

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

**MR. SPEAKER:**

I move that House Bill 1286 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

- 1 Delete everything after the enacting clause and insert the
- 2 following:
- 3 SECTION 1. IC 27-1-3-20 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 20. (a) The
- 5 commissioner may issue a certificate of authority to any company when
- 6 it shall have complied with the requirements of the laws of this state so
- 7 as to entitle it to do business herein. The certificate shall be issued
- 8 under the seal of the department authorizing and empowering the
- 9 company to make the kind or kinds of insurance specified in the
- 10 certificate. No certificate of authority shall be issued until the
- 11 commissioner has found that:
- 12 (a) (1) the company has submitted a sound plan of operation; and
- 13 (b) (2) the general character and experience of the incorporators,
- 14 directors, and proposed officers is such as to assure reasonable
- 15 promise of a successful operation, based on the fact that such
- 16 persons are of known good character and that there is no good
- 17 reason to believe that they are affiliated, directly or indirectly,
- 18 through ownership, control, management, reinsurance
- 19 transactions, or other insurance or business relations with any
- 20 person or persons known to have been involved in the improper
- 21 manipulation of assets, accounts, or reinsurance.
- 22 No certificate of authority shall be denied, however, under subdivision
- 23 (a) (1) or (b) (2) until notice, hearing, and right of appeal has been

1 given as provided in IC 4-21.5.

2 (b) Every company possessing a certificate of authority shall notify  
 3 the commissioner of the election or appointment of every new director  
 4 or principal officer, within thirty (30) days thereafter. If in the  
 5 commissioner's opinion such a new principal officer or director does  
 6 not meet the standards set forth in this section, he shall request that the  
 7 company effect the removal of such persons from office. If such  
 8 removal is not accomplished as promptly as under the circumstances  
 9 and in the opinion of the commissioner is possible, then upon notice to  
 10 both the company and such principal officer or director and after  
 11 notice, hearing, and right of appeal pursuant to IC 4-21.5, and after a  
 12 finding that such person is incompetent or untrustworthy or of known  
 13 bad character, the commissioner may order the removal of such person  
 14 from office and may, unless such removal is promptly accomplished,  
 15 suspend the company's certificate of authority until there is compliance  
 16 with such order.

17 (c) No company shall transact any business of insurance **or hold**  
 18 **itself out as a company in the business of insurance in this state**  
 19 **Indiana** until it shall have received a certificate of authority as  
 20 prescribed in this section. ~~and~~

21 (d) No company shall make, **issue, deliver, sell, or advertise** any  
 22 kind or kinds of insurance not specified in ~~such~~ **the company's**  
 23 certificate of authority.

24 SECTION 2. IC 27-14 IS ADDED TO THE INDIANA CODE AS  
 25 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 26 1998]:

27 **ARTICLE 14. MUTUAL INSURANCE HOLDING**  
 28 **COMPANY LAW**

29 **Chapter 1. General Provisions and Definitions**

30 **Sec. 1. This article may be referred to as the Indiana mutual**  
 31 **insurance holding company law.**

32 **Sec. 2. (a) The requirements of this section constitute the**  
 33 **"members' surplus protection principle" for purposes of this**  
 34 **article.**

35 (b) For purposes of this article:

36 (1) a mutual insurance company (MIC) is owned by the  
 37 policyholders of the mutual insurance company; and

38 (2) a mutual insurance holding company (MHC) organized  
 39 under this article is owned by the members of the mutual  
 40 insurance holding company.

41 (c) The members' surplus must be maintained for the exclusive  
 42 benefit of the members of the MHC.

43 (d) Except as provided by subsection (e), after the effective  
 44 date of a reorganization under this article:

45 (1) a dividend authorized for or paid to the shareholders of  
 46 any subsidiary of the MHC;

47 (2) an employee benefit plan provision; and

48 (3) other actions of a MHC or its subsidiaries;

49 may not be made, granted, enforced, or taken if the dividend,  
 50 benefit, payment, or other action reduces the members' surplus.

1 (e) Only the following may decrease the members' surplus:

- 2 (1) Dividends paid to eligible persons who were members of  
 3 the MIC on the effective date of the reorganization.  
 4 (2) Supervision of a subsidiary of the MHC under IC 27-9.  
 5 (3) A reduction in the market value of a security or other  
 6 asset of the members' surplus.

7 (f) The commissioner may not take or permit an action under  
 8 this title that conflicts with the members' surplus protection  
 9 principle of this section.

10 Sec. 3. The definitions set forth in this chapter apply  
 11 throughout this article.

12 Sec. 4. (a) Subject to subsection (b), "acting in concert" means:

- 13 (1) a knowing participation in a joint activity whether or not  
 14 under an express agreement;  
 15 (2) interdependent conscious parallel action toward a  
 16 common goal under an express agreement or otherwise; or  
 17 (3) a combination or pooling of voting interests or other  
 18 interests in the securities of a company for a common  
 19 purpose under any contract, understanding, relationship,  
 20 agreement, or other arrangement, written or otherwise.

21 (b) An employee benefit plan is acting in concert with:

- 22 (1) its trustee; or  
 23 (2) a person who serves in a capacity similar to a trustee;  
 24 solely for the purpose of determining whether capital stock held by  
 25 the trustee or the person in a similar capacity and capital stock  
 26 held by the plan will be aggregated.

27 Sec. 5. "Adoption date" means, with respect to a plan, the date  
 28 on which the board of directors approves a plan of an applicant  
 29 under this article.

30 Sec. 6. "Affiliate" means a person who, directly or indirectly:

- 31 (1) controls;  
 32 (2) is controlled by; or  
 33 (3) is under common control with;

34 another person.

35 Sec. 7. "Applicant" means, with respect to a plan, a MIC that  
 36 has submitted the plan to the commissioner under this article.

37 Sec. 8. (a) Subject to subsection (b), "associate" means any of  
 38 the following:

- 39 (1) With respect to a particular person, a corporation,  
 40 business entity, or other organization (other than the  
 41 applicant or a subsidiary or an affiliate of the applicant) for  
 42 which the person is:  
 43 (A) an officer;  
 44 (B) a partner; or  
 45 (C) directly or indirectly the beneficial owner of at least  
 46 ten percent (10%) of any class of equity securities.  
 47 (2) With respect to an individual who is a director or an  
 48 officer of the applicant or of any of the applicant's  
 49 subsidiaries or affiliates, a:  
 50 (A) relative;

- 1                   **(B) spouse; or**  
 2                   **(C) relative of the spouse;**  
 3                   **of the individual who shares the domicile of the individual.**  
 4                   **(3) With respect to a particular person, any trust or other**  
 5                   **estate in which the person has a substantial beneficial**  
 6                   **interest or for which the person serves as trustee or in a**  
 7                   **similar fiduciary capacity.**  
 8                   **(b) The term does not apply to a person that:**  
 9                   **(1) has a beneficial interest in; or**  
 10                   **(2) serves as a trustee or in a similar fiduciary capacity for;**  
 11                   **an employee benefit plan.**  
 12                   **Sec. 9. "Board" means:**  
 13                   **(1) the board of directors of a MHC, a MIC, an intermediate**  
 14                   **stock holding company, or a stock insurance company**  
 15                   **subsidiary; or**  
 16                   **(2) another board or committee that is responsible, under the**  
 17                   **articles or bylaws of the company, for decisions involving the**  
 18                   **structure or management of a MHC, MIC, intermediate**  
 19                   **stock holding company, or stock insurance company**  
 20                   **subsidiary.**  
 21                   **Sec. 10. "Commissioner" refers to the insurance commissioner**  
 22                   **appointed under IC 27-1-1-2.**  
 23                   **Sec. 11. "Company" means an entity:**  
 24                   **(1) formed and legally existing under this title; or**  
 25                   **(2) that:**  
 26                   **(A) is owned, entirely or in part, directly or indirectly,**  
 27                   **by a MHC; and**  
 28                   **(B) owns directly or indirectly all or part of the stock of**  
 29                   **a stock insurance company subsidiary.**  
 30                   **Sec. 12. "Effective date" means, with respect to a plan, the**  
 31                   **date on which the plan becomes effective under this article.**  
 32                   **Sec. 13. "Eligible member" means, with respect to a plan, a**  
 33                   **person who is a member of a MIC on the adoption date of a plan.**  
 34                   **Sec. 14. "Employee benefit plan" means an employee benefit**  
 35                   **plan established by a MHC, or by one (1) or more of the**  
 36                   **subsidiaries of a MHC, for the benefit of its:**  
 37                   **(1) employees; or**  
 38                   **(2) sales agents.**  
 39                   **Sec. 15. "Intermediate stock holding company" means a**  
 40                   **company other than a stock insurance company subsidiary and its**  
 41                   **subsidiaries that:**  
 42                   **(1) is owned entirely or in part, directly or indirectly, by a**  
 43                   **MHC; and**  
 44                   **(2) directly or indirectly owns all or part of the capital stock**  
 45                   **of a stock insurance company subsidiary.**  
 46                   **Sec. 16. "Internal Revenue Code" refers to the Internal**  
 47                   **Revenue Code of 1986, as amended.**  
 48                   **Sec. 17. "Member" means a person that, according to the:**  
 49                   **(1) records; and**  
 50                   **(2) articles of incorporation and bylaws;**

