HOUSE BILL No. 1306

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-14.

Synopsis: Mutual insurance holding companies. Authorizes a mutual insurance company (MIC) to reorganize as a mutual insurance holding company (MHC) with one or more subsidiaries. Establishes principles for the protection of the surplus of a MHC for the exclusive benefit of its members. Authorizes the formation of stock insurance company subsidiaries and intermediate stock holding companies as subsidiaries of a MHC. Establishes requirements that any plan of reorganization or plan to issue stock must meet, including requirements for public hearings favorable votes by members of a MIC after notice. Establishes certain requirements applying to mutual insurance holding companies, including the requirement to file annual reports with the insurance

(Continued next page)

Effective: July 1, 1998.

Fry

January 13, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.

C o p y

Digest Continued

commissioner. Prohibits a MHC and its subsidiaries and affiliates from taking certain actions, including the payment of special compensation to an officer or director for participating in a stock offering.

C o p y

Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

C o p y

HOUSE BILL No. 1306

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

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

ARTICLE 14. MUTUAL INSURANCE HOLDING COMPANY LAW

Chapter 1. General Provisions and Definitions

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

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

(b) For purposes of this article:

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

(2) a mutual insurance holding company (MHC) organized

under this article is owned by the members of the mutual insurance holding company.

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

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

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

(2) a stock option or performance-based payment or consideration granted to an officer or director of a MHC or its subsidiaries;

(3) an employee benefit plan provision; and

(4) other actions of a MHC or its subsidiaries;

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

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

(1) Dividends paid to members of the MHC.

(2) Supervision of a subsidiary of the MHC under IC 27-9.

(3) The net operating loss of a subsidiary of the MHC.

(4) A reduction in the market value of a security or other asset of the members' surplus.

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

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

Sec. 4. (a) Subject to subsections (b) and (c), "acting in concert" means:

(1) a knowing participation in a joint activity whether or not under an express agreement;

(2) interdependent conscious parallel action toward a common goal under an express agreement or otherwise; or

(3) a combination or pooling of voting interests or other interests in the securities of a company for a common purpose under any contract, understanding, relationship, agreement, or other arrangement, written or otherwise.

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

(1) its trustee; or

(2) a person who serves in a capacity similar to a trustee;

solely for the purpose of determining whether capital stock held by the trustee or the person in a similar capacity and capital stock held by the plan will be aggregated.

C o p y

(c) An officer or director of a MHC or its subsidiary or affiliate is not acting in concert with any other officer or director of a MHC or its subsidiary or affiliate by reason of the service of the officer or director in the capacity of officer or director.

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

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

(1) controls;

(2) is controlled by; or

(3) is under common control with;

another person.

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

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

(1) With respect to a particular person, a corporation, business entity, or other organization (other than the applicant or a subsidiary or an affiliate of the applicant) for which the person is:

(A) an officer;

(B) a partner; or

(C) directly or indirectly the beneficial owner of at least ten percent (10%) of any class of equity securities.

(2) With respect to an individual who is a director or an officer of the applicant or of any of the applicant's subsidiaries or affiliates, a:

(A) relative;

(B) spouse; or

(C) relative of the spouse;

of the individual who shares the domicile of the individual.

(3) With respect to a particular person, any trust or other estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar fiduciary capacity.

(b) The term does not apply to a person that:

(1) has a beneficial interest in; or

(2) serves as a trustee or in a similar fiduciary capacity for;

an employee benefit plan.

Sec. 9. "Board" means:

(1) the board of directors of a MHC, an intermediate stock holding company, or a stock insurance company subsidiary;

C o p y

or

(2) another board or committee that is responsible, under the articles or bylaws of the company, for decisions involving the structure or management of a MHC, intermediate stock holding company, or stock insurance company subsidiary.

Sec. 10. "Commissioner" means the insurance commissioner appointed under IC 27-1-1-2.

Sec. 11. "Company" means an entity:

(1) formed and legally existing under this title; or

(2) that:

(A) is owned, entirely or in part, directly or indirectly, by a MHC; and

(B) owns directly or indirectly all or part of the stock of a stock insurance company subsidiary.

