of such institution or this chapter or otherwise by law including the rights to vote and to participate in any distribution of the surplus of such institution, whether or not incident to a liquidation thereof. The term "membership interests" does not include rights expressly conferred upon the policyholders by their policies or contracts (including the right to participate in the distribution of surplus) other than the right to vote.

(g) "Mutual holding company" means a corporation organized under section eight thousand one hundred seventeen of this article.

(h) "Mutual property/casualty insurer" for the purposes of this article means a domestic mutual property/casualty insurance company organized under article twelve of this chapter and licensed under article forty-one of this chapter, or a domestic advance premium corporation organized and licensed under article sixty-six of this chapter, or an assessment corporation organized and licensed under article sixty-six of this chapter.

(i) "Offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of a security or interest in a security for value.

(j) "Outside director" means a director:

(1) who is not an officer, employee or consultant of the mutual holding company, any stock holding company, the reorganized insurer or any

other subsidiary of the mutual holding company or any stock holding company;

(2) who does not directly or indirectly own, control or hold one percent or greater of the voting securities of any stock holding company, the reorganized insurer or any other subsidiary of the mutual holding company or any stock holding company; and

(3) who is not a director, officer or employee of any person except the mutual holding company or any stock holding company that directly or indirectly owns, controls or holds such percentage of such voting security. Lesser amounts of ownership of voting securities other than those provided for in this subsection may be approved by the superintendent as a component of the mutual holding company's plan of reorganization pursuant to this article.

(k) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, limited liability company, limited liability partnership, trust, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary, any similar entity or any combination of the foregoing acting in concert.

(l) "Plan of reorganization" or "plan" means a plan adopted by a mutual property/casualty insurer in compliance with this article.

(m) "Policyholder" means a person who, by the records of the mutual property/casualty insurer, is deemed to be the policyholder of a policy or contract which is of a type of any one or more of the basic kinds of insurance specified in subsection (a) of section four thousand one hundred one of this chapter for purposes of section four thousand one hundred sixteen of this chapter.

(n) "Public offering" means a stock offering required to be registered pursuant to the Securities Act of 1933, United States Code, Title 15, Section 77e.

(o) "Reorganized stock insurer" means the stock property/casualty insurer into which a mutual property/casualty insurer has been reorganized in accordance with the provisions of this article.

(p) "Reorganizing insurer" means, in the case of a plan of reorganization of a mutual property/casualty insurer under this article, the mutual property/casualty insurer that is reorganizing pursuant to such plan.

(q) "Intermediate stock holding company" means a corporation incorporated under the laws of any jurisdiction in the United States, at least fifty-one percent of the voting stock of which is owned, directly or through another intermediate stock holding company, by a mutual holding company and which holds, directly or indirectly, voting stock in at least one reorganized insurer.

(r) "Voting security" includes voting securities as defined in paragraph forty-five of subsection (a) of section one hundred seven of this chapter, any reorganization certificate or subscription (including subscription rights issued pursuant to a plan of reorganization), or any security convertible (with or without consideration) into any such security, or carrying any warrant or right to subscribe for or purchase any such security, or any such warrant or right.

(s) "Voting stock" means capital stock that constitutes voting securities as defined in paragraph forty-five of subsection (a) of section one hundred seven of this chapter. All references in this article to a specified percentage of the voting stock of any person shall mean securities having the specified percentage of the voting power in such person for the election of directors, trustees or management of such person other

than securities having such power only by reason of the happening of a contingency.

§ 8102. Reorganization of mutual property/casualty insurer through formation of a mutual holding company; contents of plan. (a) A mutual property/casualty insurer may be reorganized as a domestic stock property/casualty insurer with a mutual holding company by complying with the requirements of this article.