1 of a mutual company, is a member of the mutual company.

2 Sec. 18. "Members' surplus" means the surplus and any  
3 built-in gains of a mutual insurance company that exist on the  
4 effective date of a reorganization under this article.

5 Sec. 19. "Mutual insurance company" or "MIC" means a  
6 domestic mutual insurer that is:

7 (1) submitting; or

8 (2) subject to;

9 a plan of reorganization under this article.

10 Sec. 20. "Mutual insurance holding company" or "MHC"  
11 means a mutual insurance holding company established under  
12 IC 27-14-2.

13 Sec. 21. "Outside director" means an individual who:

14 (1) is a member of a board of:

15 (A) a MHC;

16 (B) an intermediate stock holding company; or

17 (C) a stock insurance company subsidiary;

18 (2) is not a member, officer, employee, or consultant of:

19 (A) the MHC, intermediate stock holding company, or  
20 stock insurance company subsidiary on whose board the  
21 individual serves; or

22 (B) a parent company or subsidiary of the MHC,  
23 intermediate stock holding company, or stock insurance  
24 company subsidiary on whose board the individual  
25 serves;

26 (3) does not directly or indirectly own, control, or hold any  
27 of the voting capital stock or other dividend-paying  
28 instrument of:

29 (A) the MHC, intermediate stock holding company, or  
30 stock insurance company subsidiary on whose board the  
31 individual serves; or

32 (B) a parent company or subsidiary of the MHC,  
33 intermediate stock holding company, or stock insurance  
34 company subsidiary on whose board the individual  
35 serves;

36 (4) is not an officer, member of the board of directors,  
37 employee, or member of the immediate family of a person  
38 who directly or indirectly owns, controls, or holds any of the  
39 voting capital stock or other dividend-paying instrument of:

40 (A) the MHC, intermediate stock holding company, or  
41 stock insurance company subsidiary on whose board the  
42 individual serves; or

43 (B) a parent company or subsidiary of the MHC,  
44 intermediate stock holding company, or stock insurance  
45 company subsidiary on whose board the individual  
46 serves; and

47 (5) does not own a policy issued by the MIC or stock  
48 insurance company subsidiary of the MHC.

49 Sec. 22. "Parent company" means either of the following:

50 (1) As to an intermediate stock holding company, the mutual

- 1           **holding company of which the intermediate stock holding**  
 2           **company is a subsidiary.**
- 3           **(2) As to a stock insurance company subsidiary, the mutual**  
 4           **holding company or intermediate stock holding company of**  
 5           **which the stock insurance company subsidiary is a**  
 6           **subsidiary.**
- 7           **Sec. 23. "Participating policy" means an insurance policy**  
 8           **providing for the distribution of dividends.**
- 9           **Sec. 24. "Person" means any of the following:**
- 10           **(1) An individual.**
- 11           **(2) An aggregation of individuals acting in concert.**
- 12           **(3) A trust.**
- 13           **(4) An association.**
- 14           **(5) A partnership.**
- 15           **(6) A limited liability company.**
- 16           **(7) A corporation.**
- 17           **Sec. 25. "Plan" means a plan:**
- 18           **(1) of reorganization; or**
- 19           **(2) to issue stock.**
- 20           **Sec. 26. "Plan of reorganization" means a plan adopted under**  
 21           **IC 27-14-2.**
- 22           **Sec. 27. "Plan to issue stock" means a plan to issue shares of**  
 23           **voting capital stock adopted under IC 27-14-4.**
- 24           **Sec. 28. "Policy" means a contract providing one (1) or more**  
 25           **of the kinds of insurance described in IC 27-1-5-1.**
- 26           **Sec. 29. "Stock insurance company subsidiary" means a stock**  
 27           **insurance company that is owned entirely or in part by a MHC or**  
 28           **an intermediate stock holding company.**
- 29           **Sec. 30. "Subsidiary" means, with respect to a particular**  
 30           **person, an affiliate of the person that is controlled by the person,**  
 31           **either:**
- 32           **(1) directly; or**
- 33           **(2) indirectly, through one (1) or more intermediaries.**
- 34           **Sec. 31. "Voting capital stock" means capital stock whose**  
 35           **holder has the right to vote in the election of directors.**
- 36           **Chapter 2. Mutual Insurance Company Reorganization**
- 37           **Sec. 1. (a) A mutual insurance company (MIC) may reorganize**  
 38           **under this chapter as a mutual insurance holding company (MHC)**  
 39           **with one (1) or more subsidiaries after the following have**  
 40           **occurred:**
- 41           **(1) The favorable vote of its board of directors to reorganize.**
- 42           **(2) The filing of an application with the commissioner.**
- 43           **(3) A notice of a public hearing is made to its members and**  
 44           **the public.**
- 45           **(4) At least one (1) public hearing conducted by the**  
 46           **commissioner.**
- 47           **(5) The approval of the commissioner of the plan.**
- 48           **(6) A favorable vote of the membership of the MIC.**
- 49           **(7) The issuance of an order of completion by the**  
 50           **commissioner.**

1           **(b) The subsidiaries of a MIC that reorganizes as a MHC**  
 2 **under this chapter:**

3           **(1) must include at least one (1) stock insurance company**  
 4 **subsidiary; and**

5           **(2) may include one (1) or more intermediate stock holding**  
 6 **companies.**

7           **Sec. 2. The reorganization of a MIC as a MHC under this**  
 8 **chapter may be accomplished by the following means as approved**  
 9 **by the commissioner:**

10           **(1) The establishment of at least one (1) company.**

11           **(2) The amendment or restatement of the articles and bylaws**  
 12 **of any company.**

13           **(3) The transfer or acquisition of any or all of the assets and**  
 14 **liabilities of any company.**

15           **(4) The merger of two (2) or more mutual insurance**  
 16 **companies.**

17           **(5) The merger of two (2) or more intermediate stock holding**  
 18 **companies as part of the merger of two (2) or more MHCs.**

19           **(6) The merger of two (2) or more stock insurance**  
 20 **companies.**

21           **Sec. 3. (a) A plan of reorganization under this chapter must be**  
 22 **adopted by:**

23           **(1) the board of directors of the MIC; or**

24           **(2) in the case of the formation of any intermediate stock**  
 25 **insurance holding company that is not concurrent with the**  
 26 **formation of the MHC, the board of directors of the MHC.**

27           **(b) For a plan of reorganization to be adopted by the board of**  
 28 **directors of a MIC, at least seventy-five percent (75%) of the**  
 29 **members of the board of directors must vote in favor of the**  
 30 **adoption.**

31           **Sec. 4. Within ninety (90) days after the adoption of a plan of**  
 32 **reorganization and before a vote on the plan by the members, the**  
 33 **company adopting the plan must file with the commissioner an**  
 34 **application containing the following:**