Sec. 12. "Effective date" means, with respect to a plan, the date on which the plan becomes effective under this article.

Sec. 13. "Eligible member" means, with respect to a plan, a person who is a member of a company on the adoption date of a plan.

Sec. 14. "Employee benefit plan" means an employee benefit plan established by a MHC, or by one (1) or more of the subsidiaries of a MHC, for the benefit of its:

(1) employees; or

(2) sales agents.

Sec. 15. "Intermediate stock holding company" means a company other than a stock insurance company subsidiary and its subsidiaries that:

(1) is owned entirely or in part, directly or indirectly, by a MHC; and

(2) directly or indirectly owns all or part of the capital stock of a stock insurance company subsidiary.

Sec. 16. "Internal Revenue Code" refers to the Internal Revenue Code of 1986, as amended.

Sec. 17. "Member" means a person that, according to the:

(1) records; and

(2) articles of incorporation and bylaws;

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

Sec. 18. "Members' surplus" means the surplus and any built-in gains of a mutual insurance company that exist immediately prior to the reorganization of a mutual insurance company under this article. The term includes any earnings or gains on the surplus and built-in gains that accrue after the reorganization of the mutual

C o p y

insurance company as a mutual insurance holding company under this article.

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

(1) submitting; or

(2) subject to;

a plan of reorganization under this article.

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

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

(1) is a member of a board of:

(A) a MHC;

(B) an intermediate stock holding company; or

(C) a stock insurance company subsidiary;

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

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

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

(3) does not directly or indirectly own, control, or hold any of the voting capital stock of:

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

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

(4) is not an officer, member of the board of directors, employee, or member of the immediate family of a person who directly or indirectly owns, controls, or holds any of the voting capital stock of:

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

(B) a parent company or subsidiary of the MHC, intermediate stock holding company, or stock insurance company subsidiary on whose board the individual serves.

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

C o p y

(1) As to an intermediate stock holding company, the mutual holding company of which the intermediate stock holding company is a subsidiary.

(2) As to a stock insurance company subsidiary, the mutual holding company or intermediate stock holding company of which the stock insurance company subsidiary is a subsidiary.

Sec. 23. "Participating policy" means an insurance policy providing for the distribution of dividends.

Sec. 24. "Person" means any of the following:

(1) An individual.

(2) An aggregation of individuals.

(3) A trust.

(4) An association.

(5) A partnership.

(6) A limited liability company.

(7) A corporation.

Sec. 25. "Plan" means a plan:

(1) of reorganization; or

(2) to issue stock.

Sec. 26. "Plan of reorganization" means a plan adopted under IC 27-14-2.

Sec. 27. "Plan to issue stock" means a plan to issues shares of voting capital stock adopted under IC 27-14-4.

Sec. 28. "Policy" means a contract providing one (1) or more of the kinds of insurance described in IC 27-1-5-1.

Sec. 29. "Stock insurance company subsidiary" means a stock insurance company that is owned entirely or in part by a MHC or an intermediate stock holding company.

Sec. 30. "Subsidiary" means, with respect to a particular person, an affiliate of the person that is controlled by the person, either:

(1) directly; or

(2) indirectly, through one (1) or more intermediaries.

Sec. 31. "Voting capital stock" means capital stock whose holder has the right to vote in the election of directors.

Chapter 2. Mutual Insurance Company Reorganization

Sec. 1. (a) A mutual insurance company (MIC) may reorganize under this chapter as a mutual insurance holding company (MHC) with one (1) or more subsidiaries after the following have occurred:

(1) The favorable vote of its board of directors to reorganize.

(2) The filing of an application with the commissioner.

C o p y

(3) A notice of a public hearing is made to its members and the public.

(4) The public hearing conducted by the commissioner.

(5) The approval of the commissioner of the plan.

(6) A favorable vote of the membership of the MIC.

(7) The issuance of an order of completion by the commissioner.

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

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

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

Sec. 2. The reorganization of a MIC as a MHC under this chapter may be accomplished by any means approved by the commissioner, including the following:

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

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

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

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

(5) The merger of two (2) or more intermediate stock holding companies.

