
SUBSTITUTE SENATE BILL 5220

State of Washington

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By Senate Business, Financial Services, Gaming & Trade (originally sponsored by Senators Frame, Stanford, Kuderer, and Nobles)

READ FIRST TIME 01/20/23.

1 AN ACT Relating to reorganization of domestic mutual insurers;
2 amending RCW 48.09.350; and adding new sections to chapter 48.09 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this subchapter unless the context clearly requires
6 otherwise.

7 (1) "Board" means the board of directors of a converting mutual
8 insurer.

9 (2) "Conversion" means a process by which a domestic mutual
10 insurer is converted to a domestic stock insurer as part of a
11 reorganization.

12 (3) "Converted stock insurer" means a domestic stock insurer into
13 which a domestic mutual insurer is converted as part of a
14 reorganization.

15 (4) "Converting mutual insurer" means a domestic mutual insurer
16 that is converting to a domestic stock insurer as part of a
17 reorganization.

18 (5) "Effective date" means, with respect to a plan, the date on
19 which the plan or a part of the plan becomes effective as set forth
20 in an order of the commissioner.

1 (6) "Eligible member" means a member of the converting mutual
2 insurer whose insurance policy is in force as of the date on which
3 the board adopts the plan or on some other date that the plan
4 specifies as the record date and that the commissioner approves.

5 (7) "Intermediate stock holding company" means a corporation that
6 satisfies all of the following:

7 (a) The corporation was incorporated under chapter 23B.02 RCW;

8 (b) A mutual holding company holds directly or indirectly at
9 least a majority of the corporation's voting stock; and

10 (c) The corporation holds directly or indirectly at least a
11 majority of the voting stock of a converted stock insurer.

12 (8) "Member" means:

13 (a) With respect to a domestic mutual insurer, a member as
14 described in RCW 48.09.110; or

15 (b) With respect to a mutual holding company, any holder of one
16 or more policies of insurance, other than a policy of reinsurance,
17 issued by the converted stock insurer resulting from a reorganization
18 involving the organization of a mutual holding company and, if
19 permitted under the articles of incorporation or bylaws of the mutual
20 holding company, may include any holder of one or more policies of
21 insurance, other than a policy of reinsurance, issued by any other
22 insurer that is a direct or indirect subsidiary or affiliate of the
23 mutual holding company.

24 (9) "Membership interest" means:

25 (a) With respect to a converting mutual insurer, interest as set
26 forth in RCW 48.09.120; or

27 (b) With respect to a mutual holding company on and after the
28 effective date of the plan, any right that a member of the mutual
29 holding company may hold by virtue of membership in the mutual
30 holding company arising under the articles of incorporation and
31 bylaws of the mutual holding company, including the right to vote for
32 the board.

33 (10) "Mutual holding company" means a corporation that is formed
34 and existing under the laws of this state and pursuant to the
35 reorganization of a mutual insurance company.

36 (11) "Plan" means a plan of reorganization.

37 (12) "Reorganization" means a process by which a domestic mutual
38 insurer is converted to a domestic stock insurer and a mutual holding
39 company is organized.

1 (13) (a) "Voting stock" means stock of any class or any percentage
2 ownership interest having voting power for the election of directors,
3 trustees, or management.

4 (b) "Voting stock" includes stock having voting power only by
5 reason of the happening of a contingency.

6 NEW SECTION. **Sec. 2.** (1) A domestic mutual insurer may engage
7 in a conversion as part of a reorganization as a mutual holding
8 company only if the board passes a resolution that the reorganization
9 is fair and equitable to the policyholders and adopts a plan that
10 meets the requirements of this chapter.

11 (2) After the board has adopted a plan and before the board seeks
12 approval of the plan by the eligible members of the converting mutual
13 insurer, the converting mutual insurer shall file the following
14 documents with the commissioner:

15 (a) The plan;

16 (b) The form of notice of the meeting at which the eligible
17 members vote on the plan;

18 (c) The form of any proxies to be solicited from the eligible
19 members. Proxies must offer the eligible members the option of voting
20 in favor of or voting against the plan or abstaining from voting;

21 (d) Information required by the converting mutual insurer's
22 bylaws; and

23 (e) Other information or documentation required by the
24 commissioner.

25 (3) The commissioner shall approve or disapprove a plan and other
26 documents submitted under this chapter. The commissioner must approve
27 or disapprove the plan within 60 days after the commissioner receives
28 a completed filing of the plan and all information requested by the
29 commissioner or within 60 days after the completion of a hearing on
30 the plan, whichever date is later.