35           **(1) A plan of reorganization.**

36           **(2) The form of the notices to be sent to members under this**  
 37 **chapter, including a notice of the public hearing and a notice**  
 38 **informing members of their right to vote on the plan.**

39           **(3) A copy of the:**

40           **(A) proposed articles of incorporation; and**

41           **(B) bylaws;**

42           **of each company to be formed under the plan in compliance**  
 43 **with the requirements of IC 27-1-6.**

44           **(4) If it is necessary to amend the current articles of**  
 45 **incorporation or bylaws of any company that is affected by**  
 46 **the plan, a copy of:**

47           **(A) the proposed articles of amendment; and**

48           **(B) amended bylaws;**

49           **of the company that must comply with the requirements of**  
 50 **IC 27-1-8.**

1           **(5) A list of the officers and directors of each company that**  
 2           **is created or affected by the plan of reorganization.**

3           **Sec. 5. A plan of reorganization filed with the commissioner**  
 4           **under this chapter must meet the following requirements:**

5           **(1) It must describe all significant terms of the proposed**  
 6           **reorganization.**

7           **(2) It must describe in narrative form any plan to issue stock**  
 8           **that may be proposed in connection with the plan of**  
 9           **reorganization.**

10          **(3) It must describe the:**

11           **(A) reasons for and purposes of the proposed**  
 12           **reorganization; and**

13           **(B) manner in which the reorganization is expected to**  
 14           **benefit and serve the best interests of the members.**

15          **The plan must include an analysis of the risks and benefits of**  
 16          **the proposed reorganization, and a comparison of those risks**  
 17          **and benefits with the risks and benefits of alternatives**  
 18          **(including demutualization of the MIC) to the**  
 19          **reorganization.**

20          **(4) It must provide that, after the effective date, the MHC**  
 21          **must at all times have the direct or indirect power to cast at**  
 22          **least sixty percent (60%) of the votes for the election of**  
 23          **directors of:**

24           **(A) all stock insurance subsidiaries; and**

25           **(B) an intermediate stock holding company;**

26          **of the MHC.**

27          **(5) It must provide that:**

28           **(A) the:**

29            **(i) membership interests of the members of the MIC**  
 30            **remain membership interests in the MHC; and**

31            **(ii) members' surplus protection principle will**  
 32            **govern the actions of the MHC and its subsidiaries;**  
 33            **under the articles of incorporation and bylaws of the**  
 34            **MHC;**

35           **(B) the membership interest of a member of the MHC**  
 36           **may not be transferred, assigned, pledged, or alienated**  
 37           **in any manner except in connection with a transfer,**  
 38           **assignment, pledge, or alienation of the policy from**  
 39           **which the membership interest is derived; and**

40           **(C) the membership interest of a member of the MHC**  
 41           **will automatically terminate upon the lapse or other**  
 42           **termination of the policy from which the membership**  
 43           **interest is derived.**

44          **(6) It must describe how the plan of reorganization is to be**  
 45          **carried out, including a description of a contemplated**  
 46          **transfer, acquisition, or assumption of assets, rights,**  
 47          **franchises, interests, debts, liabilities, or other obligations of**  
 48          **the applicant and any other company affected by the plan of**  
 49          **reorganization.**

50          **(7) It must describe the:**

- 1 (A) establishment of companies;  
 2 (B) amendment or restatement of the articles and  
 3 bylaws of a company; and  
 4 (C) merger of companies;  
 5 that will take place under the plan of reorganization.  
 6 (8) It must provide a list of:  
 7 (A) all individuals who are or have been selected to  
 8 become directors or officers of the MHC and its  
 9 subsidiaries; and  
 10 (B) other individuals who perform or will perform  
 11 functions appropriate to the position of director or  
 12 officer.  
 13 (9) The list prepared under subdivision (8) must include, for  
 14 each individual on the list:  
 15 (A) the individual's principal occupation;  
 16 (B) all offices and positions the individual has held in the  
 17 preceding five (5) years;  
 18 (C) any crime of which the individual has been convicted  
 19 (other than traffic violations) in the preceding ten (10)  
 20 years;  
 21 (D) information concerning any personal bankruptcy of  
 22 the individual or the individual's spouse during the  
 23 previous seven (7) years;  
 24 (E) information concerning the bankruptcy of any  
 25 corporation of which the individual was an officer or  
 26 director during the previous seven (7) years;  
 27 (F) information concerning any state or federal  
 28 securities law allegations and violations against the  
 29 individual;  
 30 (G) information concerning the revocation of any state  
 31 or federal license issued to the individual; and  
 32 (H) information as to whether the individual has ever  
 33 been refused a performance or other bond.  
 34 (10) With respect to a policy that goes into force after the  
 35 effective date of the reorganization, the policy must provide  
 36 that:  
 37 (A) the owner of the policy; or  
 38 (B) another person or persons specified in:  
 39 (i) the policy; or  
 40 (ii) the MHC's articles of incorporation or bylaws;  
 41 becomes a member of the MHC.  
 42 (11) It must provide that, with regard to a policy in force on  
 43 the effective date of the plan of reorganization:  
 44 (A) the policy continues to remain in force under the  
 45 policy's terms;  
 46 (B) the policyholder continues to have the right to  
 47 receive dividends as provided for in the policy;  
 48 (C) the policyholder's right to benefits, values,  
 49 guarantees, and other policy obligations of the MIC  
 50 continues after the effective date of the plan of

- 1 reorganization; and  
 2 (D) the dividends paid on the policy after the effective  
 3 date of the plan of reorganization increase in proportion  
 4 to:  
 5 (i) increases in earned surplus available for the  
 6 payment of dividends; and  
 7 (ii) any increase in dividends paid on policies issued  
 8 after the effective date of the plan of reorganization.  
 9 (12) It must describe the nature and content of the annual  
 10 report and financial statement to be sent to each member  
 11 following the reorganization.  
 12 (13) It must demonstrate that, in the event of proceedings  
 13 under IC 27-9 involving a stock insurance company  
 14 subsidiary of the MHC that resulted from the reorganization  
 15 of a domestic MIC, the assets of the MHC are available to  
 16 satisfy the policyholder obligations of the stock insurance  
 17 company subsidiary.  
 18 (14) It must provide any additional information that the  
 19 commissioner may request.  
 20 **Sec. 6. (a) A plan of reorganization that is adopted by the**  
 21 **board of directors of the applicant may be:**  
 22 (1) amended by the board of directors of the applicant:  
 23 (A) in response to the comments or recommendations of  
 24 the commissioner, or any other state or federal agency  
 25 or entity, before any solicitation of proxies from the  
 26 members to vote on the plan of reorganization; and  
 27 (B) otherwise, with the consent of the commissioner; or  
 28 (2) terminated by the board of directors of the applicant:  
 29 (A) before notice is sent to the members under section 8  
 30 of this chapter; and  
 31 (B) otherwise, with the consent of the commissioner.  
 32 (b) For a plan of reorganization to be:  
 33 (1) amended; or  
 34 (2) terminated;  
 35 by the board of directors of a MIC, at least seventy-five percent  
 36 (75%) of the members of the board of directors must vote in favor  
 37 of the amendment or termination.  
 38 **Sec. 7. (a) The commissioner shall, as soon as practicable after**  
 39 **receiving a plan, conduct a public hearing in Indianapolis at a**  
 40 **place, date, and time specified by the commissioner to afford**  
 41 **interested persons an opportunity to present information, views,**  
 42 **arguments, or comments about the plan.**  
 43 (b) At least thirty (30) days before a hearing held under this  
 44 section, the commissioner shall publish notice of the hearing in a  
 45 newspaper of general circulation in:  
 46 (1) the city of Indianapolis;  
 47 (2) the city in which the principal office of the applicant is  
 48 located; and  
 49 (3) other cities or towns that the commissioner considers  
 50 appropriate.