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

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

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

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

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

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

(1) A plan of reorganization.

(2) The form of the notices to be sent to members under this

C o p y

chapter, including a notice of the public hearing and a notice informing members of their right to vote on the plan.

(3) A copy of the:

(A) proposed articles of incorporation; and

(B) bylaws;

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

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

(A) the proposed articles of amendment; and

(B) amended bylaws;

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

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

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

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

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

(3) It must describe the:

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

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

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

(A) all stock insurance subsidiaries; and

(B) an intermediate stock holding company;

of the MHC.

(5) It must provide that:

(A) the:

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

(ii) members' surplus protection principle will govern the actions of the MHC and its subsidiaries;

under the articles of incorporation and bylaws of the

Copy

MHC;

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

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

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

(7) It must describe the:

(A) establishment of companies;

(B) amendment or restatement of the articles and bylaws of a company; and

(C) the merger of companies;

that will take place under the plan of reorganization.

(8) It must provide a list of:

(A) all individuals who are or have been selected to become directors or officers of the MHC and its subsidiaries; and

(B) other individuals who perform or will perform functions appropriate to the position of director or officer.

(9) The list prepared under subdivision (8) must include, for each individual on the list:

(A) the individual's principal occupation;

(B) all offices and positions the individual has held in the preceding five (5) years;

(C) any crime of which the individual has been convicted (other than traffic violations) in the preceding ten (10) years;

(D) information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;

(E) information concerning the bankruptcy of any corporation of which the individual was an officer or director during the previous seven (7) years;

(F) information concerning any state or federal securities

C o p y

law allegations and violations against the individual;

(G) information concerning the revocation of any state or federal license issued to the individual; and

(H) information as to whether the individual has ever been refused a performance or other bond.

(10) With respect to a policy that goes into force after the effective date of the reorganization, the policy must provide that:

(A) the owner of the policy; or

(B) another person or persons specified in:

(i) the policy; or

(ii) the MHC's articles of incorporation or bylaws;

becomes a member of the MHC.

(11) It must provide that, with regard to a policy in force on the effective date of the plan of reorganization:

(A) the policy continues to remain in force under the policy's terms;

(B) the policyholder continues to have the right to receive dividends as provided for in the policy;

(C) the policyholder's right to benefits, values, guarantees, and other policy obligations of the MIC continues after the effective date of the plan of reorganization; and

(D) the dividends paid on the policy after the effective date of the plan of reorganization increase in proportion to:

(i) increases in earned surplus available for the payment of dividends; and

(ii) any increase in dividends paid on policies issued after the effective date of the plan of reorganization.

(12) It must describe the nature and content of the annual report and financial statement to be sent to each member following the reorganization.

(13) It must demonstrate that, in the event of proceedings under IC 27-9 involving a stock insurance company subsidiary of the MHC that resulted from the reorganization of a domestic MIC, the assets of the MHC are available to satisfy the policyholder obligations of the stock insurance company subsidiary.

(14) It must provide any additional information that the commissioner may request.

Sec. 6. (a) A plan of reorganization that is adopted by the board of directors of the applicant may be:

(1) amended by the board of directors of the applicant:

C o p y

(A) in response to the comments or recommendations of the commissioner, or any other state or federal agency or entity, before any solicitation of proxies from the members to vote on the plan of reorganization; and

(B) otherwise, with the consent of the commissioner; or

(2) terminated by the board of directors of the applicant:

(A) before the members vote on the plan of reorganization; and

(B) otherwise, with the consent of the commissioner.

(b) For a plan of reorganization to be:

(1) amended; or

(2) terminated;

by the board of directors of a MIC, at least seventy-five percent (75%) of the members of the board of directors must vote in favor of the amendment or termination.

Sec. 7. (a) The commissioner shall, as soon as practicable after receiving a plan, conduct a public hearing in Indianapolis at a place, date, and time specified by the commissioner to afford interested persons an opportunity to present information, views, arguments, or comments about the plan.

(b) At least thirty (30) days before a hearing held under this section, the commissioner shall publish notice of the hearing in a newspaper of general circulation in:

(1) the city of Indianapolis;

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

(3) other cities or towns that the commissioner considers appropriate.