31 (4) At any time before the commissioner approves a plan, the
32 board may amend or withdraw the plan.

33 (5) After the commissioner approves a plan, the eligible members
34 of the converting mutual insurer must approve the plan. Approval by
35 the eligible members is subject to the following requirements:

36 (a) All eligible members must be given notice of the plan and of
37 their opportunity to vote on the plan. A copy of the plan or a
38 summary of the plan must accompany the notice. The notice shall be
39 mailed to the last known address of each eligible member, as shown on

1 the records of the converting mutual insurer, within 45 days after
2 the commissioner approves the plan. The meeting of the eligible
3 members at which a vote on the plan will occur shall be set for a
4 date that is not earlier than the 30th day after the date on which
5 the mutual insurer mailed the notice of the meeting. If the
6 converting mutual insurer complies substantially and in good faith
7 with the notice requirements of this subsection (5)(a), the
8 converting mutual insurer's failure to give any member or members any
9 required notice does not impair the validity of any action taken
10 under this section.

11 (b) The vote required for approval must be conducted in
12 accordance with the converting mutual insurer's bylaws, except that:

13 (i) Only eligible members may vote on the plan;

14 (ii) An eligible member may vote in person or by proxy at the
15 meeting at which the plan is voted on; and

16 (iii) The plan is approved by the eligible members on the
17 affirmative vote of two-thirds or more of the eligible members voting
18 on the plan, unless the bylaws require a greater number of
19 affirmative votes. The converting mutual insurer shall file with the
20 commissioner a certification that the plan has been duly adopted by a
21 vote of at least two-thirds of the eligible members.

22 (6) The plan shall be carried out in accordance with its terms on
23 the effective date of the reorganization.

24 (7) Except as otherwise provided in this section, all information
25 and documents obtained by or disclosed to the commissioner or any
26 other person in the course of preparing, filing, and processing an
27 application to reorganize, other than information and documents
28 distributed to policyholders or filed and submitted as evidence in
29 connection with a public hearing held pursuant to chapter 48.04 RCW
30 and the administrative procedure act, chapter 34.05 RCW, are
31 confidential and not subject to subpoena and must not be made public
32 except to insurance departments of other states, with the prior
33 written consent of the insurer to which such information and
34 documents pertain.

35 NEW SECTION. **Sec. 3.** A plan of a domestic mutual insurer shall
36 include the following:

37 (1) A statement of the reasons for the proposed action;

38 (2) A description of how the plan will be carried out, including
39 any transaction included within the plan and a description of any

1 mutual holding company, intermediate stock holding company, or other
2 corporation organized pursuant to the plan;

3 (3) A description of all significant terms of the reorganization;

4 (4) New or revised intercompany agreements;

5 (5) A description of the overall effect of the plan on policies
6 issued by the converting mutual insurer. The description must show
7 that policyholder interests collectively are properly preserved and
8 protected and that the plan is fair and equitable to the
9 policyholders;

10 (6) The record date for determining whether a member of the
11 converting mutual insurer is an eligible member;

12 (7) The proposed effective date of the reorganization or the
13 manner in which the proposed effective date of the reorganization is
14 established;

15 (8) The proposed amendments to or restatement of the articles of
16 incorporation and bylaws of the converting mutual insurer and the
17 proposed articles of incorporation and bylaws of any mutual holding
18 company, intermediate stock holding company, or other corporation
19 organized pursuant to the plan;

20 (9) A description of any plans for the initial sale of voting
21 stock to third parties by the converted stock insurer or any
22 intermediate stock holding company, or a statement that the converted
23 stock insurer or intermediate stock holding company has no current
24 plans for the sale of voting stock;

25 (10) The intention, if any, that a director or officer of the
26 converting mutual insurer, mutual holding company, intermediate stock
27 holding company, or other corporation organized pursuant to the plan,
28 within the three-year period following the effective date of the
29 conversion or reorganization, may purchase or acquire shares of
30 capital stock or other securities of an issuer to be issued pursuant
31 to the plan; and

32 (11) A provision that all policies in force on the effective date
33 of the conversion or reorganization will remain in force under the
34 terms of those policies and that on the effective date of the
35 reorganization, any voting rights of the members provided for under
36 the policies or under this title are extinguished.