(b) The plan of reorganization shall contain provisions for:

(1) the reorganizing insurer becoming a domestic stock property/casualty insurer;

(2) the formation of a mutual holding company;

(3) the eligible members of the reorganizing insurer becoming members of the mutual holding company with membership interests therein, and the membership interests in the reorganizing insurer being extinguished;

(4) at least fifty-one percent of the voting stock issued by the reorganized insurer being acquired and held, directly or through one or more intermediate stock holding companies, by the mutual holding company;

(5) if applicable, the general terms for the establishment of an alternative provision under the proposed dividend policy under subsection (a) of section eight thousand one hundred three of this article; and

(6) a plan of operation for the reorganized insurer including financial projections for a three-year period and a statement indicating its intentions with regard to issuing any nonparticipating business.

(c) The plan of reorganization shall provide that the reorganization process itself will not change premiums or reduce policy benefits or other policy obligations of the mutual property/casualty insurer, provided that the plan of reorganization may provide that the reorganized stock insurer will be able to make such changes and reductions as would be permitted under this chapter if the mutual property/casualty insurer were not a reorganizing insurer under this article.

(d) The plan may provide for the formation of one or more intermediate stock holding companies.

(e) The plan shall include the following as exhibits:

(1) the proposed charters or certificates of incorporation of the reorganized insurer, the mutual holding company and any intermediate stock holding company or companies; and

(2) the proposed by-laws of the reorganized insurer, the mutual holding company and any stock holding company or companies.

§ 8103. Dividend practices. (a) Following the effective date of the plan, the reorganized insurer may, with respect to its individual policies and contracts:

(1) continue the dividend practices of the reorganizing insurer;

(2) continue the dividend practices of the reorganizing insurer and adopt such other dividend practices as, at the time of the effective date or at any time thereafter, may be permitted under applicable law or regulation or approved by the superintendent;

(3) adopt such other alternative with respect to dividend practices as the superintendent may approve; or

(4) discontinue the dividend practices of the reorganizing insurer.

§ 8104. Adoption of plan; submission of plan to the superintendent. (a) A mutual property/casualty insurer seeking to reorganize under this article shall, by approval of a resolution adopted by at least two-thirds of its entire board of directors, adopt a plan consistent with the provisions of sections eight thousand one hundred two and eight thousand one hundred three of this article which is fair and equitable

to the policyholders. The resolution voted upon by the board of directors shall specify the reasons for and the purposes of the proposed reorganization.

(b) The plan shall be submitted to the superintendent, together with the resolution of the board of directors of the reorganizing insurer, certified by the secretary thereof, adopting the plan pursuant to this article.

§ 8105. Amendment or withdrawal of plan. At any time before the plan of reorganization becomes effective as provided in section eight thousand one hundred nine of this article, the reorganizing insurer may, by resolution of a three-fourths majority of its entire board of directors, amend the plan of reorganization or withdraw the plan of reorganization. In the case of a plan amendment, all references in this article to the plan of reorganization shall be deemed to refer to the plan as amended, but no amendment shall be deemed to change the adoption date of the plan of reorganization. A further public hearing is not necessary unless the superintendent determines that amendments submitted after the original hearing required under section eight thousand one hundred seven of this article will substantially alter the plan. In the event that the superintendent determines that the amendment substantially alters the plan, the plan as amended must be submitted for reconsideration by the eligible members as provided in section eight thousand one hundred eight of this article.

§ 8106. Consultants. The superintendent may appoint one or more consultants as the superintendent shall reasonably deem necessary to advise the superintendent in making the determination of whether the proposed plan of reorganization meets the applicable requirements of this article. The reorganizing insurer shall be responsible for the reasonable fees and expenses of any such consultants. This expenditure shall not constitute an expenditure of public funds pursuant to the state finance law, but the superintendent, with the approval of the comptroller, may in the superintendent's discretion for good cause shown remit such charges.