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

(c) The notice provided under this section must:

(1) refer to the applicable statutory provisions;

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

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

(d) At a public hearing under this section:

(1) an interested person may appear and:

(A) file a written statement;

(B) make an oral presentation;

(C) pose questions to the officers and directors of the MIC; and

(D) examine the evidence; and

C o p y

(2) at the discretion of the commissioner or the commissioner's appointee, testimony may be taken under oath or by affirmation.

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

(1) Reference to the applicable statutory provisions.

(2) State the date, time, and location of the hearing.

(3) A brief statement of the subject of the hearing, including specific notice to the member that the member has an ownership interest in the MIC that may be affected by the reorganization.

Sec. 9. (a) The commissioner shall not approve a plan of reorganization submitted under this article unless the applicant has shown, by a preponderance of the evidence, that the plan of reorganization:

(1) complies with the law;

(2) includes the disclosures and notices required under this article;

(3) is fair to the members of the MIC; and

(4) complies with the members' surplus protection principle.

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

(1) the approval of the plan by the members under this chapter; and

(2) the completion order requirements of this chapter.

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

Sec. 12. (a) A plan of reorganization of a MIC must be submitted for approval by the members of the MIC after approval of the application by the commissioner under section 10 of this chapter. A vote by the members to approve the plan must be made at a special or annual meeting held under IC 27-1-7-7 and this chapter.

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

C o p y

notice must:

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

(2) refer to the applicable statutory provisions;

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

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

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

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

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

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

(1) may vote in person or by proxy if the proxy was solicited and obtained from the member after the MIC has submitted the plan of reorganization to the commissioner under this article; and

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

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

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

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

(1) the commissioner must have issued notice to the applicant that the commissioner has approved the plan of reorganization of the applicant under section 10 of this chapter;

(2) a public hearing must have been conducted under this chapter;

(3) the commissioner must have received the minutes of the

C o p y

meeting of the members at which the plan was approved, if the members voted to approve the plan at a special or annual meeting;

(4) the articles of incorporation of the applicant must have been certified by the secretary of state and transmitted to the commissioner; and

(5) the applicant must have posted a surety bond.

(b) After the events referred to in subsection (a), the commissioner shall issue:

(1) a permit for completion of organization as provided in IC 27-1-6-11, in the case of a newly organized company; or

(2) an amended certificate of authority as provided in IC 27-1-8-9, in the case of amended articles of incorporation.

Sec. 18. A plan of reorganization is effective when each company affected by the plan has filed:

(1) its articles of incorporation or, if appropriate, its articles of amendment; and

(2) the certificate of authority issued to the company by the commissioner under this chapter;

in the office of the county recorder of the county in which the principal office of the company is located.

Sec. 19. The organization of any company under a plan of reorganization under this article must be conducted under IC 27-1-6 concerning the formation of domestic insurance companies, except as provided in section 17 of this chapter.

Sec. 20. The amendment of the articles of incorporation of a company under a plan of reorganization under this article must be conducted in compliance with IC 27-1-8, except as provided in section 17 of this chapter and except that the commissioner, the attorney general, and the secretary of state shall examine and, if warranted, approve the proposed articles of amendment before the amended articles are submitted to the members for approval.

Chapter 3. Mutual Insurance Holding Companies

Sec. 1. A MHC organized under this article:

(1) must be licensed; and

(2) is subject to rules that the commissioner may adopt under IC 4-22-2.

Sec. 2. The articles of incorporation of a MHC must contain the following, or provisions at least substantially equivalent to the following:

(1) The name of the MHC, which must include the term "mutual" or the abbreviation "MHC".

C o p y

(2) A provision that no actions will be taken by the MHC that contravene the members' surplus protection principle established in this article.

(3) A provision specifying that one (1) purpose of the MHC is, at all times, to have the direct or indirect power to cast at least sixty percent (60%) of the votes for the election of directors of each stock insurance company subsidiary and any intermediate stock holding company.

(4) A provision specifying that the MHC does not have the power to engage in the business of issuing insurance policies or contracts, except through a stock insurance company subsidiary.

