

**§3488. Reorganization of mutual insurer through formation of mutual holding company**

**1. Procedure for reorganization as stock insurer.** A mutual insurer may be reorganized as a stock insurer within a mutual holding company as provided in this section. The mutual insurer shall submit to the superintendent a reasonable reorganization plan, referred to in this section as the "plan," and the procedure for putting the plan into effect. A hearing must be held on the plan. Notice of the hearing must be provided pursuant to section 230 to the insurer, its directors or trustees, its officers, employees and its policyholders, all of whom have the right to appear and be heard at the hearing. The plan may not take effect unless approved by the superintendent.

[PL 1999, c. 656, §5 (NEW).]

**2. Plan requirements.** The plan must contain provisions for:

A. The reorganizing insurer to become a stock insurer; [PL 1999, c. 656, §5 (NEW).]

B. The formation of a mutual holding company; [PL 1999, c. 656, §5 (NEW).]

C. The members of the reorganizing insurer to become members of the mutual holding company with membership interests therein and the membership interests in the reorganizing insurer to be extinguished; and [PL 1999, c. 656, §5 (NEW).]

D. At least 51% of the voting stock issued and outstanding by the reorganized insurer to be acquired and held, directly or through one or more stock holding companies, by the mutual holding company.

[PL 1999, c. 656, §5 (NEW).]

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**3. Number of stock holding companies.** The plan may provide for the formation of one or more intermediate stock holding companies.

[PL 1999, c. 656, §5 (NEW).]

**4. Approval of plan.** The superintendent may not approve a plan unless:

A. The terms and conditions of the plan are fair and equitable; [PL 1999, c. 656, §5 (NEW).]

B. The plan is subject to approval by vote of not less than 2/3 of the insurer's policyholders voting on the plan in person, by proxy or by mail at a meeting of policyholders called by the insurer for that purpose pursuant to reasonable notice of the meeting and procedures as approved by the superintendent. The plan must specify that only persons who were policyholders both at least one year before the submission of the plan to the superintendent and on a subsequent date before the vote found reasonable by the superintendent are entitled to vote. Each eligible policyholder is entitled to one vote; [PL 1999, c. 656, §5 (NEW).]

C. The plan, when completed, would provide paid-in capital stock for the reorganized insurer in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in an amount not less than 1/2 of such required capital stock; and [PL 1999, c. 656, §5 (NEW).]

D. The superintendent finds that the insurer's management has not, through reduction in volume of new business written or cancellation or any other means, sought to reduce, limit or affect the number or identity of the reorganizing insurer's members to be entitled to participate in the plan or to secure for the individuals comprising management any unfair advantage through the plan. [PL 1999, c. 656, §5 (NEW).]

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**5. Compensation.** A director, officer, agent or employee of the reorganizing insurer or any other person may not receive any fee, commission or other valuable consideration whatsoever, other than that person's usual regular salary and compensation, for in any manner aiding, promoting or assisting in the reorganization except as set forth in the plan approved by the superintendent. This provision

does not prohibit the payment of reasonable fees and compensation to attorneys, accountants or actuaries for services performed in the independent practice of their professions, even though they also may be directors of the insurer.

[PL 1999, c. 656, §5 (NEW).]

**6. Effective date of plan.** The plan becomes effective, after approval by the superintendent and by the policyholders, upon the filing with the superintendent and the Secretary of State of amended and restated articles of incorporation of the reorganized insurer pursuant to section 3310 and articles of incorporation of the mutual holding company and any related stock holding company.

[PL 1999, c. 656, §5 (NEW).]

**7. Consequence of effective plan.** The following are the consequences of a plan that becomes effective pursuant to subsection 6.

A. The reorganizing insurer immediately becomes a domestic stock insurer. [PL 1999, c. 656, §5 (NEW).]

B. The members of the reorganizing insurer on the effective date immediately become members of the mutual holding company with membership interests in that holding company. All membership interests in the reorganizing insurer are extinguished. [PL 1999, c. 656, §5 (NEW).]

C. A person becoming a policyholder of the reorganized insurer after the effective date of the plan becomes a member of the mutual holding company immediately upon issuance of the policy or contract. [PL 1999, c. 656, §5 (NEW).]

D. One hundred percent of the voting stock issued by the reorganized insurer in the reorganization is owned, directly or through one or more stock holding companies, by the mutual holding company. All stock issued by the reorganized insurer in the reorganization is considered duly and validly issued, fully paid and nonassessable. [PL 1999, c. 656, §5 (NEW).]

E. The reorganized insurer is a continuation of the reorganizing insurer. The reorganization may not annul, modify or change any of the insurer's existing suits, rights, contracts or liabilities except as provided in the plan. [PL 1999, c. 656, §5 (NEW).]

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**8. Assistance in determining approval of plan.** For the purpose of determining whether a plan meets the requirements of this section and any other relevant provisions of this Title, the superintendent may employ staff personnel and outside consultants. All reasonable costs related to the review of a plan, including those attributable to the use of staff personnel, must be borne by the insurer or insurers making the filing.

[PL 1999, c. 656, §5 (NEW).]

**9. Injunctive relief and damages.** If the reorganizing insurer complies substantially and in good faith with the requirements of subsection 4, paragraph B with respect to the giving of any required notice to policyholders, the insurer's failure to give notice to a person entitled to notice does not impair the validity of the actions and proceedings taken under this section or entitle that person to any injunctive or other equitable relief with respect to those actions and proceedings. This subsection does not impair any claim for damages that person would otherwise have due to failure to give notice.

[PL 1999, c. 656, §5 (NEW).]

**10. Exclusion of certain insurers.** This section does not apply to an insurer authorized to transact life insurance or annuities or an insurer formed pursuant to chapter 52.

[PL 1999, c. 656, §5 (NEW).]

## SECTION HISTORY

PL 1999, c. 656, §5 (NEW).

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