1       **The commissioner may provide written notice of the hearing by**  
 2       **other means and to other persons that the commissioner considers**  
 3       **appropriate.**

4       **(c) The notice provided under this section must:**

- 5           **(1) refer to the applicable statutory provisions;**
- 6           **(2) state the date, time, and location of the hearing; and**
- 7           **(3) include a brief statement of the subject of the hearing.**

8       **(d) At a public hearing under this section, an interested person**  
 9       **may appear and:**

- 10           **(1) file a written statement;**
- 11           **(2) make an oral presentation;**
- 12           **(3) pose questions to the officers and directors of the MIC;**
- 13           **and**
- 14           **(4) examine the evidence.**

15       **(e) At the discretion of the commissioner or the**  
 16       **commissioner's appointee, testimony may be taken under oath or**  
 17       **by affirmation at a public hearing under this article.**

18       **Sec. 8. The applicant shall, at least thirty (30) days before the**  
 19       **public hearing required under this chapter, notify each member of**  
 20       **the MIC of the public hearing. The notice must achieve a minimum**  
 21       **score of forty (40) on the Flesch reading ease test or an equivalent**  
 22       **score on a comparable test approved by the commissioner. The**  
 23       **notice must include the following:**

- 24           **(1) Reference to the applicable statutory provisions.**
- 25           **(2) A statement of the date, time, and location of the hearing.**
- 26           **(3) A brief statement of the subject of the hearing, including**  
 27           **specific notice to the member that the member has an**  
 28           **ownership interest in the MIC that may be affected by the**  
 29           **reorganization.**

30       **Sec. 9. The commissioner shall not approve a plan of**  
 31       **reorganization submitted under this article unless the applicant has**  
 32       **shown, by a preponderance of the evidence, that the plan of**  
 33       **reorganization:**

- 34           **(1) complies with the law;**
- 35           **(2) includes the disclosures and notices required under this**  
 36           **article;**
- 37           **(3) is fair to the members of the MIC; and**
- 38           **(4) complies with the members' surplus protection principle.**

39       **Sec. 10. Not more than one hundred eighty (180) days after the**  
 40       **commissioner accepts the application relating to the plan, the**  
 41       **commissioner shall approve or disapprove a plan of**  
 42       **reorganization. The commissioner's approval of the plan must be**  
 43       **conditioned upon:**

- 44           **(1) the approval of the plan by the members under this**  
 45           **chapter; and**
- 46           **(2) the completion order requirements of this chapter.**

47       **Sec. 11. The commissioner shall immediately notify the**  
 48       **applicant upon reaching a decision on a plan of reorganization.**

49       **Sec. 12. (a) A plan of reorganization of a MIC must be**  
 50       **submitted for approval by the members of the MIC after approval**

1 of the application by the commissioner under section 10 of this  
 2 chapter. A vote by the members to approve the plan must be made  
 3 at a special or annual meeting held under IC 27-1-7-7 and this  
 4 chapter.

5 (b) A member must be sent notice of the meeting at which a  
 6 plan of reorganization will be submitted for approval by members.  
 7 The notice must:

8 (1) be mailed at least thirty (30) days before the meeting;

9 (2) refer to the applicable statutory provisions;

10 (3) state the date, time, and location of the meeting;

11 (4) include a brief statement of the subject of the meeting;  
 12 and

13 (5) describe the member's right to appear and participate in  
 14 the meeting.

15 (c) The notice sent under this section must achieve a minimum  
 16 score of forty (40) on the Flesch reading ease test or an equivalent  
 17 score on a comparable test approved by the commissioner.

18 Sec. 13. Before the special or annual meeting at which the  
 19 members of a MIC vote on a plan of reorganization, the MIC shall  
 20 provide the members with information about the plan sufficient for  
 21 the members, in the reasonable determination of the commissioner,  
 22 to make an informed decision about the plan of reorganization.

23 Sec. 14. Notwithstanding IC 27-1-7-9, with respect to a vote  
 24 under section 12 of this chapter, a member:

25 (1) may vote in person or by proxy if the proxy:

26 (A) includes reference to the applicable statutory  
 27 provisions;

28 (B) states the date, time, and location of the meeting;

29 (C) contains a brief statement of the subject of the  
 30 meeting, including specific notice to the member that the  
 31 member has an ownership interest in the MIC that may  
 32 be affected by the reorganization; and

33 (D) was solicited and obtained from the member after  
 34 the MIC has submitted the plan of reorganization to the  
 35 commissioner under this article; and

36 (2) is entitled to cast only one (1) vote on the proposed plan  
 37 of reorganization, regardless of the number of policies or the  
 38 amount of insurance that the member has with the applicant  
 39 or any affiliate of the applicant.

40 Sec. 15. For a plan of reorganization to be approved by  
 41 members of a MIC, at least sixty-seven percent (67%) of the  
 42 members must vote in favor of the plan.

43 Sec. 16. Within thirty (30) days after members have approved  
 44 a plan of reorganization at a special or annual meeting of members  
 45 under this chapter, an applicant must file with the commissioner  
 46 the minutes of the meeting at which the plan of reorganization was  
 47 approved.

48 Sec. 17. (a) Before the commissioner issues a permit for  
 49 completion of organization under subsection (b):

50 (1) the commissioner must have issued notice to the applicant

- 1 that the commissioner has approved the plan of  
 2 reorganization of the applicant under section 10 of this  
 3 chapter;  
 4 (2) a public hearing must have been conducted under this  
 5 chapter;  
 6 (3) the commissioner must have received the minutes of the  
 7 meeting of the members at which the plan was approved  
 8 reflecting that the plan of reorganization was on the agenda  
 9 and the plan was approved, if the members voted to approve  
 10 the plan at a special or annual meeting;  
 11 (4) the articles of incorporation of the applicant must have  
 12 been certified by the secretary of state and transmitted to the  
 13 commissioner; and  
 14 (5) the applicant must have posted a surety bond.
- 15 (b) After the events referred to in subsection (a), the  
 16 commissioner shall issue:
- 17 (1) a permit for completion of organization as provided in  
 18 IC 27-1-6-11, in the case of a newly organized company; or  
 19 (2) an amended certificate of authority as provided in  
 20 IC 27-1-8-9, in the case of amended articles of incorporation.
- 21 **Sec. 18.** A plan of reorganization is effective when each  
 22 company affected by the plan has filed:
- 23 (1) its articles of incorporation or, if appropriate, its articles  
 24 of amendment; and  
 25 (2) the certificate of authority issued to the company by the  
 26 commissioner under this chapter;
- 27 in the office of the county recorder of the county in which the  
 28 principal office of the company is located.
- 29 **Sec. 19.** The organization of any company under a plan of  
 30 reorganization under this article must be conducted under  
 31 IC 27-1-6 concerning the formation of domestic insurance  
 32 companies, except as provided in section 17 of this chapter.
- 33 **Sec. 20.** The amendment of the articles of incorporation of a  
 34 company under a plan of reorganization under this article must be  
 35 conducted in compliance with IC 27-1-8, except as provided in  
 36 section 17 of this chapter.
- 37 **Chapter 3. Mutual Insurance Holding Companies**
- 38 **Sec. 1.** A MHC organized under this article:
- 39 (1) must be licensed; and  
 40 (2) is subject to rules that the commissioner may adopt under  
 41 IC 4-22-2.
- 42 **Sec. 2.** The articles of incorporation of a MHC must contain  
 43 the following, or provisions at least substantially equivalent to the  
 44 following:
- 45 (1) The name of the MHC, which must include the term  
 46 "mutual" or the abbreviation "MHC".  
 47 (2) A provision that no actions will be taken by the MHC that  
 48 contravene the members' surplus protection principle  
 49 established in this article.  
 50 (3) A provision specifying that the MHC must, at all times,