(5) A provision specifying that the MHC is not authorized to issue voting stock.

(6) A provision setting forth any rights of members of the MHC in the equity of the MHC upon liquidation.

(7) A provision specifying that:

(A) a member of the MHC is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the MHC; and

(B) no assessment may be imposed upon the members of the MHC by any person, including:

(i) the board of directors, members, or creditors of the MHC; and

(ii) any governmental office or official, including the commissioner;

because of any liability of any company or because of any act, debt, or liability of the MHC.

Sec. 3. Members of a MHC have rights and obligations specified in:

(1) this article; and

(2) the articles of incorporation and bylaws of the MHC.

Sec. 4. On the effective date of the reorganization of a MIC as a MHC under this chapter, the MHC must have the direct or indirect power to cast one hundred percent (100%) of the votes for the election of directors of:

(1) all stock insurance subsidiaries; and

(2) an intermediate stock holding company;

of the MIC.

(b) After the effective date of the reorganization of a MIC as a MHC under this chapter, the MHC must at all times have the direct or indirect power to cast at least sixty percent (60%) of the

Copy

votes for the election of directors of:

(1) all stock insurance subsidiaries; and

(2) an intermediate stock holding company;

of the MIC.

Sec. 5. Major transactions between:

(1) a MHC and its subsidiaries; or

(2) subsidiaries of a MHC;

must be conducted in fairness to the members of the MHC, comply with the members' surplus protection principle, and approved by the commissioner.

Sec. 6. (a) At least seventy-five percent (75%) of the following must be made up of outside directors:

(1) The board of directors of a MHC.

(2) The board of directors of an intermediate stock holding company.

(3) The board of directors of a stock insurance company subsidiary.

(4) Each committee of the board of directors of:

(A) a MHC;

(B) an intermediate stock holding company; or

(C) a stock insurance company subsidiary.

Sec. 7. (a) With the written approval of the commissioner, and subject to any conditions imposed by the commissioner, a MHC may do any of the following:

(1) Merge or consolidate with, or acquire the assets of a:

(A) MHC licensed under this article; or

(B) similar entity organized under the laws of any other state.

(2) Acquire the stock of a stock insurance company as a subsidiary of the MHC or an intermediate stock insurance company of the MHC.

(3) Organize an intermediate stock insurance company as a wholly owned subsidiary.

(4) Organize a stock insurance company as a subsidiary.

(5) Acquire the stock or assets of any non-insurance related corporation.

(b) Whenever a MHC acquires or plans to acquire more than fifty percent (50%) of the voting capital stock of a stock insurance company, the MHC must submit to the commissioner a description of any membership interests of policyholders of the stock insurance company.

Sec. 8. (a) Except as provided in subsection (b), a MHC:

C o p y

(1) has and may exercise all the rights and privileges of insurance companies formed under this title; and

(2) is subject to all the requirements and regulations imposed upon insurance companies formed under this title.

(b) The exceptions referred to in subsection (a) are as follows:

(1) A MHC does not have the right or privilege to write insurance (except through a stock insurance company subsidiary) and is not subject to any requirement or rule adopted under IC 4-22-2 relating to the writing of insurance.

(2) A MHC is not subject to the surplus requirements in IC 27-1-6-15.

(3) A MHC is not subject to any requirement or rule adopted under IC 4-22-2 that is imposed upon insurance companies formed under this title to the extent that the requirement or rule is in conflict with this article.

Sec. 9. Not later than April 1, a MHC shall file with the commissioner an annual statement containing the following information:

(1) Audited financial statements, including:

(A) an income statement;

(B) a balance sheet;

(C) a statement of cash flows; and

(D) footnotes.

(2) Complete information on the status of any condition imposed in connection with the approval of a plan of reorganization.

(3) An investment plan covering all assets of the MHC.

(4) A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the MHC.

(5) A statement that includes the reason for any change in the members' surplus.

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

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

(1) is included in a plan approved under this article; and

(2) does not involve the acquisition of control of an insurance company that is not affiliated with the applicant before the

C o p y

reorganization.