§ 8107. Approval of plan by superintendent; hearing. The superintendent may order a public hearing on the plan to be held prior to the plan being submitted to the eligible members for their approval. The reorganizing insurer shall give written notice of the hearing to eligible members sent by mail or electronic transmission to the last known mailing or electronic addresses of such eligible members as shown on the records of the reorganizing insurer. Such summary notice shall be subject to the approval of the superintendent, shall include the date, time and place of the hearing, and shall include both a website address and a toll-free telephone number through which eligible members may obtain, if not included in the summary notice, a full notice of the hearing and either a true and correct copy of the plan, or a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require. The reorganizing insurer shall also post a copy of such notice on its website. Such notice shall be sent to eligible members at least thirty days before the date specified for the hearing and may be sent electronically if the eligible member has consented to receive electronic communications from the reorganizing insurer under section three thousand four hundred fifty-eight of this chapter. The hearing shall be held at a time and location in this state deemed by the superintendent to be most convenient to the greatest number of eligible members. At such hearing any person may be heard in favor of, or against, the terms of the plan.

The plan of reorganization shall be made available for public inspection at one office of the department in each city in this state where the department maintains an office and at the principal office of the reorganizing insurer. The superintendent shall approve the plan if the superintendent finds that:

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

(b) the plan does not violate this article; and

(c) after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the superintendent deems to be reasonably necessary for its future solvency.

§ 8108. Approval of plan by eligible members. (a) A proposal to approve the plan of reorganization shall be submitted to eligible members for approval. The reorganizing insurer shall give written notice stating the date, time and place for voting on such proposal to eligible members and to vote on the proposal in accordance with this section, sent by mail or electronic transmission to the last known mailing or electronic addresses of such policyholders as shown on the records of the reorganizing insurer. Such notice shall be sent at least forty-five days before the date of the proposed vote to approve the plan of reorganization. Such notice may be combined with the summary notice of the hearing required by section eight thousand one hundred seven of this article. Such notice shall be subject to the approval of the superintendent and shall include both a website address and a toll-free telephone number through which members may obtain either a true and correct copy of the plan, or a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require.

(b) Each eligible member shall be entitled to cast one vote, unless otherwise provided in the charter or by-laws of the reorganizing insurer, on the proposal, either in person, by mail or by proxy, irrespective of the number or amount of the policies or contracts held. Each proxy shall be revocable at any time, except to the extent that, at the time of attempted revocation, the power conferred thereby has already been properly exercised. All votes shall be by written ballot cast in person, by mail or by electronic means by eligible members or by proxy agents duly appointed by eligible members. The in-person voting on the plan shall be held at a location and time approved by the superintendent.

(c) The proposal to approve the plan of reorganization shall be adopted by the affirmative vote of at least two-thirds of all votes cast by eligible members.

(d) The superintendent shall have power to prescribe rules governing the procedures for conduct of the voting on the proposal.

(e) The provisions of section four thousand one hundred sixteen of this chapter shall not apply to the action by eligible members pursuant to this section.

(f) The provisions of subsection (a) of section four thousand one hundred ten of this chapter and subsection (a) of section six thousand six hundred thirteen of this chapter shall not apply to a corporation organized under section eight thousand one hundred seventeen of this article.

(g) Upon the conclusion of the vote, the reorganizing insurer shall submit to the superintendent:

(1) a certified copy of the plan of reorganization, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or an assistant secretary of the reorganizing insurer;

(2) a certificate, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or assistant secretary of the reorganizing insurer, or subscribed by the person or persons, if any, designated by the superintendent to supervise the giving of notice of the date for action on the proposal, to the effect that such notice was given in accordance with this section to all policyholders entitled to such notice; and

(3) a certificate subscribed by an officer of the reorganizing insurer of the results of the vote, as evidenced by valid ballots received before the polls were closed.

(h) Each such certificate shall be affirmed as true under the penalties of perjury by the person or persons subscribing the same and, in the case of a certificate signed by officers of the reorganizing insurer, shall be affirmed under the corporate seal of the reorganizing insurer.

§ 8109. Filing of plan; effective date of reorganization. (a) When the superintendent has approved the plan of reorganization as provided in section eight thousand one hundred seven of this article, and certification of approval of the plan by eligible members has been made to the superintendent as provided in section eight thousand one hundred eight of this article, a copy of the plan of reorganization, with the superintendent's approval endorsed thereon, shall be filed in the office of the superintendent. A copy of such plan certified by the superintendent shall also be filed by the reorganizing insurer in the office of the clerk of the county where the principal office of the reorganizing insurer is located within thirty days after the superintendent's approval.

