

Insurance Company Mutual-to-Stock Conversion

This Act establishes a process to enable a mutual insurer to convert to a stock insurer in a manner consistent with the manner in which a mutual savings institution converts from mutual to a stock form under federal law and regulation. The purpose of the Act is to help facilitate the recapitalization of insurance industry by establishing a method of capital formation for insurers that elect to domicile in the state.

Submitted as:

Delaware

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Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Insurance Company Mutual-to-
2 Stock Conversion Act.”

3
4 Section 2. [*Purpose.*]

5 (a) Policyholders of a mutual insurer have contractual rights to insurance coverage and
6 certain membership rights consisting principally of the right to elect directors of a mutual
7 insurer, the right to vote on certain fundamental transactions undertaken by a mutual insurer, and
8 the right to share in surplus in the event of a solvent liquidation of a mutual insurer. It is
9 determined and declared that the membership rights of policyholders in a domestic mutual
10 company existing as of the effective date of this Act who vote to make such mutual company
11 subject to this Act, or policyholders of a foreign mutual insurer who vote to redomesticate to this
12 state pursuant to Section 5 of this Act, are not equivalent to an ownership interest in such mutual
13 insurer and that, in connection with the mutual to stock conversion of a mutual insurer, the grant
14 to policyholders of a first priority right to purchase stock in the converting company or a holding
15 company for such converting company is adequate compensation for the relinquishment of the
16 membership rights of a policyholder. The [legislature] determines that it is desirable to provide
17 for the conversion of a mutual insurer from the mutual form to the stock form in a manner
18 similar to the manner in which mutual savings institutions convert from mutual to stock form
19 under federal law and regulation.

20 (b) This Act shall:

21 (1) Provide for the mutual to stock conversion of a mutual insurer in a manner
22 consistent with the manner in which a mutual savings institution converts from mutual to stock
23 form under federal law and regulation; and

24 (2) Facilitate the recapitalization of the insurance industry nationally by
25 establishing a proven method of capital formation for insurers that elect to domicile in this state.

26
27 Section 3. [*Definitions.*] As used in this Act:

28 (1) “Capital stock” means common or preferred stock or any hybrid security issued by a
29 converted stock insurer or other company pursuant to the exercise of subscription rights granted
30 pursuant to [insert citation].

31 (2) “Commissioner” means the [insurance commissioner of this state].

32 (3) “Converted stock company” means a stock insurer that converted from a mutual
33 insurer under this Act.

34 (4) “Domestic mutual company” means a mutual insurer domiciled in this state.

35 (5) “Department” means the [department of insurance] of this state.

36 (6) “Eligible member” means a member of a mutual company whose policy is in force on
37 the date the mutual company’s governing body adopts a plan of conversion or such earlier date
38 as the mutual company may establish with the consent of the [commissioner]. A person insured
39 under a group policy is not an eligible member. A person whose policy becomes effective after
40 the governing body adopts the plan but before the plan’s effective date is not an eligible member
41 but shall have those rights established under [insert citation].

42 (7) “Foreign mutual insurer” means a mutual insurer domiciled in a jurisdiction other
43 than this state.

44 (8) “Mutual company” means a mutual insurer that is seeking to convert to a stock
45 insurer under this Act, including a foreign mutual insurer that has applied to redomesticate to this
46 state with an intent to file an application to convert from mutual to stock form under this Act.

47 (9) “Mutual holding company” means a corporation resulting from a reorganization of a
48 mutual company under this Act. A mutual holding company shall be subject to the provisions of
49 this Act and to any other provisions of state law applicable to mutual companies, except as
50 otherwise provided in this Act. The certificate of incorporation of a mutual holding company
51 shall include provisions setting forth the following:

52 (i) that it is a mutual holding company organized under this Act;

53 (ii) that the mutual holding company may hold not less than a majority of the
54 shares of voting stock of a converted company or intermediate holding company, which in turn
55 holds, directly or indirectly, all of the voting stock of a converted company;

56 (iii) that it is not authorized to issue any capital stock except pursuant to a
57 conversion in accordance with the provisions of this Act;

58 (iv) that its members shall have the rights specified in this Act and its certificate
59 of incorporation and bylaws; and

60 (v) that its assets shall be subject to inclusion in the estate of the converted
61 company in any rehabilitation or insolvency proceedings initiated by the [commissioner].

