
SENATE BILL 5220

State of Washington

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By Senators Frame, Stanford, Kuderer, and Nobles

Read first time 01/10/23. Referred to Committee on Business,
Financial Services, Gaming & Trade.

1 AN ACT Relating to reorganization of domestic mutual insurers;
2 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) Upon satisfaction of the requirements
7 applicable to the formation of a domestic stock insurer, a domestic
8 mutual insurer may be reorganized as a stock corporation, pursuant to
9 a plan as approved by the commissioner.

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

14 (3) The commissioner shall not approve any such plan or
15 reinsurance agreement which does not determine the amount of and make
16 adequate provision for paying to members of such mutual insurer,
17 reasonable compensation for their equities as owners of such insurer,
18 such compensation to be apportioned to members as identified and in
19 the manner prescribed in RCW 48.09.360. The procedure for approval by
20 the commissioner of any such plan or reinsurance agreement shall be
21 the same as the procedure for approval by the commissioner of a plan
22 of merger or consolidation under RCW 48.31.010. Approval at a
23 corporate meeting of members by two-thirds of the then members of a
24 domestic mutual insurer who vote on the plan or agreement pursuant to
25 such notice and procedure as was approved by the commissioner shall
26 constitute approval of any such plan or reinsurance agreement by the
27 insurer's members.

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

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

37 (ii) All membership interests and rights in surplus of the
38 converting mutual insurer are extinguished and the members of the
39 converting mutual insurer become members of the mutual holding

1 company in accordance with this chapter and the articles of
2 incorporation and bylaws of the mutual holding company;

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

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

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

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

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

38 (c) The converted stock insurer and any intermediate stock
39 holding company may issue to third parties debt securities, stock

1 other than voting stock, and voting stock if all of the following
2 apply:

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

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

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

27 NEW SECTION. **Sec. 3.** (1) A domestic mutual insurer may engage
28 in a conversion as part of a reorganization as a mutual holding
29 company only if the board passes a resolution that the reorganization
30 is fair and equitable to the policyholders and adopts a plan that
31 meets the requirements of this chapter.

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

36 (a) The plan;

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

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

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

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

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

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

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

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

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

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

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

38 (iii) The plan is approved by the eligible members on the
39 affirmative vote of two-thirds or more of the eligible members voting
40 on the plan, unless the bylaws require a greater number of

1 affirmative votes. The converting mutual insurer shall file with the
2 commissioner a certification that the plan has been duly adopted by a
3 vote of at least two-thirds of the eligible members.

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

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

17 NEW SECTION. **Sec. 4.** A plan of a domestic mutual insurer shall
18 include the following:

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

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

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

25 (4) New or revised intercompany agreements;

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

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

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

36 (8) The proposed amendments to or restatement of the articles of
37 incorporation and bylaws of the converting mutual insurer and the
38 proposed articles of incorporation and bylaws of any mutual holding

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

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

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

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

20 NEW SECTION. **Sec. 5.** (1) The commissioner shall review a plan
21 that is submitted to the commissioner. On review, the commissioner
22 shall approve the plan if the commissioner finds all of the
23 following:

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

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

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

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

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

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

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

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

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

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

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

23 (5) The commissioner may hold a hearing as prescribed in chapter
24 48.04 RCW and the administrative procedure act, chapter 34.05 RCW,
25 for the purposes of receiving comments on whether a plan should be
26 approved and on any other matter relating to the reorganization. The
27 hearing, if held, shall be held within 60 days after the commissioner
28 receives a completed filing of the plan and all information required
29 by the commissioner.

30 NEW SECTION. **Sec. 6.** (1) A mutual holding company is not an
31 insurer for the purposes of this title, except that RCW 48.07.030,
32 48.09.130, 48.09.160, 48.09.120, 48.09.300, 48.09.350, and 48.09.360
33 apply to a mutual holding company as if the mutual holding company
34 were a domestic mutual insurer.

35 (2) Except where inconsistent with the provisions of this
36 section, RCW 48.07.030, 48.09.110(2) through 48.09.160, 48.09.360,
37 and 48.36A.390 shall be interpreted to apply to a mutual holding
38 company in the same manner as if the mutual holding company were a
39 domestic mutual insurer, considering the fact that a mutual holding

1 company does not issue policies and does not have a certificate of
2 authority. For purposes of this subsection, any references therein to
3 a policy issued by, or a certificate of authority of, a domestic
4 mutual insurer shall be interpreted to be references to a policy
5 issued by, or a certificate of authority of, a stock insurer
6 subsidiary of a mutual holding company whose policyholders are
7 members of the mutual holding company.

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

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

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 7.** The concurrent reorganization of a
20 domestic mutual insurer with one or more mutual insurers, domestic or
21 foreign, into a single mutual holding company, whether domestic or
22 foreign, may be accomplished by a joint application and a joint plan
23 and may be approved by the commissioner by complying with the
24 requirements of this chapter. The commissioner may determine that
25 such other procedures are unnecessary to avoid duplicative costs and
26 efforts in satisfying the requirements of this chapter and
27 effectuating the reorganization.

28 NEW SECTION. **Sec. 8.** (1) A foreign mutual insurer organized
29 under the laws of any other state, that, if a domestic corporation,
30 would be organized under RCW 48.09.010, may reorganize by merging its
31 policyholders' membership interests into an existing domestic mutual
32 holding company in accordance with the requirements of any other law
33 or regulation that applies to the foreign mutual insurer. The
34 reorganization shall continue the corporate existence of the
35 converting mutual insurer as a foreign stock insurance company
36 subsidiary of the existing domestic mutual holding company or as a
37 foreign stock insurance company subsidiary of an intermediate stock
38 holding company. The reorganizing foreign mutual insurer may remain a

1 foreign insurer after the restructuring and may be admitted to do
2 business in this state if it meets the applicable requirements of
3 this title. A foreign mutual insurer that is a party to the
4 reorganization may at the same time redomesticate to this state by
5 complying with the applicable requirements of this state and the
6 foreign mutual insurer's state of domicile.

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

10 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act are each
11 added to chapter 48.09 RCW and codified with the subchapter heading
12 of "Reorganization of domestic mutual insurers."

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