37 NEW SECTION. **Sec. 4.** (1) The commissioner shall review a plan
38 that is submitted to the commissioner. On review, the commissioner

1 shall approve the plan if the commissioner finds all of the
2 following:

3 (a) The applicable provisions of this chapter, and other
4 applicable provisions of law, have been fully met;

5 (b) The plan protects the rights of policyholders;

6 (c) The plan is fair and equitable to the members and the plan
7 does not prejudice the interests of the members;

8 (d) The converted stock insurer has capital or surplus, or any
9 combination thereof, that is required of a domestic stock insurer on
10 initial authorization to transact like kinds of insurance, and
11 otherwise is able to satisfy the requirements of this state for
12 transacting its insurance business;

13 (e) The plan does not substantially reduce the security of the
14 policyholders and the service to be rendered to the policyholders;

15 (f) The financial condition of the mutual holding company or any
16 subsidiary of the mutual holding company does not jeopardize the
17 financial stability of the converted stock insurer;

18 (g) The financial condition of the converting mutual insurer is
19 not jeopardized by the conversion or reorganization, and the
20 conversion or reorganization does not jeopardize the financial
21 stability of the mutual holding company or any subsidiary of the
22 mutual holding company; and

23 (h) The competence, experience, and integrity of those persons
24 who control the operation of the converted stock insurer are not
25 contrary to the interests of policyholders of the converted stock
26 insurer and of the public in allowing the plan to proceed.

27 (2) To the extent the plan contains a provision that allows for
28 the acquisition or merger of other insurance companies, the
29 commissioner shall apply the standards for scrutinizing mergers and
30 acquisitions provided in RCW 48.31B.015. The commissioner may not
31 approve a plan that fails to meet these standards.

32 (3) An approval of a plan by the commissioner expires if the plan
33 is not carried out within one year after the date of the approval,
34 unless the commissioner extends the time period for good cause on
35 written application for such extension.

36 (4) The commissioner may retain, at the expense of the converting
37 mutual insurer, qualified experts not otherwise a part of the staff
38 of the department to assist in reviewing the plan and supplemental
39 documents.

1 (5) The commissioner may hold a hearing as prescribed in chapter
2 48.04 RCW and the administrative procedure act, chapter 34.05 RCW,
3 for the purposes of receiving comments on whether a plan should be
4 approved and on any other matter relating to the reorganization. The
5 hearing, if held, shall be held within 60 days after the commissioner
6 receives a completed filing of the plan and all information required
7 by the commissioner.

8 NEW SECTION. **Sec. 5.** (1) A mutual holding company is not an
9 insurer for the purposes of this title, except that RCW 48.07.030,
10 48.09.130, 48.09.160, 48.09.120, 48.09.300, 48.09.350, and 48.09.360
11 apply to a mutual holding company as if the mutual holding company
12 were a domestic mutual insurer.

13 (2) Except where inconsistent with the provisions of this
14 section, RCW 48.07.030, 48.09.110(2) through 48.09.160, 48.09.360,
15 and 48.36A.390 shall be interpreted to apply to a mutual holding
16 company in the same manner as if the mutual holding company were a
17 domestic mutual insurer, considering the fact that a mutual holding
18 company does not issue policies and does not have a certificate of
19 authority. For purposes of this subsection, any references therein to
20 a policy issued by, or a certificate of authority of, a domestic
21 mutual insurer shall be interpreted to be references to a policy
22 issued by, or a certificate of authority of, a stock insurer
23 subsidiary of a mutual holding company whose policyholders are
24 members of the mutual holding company.

25 (3) A mutual holding company may not dissolve or liquidate
26 without approval by the commissioner or unless required by judicial
27 order. The commissioner retains jurisdiction over a mutual holding
28 company, any intermediate stock holding company, and any subsidiary
29 of an intermediate stock holding company as provided in this section
30 and RCW 48.31B.035.

31 (4) The members of a mutual holding company have the rights and
32 obligations set forth in this section and in the articles of
33 incorporation and bylaws of the mutual holding company. A member of a
34 mutual holding company may not transfer membership in the mutual
35 holding company or any right arising from such membership. Such
36 limitation on the transfer of membership or rights arising from
37 membership does not restrict the assignment of a policy that is
38 otherwise permissible. A member of a mutual holding company is not
39 personally liable for the acts, debts, liabilities, or obligations of

1 the mutual holding company merely by reason of being a member. An
2 assessment of any kind may not be imposed on a member of a mutual
3 holding company. Any premium due under an insurance policy or
4 contract issued to a member of a mutual holding company is not
5 considered an assessment.