62 (10) “Participating policy” means a policy that grants a holder the right to receive
63 dividends if, as and when declared by the mutual company.

64 (11) “Person” means an individual, a corporation, a limited liability company, a
65 partnership, an association, a joint stock company, a trust, an unincorporated organization, a
66 similar entity, or a combination of the foregoing acting in concert.

67 (12) “Plan of conversion” or “plan” means a plan adopted by a mutual company’s
68 governing body to convert the mutual company into a stock company in accordance with the
69 requirements of this Act.

70 (13) “Policy” means an insurance policy, including an annuity contract.

71 (14) “Stock company” means a stock insurer that meets all of the current requirements for
72 admission to do business as a domestic insurer in this state.

73 (15) “Voting member” means a member who is an eligible member and is also a member
74 of the mutual insurer as of a date not more than [90] days prior to the date of the meeting at
75 which the plan shall be voted upon by members.

76

77 Section 4. [*Adoption of Plan of Conversion.*]

78 (a) No plan of conversion shall become effective unless the mutual company seeking to
79 convert to a stock company shall have adopted, by the affirmative vote of not less than two-
80 thirds of its governing body and otherwise in accordance with law, a plan of conversion

81 consistent with the requirements of sections 6, 7, and 8 of this Act. At any time before approval
82 of a plan by the [commissioner], the mutual company, by the affirmative vote of not less than a
83 majority of its governing body, may amend or withdraw the plan.

84 (b) With respect to a domestic mutual company that exists as of the effective date of this
85 Act, no plan of conversion may be adopted pursuant to paragraph (a) of this section unless the
86 policyholders of the domestic mutual company shall have previously elected to subject the
87 domestic mutual company to the provisions of this [Act] at a separate meeting convened for such
88 purpose. In connection with such meeting, the domestic mutual company shall provide its
89 policyholders with substantially the same information as is required by the provisions of section
90 5(b).

91 (c) Before a mutual company's eligible members may vote on approval of a plan, a
92 mutual company whose governing body has adopted a plan shall file all of the following
93 documents with the [commissioner] within [ninety (90)] days after adoption of the plan together
94 with the application fee specified herein:

95 (1) The plan of conversion, including the independent evaluation of pro forma
96 market value required by section 6(d).

97 (2) The form of notice required by subsection (f) of this section.

98 (3) The form of proxy to be solicited from eligible members pursuant to
99 subsection (g) of this section.

100 (4) The form of notice required by section 11 of this Act to people whose policies
101 are issued after adoption of the plan but before its effective date.

102 (5) The proposed certificate of incorporation and bylaws of the converted stock
103 company.

104 (6) The acquisition of control statement, as required by [insert citation].

105 (7) The application shall be accompanied by an application fee equal to the
106 greater of [\$100,000], or [an amount equal to [1/10 of 1%] of the estimated pro forma market
107 value of the converted stock company as determined in accordance with section 6(d). If such
108 value is expressed as a range of values, the application fee shall be based upon the midpoint of
109 the range. For good cause shown, the [commissioner] may waive the application fee in whole or
110 in part, or permit a portion of the application fee to be deferred until completion of the
111 conversion.

112 (8) Such other information as the [commissioner] may request. Upon filing of the
113 foregoing documents with the [commissioner], the mutual company shall send to eligible
114 members a notice advising eligible members of the adoption and filing of the plan, their ability to
115 provide the [commissioner] and the mutual company with comments on the plan within [thirty
116 (30)] days of the date of such notice, and procedure therefore.

117 (d) The [commissioner] shall immediately give written notice to the mutual company of
118 any decision and, in the event of disapproval, a statement in detail of the reasons for the decision.
119 The [commissioner] shall approve the plan if the [commissioner] finds each of the following:

120 (1) The plan complies with this Act.

121 (2) The plan will not prejudice the interests of the members.

122 (3) The plan's method of allocating subscription rights is fair and equitable.