(b) The plan of reorganization shall take effect in accordance with its terms on the date and at the time when the filing in the office of the superintendent required by this section has been made or on such later date or at such later time, if any, as may have been specified in or determined in accordance with the plan or pursuant thereto.

(c) As of the effective date, the superintendent shall issue an amended certificate of authority to the reorganized insurer, and, if the plan of reorganization specifies that the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the superintendent shall, issue a permit authorizing it to do so.

§ 8110. Effect of reorganization. Upon the effective date of a plan of reorganization in accordance with section eight thousand one hundred nine of this article:

(a) the reorganizing insurer shall immediately become a domestic stock property/casualty insurer;

(b) the policyholders of the reorganizing insurer on the effective date shall immediately become members of the mutual holding company with membership interests therein, and all membership interests in the reorganizing insurer shall be extinguished;

(c) persons becoming policyholders of the reorganized insurer after the effective date of the plan shall become members of the mutual holding company immediately upon issuance of the policy or contract;

(d) one hundred percent of the voting stock issued by the reorganized insurer shall be owned, directly or through one or more intermediate stock holding companies, by the mutual holding company, and at no time subsequent shall such mutual holding company own less than fifty-one percent of such voting stock; and

(e) any other reorganization of the reorganizing insurer and its subsidiaries specified in the plan shall become effective in accordance with the terms of the plan. Except for the right to vote, the rights of all policyholders with respect to the reorganized insurer thereafter shall be as specified in their policies or contracts, in the charter of the reorganized insurer and in the plan of reorganization.

§ 8111. Corporate existence. (a) The reorganized insurer shall be a continuation of the reorganizing insurer, and the reorganization shall in no way annul, modify, or change any of such insurer's existing suits, rights, contracts, or liabilities except as provided in the approved plan of reorganization. All rights, franchises and interests of the reorganizing insurer in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be vested in the continuing company, without any deed or transfer, and simultaneously therewith such continuing company shall be subject to all of the obligations and liabilities of the reorganizing insurer, other than obligations and liabilities with respect to the policyholders' membership interests extinguished by the plan of reorganization.

(b) No action or proceeding pending at the time of the reorganization to which the reorganizing insurer may be a party shall be abated or discontinued by reason of such reorganization, but the same may be prosecuted to final judgment in the same manner as if the reorganization had not taken place, or the reorganized insurer may be substituted in place of such reorganizing insurer by order of the court in which the action or proceeding may be pending.

§ 8112. Directors and officers. Except as otherwise provided in the plan of reorganization and subject to subsection (d) of section eight thousand one hundred seventeen of this article, the directors and officers of the reorganizing insurer shall serve as directors and officers of the reorganized insurer, any intermediate stock holding company and the mutual holding company until new directors and officers have been duly elected and qualified pursuant to the charter or certificate of incorporation and the by-laws of the respective companies.

§ 8113. Notice of proposed reorganization. (a) In addition to the notices given pursuant to section eight thousand one hundred eight of this article, the reorganizing insurer shall give written notice of the pendency of the proposed reorganization and of the effect thereof to all persons who are not eligible members to whom the reorganizing insurer delivers policies or contracts that are issued after the adoption date and before the plan takes effect or is withdrawn, sent by mail or electronic transmission to the last known mailing or electronic addresses of such persons as shown on the records of the reorganizing insurer.

(b) Neither the receipt of such policy or contract nor the right to receive such notice shall entitle such persons to vote on the proposed plan of reorganization pursuant to section eight thousand one hundred eight of this article or vest such persons with any other rights or entitlements except as provided for in this article.

(c) Where, prior to the issuance of a policy or contract, the reorganizing insurer provides the prospective policyholders with notice of the pendency of the proposed reorganization and of the effect thereof, which notice has been approved for such purpose by the superintendent, then, unless the laws of the policyholder's domiciliary state otherwise require, such policyholders shall not have the foregoing rights of rescission and refund.