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

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

(1) owe the same fiduciary responsibilities to the members of the former MIC as the officers and directors of the mutual holding company owed to the members before the effective date of the plan of reorganization; and

(2) are subject to potential liability to the members of the former MIC to the same extent as the officers and directors of the mutual holding company were to the members before the effective date of the plan of reorganization.

(b) An action may not be brought to recover for the violation of fiduciary responsibilities under this section more than ten (10) years after the effective date of a plan of reorganization.

Chapter 4. Issuance of Capital Stock

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

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

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

only in compliance with this article.

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

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

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

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

Copy

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

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

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

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

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

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

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

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

(8) A description of:

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

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

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

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

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

(9) A list of:

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

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

(C) if any of the persons listed under clause (A) or (B) is a corporation or other business organization, the name of each member of its board of directors or equivalent

Copy

management body.

(10) Copies of any filings with the United States Securities and Exchange Commission disclosing intended acquisitions of voting capital stock of the applicant.

(11) A description of all expenses expected to be incurred in connection with the offering.

(12) Any other information requested by the commissioner.

Sec. 5. A plan to issue voting capital stock that is filed with the commissioner under this chapter must do the following:

(1) Describe the reasons for and the purposes of the proposed issuance of shares of voting capital stock, and the manner in which the issuance is expected to benefit and serve the best interests of the members.

(2) Require that, after the effective date, the MHC must at all times have the direct or indirect power to cast at least a sixty percent (60%) of the votes for the election of directors of each stock insurance company subsidiary and any intermediate stock holding company.

(3) Provide that the aggregate number of shares of voting capital stock owned by all of the directors and officers of the MHC and its subsidiaries and associates may not exceed:

(A) within five (5) years after the initial issuance of voting capital stock, five percent (5%) of the total number of shares of voting capital stock to be issued; and

(B) more than five years after the initial issuance of voting capital stock, ten percent (10%) of the total number of shares of voting capital stock to be issued;

including any shares acquired by the officers and directors and their associates through discounted subscriptions, employee benefit plans, or stock options.

(4) Provide that the aggregate number of shares of voting capital stock purchased by:

(A) a single director or officer of the MHC or the subsidiaries of the MHC;

(B) associates of the person referred to in clause (A); and

(C) persons acting in concert with the person referred to in clause (A) or (B);

may not exceed five percent (5%) of the total number of shares to be issued under the plan, including any shares attributed to the officers and directors and their associates but held by one (1) or more tax-qualified employee benefit plans.

C o p y

(5) Provide that a director, officer, agent, or employee of the MHC or its subsidiaries, or an associate of a director, officer, agent, or employee, may not receive a fee, commission, or other valuable consideration for aiding, promoting, or assisting in the issuance of voting capital stock under this section, except for:

(A) compensation as provided for in the plan and approved by the commissioner;

(B) the person's usual, regular salary or compensation; and

(C) reasonable fees and compensation paid to an individual who is an attorney, accountant, or actuary for services performed in the individual's independent practice, even if the individual is also a director, officer, agent, or employee of the MHC or its subsidiaries.

(6) Provide that the aggregate number of shares of voting capital stock that may be purchased by an employee benefit plan may not exceed ten percent (10%) of the total number of shares to be issued under the plan.

(7) Describe:

(A) how the offering price of the voting capital stock to be sold is established; or

(B) the method by which the offering price will be determined.

Sec. 6. (a) A plan to issue voting capital stock in a public offering (other than an offering solely in connection with a consolidation, merger, share exchange, or other business combination or an offering of stock under a stock option plan) must do the following:

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

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

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

(4) Provide that any shares of voting capital stock not subscribed to by eligible members exercising subscription rights received under this chapter, or not subscribed to by an employee benefit plan or by directors, officers, and employees

Copy

exercising subscription rights, will be sold:

(A) in a public offering through an underwriter;

(B) through private placement; or

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

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

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

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

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

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

(A) intermediate stock holding company; and

(B) stock insurance company subsidiary;

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

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

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

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

(9) Establish a pricing committee within the board of directors of the entity making the offering of voting capital stock, consisting exclusively of directors who are not officers or employees of the MHC or any of its subsidiaries, with the responsibility of evaluating and approving the price of voting capital stock sold in the offering.