123 (e) The [commissioner] may retain, at the mutual company's expense, any qualified
124 expert not otherwise a part of the [commissioner's] staff, including counsel and financial
125 advisors, to assist in reviewing the plan and the independent evaluation of the pro forma market
126 value required under section 6.

127 (f) The [commissioner] may order a hearing on whether the terms of the plan comply
128 with this Act after giving written notice by mail or publication to the mutual company and other
129 interested people, all of whom have the right to appear at the hearing.

130 (g) All voting members shall be sent notice of the members' meeting to vote on the plan.
131 The notice shall briefly but fairly describe the proposed conversion plan, shall inform the voting
132 member of the voting member's right to vote upon the plan, and shall be sent to each voting
133 member's last known address, as shown on the mutual company's records. If the meeting to vote
134 upon the plan is held during the mutual company's annual meeting of policyholders, only a
135 combined notice of meeting is required.

136 (h) The plan shall be voted upon by voting members and shall be adopted upon receiving
137 the affirmative vote of at least [two-thirds] of the votes cast by voting members at the meeting.
138 Voting members entitled to vote upon the proposed plan may vote in person or by proxy. The
139 number of votes each voting member may cast shall be determined by the mutual company's
140 bylaws. If the bylaws are silent, each voting member may cast [one] vote.

141 (i) The certificate of incorporation of the converted stock company shall be considered at
142 the meeting of the voting members called for the purpose of adopting the plan of conversion and
143 shall require for adoption the affirmative vote of at least [two-thirds] of the votes cast by voting
144 members.

145 (j) Documents to be filed following approval. within [thirty (30)] days after the voting
146 members have approved the plan in accordance with the requirements of this section, the
147 converted stock company shall file the following documents with the [commissioner]:

148 (1) The minutes of the meeting of the voting members at which the plan was
149 approved.

150 (2) The certificate of incorporation and bylaws of the converted stock company.

151

152 Section 5. [*Redomestication and Conversion.*]

153 (a) A foreign mutual insurer that has filed an application for redomestication may file an
154 application for conversion under this Act promptly after completion of the redomestication or
155 upon such earlier date as the [commissioner] may permit, but in no event prior to the approval of
156 the redomestication by the members of the foreign mutual insurance company if such a member
157 vote is required under the laws of the foreign mutual insurance company's state of domicile. A
158 redomestication application shall contain such information as the [commissioner] may require. If
159 the redomestication is approved by the state of domicile of the foreign mutual insurer and the
160 members of the foreign mutual insurer, to the extent required, then no redomestication
161 application of a foreign mutual insurer will be denied solely because the applicant has indicated
162 its intention to avail itself of the provisions of this Act.

163 (b) In addition to any requirements imposed by the existing state of domicile with respect
164 to approval of redomestication by its voting members, a foreign mutual insurer that files an
165 application for redomestication under section also shall provide to its voting members a
166 comparison of the method of mutual to stock conversion in its existing state of domicile and the
167 method of mutual to stock conversion established by this Act.

168 (c) Any order approving the redomestication of a foreign mutual insurer may contain
169 such terms and conditions as the [commissioner] shall require.

170 (d) Any foreign mutual insurer that redomesticates under the provisions of this section,
171 within [ten (10)] days of the date of redomestication, shall adopt resolutions ratifying any
172 previously adopted plan of conversion and file such resolutions as an amendment to the
173 application for conversion. The [commissioner] may deem any failure to file such ratifying
174 resolutions as a withdrawal of the application for conversion.

175 (e) Nothing contained in this Act is intended or shall be deemed to supersede or conflict
176 with the requirements of the state of domicile of any foreign mutual insurer.

177 (f) Except to the extent specifically provided by this section, a plan of conversion shall be
178 adopted as required by section 4 and shall be consistent with the requirements of sections 6, 7,
179 and 8 of this Act.

180
181 Section 6. [*Required Provisions of Plan of Conversion.*]

182 (a) The following provisions shall be included in the plan:

183 (1) The reasons for proposed conversion.