§ 8114. Failure to give notice. If the reorganizing insurer complies substantially and in good faith with the requirements of this article

with respect to the giving of any required notice, its failure in any case to give such notice to any person or persons entitled thereto shall not impair the validity of the actions and proceedings taken under this article or entitle such person to any injunctive or other equitable relief with respect thereto, nor shall such person have any claim for damages due to such failure.

§ 8115. Limitations of actions; security. (a) Notwithstanding any other provision of law to the contrary and except as otherwise provided in subsection (c) or (d) of this section, actions concerning or arising out of any plan of reorganization, proposed plan of reorganization, plan amendment or proposed plan amendment under this article or any acts taken or proposed to be taken under this article shall be commenced within eighteen months after the plan of reorganization or plan amendment is filed pursuant to subsection (a) of section eight thousand one hundred nine of this article or the charter is filed pursuant to subsection (c) of section eight thousand one hundred seventeen of this article, as the case may be, in the office of the superintendent or one year from the effective date of the plan of reorganization, whichever is later, or if the plan of reorganization or plan amendment is withdrawn, within one year from the date the board of directors approves a resolution to withdraw the plan. Where an action concerns or arises out of a plan amendment or proposed plan amendment made under section eight thousand one hundred five of this article, the applicable time period is measured from the filing, effective date or approval of withdrawal of the plan amendment, as the case may be. Where the action arises out of either a transfer of subsidiaries pursuant to section eight thousand one hundred twenty of this article or a sale of securities of the reorganized insurer or any stock holding company pursuant to section eight thousand one hundred eighteen of this article, which transfer or sale is not contemplated by the plan, then the applicable time period shall be measured from the effective date of such transfer or sale, as the case may be. Where the action concerns or arises out of a plan of reorganization adopted pursuant to section eight thousand one hundred nineteen of this article, then the applicable time period shall be measured from the effective date of the plan of reorganization.

(b) In any action referred to in subsection (a) of this section, the plaintiff or plaintiffs shall be required, upon a motion of the mutual holding company, reorganizing insurer or reorganized insurer or any intermediate stock holding company which establishes to the satisfaction of the court, that a substantial likelihood exists that such action is brought without merit and with an intention to delay or harass, to give adequate security for the damages and reasonable expenses, including attorneys' fees, which may be incurred as a result of, or in connection with, such action by such company and by any other defendants in such action or for which such company may become liable, to which security the mutual holding company, reorganizing insurer or reorganized insurer or any stock holding company shall have recourse in such amount as the court determines upon the termination of such action. The amount of security may from time to time be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or excessive.

(c) Notwithstanding any other provision of law to the contrary, any action seeking a stay, restraining order, injunction or similar remedy to prevent or delay the closing of any transaction pursuant to this article or of any transaction described in the plan of reorganization

must be commenced within the earlier of one hundred twenty days after, as applicable:

(1) the approval of a plan of reorganization by the superintendent pursuant to section eight thousand one hundred seven or eight thousand one hundred nineteen of this article, as the case may be; or

(2) the approval of the superintendent pursuant to section eight thousand one hundred twenty of this article.

(d) Any action or proceeding against the superintendent or any other governmental body or officer in connection with any act taken or order, regulation or rule issued pursuant to this article shall be commenced within one hundred twenty days from the date of such act or signing of such order, regulation or rule.

(e) Any person aggrieved by any act taken or order, regulation or rule issued pursuant to this article may petition for judicial review in the manner provided by article seventy-eight of the civil practice law and rules, pursuant to the limitations period prescribed in subsection (d) of this section. The petition shall be brought in the judicial department embracing the county wherein the act was taken, or the order, regulation or rule was issued. All such proceedings shall be heard and determined as expeditiously as possible and with lawful precedence over other matters. Acts taken or orders, regulations or rules issued pursuant to this article shall not be stayed or enjoined except upon application after notice to the superintendent and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success and will suffer irreparable harm if the stay or injunction is not granted.

