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**SUBSTITUTE SENATE BILL 5220**

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**State of Washington 68th Legislature 2023 Regular Session**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) "Member" means:

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

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

(9) "Membership interest" means:

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

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

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

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

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

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

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

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

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

(a) The plan;

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

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

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

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

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

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

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

(a) All eligible members must be given notice of the plan and of their opportunity to vote on the plan. A copy of the plan or a summary of the plan must accompany the notice. The notice shall be mailed to the last known address of each eligible member, as shown on the records of the converting mutual insurer, within 45 days after the commissioner approves the plan. The meeting of the eligible members at which a vote on the plan will occur shall be set for a date that is not earlier than the 30th day after the date on which the mutual insurer mailed the notice of the meeting. If the converting mutual insurer complies substantially and in good faith with the notice requirements of this subsection (5)(a), the converting mutual insurer's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

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

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

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

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

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

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

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

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

(2) A description of how the plan will be carried out, including any transaction included within the plan and a description of any mutual holding company, intermediate stock holding company, or other corporation organized pursuant to the plan;

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

(4) New or revised intercompany agreements;

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  (1) The commissioner shall review a plan that is submitted to the commissioner. On review, the commissioner shall approve the plan if the commissioner finds all of the following:

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

(b) The plan protects the rights of policyholders;

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The members of a mutual holding company have the rights and obligations set forth in this section and in the articles of incorporation and bylaws of the mutual holding company. A member of a mutual holding company may not transfer membership in the mutual holding company or any right arising from such membership. Such limitation on the transfer of membership or rights arising from membership does not restrict the assignment of a policy that is otherwise permissible. A member of a mutual holding company is not personally liable for the acts, debts, liabilities, or obligations of the mutual holding company merely by reason of being a member. An assessment of any kind may not be imposed on a member of a mutual holding company. Any premium due under an insurance policy or contract issued to a member of a mutual holding company is not considered an assessment.

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  The concurrent reorganization of a domestic mutual insurer with one or more mutual insurers, domestic or foreign, into a single mutual holding company, whether domestic or foreign, may be accomplished by a joint application and a joint plan and may be approved by the commissioner by complying with the requirements of this chapter. The commissioner may determine that such other procedures are unnecessary to avoid duplicative costs and efforts in satisfying the requirements of this chapter and effectuating the reorganization.

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

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

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

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

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

(3) The commissioner shall not approve any such reorganization plan or reinsurance agreement which does not determine the amount of and make adequate provision for paying to members of such mutual insurer, reasonable compensation for their equities as owners of such insurer, such compensation to be apportioned to members as identified and in the manner prescribed in RCW 48.09.360. The procedure for approval by the commissioner of any such reorganization plan or reinsurance agreement shall be the same as the procedure for approval by the commissioner of a plan of merger or consolidation under RCW 48.31.010.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A majority of the voting stock of the converted stock insurer is at all times owned by the mutual holding company or by the intermediate stock holding company, a majority of whose voting stock is held by the mutual holding company, and such majority interest in the converted stock insurer and any intermediate stock holding company is not conveyed, transferred, assigned, pledged, subjected to a security interest or lien, placed in a voting trust, encumbered, or otherwise hypothecated or alienated by the mutual holding company or by the intermediate stock holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, placement in a voting trust, encumbrance, or hypothecation or alienation of, in, or on a majority of the voting shares of the converted stock insurer or the intermediate stock holding company in violation of this subsection (4)(c)(ii) is void in inverse chronological order as to the shares necessary to constitute a majority of such voting stock.

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

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

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