184 (2) The effect of conversion on existing policies, including all of the following:

185 (A) A provision that all policies in force on the effective date of
186 conversion continue to remain in force under the terms of the policies, except that the following
187 rights, to the extent they existed in the mutual company, shall be extinguished on the effective
188 date of the conversion:

189 (i) Any voting rights of the policyholders provided under the
190 policies.

191 (ii) Except as provided under subparagraph (b.), any right to share
192 in the surplus of the mutual company, unless such right is expressly provided for under the
193 provisions of the existing policy.

194 (iii) Any assessment provisions provided for under certain types of
195 policies.

196 (B) Except as provided in subparagraph (C), a provision that holders of
197 participating policies in effect on the date of conversion continue to have a right to receive
198 dividends as provided in the participating policies, if any.

199 (C) Except for the mutual company's life policies, participating
200 guaranteed renewable accident and health policies, and participating guaranteed renewable non-
201 cancelable accident and health policies, a provision that upon the renewal date of a participating
202 policy, the converted stock company may issue the insured a nonparticipating policy as a
203 substitute for the participating policy. Nothing contained herein shall be construed to permit the
204 substitution, during the term of a policy, of a non-experience rated policy for an experience rated
205 policy.

206 (3) The grant of subscription rights to eligible members, including both of the
207 following:

208 (A) A provision that each eligible member is to receive, without payment,
209 nontransferable subscription rights to purchase the capital stock of the converted stock company
210 and that, in the aggregate, all eligible members shall have the right, prior to the right of any other
211 party, to purchase [one-hundred percent (100%)] of the capital stock of the converted stock
212 company, exclusive of any shares of capital stock required to be sold or distributed to the holders
213 of surplus notes, if any, and capital stock purchased by the company's tax-qualified employee
214 stock benefit plan that is in excess of the total price of the capital stock established under
215 subsection (d) of this section, as permitted section 8(c) of this Act. As an alternative to
216 subscription rights in the converted stock company, the plan may provide that each eligible
217 member is to receive, without payment, nontransferable subscription rights to purchase a portion
218 of the capital stock of one of the following:

219 (i) a corporation organized for the purpose of purchasing and
220 holding all the stock of the converted stock company; provided however, that the [commissioner]
221 may, at the [commissioner's] discretion; require that such corporation be incorporated in this
222 state;

223 (ii) a stock insurer owned by the mutual company into which the
224 mutual company will be merged; or

225 (iii) an unaffiliated stock insurer or other corporation that will
226 purchase all the stock of the converted stock company.

227 For purposes of any plan, the transfer of subscription rights from an individual to such individual
228 and his or her spouse or children or to a trust or other estate or wealth planning entity established
229 for the benefit of such individual, his or her spouse or children, an individual to such individual's
230 joint or individual IRA account, or other tax-qualified retirement plan, an entity to the
231 shareholders, partners or members of such entity, or the holder of such rights to the mutual
232 insurance company or its proposed holding company, shall not be deemed an unpermitted
233 transfer for purposes of this Act.

234 (B) A provision that the subscription rights shall be allocated in whole
235 shares among the eligible members using a fair and equitable formula. The formula need not
236 allocate subscription rights to eligible members on a pro rata basis based on premium payments
237 or contributions to surplus, but may take into account how the different classes of policies of the
238 eligible members contributed to the surplus of the mutual company or any other factors that may
239 be fair or equitable. In accordance with section 4(e), the [commissioner] may retain an
240 independent consultant to assist in the determination that the allocation of subscription rights is
241 fair and equitable.

242 (b) The plan shall provide a fair and equitable means for allocating shares of capital stock
243 in the event of an oversubscription to shares by eligible members exercising subscription rights
244 received under subsection (a)(3) of this section.

245 (c) The plan shall provide that any shares of capital stock not subscribed to by eligible
246 members exercising subscription rights received under subsection (a)(3) of this section shall be
247 sold in a public offering. If the number of shares of capital stock not subscribed by eligible
248 members is so small in number or other factors exist that do not warrant the time or expense of a
249 public offering, or warrant the participation of standby investors to facilitate completion of the
250 conversion, the plan of conversion may provide for sale of the unsubscribed shares through a
251 private placement or other alternative method approved by the [commissioner] that is fair and
252 equitable to eligible members.

