§ 7313. Reorganization of domestic mutual accident and health insurance companies.

(a) In this section:

(1) "Affiliate" of a mutual insurer means any person who controls, is controlled by or is under common control with, the mutual insurer being converted. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of persons manage the two corporations.

(2) "Control" has the meaning assigned to it in paragraph two of subsection (a) of section one thousand five hundred one of this chapter.

(3) A "domestic mutual insurer" or "mutual insurer" means a domestic mutual accident and health insurance company organized under article twelve of this chapter and licensed under article forty-two of this chapter and not operating under an order of rehabilitation.

(4) "Policyholder" means a person, as determined by the records of a mutual accident and health insurer, who is deemed to be the "policyholder" of a policy that is of a type described in paragraph three of subsection (a) of section one thousand one hundred thirteen of this chapter.

(5) "Policyholders' membership interest" means and includes all policyholders' rights as members arising under the charter of the mutual accident and health insurer or this chapter or otherwise by law, including the rights to vote and to participate in the distribution of surplus whether or not incident to a liquidation of a mutual accident and health insurer. The term "policyholders' membership interest" does not include rights, including without limitation the right to participate in the distribution of surplus, expressly conferred upon the policyholders by their policies or contracts other than any right to vote.

(6) "Reorganization" means a conversion in accordance with this section.

(b)(1) A domestic mutual insurer may apply to the superintendent for permission to reorganize and convert into a domestic stock accident and health insurer complying with the relevant organization and licensing provisions of articles twelve and forty-two of this chapter. The application to the superintendent shall be pursuant to a resolution, adopted by no less than a majority of the entire board of directors,

specifying the reasons for and the purposes of the proposed conversion and the manner in which the conversion is expected to benefit policyholders and the public. A copy of the resolution, together with a statement of its adoption, both certified by the president and secretary, or officers corresponding to either of them, and affirmed by them as true under the penalties of perjury and under the seal of the mutual insurer, and such other information as the superintendent may require shall accompany the application.

(2) The superintendent shall order an examination of the mutual insurer pursuant to section three hundred ten of this chapter as of the last day of the period covered in the insurer's latest filed statement, except that the proposed conversion shall terminate without an examination if the superintendent finds that:

(A) the resolution is defective upon its face;

(B) the proposed conversion is contrary to law or is not in the best interests of the policyholders or the public; or

(C) the mutual insurer does not have a surplus to policyholders at least equal to the minimum capital and surplus required to be maintained for a newly organized stock insurer doing the same kinds of insurance.

(c) The superintendent shall also appoint one or more qualified disinterested persons to appraise and report to the superintendent the fair market value of the mutual insurer and, to the extent necessary, its affiliates, on the basis of its latest filed annual or quarterly statement, and of any significant subsequent developments. The appraisers shall consider the assets and liabilities of the mutual insurer and any factors bearing on the value of the mutual insurer or its affiliates. The appraisers shall receive reasonable compensation and be reimbursed for reasonable expenses incurred in discharging their duties. The appraisers may, as necessary, employ consultants to advise them on any technical matters.

(d) The superintendent shall make copies of such examination report and appraisal report available to the board of directors within fifteen days of the superintendent's receipt of the reports. After receiving the reports, the superintendent may grant or deny permission to the board of directors to submit to the superintendent a plan of conversion. If permission is granted, the plan shall include the provisions, and be submitted in the manner and under the conditions, required by subsection

(e) of this section. If permission is denied, the superintendent shall make a written statement of the superintendent's findings and the board shall have the right to a hearing before the superintendent within thirty days of the date of denial.

(e)(1) In order for the conversion to proceed:

(A) the plan must be adopted by a majority of the entire board;

(B) the plan must be signed by the president and attested to by the secretary, or officers corresponding to either of them, under the corporate seal of the insurer; and

(C) a copy of the plan and resolution, both certified by such officers as true under the penalties of perjury and under the seal of the insurer, shall be submitted to the superintendent not later than forty-five days after permission was granted under subsection (d) of this section.