- 1           **have the direct or indirect power to cast at least sixty percent**  
 2           **(60%) of the votes for the election of directors of each stock**  
 3           **insurance company subsidiary and any intermediate stock**  
 4           **holding company.**
- 5           **(4) A provision specifying that the MHC does not have the**  
 6           **power to engage in the business of issuing insurance policies**  
 7           **or contracts, except through a stock insurance company**  
 8           **subsidiary.**
- 9           **(5) A provision specifying that the MHC is not authorized to**  
 10           **issue voting stock.**
- 11           **(6) A provision setting forth the rights of members of the**  
 12           **MHC in the equity of the MHC upon liquidation, including**  
 13           **the rights of the members to the assets of the MHC.**
- 14           **(7) A provision specifying that:**
- 15                   **(A) a member of the MHC is not, as a member,**  
 16                   **personally liable for the acts, debts, liabilities, or**  
 17                   **obligations of the MHC; and**
- 18                   **(B) no assessment may be imposed upon the members of**  
 19                   **the MHC by any person, including:**
- 20                           **(i) the board of directors, members, or creditors of**  
 21                           **the MHC; and**
- 22                           **(ii) any governmental office or official, including**  
 23                           **the commissioner;**
- 24                           **because of any liability of any company or because of**  
 25                           **any act, debt, or liability of the MHC.**
- 26           **Sec. 3. Members of a MHC have rights and obligations**  
 27           **specified in:**
- 28                   **(1) this article; and**
- 29                   **(2) the articles of incorporation and bylaws of the MHC.**
- 30           **Sec. 4. (a) On the effective date of the reorganization of a MIC**  
 31           **as a MHC under this chapter, the MHC must have the direct or**  
 32           **indirect power to cast one hundred percent (100%) of the votes for**  
 33           **the election of directors of:**
- 34                   **(1) all stock insurance subsidiaries; and**
- 35                   **(2) an intermediate stock holding company;**
- 36           **of the MIC.**
- 37                   **(b) After the effective date of the reorganization of a MIC as**  
 38           **a MHC under this chapter, the MHC must at all times have the**  
 39           **direct or indirect power to cast at least sixty percent (60%) of the**  
 40           **votes for the election of directors of:**
- 41                   **(1) all stock insurance subsidiaries; and**
- 42                   **(2) an intermediate stock holding company;**
- 43           **of the MIC.**
- 44           **Sec. 5. Major transactions between:**
- 45                   **(1) a MHC and its subsidiaries; or**
- 46                   **(2) subsidiaries of a MHC;**
- 47           **must be conducted in fairness to the members of the MHC, comply**  
 48           **with the members' surplus protection principle, and be approved**  
 49           **by the commissioner.**
- 50           **Sec. 6. At least seventy-five percent (75%) of the following**

- 1       **must be made up of outside directors:**  
2           (1) The board of directors of a MHC.  
3           (2) The board of directors of an intermediate stock holding  
4           company.  
5           (3) The board of directors of a stock insurance company  
6           subsidiary.  
7           (4) Each committee of the board of directors of:  
8                (A) a MHC;  
9                (B) an intermediate stock holding company; or  
10              (C) a stock insurance company subsidiary.
- 11       **Sec. 7. (a) With the written approval of the commissioner, and**  
12       **subject to any conditions imposed by the commissioner, a MHC**  
13       **may do any of the following:**  
14           (1) Merge or consolidate with, or acquire the assets of a:  
15                (A) MHC licensed under this article; or  
16                (B) similar entity organized under the laws of any other  
17                state.  
18           (2) Acquire the stock of a stock insurance company as a  
19           subsidiary of the MHC or an intermediate stock insurance  
20           company of the MHC.  
21           (3) Organize an intermediate stock insurance company as a  
22           wholly owned subsidiary.  
23           (4) Organize a stock insurance company as a subsidiary.  
24           (5) Acquire the stock or assets of any non-insurance related  
25           corporation.
- 26       **(b) Whenever a MHC acquires or plans to acquire more than**  
27       **fifty percent (50%) of the voting capital stock of a stock insurance**  
28       **company, the MHC must submit to the commissioner a description**  
29       **of any membership interests of policyholders of the stock insurance**  
30       **company.**
- 31       **Sec. 8. (a) Except as provided in subsection (b), a MHC:**  
32           (1) has and may exercise all the rights and privileges of  
33           insurance companies formed under this title; and  
34           (2) is subject to all the requirements and regulations imposed  
35           upon insurance companies formed under this title.
- 36       **(b) The exceptions referred to in subsection (a) are as follows:**  
37           (1) A MHC does not have the right or privilege to write  
38           insurance (except through a stock insurance company  
39           subsidiary) and is not subject to any requirement or rule  
40           adopted under IC 4-22-2 relating to the writing of insurance.  
41           (2) A MHC is not subject to the surplus requirements in  
42           IC 27-1-6-15.  
43           (3) A MHC is not subject to any requirement or rule adopted  
44           under IC 4-22-2 that is imposed upon insurance companies  
45           formed under this title to the extent that the requirement or  
46           rule is in conflict with this article.
- 47       **Sec. 9. Not later than April 1, a MHC shall file with the**  
48       **commissioner an annual statement containing the following**  
49       **information:**  
50           (1) Audited financial statements, including:

- 1                   (A) an income statement;  
 2                   (B) a balance sheet;  
 3                   (C) a statement of cash flows; and  
 4                   (D) footnotes.
- 5           (2) Complete information on the status of any condition  
 6 imposed in connection with the approval of a plan of  
 7 reorganization.
- 8           (3) An investment plan covering all assets of the MHC.
- 9           (4) A statement that the MHC and its affiliates have  
 10 complied with section 13 of this chapter.
- 11           (5) A statement that describes any changes in the members'  
 12 surplus and the reason for any such change in the members'  
 13 surplus.

14           **Sec. 10. (a)** A MHC and the intermediate stock holding  
 15 companies and stock insurance company subsidiaries that are  
 16 owned entirely or in part, directly or indirectly, by the MHC  
 17 constitute an insurance holding company system (as defined in  
 18 IC 27-1-23-1).

19           (b) Notwithstanding subsection (a), a separate filing or  
 20 approval is not required under IC 27-1-23 for a reorganization  
 21 that:

- 22                   (1) is included in a plan approved under this article; and  
 23                   (2) does not involve the acquisition of control of an insurance  
 24 company that is not affiliated with the applicant before the  
 25 reorganization.

26           **Sec. 11.** A membership interest in a MHC does not constitute  
 27 a security under Indiana law.

28           **Sec. 12. (a)** After the effective date of a plan of reorganization,  
 29 the officers and directors of the MHC and its subsidiaries:

- 30                   (1) owe the same fiduciary responsibilities to the members of  
 31 the former MIC as the officers and directors of the MHC  
 32 owed to the members before the effective date of the plan of  
 33 reorganization;  
 34                   (2) are subject to potential liability to the members of the  
 35 former MIC to the same extent as the officers and directors  
 36 of the MHC were to the members before the effective date of  
 37 the plan of reorganization; and  
 38                   (3) owe a fiduciary duty to the members of the MHC to  
 39 follow the members' surplus protection principle.

40           (b) An action may not be brought to recover for the violation  
 41 of fiduciary responsibilities under this article more than ten (10)  
 42 years after the alleged violation of the fiduciary responsibility.