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

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

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

C o p y

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

(2) Provide for:

(A) the establishment of; and

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

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

(3) Provide an allocation without payment of nontransferable subscription rights to purchase voting capital stock to any director, officer, or employee of a MIC, a MHC, or a subsidiary of a MHC:

(A) limited to the extent that unsubscribed shares of voting capital stock remain after the members and any employee benefit plans have exercised their subscription rights; and

(B) in the case of officers and directors, subject to the aggregate and individual purchase limitations of this article.

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

(A) person; or

(B) group of persons acting in concert;

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

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

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

(B) a specified percentage of not less than one percent

Copy

(1%) of the total number of shares to be issued under the plan.

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

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

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

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

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

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

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

Sec. 1. Not more than:

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

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

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

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

(1) the city of Indianapolis;

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

(3) another city or cities that the commissioner deems appropriate;

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

(b) The notice provided under this section must:

(1) refer to the applicable statutory provisions;

Copy

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

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

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

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

(A) file a written statement; or

(B) make an oral presentation; and

(2) at the discretion of the commissioner or the commissioner's appointee, testimony may be taken under oath or by affirmation.

Sec. 4. In compliance with the later of:

(1) sixty (60) days after a public hearing held under this chapter; or

(2) one hundred twenty (120) days after the commissioner accepts the application relating to the plan;

the commissioner shall approve or disapprove the plan to issue stock.

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

(1) Disapproval of the plan is necessary to prevent practices that will cause financial impairment to the applicant or its subsidiaries.

(2) The financial or management resources of the applicant or its subsidiaries or affiliates warrant disapproval.

(3) The plan does not comply with the provisions of this article.

(4) The proposed plan is unfair to members.

(5) The plan does not comply with the members' surplus protection principles of this article.

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

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

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

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

C o p y

commissioner.

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

Sec. 9. The amendment of the articles of incorporation of a company under a plan under this article must be conducted in compliance with IC 27-1-8, except as provided in this chapter and except that the commissioner, the attorney general, and the secretary of state shall examine and, if warranted, approve the proposed articles of amendment before the amended articles are submitted to the members for approval.

Chapter 6. Miscellaneous Provisions

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

(b) All provisions of IC 27-1-2 through IC 27-1-20 are fully and completely applicable to this article in the same manner as if the provisions of this article had been an original part of IC 27-1-2 through IC 27-1-20. If any conflict exists between this article and IC 27-1-2 through IC 27-1-20, this article is controlling.

Sec. 2. A civil action:

(1) challenging the validity of; or

(2) arising out of;

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

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

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

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

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

(1) Lend funds to any person to finance the purchase of stock in a stock offering by a MHC or any of its subsidiaries.

(2) Pay commissions, special fees, or other special or extraordinary compensation to officers, directors, interested

Copy

persons, or affiliates for arranging, promoting, aiding, assisting, or participating in the structure or placement of a stock offering by the MHC or any of its subsidiaries, except to the extent permitted under IC 27-14-4.

(3) Enter into an understanding or agreement transferring legal or beneficial ownership of stock to another person in avoidance of this article.

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

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

(1) the proceeding may be continued after the effective date, as if the reorganization had not occurred; or

(2) the stock insurance company subsidiary that succeeds to the MIC's business may be substituted in the proceeding for the MIC.

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

Sec. 9. The commissioner shall, at the applicant's expense, hire attorneys, actuaries, accountants, investment bankers, and other experts as may be necessary to assist the commissioner in reviewing all matters under this article that are associated with a plan of reorganization or a plan to issue stock.

SECTION 2. [EFFECTIVE JULY 1, 1998] **(a) IC 27-14, as added by this act, is intended to enable mutual insurance companies to seek additional capital more effectively to:**

(1) enhance their financial strength and flexibility; and

(2) support long term growth through creative internal strategies, mergers, and acquisitions.

(b) IC 27-14, as added by this act, provides an alternative organizational structure to help strengthen the Indiana mutual insurance industry by permitting mutual insurance companies to:

(1) reorganize into a mutual insurance holding company structure; and

(2) raise capital through the sale of capital stock.

C o p y