6 (5) A membership interest in a mutual holding company does not
7 constitute a security as defined in RCW 21.20.005.

8 (6) Each member of a mutual holding company is entitled to one
9 vote on each matter coming before a meeting of the members and for
10 each director to be elected regardless of the number of policies or
11 amount of insurance and benefits held by such member. The mutual
12 holding company's bylaws shall set forth the voting rights of the
13 members of a mutual holding company.

14 (7) Meetings of the members of a mutual holding company shall be
15 governed in the same manner as if the mutual holding company were a
16 domestic mutual insurer, including provisions governing quorum
17 requirements, the approval of matters by the members, and the
18 election of directors by the members.

19 (8) The articles of incorporation of a mutual holding company
20 shall contain the following provisions:

21 (a) The name of the mutual holding company. The name shall
22 include the words "mutual holding company" or "mutual insurance
23 holding company" or other words connoting the mutual character of the
24 mutual holding company that are approved by the commissioner;

25 (b) A provision specifying that the mutual holding company is not
26 authorized to issue capital stock, whether voting or nonvoting; and

27 (c) A provision setting forth any rights of the members of the
28 mutual holding company on dissolution or liquidation.

29 (9) A mutual holding company shall automatically be a party to
30 any rehabilitation or liquidation proceeding involving the converted
31 stock insurer that as a result of a reorganization is a direct or
32 indirect subsidiary of the mutual holding company. In such a
33 proceeding, the assets of the mutual holding company shall be counted
34 as assets of the estate of the converted stock insurer for the
35 purpose of satisfying the claims of the policyholders of the
36 converted stock insurer.

37 NEW SECTION. **Sec. 6.** The concurrent reorganization of a
38 domestic mutual insurer with one or more mutual insurers, domestic or
39 foreign, into a single mutual holding company, whether domestic or

1 foreign, may be accomplished by a joint application and a joint plan
2 and may be approved by the commissioner by complying with the
3 requirements of this chapter. The commissioner may determine that
4 such other procedures are unnecessary to avoid duplicative costs and
5 efforts in satisfying the requirements of this chapter and
6 effectuating the reorganization.

7 NEW SECTION. **Sec. 7.** (1) A foreign mutual insurer organized
8 under the laws of any other state, that, if a domestic corporation,
9 would be organized under RCW 48.09.010, may reorganize by merging its
10 policyholders' membership interests into an existing domestic mutual
11 holding company in accordance with the requirements of any other law
12 or regulation that applies to the foreign mutual insurer. The
13 reorganization shall continue the corporate existence of the
14 converting mutual insurer as a foreign stock insurance company
15 subsidiary of the existing domestic mutual holding company or as a
16 foreign stock insurance company subsidiary of an intermediate stock
17 holding company. The reorganizing foreign mutual insurer may remain a
18 foreign insurer after the restructuring and may be admitted to do
19 business in this state if it meets the applicable requirements of
20 this title. A foreign mutual insurer that is a party to the
21 reorganization may at the same time redomesticate to this state by
22 complying with the applicable requirements of this state and the
23 foreign mutual insurer's state of domicile.

24 (2) For the purposes of this section, "existing domestic mutual
25 holding company" means a mutual holding company formed under this
26 chapter.

27 **Sec. 8.** RCW 48.09.350 and 1984 c 23 s 1 are each amended to read
28 as follows:

29 (1) Upon satisfaction of the requirements applicable to the
30 formation of a domestic stock insurer, a domestic mutual insurer may
31 be reorganized as a stock corporation, pursuant to a plan of
32 reorganization as approved by the commissioner.

33 (2) A domestic mutual insurer may be wholly reinsured in and its
34 assets transferred to and its liabilities assumed by another mutual
35 or stock insurer under such terms and conditions as are approved by
36 the commissioner in advance of such reinsurance.

37 (3) The commissioner shall not approve any such reorganization
38 plan or reinsurance agreement which does not determine the amount of

1 and make adequate provision for paying to members of such mutual
2 insurer, reasonable compensation for their equities as owners of such
3 insurer, such compensation to be apportioned to members as identified
4 and in the manner prescribed in RCW 48.09.360. The procedure for
5 approval by the commissioner of any such reorganization plan or
6 reinsurance agreement shall be the same as the procedure for approval
7 by the commissioner of a plan of merger or consolidation under RCW
8 48.31.010.

9 Approval at a corporate meeting of members by two-thirds of the
10 then members of a domestic mutual insurer who vote on the plan or
11 agreement pursuant to such notice and procedure as was approved by
12 the commissioner shall constitute approval of any such reorganization
13 plan or reinsurance agreement by the insurer's members.