43           **Sec. 13. (a)** The following transactions involving a MHC or an  
 44 affiliate of a MHC and any person may not be entered into unless  
 45 the MHC has notified the commissioner in writing of its intention  
 46 to enter into such transaction at least thirty (30) days before  
 47 entering into the transaction, or such shorter period as the  
 48 commissioner may permit, and the commissioner has not  
 49 disapproved it within that period:

- 50                   (1) Sales, purchases, exchanges, loans or extensions of credit,

1           **guarantees, or investments, provided those transactions are**  
 2           **equal to or exceed three percent (3%) of the MHC's assets as**  
 3           **of December 31 of the previous year.**

4           **(2) Loans or extensions of credit to any person who is not an**  
 5           **affiliate of the MHC, where the MHC makes those loans or**  
 6           **extensions of credit with the agreement or understanding**  
 7           **that the proceeds of such transactions, in whole or in**  
 8           **substantial part, are to be used to make loans or extensions**  
 9           **of credit to, to purchase assets of, or to make investments in,**  
 10           **any affiliate of the MHC making such loans or extensions of**  
 11           **credit, provided those transactions are equal to or exceed**  
 12           **three percent (3%) of the MHC's assets as of December 31 of**  
 13           **the previous year.**

14           **(3) Reinsurance agreements or modifications to the**  
 15           **agreements in which the amount of cash or invested assets**  
 16           **transferred by the MHC equals or exceeds five percent (5%)**  
 17           **of the MHC's surplus as regards policyholders, as of**  
 18           **December 31 of the previous year, including those**  
 19           **agreements that may require as consideration the transfer of**  
 20           **assets from a MHC to a nonaffiliate, if an agreement or**  
 21           **understanding exists between the MHC and nonaffiliate that**  
 22           **any portion of the assets will be transferred to one (1) or**  
 23           **more affiliates of the MHC.**

24           **(4) Management agreements, service contracts, and**  
 25           **cost-sharing arrangements.**

26           **(5) Material transactions, specified by rule, that the**  
 27           **commissioner determines may adversely affect the interests**  
 28           **of the policyholders of affiliates of the MHC or that do not**  
 29           **comply with the members' surplus protection principle.**

30           **This subsection does not authorize or permit any transactions**  
 31           **other than those authorized under this article.**

32           **(b) A MHC and its affiliates may not enter into transactions**  
 33           **that are part of a plan or series of like transactions if the purpose**  
 34           **of those separate transactions is to avoid the statutory threshold**  
 35           **amount and avoid the review required under this section.**

#### 36           **Chapter 4. Issuance of Capital Stock**

37           **Sec. 1. A subsidiary organized under this title may issue shares**  
 38           **of any class or type of capital stock permitted under this title, and**  
 39           **an intermediate stock holding company may issue any type of stock**  
 40           **permitted by the law under which it is organized. However, a stock**  
 41           **insurance company subsidiary and an intermediate stock holding**  
 42           **company may issue shares of voting capital stock to a person or**  
 43           **entity other than:**

44           **(1) the MHC of which it is a subsidiary; or**

45           **(2) an intermediate stock holding company that is a**  
 46           **subsidiary of the MHC referred to in subdivision (1);**

47           **only in compliance with this article.**

48           **Sec. 2. A plan to issue voting capital stock under this chapter**  
 49           **must be adopted:**

50           **(1) by the board of directors of the MHC; or**

1           **(2) in the case of a plan to issue shares of voting capital stock**  
 2           **that is not concurrent with the formation of the MHC, by the**  
 3           **board of directors of the stock insurance company subsidiary**  
 4           **or intermediate stock holding company proposing to issue**  
 5           **the stock.**

6           **Sec. 3. A board of directors that adopts a plan to issue voting**  
 7           **capital stock under this chapter may amend or withdraw that plan**  
 8           **at any time before the effective date. However, after the**  
 9           **commissioner has approved a plan to issue voting capital stock, the**  
 10           **plan may not be amended unless the commissioner approves the**  
 11           **amendment.**

12           **Sec. 4. Within ninety (90) days after the adoption of a plan to**  
 13           **issue voting capital stock, the stock insurance company subsidiary**  
 14           **or intermediate stock holding company adopting the plan must file**  
 15           **with the commissioner an application that contains the following:**

16           **(1) A proposed plan to issue voting capital stock.**

17           **(2) The form of notice to be sent to members, informing**  
 18           **members of their right to vote on the plan.**

19           **(3) The form of the proxy statement to be used to solicit the**  
 20           **votes of members. The form must describe the plan, and**  
 21           **must achieve a minimum score of forty (40) on the Flesch**  
 22           **reading ease test or an equivalent score on a comparable test**  
 23           **approved by the commissioner.**

24           **(4) The form of proxy to be solicited from members.**

25           **(5) A copy of the proposed articles of incorporation and**  
 26           **bylaws of each company to be formed under the plan in**  
 27           **compliance with the requirements of IC 27-1-6.**

28           **(6) If it is necessary to amend the current articles of**  
 29           **incorporation or bylaws of a company that is affected by the**  
 30           **plan, a copy of the proposed articles of amendment and**  
 31           **amended bylaws of the company that must comply with the**  
 32           **requirements of IC 27-1-8.**

33           **(7) A list of the officers and directors of a company that is**  
 34           **affected by the plan.**

35           **(8) A description of:**

36           **(A) the voting capital stock intended to be offered by the**  
 37           **applicant;**

38           **(B) all shareholder rights applicable to the voting capital**  
 39           **stock intended to be offered by the applicant;**

40           **(C) the total number of shares authorized to be issued;**

41           **(D) the estimated number of shares the applicant intends**  
 42           **to offer; and**

43           **(E) the intended date or range of dates for the offering.**

44           **(9) A list of:**

45           **(A) the name or names of any underwriter, syndicate**  
 46           **member, or placement agent involved;**

47           **(B) if known by the applicant, the name or names of**  
 48           **each person or group of persons who will control five**  
 49           **percent (5%) or more of the total outstanding shares of**  
 50           **the class of voting capital stock to be offered; and**

- 1           **(C) if any of the persons listed under clause (A) or (B) is**  
 2           **a corporation or other business organization, the name**  
 3           **of each member of its board of directors or equivalent**  
 4           **management body.**
- 5           **(10) Copies of any filings with the United States Securities**  
 6           **and Exchange Commission disclosing intended acquisitions**  
 7           **of voting capital stock of the applicant.**
- 8           **(11) A description of all expenses expected to be incurred in**  
 9           **connection with the offering.**
- 10           **(12) Any other information requested by the commissioner.**
- 11           **Sec. 5. A plan to issue voting capital stock that is filed with the**  
 12           **commissioner under this chapter must do the following:**
- 13           **(1) Describe the reasons for and the purposes of the proposed**  
 14           **issuance of shares of voting capital stock, and the manner in**  
 15           **which the issuance is expected to benefit and serve the best**  
 16           **interests of the members.**
- 17           **(2) Require that, after the effective date, the MHC must at all**  
 18           **times have the direct or indirect power to cast at least sixty**  
 19           **percent (60%) of the votes for the election of directors of**  
 20           **each stock insurance company subsidiary and any**  
 21           **intermediate stock holding company.**
- 22           **(3) Provide that the aggregate number of shares of voting**  
 23           **capital stock owned by all of the directors and officers of the**  
 24           **MHC and its subsidiaries and associates may not exceed:**
- 25                   **(A) within five (5) years after the initial issuance of**  
 26                   **voting capital stock, five percent (5%) of the total**  
 27                   **number of shares of voting capital stock to be issued;**  
 28                   **and**
- 29                   **(B) more than five years after the initial issuance of**  
 30                   **voting capital stock, ten percent (10%) of the total**  
 31                   **number of shares of voting capital stock to be issued;**
- 32           **including any shares acquired by the officers and directors**  
 33           **and their associates through discounted subscriptions,**  
 34           **employee benefit plans, or stock options.**
- 35           **(4) Provide that the aggregate number of shares of voting**  
 36           **capital stock purchased by:**
- 37                   **(A) a single director or officer of the MHC or the**  
 38                   **subsidiaries of the MHC;**
- 39                   **(B) associates of the person referred to in clause (A);**  
 40                   **and**
- 41                   **(C) persons acting in concert with the person referred to**  
 42                   **in clause (A) or (B);**
- 43           **may not exceed five percent (5%) of the total number of**  
 44           **shares to be issued under the plan, including any shares**  
 45           **attributed to the officers and directors and their associates**  
 46           **but held by one (1) or more tax-qualified employee benefit**  
 47           **plans.**
- 48           **(5) Provide that the aggregate number of shares of all**  
 49           **nonvoting equities and other nonvoting dividend paying**  
 50           **instruments owned by all of the directors and officers of the**