§ 8116. Prohibited transactions by officers, directors and employees. No director, officer, agent or employee of the reorganizing insurer shall receive any fee, commission or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting or assisting in the reorganization except as set forth in the plan approved by the superintendent.

§ 8117. Requirements applicable to a mutual holding company. (a) The following provisions of this article are applicable to a mutual holding company:

(1) the following provisions of article twelve of this chapter shall apply to a mutual holding company as though it were a domestic mutual insurer: section one thousand two hundred one of this chapter to the extent provided in subsection (c) of this section and sections one thousand two hundred two, one thousand two hundred six, one thousand two hundred eight, one thousand two hundred nine, one thousand two hundred twelve, and one thousand two hundred fifteen through one thousand two hundred nineteen of this chapter;

(2) the provisions of the business corporation law that are applicable to a domestic mutual property/casualty insurer shall apply to a mutual holding company as though it were a domestic mutual insurer; and

(3) the provisions of section four thousand one hundred sixteen of this chapter applicable to a domestic mutual property/casualty insurer shall be applied to a mutual holding company as though its members were voting policyholders of a mutual property/casualty insurer.

(b) A mutual holding company shall not dissolve, liquidate or wind up and dissolve except through proceedings under section eight thousand one hundred nineteen of this article, article seven thousand four of this chapter for the liquidation or dissolution of the reorganized insurer or as the superintendent may otherwise approve. In the event any proceedings are instituted under article seven thousand four of this

chapter for the complete liquidation of reorganized insurer pursuant to this article:

(1) the mutual holding company formed as part of such reorganization shall automatically become a party to such proceedings;

(2) all of the mutual holding company's assets, including its holdings of shares in the reorganized insurer or any intermediate stock holding company, shall be deemed assets of the estate of the domestic stock property/casualty insurer to the extent necessary to satisfy claims of persons who have class one, class two, class three or class four claims under subsection (a) of section seven thousand four hundred thirty-five of this chapter with respect to such domestic stock property/casualty insurer; and

(3) members of the mutual holding company shall be deemed to hold class seven claims with respect to the mutual holding company under subsection (a) of section seven thousand four hundred thirty-four of this chapter.

(c) The charter of the mutual holding company shall be filed with the superintendent and shall contain the matters required to be contained in the charter of a domestic mutual property/casualty insurer by section one thousand two hundred one of this chapter, except that the name of the mutual holding company shall contain the word "mutual" and shall not contain the word "insurance", "assurance" and the company's powers shall not include doing an insurance business. The charter shall contain provisions stating that:

(1) it is a mutual holding company organized under this article;

(2) its purpose shall be to hold, directly or through one or more intermediate stock holding companies, greater than fifty percent of the voting stock of a reorganized insurer;

(3) it shall not be authorized to issue voting stock;

(4) it shall not be authorized to conduct any business other than that of a mutual holding company, except for the acquisition, ownership, management and disposition of its assets and all actions reasonably incident thereto; and

(5) it shall have members having the rights specified in this section and section eight thousand one hundred ten of this article and in its charter and by-laws. The charter shall also contain provisions setting forth any rights of members of the mutual holding company in the surplus of the mutual holding company.

(d) At least two-thirds of the directors of the mutual holding company and of any intermediate stock holding company, all of the members of the compensation committee of the board of directors of the mutual holding company and of any intermediate stock holding company, at least two-thirds of the members of any committee responsible for making decisions affecting the capital structure or mergers and acquisitions, and a majority of the directors on each other committee of the board of directors of the mutual holding company and any stock holding company shall be outside directors. The aggregate percentage of voting securities of the reorganized insurer directly or indirectly owned, controlled or held with the power to vote, either personally or by persons (other than the mutual holding company and any intermediate stock holding company) of which they are directors, officers or employees, by outside directors, shall not exceed three percent or such lesser percentage as may be determined by the superintendent in his or her approval of the mutual holding company's plan of reorganization pursuant to this article. The by-laws of the mutual holding company and any intermediate stock holding company shall provide that the affirmative vote of at least two-thirds

of the board of directors of such company shall be required for any action by such company to adopt a plan of conversion pursuant to section eight thousand one hundred nineteen of this article, enter into a merger, conduct a public offering or authorize the issuance of any voting stock or security convertible into voting stock of the reorganized insurer or the stock holding company to any person other than the mutual holding company or the stock holding company.