14 (4) The following applies if a mutual holding company conversion
15 occurs:

16 (a) On the effective date of a plan, all of the following shall
17 occur:

18 (i) The converting mutual insurer becomes a converted stock
19 insurer. The amended or restated articles of incorporation and bylaws
20 of the converting mutual insurer shall be filed with the commissioner
21 as part of the plan and shall become effective on the effective date
22 of the conversion. The commissioner shall amend the certificate of
23 authority of the converting mutual insurer on the effective date of
24 the conversion;

25 (ii) All membership interests and rights in surplus of the
26 converting mutual insurer are extinguished and the members of the
27 converting mutual insurer become members of the mutual holding
28 company in accordance with this chapter and the articles of
29 incorporation and bylaws of the mutual holding company;

30 (iii) Any owner of one or more policies of insurance, other than
31 a policy of reinsurance, issued by the converted stock insurer after
32 the effective date of the conversion and, if permitted under the
33 articles of incorporation or bylaws of the mutual holding company,
34 any holder of one or more policies of insurance, other than a policy
35 of reinsurance, issued by any other insurer that is a direct or
36 indirect subsidiary or affiliate of the mutual holding company after
37 the effective date of the reorganization becomes a member of the
38 mutual holding company;

1 (iv) The mutual holding company or, if created, an intermediate
2 stock holding company acquires and shall retain all shares of the
3 voting stock of the converted stock insurer;

4 (v) The mutual holding company acquires and shall retain all
5 shares of the voting stock of any intermediate stock holding company;
6 and

7 (vi) A converted stock insurer continues the corporate existence
8 of the converting mutual insurer. Except as provided in the plan, the
9 conversion does not annul, modify, or change any existing license or
10 other authority or any of the existing civil actions, rights,
11 contracts, or liabilities of the converting mutual insurer. The
12 converted stock insurer retains all property, debts, and choses in
13 action and every other interest belonging to the converting mutual
14 insurer before the conversion without further action needed. On and
15 after the effective date of the conversion, the converted stock
16 insurer may exercise all rights and powers conferred and shall
17 perform all duties imposed by law on insurers writing the classes of
18 insurance written by the converted stock insurer, shall retain the
19 rights and contracts of the converting mutual insurer existing
20 immediately before the conversion, and shall be subject to all
21 obligations and liabilities of the converting mutual insurer existing
22 immediately before the conversion, subject to the terms of the plan.

23 (b) Any intermediate stock holding company created at the time of
24 reorganization to hold the stock of the converting mutual insurer
25 shall be incorporated under chapter 23B.02 RCW and may engage in any
26 business or activity permitted by chapter 23B.02 RCW.

27 (c) The converted stock insurer and any intermediate stock
28 holding company may issue to third parties debt securities, stock
29 other than voting stock, and voting stock if all of the following
30 apply:

31 (i) No shares of stock representing a majority of the voting
32 power of all issued and outstanding voting stock of either the
33 converted stock insurer or the intermediate stock holding company, if
34 any, are issued to third parties; and

35 (ii) A majority of the voting stock of the converted stock
36 insurer is at all times owned by the mutual holding company or by the
37 intermediate stock holding company, a majority of whose voting stock
38 is held by the mutual holding company, and such majority interest in
39 the converted stock insurer and any intermediate stock holding
40 company is not conveyed, transferred, assigned, pledged, subjected to

1 a security interest or lien, placed in a voting trust, encumbered, or
2 otherwise hypothecated or alienated by the mutual holding company or
3 by the intermediate stock holding company. Any conveyance, transfer,
4 assignment, pledge, security interest, lien, placement in a voting
5 trust, encumbrance, or hypothecation or alienation of, in, or on a
6 majority of the voting shares of the converted stock insurer or the
7 intermediate stock holding company in violation of this subsection
8 (4)(c)(ii) is void in inverse chronological order as to the shares
9 necessary to constitute a majority of such voting stock.

10 (d) Unless otherwise specified in the plan, the directors and
11 officers of the converting mutual insurer shall serve as directors
12 and officers of the mutual holding company, any intermediate stock
13 holding company, and the converted stock insurer until new directors
14 and officers are elected.

15 NEW SECTION. Sec. 9. Sections 1 through 7 of this act are each
16 added to chapter 48.09 RCW and codified with the subchapter heading
17 of "Reorganization of domestic mutual insurers."

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