253 (d) The plan shall set the dollar amount of the capital stock for which subscription rights
254 must be granted pursuant to subsection (a)(3) of this section equal to the estimated pro forma
255 market value of the converted stock company based upon an independent evaluation by a
256 qualified expert. This pro forma market value may be that value that is estimated to be necessary
257 to attract full subscription for the shares, as indicated by the independent evaluation, and may be
258 stated as a range of pro forma market value.

259 (e) The plan shall set the purchase price per share of capital stock equal to any reasonable
260 amount. However, the minimum subscription amount required of any eligible member cannot
261 exceed [five hundred (\$500)] dollars, but the plan may provide that the minimum number of
262 shares any person may purchase pursuant to the plan is [twenty-five (25)] shares.

263 (f) The plan shall provide that any person or group of people acting in concert shall not
264 acquire, in the public offering or pursuant to the exercise of subscription rights, more than [five
265 percent (5%)] of the capital stock of the converted stock company or the stock of another
266 corporation that is participating in the conversion plan, as provided in subsection (a)(3)(a.) of this
267 section, except with the approval of the [commissioner]. This limitation does not apply to any
268 entity that is to purchase [one hundred percent (100%)] of the capital stock of the converted
269 stock company as part of the plan of conversion approved by the [commissioner].

270 (g) The plan shall provide that no director or officer or person acting in concert with a
271 director or officer of the mutual company shall acquire any capital stock of the converted stock
272 company or the stock of another corporation that is participating in the conversion plan, as
273 provided in subsection (a)(3)(A) of this section, for [three (3)] years after the effective date of the

274 plan, except through a broker-dealer, without the permission of the [commissioner]. This
275 provision does not prohibit the directors and officers from:

276 (1) making block purchases of [one percent (1%)] or more of the outstanding
277 common stock other than through a broker-dealer if approved in writing by the [department];

278 (2) exercising subscription rights received under the plan; or

279 (3) participating in a stock benefit plan permitted by section 8(c) of this Act, or
280 approved by shareholders pursuant to 13(b) of this Act.

281 (h) The plan shall provide that no director or officer may sell stock purchased pursuant to
282 this section, or section 8(a) of this Act within [one (1)] year after the effective date of the
283 conversion, except that nothing contained in this section shall be deemed to restrict a transfer of
284 stock by such director or officer to the spouse or minor children of such director or officer, or a
285 to a trust or other estate or wealth planning entity established for the benefit of such director or
286 officer, or the spouse or minor children of such director or officer.

287 (i) The plan shall provide that the rights of a holder of a surplus note to participate in the
288 conversion, if any, shall be governed by the terms of the surplus note.

289 (j) The plan shall provide that, without the prior approval of the [commissioner], no
290 converted stock company, or any corporation participating in the conversion plan pursuant to
291 subsection (a)(3)(A)(i) or (ii) of this section, shall, for a period of [three (3)] years from the date
292 of the completion of the conversion, repurchase any of its capital stock from any person, except
293 that this restriction shall not apply to either:

294 (1) a repurchase on a pro rata basis pursuant to an offer made to all shareholders
295 of the converted stock company, or any corporation participating in the conversion plan pursuant
296 to subsection (a)(3)(A)(i), or (ii) of this section; or

297 (2) a purchase in the open market by a tax-qualified, or non-tax-qualified
298 employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

299

300 Section 7. [*Closed Block of Business for Participating Life Policies.*]

301 (a) A plan that is adopted by a mutual company that is a life insurance company which
302 issues participating life policies shall provide that participating life policies in force on the
303 effective date of the conversion shall be operated by the converted stock company for dividend
304 purposes as a closed block of participating business, except that any and all classes of group
305 participating policies may be excluded from the closed block.

306 (b) The plan shall provide that sufficient assets of the mutual company shall be allocated
307 for the benefit of the closed block of business so that the assets, together with the revenue from
308 the closed block of business, are sufficient to support the closed block, including, but not limited
309 to, the payment of claims, expenses, taxes, and any dividends that are provided for under the
310 terms of the participating policies, with appropriate adjustments in the dividends for experience
311 changes. The plan shall be accompanied by an opinion of a qualified actuary, or an appointed
312 actuary, who meets the standards set forth in the insurance laws or regulations of this state for the
313 submission of actuarial opinions as to the adequacy of reserves or assets. The opinion shall relate
314 to the adequacy of the assets allocated in support of the closed block of business. The actuarial
315 opinion shall be based on methods of analysis deemed appropriate for those purposes by the
316 [actuarial standards board].