(e) The superintendent may, by regulation, require a mutual holding company to file annual statements with the superintendent in such form as the superintendent shall prescribe.

(f) With the written approval of the superintendent, and subject to the conditions that the superintendent may impose, a mutual holding company or stock company may:

(1) merge or consolidate with, or acquire the assets of, a mutual holding company organized pursuant to this article or pursuant to the laws of another state;

(2) either alone or together with one or more of the reorganized insurer, any intermediate stock holding companies or any subsidiaries of any of them, merge or consolidate with or acquire the assets of a mutual property/casualty insurer;

(3) merge or consolidate with any other person.

(g) A mutual holding company or any intermediate stock holding company may also acquire the capital stock or assets of other persons.

(h) A member of a mutual holding company is not, as a member, personally liable for the acts, debts, liabilities or obligations of the company. No assessment of any kind may be imposed upon the members of a mutual holding company by the board of directors, members or creditors of the mutual holding company or because of any liability of any company owned or controlled, in whole or in part, directly or indirectly, by the mutual holding company or because of any act, debt or liability of the mutual holding company.

(i) A membership interest in a mutual holding company shall not constitute a security under the laws of this state.

(j) The superintendent shall retain jurisdiction over any mutual holding company organized pursuant to this article.

(k) Directors of the mutual holding company shall be elected by a majority vote of all members who vote in such election in person or by proxy or as set forth in the by-laws of the mutual holding company. If the reorganized insurer takes any action other than election of its directors that would require a vote of policyholders if the reorganized insurer were a mutual property/casualty insurer, then such action shall require a vote of members of the mutual holding company.

§ 8118. Other requirements applicable to an intermediate stock holding company and a mutual holding company. (a) From and after the effective date, the mutual holding company shall hold, directly or through one or more stock holding companies, more than fifty percent of the issued and outstanding voting stock of the reorganized insurer. For purposes of the voting stock ownership requirement under this subsection, any issued and outstanding securities of the reorganized insurer or any stock holding company that are convertible into voting stock shall be considered issued and outstanding voting stock.

(b) A mutual holding company and any intermediate stock holding company shall each be deemed to be a "holding company" of the reorganized insurer within the meaning of article fifteen of this chapter, and all provisions of article fifteen of this chapter shall apply to transactions occurring between the mutual holding company, the stock holding

company and the reorganized insurer. Approval of the plan of reorganization by the superintendent pursuant to this article shall constitute approval of the acquisition of control by a mutual holding company and any stock holding company under section one thousand five hundred six of this chapter, the registration by the reorganized insurer as a controlled insurer under section one thousand five hundred three of this chapter and notice of the acquisition of shares of the reorganized insurer under section four thousand two hundred three of this chapter.

(c) Outside directors of the mutual holding company, an intermediate stock holding company or the reorganized insurer shall not own beneficially, in the aggregate, more than three percent of the voting stock of the stock holding company or the reorganized insurer.

(d) Any issuance of voting stock or securities convertible into voting stock or options for the purchase of voting stock of the reorganized insurer or the stock holding company prior to an initial public offering, private equity placement, or the issuance of public or private voting stock or securities convertible into voting stock of the reorganized insurer or stock holding company or any other type of capital raised shall be subject to the approval of the superintendent as to the proposed valuation of such stock or securities, the superintendent may impose conditions upon such approval, and all expenses of the superintendent's review, including without limitation those of outside consultants in reviewing such proposed valuation, shall be borne by the issuing company.

(e) In the event of an initial public offering, an intermediate stock holding company or reorganized insurer may not repurchase capital stock within one year following the date of such initial public offering, except that repurchases of no greater than five percent of the outstanding stock may be repurchased during this one-year period without the approval of the superintendent.