- 1           **MHC and its subsidiaries and associates may not exceed:**  
2           (A) within five (5) years after the initial issuance of  
3           voting capital stock, five percent (5%) of the total  
4           number of shares of nonvoting equities or other  
5           nonvoting dividend paying instruments to be issued; and  
6           (B) more than five years after the initial issuance of  
7           voting capital stock, ten percent (10%) of the total  
8           number of shares of nonvoting equities or other  
9           dividend paying instruments to be issued.
- 10          **(6) Provide that the aggregate number of shares of nonvoting**  
11          **equities or other nonvoting dividend paying instruments**  
12          **purchased by:**  
13                (A) a single director or officer of the MHC or the  
14                subsidiaries of the MHC;  
15                (B) associates of the person referred to in clause (A);  
16                and  
17                (C) persons acting in concert with the person referred to  
18                in clause (A) or (B);  
19          **may not exceed five percent (5%) of the total number of**  
20          **shares of nonvoting equities and other nonvoting dividend**  
21          **paying instruments to be issued under the plan, including**  
22          **any nonvoting equities or instruments attributed to the**  
23          **officers and directors and their associates but held by one (1)**  
24          **or more tax-qualified employee benefit plans.**
- 25          **(7) Provide that a director, officer, agent, or employee of the**  
26          **MHC or its subsidiaries, or an associate of a director, officer,**  
27          **agent, or employee, may not receive a fee, commission, or**  
28          **other valuable consideration for aiding, promoting, or**  
29          **assisting in the issuance of voting capital stock under this**  
30          **section, except for:**  
31                (A) compensation as provided for in the plan and  
32                approved by the commissioner;  
33                (B) the person's usual, regular salary or compensation;  
34                and  
35                (C) reasonable fees and compensation paid to an  
36                individual who is an attorney, accountant, or actuary for  
37                services performed in the individual's independent  
38                practice, even if the individual is also a director, officer,  
39                agent, or employee of the MHC or its subsidiaries.
- 40          **(8) Provide that the aggregate number of shares of voting**  
41          **capital stock that may be purchased by an employee benefit**  
42          **plan may not exceed ten percent (10%) of the total number**  
43          **of shares to be issued under the plan.**
- 44          **(9) Describe:**  
45                (A) how the offering price of the voting capital stock to  
46                be sold is established; or  
47                (B) the method by which the offering price will be  
48                determined.
- 49          **Sec. 6. (a) A plan to issue voting capital stock in a public**  
50          **offering (other than an offering solely in connection with a**

1 consolidation, merger, share exchange, or other business  
 2 combination or an offering of stock under a stock option plan)  
 3 must do the following:

4 (1) Provide for each eligible member to receive, without  
 5 payment, nontransferable subscription rights to purchase a  
 6 portion of the voting capital stock of the applicant.

7 (2) Specify how subscription rights are to be allocated in  
 8 whole shares of voting capital stock among the eligible  
 9 members.

10 (3) Provide a fair and equitable means for allocating shares  
 11 of voting capital stock in the event of an oversubscription to  
 12 the shares by eligible members exercising subscription rights  
 13 received under this chapter.

14 (4) Provide that any shares of voting capital stock not  
 15 subscribed to by eligible members exercising subscription  
 16 rights received under this chapter, or not subscribed to by an  
 17 employee benefit plan or by directors, officers, and  
 18 employees exercising subscription rights, will be sold:

19 (A) in a public offering through an underwriter;

20 (B) through private placement; or

21 (C) by any other method approved by the commissioner  
 22 that is fair and equitable to members.

23 (5) Require a person that exercises subscription rights to:

24 (A) purchase at least the minimum number of shares of  
 25 voting capital stock; or

26 (B) if the person purchases less than the minimum  
 27 number of shares, make a purchase of shares of voting  
 28 capital stock in at least the minimum amount.

29 (6) Require that at least seventy-five percent (75%) of the  
 30 members of the board of directors of the MHC must be  
 31 persons who are not officers or employees of the MHC or  
 32 any of its subsidiaries.

33 (7) Require that at least three (3) members of the board of  
 34 directors of each:

35 (A) intermediate stock holding company; and

36 (B) stock insurance company subsidiary;

37 of the MHC must be persons who are not officers or  
 38 employees of the MHC or any of its subsidiaries.

39 (8) Provide that the MHC will adopt articles of incorporation  
 40 or articles of amendment that include a provision prohibiting  
 41 the MHC from waiving any dividends from its subsidiaries  
 42 except:

43 (A) under conditions specified in the articles of  
 44 incorporation; and

45 (B) after approval of the waiver by the board of  
 46 directors of the MHC and by the commissioner.

47 (9) Establish a pricing committee within the board of  
 48 directors of the entity making the offering of voting capital  
 49 stock, consisting exclusively of directors who are not officers  
 50 or employees of the MHC or any of its subsidiaries, with the

1           responsibility of evaluating and approving the price of voting  
2           capital stock sold in the offering.

3           (b) The minimum number of shares of voting capital stock  
4           established under subsection (a)(5)(A) may not be more than one  
5           hundred (100) shares.

6           (c) The minimum amount of a purchase of shares of voting  
7           capital stock established under subsection (a)(5)(B) may not be  
8           more than two thousand dollars (\$2,000).

9           Sec. 7. A plan to issue voting capital stock may do the  
10          following:

11          (1) Provide an allocation without payment of  
12          nontransferable subscription rights to purchase not more  
13          than ten percent (10%) of the total amount of voting capital  
14          stock issued under the plan to one (1) or more employee  
15          benefit plans that satisfy the requirements of Section 401(a),  
16          403(b), 404(c), 408, 423, or 501(c)(9) of the Internal Revenue  
17          Code, limited to the extent that unsubscribed shares of voting  
18          capital stock remain after the members have exercised their  
19          subscription rights.

20          (2) Subject to the limitations of section 5 of this chapter,  
21          provide for:

22                  (A) the establishment of; and

23                  (B) the allocation of not more than four percent (4%) of  
24                  the total amount of voting capital stock issued under the  
25                  stock issuance plan to;

26          an employee benefit plan that provides benefits that are  
27          subject to taxation under Section 83 of the Internal Revenue  
28          Code or that complies with the requirements of Section 422  
29          of the Internal Revenue Code, for the purpose of granting  
30          stock or stock options.

31          (3) Provide that the articles of incorporation of a subsidiary  
32          of the MHC may, subject to specified exceptions, prohibit a:

33                  (A) person; or

34                  (B) group of persons acting in concert;

35          acting directly or through associates, from acquiring more  
36          than a specified percentage of any class of the issued and  
37          outstanding shares of capital stock of the issuing subsidiary.

38          (4) Provide that the aggregate number of shares of voting  
39          capital stock purchased by an eligible member that exercises  
40          subscription rights may not exceed:

41                  (A) a specified number of shares equal to at least one  
42                  percent (1%) of the total number of shares to be issued  
43                  under the plan; or

44                  (B) a specified percentage of not less than one percent  
45                  (1%) of the total number of shares to be issued under  
46                  the plan.

47          (5) Provide that subscription rights need not be granted to an  
48          eligible member who resides in a foreign country or other  
49          jurisdiction for which the commissioner determines that all  
50          of the following apply:

1 (A) A small number of eligible members reside in the  
2 jurisdiction.

3 (B) The granting of subscription rights or the offer or  
4 sale of voting capital stock to eligible members in the  
5 jurisdiction would require the issuer or its officers or  
6 directors to:

7 (i) register, under the securities laws of the  
8 jurisdiction, as a broker, dealer, salesman, or agent;  
9 or

10 (ii) register, or otherwise qualify, the voting capital  
11 stock for sale in the jurisdiction.

12 (C) The registration, qualification, or filing in the  
13 judgment of the commissioner would be impracticable  
14 or unduly burdensome for reasons of cost or otherwise.