(2) The plan shall include:

(A) the proposed charter and by-laws of the insurer as a stock corporation set out in accordance with paragraph five of subsection (a) of section one thousand two hundred one of this chapter;

(B) the manner of treating a holder of an agreement subject to section one thousand three hundred seven of this chapter, if any; the holder, if otherwise qualified, may, at its option, exchange such agreement for an equitable share of the securities or other consideration, or both, of the corporation into which the insurer is to be converted.

(C)(i) the manner and basis of exchanging the equitable share of each eligible mutual policyholder's membership interests for securities or other consideration, or both, of the stock corporation into which the mutual insurer is to be converted and the disposition of any unclaimed shares.

(ii) The plan shall also provide that each person who had a policy of insurance in effect at any time during the three-year period immediately preceding the date of adoption of the resolution described in subsection (b) of this section shall be entitled to receive in exchange for the equitable share, without additional payment, consideration payable in voting common shares of the insurer or other consideration, or both. The equitable share of the policyholder in the mutual insurer shall be determined by the ratio that the net premiums (gross premiums less return premiums and dividend paid) such policyholder has properly and

timely paid to the insurer on insurance policies in effect during the three years immediately preceding the adoption of the resolution by the board of directors under subsection (b) of this section bears to the total net premiums received by the mutual insurer from such eligible policyholders. In computing a policyholder's equitable share, no credit shall be given for any net premiums which result from an endorsement which is effective on or after the date of adoption of the resolution.

(iii) Notwithstanding item (ii) of this subparagraph, credit shall be given for any net premiums resulting from an audit or retrospective premium adjustment that is billed within one hundred eighty days after the date of adoption of the resolution described in subsection (b) of this section, provided the premium is paid timely.

(iv) If the equitable share of the eligible policyholder entitles the policyholder to the purchase of a fractional share of stock, the policyholder shall have the option to receive the value of the fractional share in cash or purchase a full share by paying the balance in cash;

(D) the number of voting common shares proposed to be authorized for the stock corporation, their par value and the price at which they shall be offered, which price may not exceed one-half of the median equitable share of all policyholders under item (ii) of subparagraph (C) of paragraph two of this subsection.

(E) any other information or other item that the superintendent may require.

(f) The mutual insurer shall give prompt notice to all persons who become policyholders or holders of agreements subject to section one thousand three hundred seven of this chapter on or after the date of the adoption of the resolution described in subsection (b) of this section. The notice shall specify the pendency of a proposed conversion and the effect the conversion shall have on them.

(g) The superintendent shall hold a public hearing, adequate notice of which shall be mailed by the mutual insurer to each policyholder on the day preceding the date of adoption of the resolution described in subsection (b) of this section, accompanied by a copy of the plan of conversion and any comment the superintendent considers necessary for the adequate information of the policyholders. The mutual insurer shall also immediately cause the notice to be posted on its website. In

addition, the mutual insurer shall give notice of the hearing by publication in a newspaper of general circulation in the county in which the mutual insurer has its principal office and in the two largest cities in each state in which the insurer has underwritten insurance within the five years preceding the date of the adoption of the resolution described in subsection (b) of this section. The notice shall be accompanied by a summary approved by the superintendent of the plan and any comment the superintendent considers necessary for the adequate information of former policyholders and the public.

(h) (1) After the hearing, the superintendent shall approve the plan as submitted, refuse to approve the plan, or request modification of the plan before granting approval. The superintendent may approve the plan unless the superintendent finds that the plan violates this chapter, is inconsistent with law, or is not fair and equitable or in the best interests of the policyholders and the public. If the superintendent finds that the plan does not meet the foregoing standards for approval, the superintendent shall either refuse to approve the plan and the plan shall become null and void or return the plan to the mutual insurer for modification to meet the superintendent's stated objections.

(2) If within ninety days after receipt of the superintendent's request for modifications the mutual insurer does not submit an amended plan satisfactory to the superintendent and that meets the superintendent's objections and complies with the standards for approval, the plan shall become null and void.