(f) In the event of any violation of this section, or of any action which, if consummated, might constitute such a violation:

(1) all voting stock of the reorganized insurer, any stock holding company, or the reorganized mutual holding company, acquired by any person in excess of the maximum amount permitted to be acquired by such person pursuant to this subsection shall be deemed to be non-voting stock; and

(2) in addition to any other enforcement powers of the superintendent under this chapter, such violation or action may be enforced or enjoined, as the case may be, by appropriate proceeding commenced on behalf of the reorganized insurer, any stock holding company or, if applicable, a reorganized mutual holding company, by the reorganized insurer, the stock holding company, the mutual holding company or the superintendent, the attorney general, any member of the mutual holding company or, if applicable, a reorganized mutual holding company, or any stockholder of the reorganized insurer, any stock holding company or the reorganized mutual holding company in the supreme court in the judicial district in which the reorganized insurer has its home office or in any other court having jurisdiction, and such court may issue any order, injunctive or otherwise, it finds necessary to cure such violation or to prevent such action.

§ 8119. Conversion of mutual holding company. (a) A mutual holding company may reorganize in accordance with a plan of reorganization which is fair and equitable to the company's members and is:

(1) adopted by action of two-thirds of its entire board of directors;

(2) approved by the superintendent if found by the superintendent to be fair and equitable to the company's members after a hearing held upon notice to the company's members; and, thereafter,

(3) adopted by the affirmative vote of two-thirds of all votes cast by members of the company entitled to vote, after notice being given to all members entitled to vote. The mutual holding company shall give written notice stating the date, time and place for voting on such proposal to members entitled to notice of and to vote on the proposal in accordance with this section, sent by mail or electronic transmission to the last known mailing or electronic addresses of such policyholders as shown on the records of the mutual holding company. Such notice shall be sent at least forty-five days before the date of the proposed vote to approve the plan of reorganization. Such notice may be combined with notice of the hearing required by paragraph two of this subsection. Such notice shall be preceded or accompanied by a true and correct copy of the plan, or by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require.

(b) A plan of reorganization pursuant to subsection (a) of this section shall provide for the membership interests in the mutual holding company being extinguished and may provide either for:

(1) the conversion of the mutual holding company into a stock corporation, in which event consideration distributed shall be equal to that required under section seven thousand three hundred seven of this chapter or such other law governing the demutualization of mutual property/casualty insurers as may then be in effect; or

(2) the distribution to eligible members of the mutual holding company of consideration consisting of all assets of the mutual holding company including all stock of the reorganized insurer or any stock holding company owned by the mutual holding company, or other consideration having equivalent aggregate value, which may be in the form of cash, securities of any institution, additional insurance or annuity benefits or policy credits, dividends or other consideration, all such consideration being allocated among eligible members of the mutual holding company in a manner that is fair and equitable to the company's members.

§ 8120. Transfers of subsidiaries. A reorganizing or reorganized insurer may transfer any one or more of its subsidiaries to the mutual holding company or to one or more persons owned or controlled by the mutual holding company, provided the reorganizing or reorganized insurer obtains the prior approval of the superintendent. Any such transfer may be made without consideration as a dividend or for consideration that may include obligations of the mutual holding company or obligations or preferred shares of a person owned or controlled by the mutual holding company. The superintendent shall approve each such proposed transfer if the superintendent finds it is fair and equitable. For a reorganizing insurer, the plan may provide for such transfer, in which case approval of the plan shall constitute approval by the superintendent pursuant to this section. The provisions of section one thousand five hundred five of this chapter shall not apply to any transfer of subsidiaries affected pursuant to this section but shall otherwise apply to the reorganized insurer and its affiliates in accordance with their terms. For a reorganized insurer, the other provisions of this article, including, without limitation, the requirement of filing a plan of reorganization, shall not apply to the transfer of subsidiaries pursuant to this section.

§ 2. This act shall take effect immediately.