15 **Sec. 8. Notwithstanding any provision of this article, a MHC**  
16 **or an affiliate of a MHC may not use any form of a stock option or**  
17 **other preference with respect to the sale or purchase of any voting**  
18 **capital stock or other equity instrument of the MHC or an affiliate**  
19 **of the MHC to compensate an officer or director of the MHC or an**  
20 **affiliate of the MHC.**

21 **Chapter 5. Public Hearing, Commissioner Approval, and**  
22 **Effective Date of Plan to Issue Stock**

23 **Sec. 1. Not more than:**

24 (1) sixty (60) days after the acceptance of an application filed  
25 with respect to a plan to issue stock under this article; or

26 (2) a longer period after the application is filed, as  
27 determined by the commissioner upon a showing of good  
28 cause;

29 **the commissioner may conduct a public hearing in Indianapolis at**  
30 **a place, date, and time specified by the commissioner to afford**  
31 **interested persons an opportunity to present information, views,**  
32 **arguments, or comments in regard to the plan.**

33 **Sec. 2. (a) At least thirty (30) days before a hearing held under**  
34 **this section, the commissioner shall publish notice of the hearing in**  
35 **a newspaper of general circulation in:**

36 (1) the city of Indianapolis;

37 (2) the city in which the principal office of the applicant is  
38 located; and

39 (3) another city or cities that the commissioner considers  
40 appropriate;

41 **and may provide written notice of the hearing by other means and**  
42 **to other persons that the commissioner considers appropriate.**

43 (b) The notice provided under this section must:

44 (1) refer to the applicable statutory provisions;

45 (2) state the date, time, and location of the hearing; and

46 (3) include a brief statement of the subject of the hearing.

47 **Sec. 3. At a public hearing on a plan to issue stock held under**  
48 **this chapter:**

49 (1) a member or any other interested person may appear  
50 and:

- 1                   (A) file a written statement; or  
 2                   (B) make an oral presentation; and  
 3           (2) at the discretion of the commissioner or the  
 4           commissioner's appointee, testimony may be taken under  
 5           oath or by affirmation.

6           **Sec. 4. In compliance with the later of:**

- 7                   (1) sixty (60) days after a public hearing held under this  
 8                   chapter; or  
 9                   (2) one hundred twenty (120) days after the commissioner  
 10                  accepts the application relating to the plan;

11           **the commissioner shall approve or disapprove the plan to issue**  
 12           **stock.**

13           **Sec. 5. The commissioner shall approve a plan to issue stock**  
 14           **submitted under this article unless the commissioner makes at least**  
 15           **one (1) of the following findings with respect to the plan:**

- 16                   (1) Disapproval of the plan is necessary to prevent practices  
 17                   that will cause financial impairment to the applicant or its  
 18                   subsidiaries.  
 19                   (2) The financial or management resources of the applicant  
 20                   or its subsidiaries or affiliates warrant disapproval.  
 21                   (3) The plan does not comply with the provisions of this  
 22                   article.  
 23                   (4) The proposed plan is unfair to members.  
 24                   (5) The plan does not comply with the members' surplus  
 25                   protection principles of this article.

26           **Sec. 6. (a) The commissioner shall immediately notify the**  
 27           **applicant upon reaching a decision on a plan submitted under this**  
 28           **chapter.**

29                   (b) If the commissioner disapproves a plan, the commissioner  
 30                   shall provide the applicant with a written statement detailing the  
 31                   reasons for the disapproval.

32                   (c) A decision of the commissioner approving a plan to issue  
 33                   stock must specify the valuation of the stock approved by the  
 34                   commissioner.

35           **Sec. 7. The approval by the commissioner of a plan to issue**  
 36           **stock expires one hundred eighty (180) days after the date of**  
 37           **approval, except as otherwise provided by an order of the**  
 38           **commissioner.**

39           **Sec. 8. The organization of a company under a plan under this**  
 40           **article must be conducted in compliance with the provisions of**  
 41           **IC 27-1-6 concerning the formation of domestic insurance**  
 42           **companies, except as provided in this chapter.**

43           **Sec. 9. The amendment of the articles of incorporation of a**  
 44           **company under a plan under this article must be conducted in**  
 45           **compliance with IC 27-1-8, except as provided in this chapter.**

46           **Chapter 6. Miscellaneous Provisions**

47           **Sec. 1. (a) This article, while independent of any other law, is**  
 48           **supplemental to IC 27-1-2 through IC 27-1-20.**

49                   (b) All provisions of IC 27-1-2 through IC 27-1-20 are fully  
 50                   and completely applicable to this article in the same manner as if

1 the provisions of this article had been an original part of IC 27-1-2  
 2 through IC 27-1-20. If any conflict exists between this article and  
 3 IC 27-1-2 through IC 27-1-20, this article is controlling.

4 **Sec. 2. A civil action:**

- 5 (1) challenging the validity of; or  
 6 (2) arising out of;

7 action that is taken or proposed to be taken under this article must  
 8 commence not later than ninety (90) days after the approval by the  
 9 commissioner of the plan under which or in respect of which the  
 10 action is taken or proposed to be taken.

11 **Sec. 3. The provisions of this article are severable in the**  
 12 **manner provided in IC 1-1-1-8(b).**

13 **Sec. 4. (a) A person who is aggrieved by an agency action of**  
 14 **the commissioner under this article may petition for judicial**  
 15 **review of the action under IC 4-21.5-5.**

16 **(b) A person who is aggrieved by a failure of the commissioner**  
 17 **to act or make a determination required by this article may bring**  
 18 **an action for mandate in the circuit court of St. Joseph County to**  
 19 **compel the commissioner to act or make the determination.**

20 **Sec. 5. A MHC and its subsidiaries and affiliates may not do**  
 21 **any of the following:**

- 22 (1) Lend funds to any person to finance the purchase of stock  
 23 in a stock offering by a MHC or any of its subsidiaries.  
 24 (2) Pay commissions, special fees, or other special or  
 25 extraordinary compensation to officers, directors, interested  
 26 persons, or affiliates for arranging, promoting, aiding,  
 27 assisting, or participating in the structure or placement of a  
 28 stock offering by the MHC or any of its subsidiaries, except  
 29 to the extent permitted under IC 27-14-4.  
 30 (3) Enter into an understanding or agreement transferring  
 31 legal or beneficial ownership of stock to another person in  
 32 avoidance of this article.

33 **Sec. 6. A stock insurance subsidiary to which insurance**  
 34 **policies, contracts, and other assets and obligations are transferred**  
 35 **in connection with a plan of reorganization under this article has,**  
 36 **with respect to the insurance policies, contracts, and other assets**  
 37 **and obligations, all rights, liabilities, and authority of the MIC that**  
 38 **is the subject of the plan of reorganization.**

39 **Sec. 7. If a proceeding is pending against a MIC that is the**  
 40 **subject of a plan of reorganization under this article:**

- 41 (1) the proceeding may be continued after the effective date,  
 42 as if the reorganization had not occurred; or  
 43 (2) the stock insurance company subsidiary that succeeds to  
 44 the MIC's business may be substituted in the proceeding for  
 45 the MIC.

46 **Sec. 8. A MHC may convert to a stock insurance holding**  
 47 **company under IC 27-1-8-13 as though the MHC were a MIC.**

48 **Sec. 9. The commissioner shall, at the applicant's expense, hire**  
 49 **attorneys, actuaries, accountants, investment bankers, and other**  
 50 **experts as may be necessary to assist the commissioner in**

1 reviewing all matters under this article that are associated with a  
2 plan of reorganization or a plan to issue stock.  
3 SECTION 3. [EFFECTIVE JULY 1, 1998] (a) IC 27-14, as added  
4 by this act, is intended to enable mutual insurance companies to  
5 seek additional capital more effectively to:  
6 (1) enhance their financial strength and flexibility; and  
7 (2) support long term growth through creative internal  
8 strategies, mergers, and acquisitions.  
9 (b) IC 27-14, as added by this act, provides an alternative  
10 organizational structure to help strengthen the Indiana mutual  
11 insurance industry by permitting mutual insurance companies to:  
12 (1) reorganize into a mutual insurance holding company  
13 structure; and  
14 (2) raise capital through the sale of capital stock.  
(Reference is to HB 1286 as reprinted January 30, 1998.)

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Representative Fry



Adopted

Rejected

# COMMITTEE REPORT

MR. SPEAKER:

Your Committee of One, to which was referred House Bill 1286, begs leave to report that said bill has been amended as directed.

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Representative Fry