(i) After approval by the superintendent the plan shall be submitted to a vote of the persons who were policyholders of the mutual insurer on the day preceding the date of adoption of the resolution described in subsection (b) of this section. The plan shall provide for proxy voting in a manner to be prescribed by the superintendent. The board shall submit the question of the plan to the policyholders at a meeting thereof, by causing a full, true and correct copy or a summary thereof approved by the superintendent, together with notice, stating the time, place and purpose of the meeting, to be delivered personally, or deposited in the post office, postage prepaid, at least thirty days (unless a shorter time, not less than ten days, be approved by the superintendent) prior to the time fixed for such meeting, addressed to each policyholder at the policyholder's last post office address

appearing on the records of the insurer or other form of delivery intended to encourage participation acceptable to the superintendent.

(j) Each such policyholder eligible to vote pursuant to subsection (i) of this section shall be entitled to the number of votes as may be provided for in the by-laws of the mutual insurer. The votes of two-thirds of all the votes cast by policyholders represented at the meeting in person or by proxy, or by such other means acceptable to the superintendent intended to encourage participation, shall be necessary for the adoption of the plan. Upon the conclusion of the vote the insurer shall submit to the superintendent a certified copy of the plan voted on together with a certificate setting forth the results of the vote, both of which shall be subscribed by the president and attested by the secretary, or officers corresponding to either of them, under the corporate seal of the mutual insurer, and affirmed by them as true under the penalties of perjury.

(k) If at any stage in the process of a conversion under this section the superintendent finds that the mutual insurer is impaired or that the further transaction of business by the mutual insurer will be hazardous to its policyholders, its creditors, or the public, the proposed conversion shall terminate.

(l) If the conversion plan is adopted pursuant to subsection (j) of this section, the superintendent, upon being satisfied that the insurer will have at least the minimum capital and surplus required to be maintained for a newly organized domestic stock insurer doing the same kinds of insurance, shall issue a new certificate of authority to the insurer, thereby converting the mutual insurer into a stock insurer. At the same time, the superintendent may issue such license as may be required pursuant to section one thousand two hundred four of this chapter.

(m) Upon the conversion, the stock insurer shall give notice thereof by publication in a newspaper of general circulation in the county in which the insurer has its principal office and in the two largest cities in each state in which the insurer shall be licensed to do business. In addition, the stock insurer shall also immediately cause the notice to be posted on its website. The notice shall include a correct copy of the plan, or a summary thereof approved by the superintendent.

(n) Upon the conversion of the mutual insurer in the manner herein

provided, all the rights, franchises and interests of the former mutual insurer, in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed as transferred to and vested in the stock insurer, without any other deed or transfer; and simultaneously therewith such company shall be deemed to have assumed all of the obligations and liabilities of the former mutual insurer.

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

(p) The directors and officers of the mutual insurer shall serve until new directors and officers have been duly elected and qualified pursuant to the charter and by-laws of the stock insurer.

(q) The insurer, whether before or after conversion, shall pay no compensation of any kind to any person other than regular salaries to existing personnel, in connection with the proposed conversion, other than for clerical and mailing expenses, except that, with the superintendent's approval, payment may be made at reasonable rates for printing costs, and for legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the department, shall be borne by the insurer.

(r) No voting common shares shall be subscribed by or issued to persons other than eligible policyholders or holders of agreements subject to section one thousand three hundred seven of this chapter until all subscriptions by such policyholders or agreement holders have been filled or other consideration has been provided in accordance with the plan. Thereafter, any new issue of common shares within three years after the conversion shall first be offered to the persons who have become voting common shareholders, pursuant to subsection (e) of this section in proportion to their holdings of such shares.

(s) No insurer becoming a domestic stock insurer under the provisions of this section shall:

(1) for a period of ten years after conversion, redomesticate directly or indirectly or remove its principal offices from within the state; or

(2) for a period of five years after conversion:

(A) enter into any agreement by the terms of which any person, partnership or corporation agrees to pay all or a portion of the expenses of management of the insurer in consideration of the insurer's agreement to pay such person or other entity either commissions on premiums due the insurer or any other compensation for services, or

(B) enter into any agreement with an officer or director of the insurer or with any firm or corporation in which any officer or director of the insurer is pecuniarily interested, directly or indirectly, under which agreement the insurer agrees to pay, for the acquisition of business, any commissions or other compensation that by the terms of such agreement varies with the amount of the business or with the earnings of the insurer on the business.

(t) Nothing in this section shall in any way impede or impair the exercise by the superintendent of the superintendent's authority under any other provision of this chapter.