317 (c) The amount of assets allocated for the benefit of the closed block shall be based upon
318 the mutual life insurance company's last annual statement, updated to the last day of the quarter
319 immediately preceding the effective date of the conversion.

320 (d) The converted stock company shall keep a separate accounting for the closed block
321 and shall make and include in the annual statement to be filed with the [commissioner] each year

322 a separate statement showing the gains, losses, and expenses properly attributable to the closed
323 block.

324 (e) The assets and liabilities allocated to the closed block may be periodically reviewed
325 by the [commissioner] or the [commissioner's] designee. The converted stock company shall
326 bear the cost of any such review. If, as a result of such review, the [commissioner] determines
327 that the assets allocated to the closed block are insufficient to support the remaining policies in
328 the closed block, the [commissioner] may issue an order directing the converted stock company
329 to allocate additional assets to the closed block sufficient to support the remaining policies in the
330 closed block and the converted stock company shall comply with such order within [thirty (30)]
331 days of the date thereof. If, as a result of such review, or as a result of a review initiated by the
332 converted stock company and accepted by the [commissioner], assets allocated to the closed
333 block are in excess of the amount necessary to support the remaining policies, then upon
334 application made to the [commissioner] by the converted stock company, the [commissioner]
335 may issue an order permitting such excess assets in the closed block to revert to the benefit of the
336 converted stock company.

337 (f) The [commissioner] may waive the requirement for establishing a closed block of
338 business if, in the [commissioner's] discretion, it is in the best interests of policyholders to do so.
339 The [commissioner] may waive from inclusion in the closed block of participating policies those
340 participating policies for which there is no expectation of dividends being paid if, in the
341 [commissioner's] discretion, it is fair and equitable to do so.

342

343 Section 8. [*Optional Provisions of Plan of Conversion.*]

344 (a) The plan may provide that the directors, officers, and employees of the mutual
345 company shall receive, without payment, nontransferable subscription rights to purchase capital
346 stock of the converted stock company or the stock of another corporation that is participating in
347 the conversion plan, as provided in section 6 (a)(3)(A) of this Act. These subscription rights shall
348 be allocated among the directors, officers, and employees by a fair and equitable formula and
349 shall be subordinate to the subscription rights of eligible members. Nothing contained in this Act
350 shall require the subordination of subscription rights received by directors and officers in their
351 capacity as eligible members, if any.

352 (b) The aggregate total number of shares that may be purchased by directors and officers
353 of the mutual company in their capacity under subsection (a) of this section and in their capacity
354 as eligible members under section 6(a)(3)(A) of this Act shall not exceed [thirty-five percent
355 (35%)] of the total number of shares to be issued for a mutual company if total assets of the
356 mutual company are less than [fifty million (\$50,000,000)] dollars or [twenty-five percent
357 (25%)] of the total number of shares to be issued for a mutual company if total assets of the
358 mutual company are more than [five hundred million (\$500,000,000)] dollars. For mutual
359 companies with total assets of or between [fifty million (\$50,000,000)] dollars and [five hundred
360 million (\$500,000,000)] dollars, the percentage of the total number of shares that may be
361 purchased shall be interpolated.

362 (c) The plan may allocate to a tax-qualified employee benefit plan nontransferable
363 subscription rights to purchase up to [ten percent (10%)] of the capital stock of the converted
364 stock company or the stock of another corporation that is participating in the conversion plan, as
365 provided in section 6(a)(3)A of this Act. A tax-qualified employee benefit plan is entitled to
366 exercise subscription rights granted under this subsection regardless of the total number of shares
367 purchased by other people.

368 (d) The plan may provide that the other classes of subscribers approved by the
369 [commissioner] shall receive, without payment, nontransferable subscription rights to purchase
370 capital stock of the converted stock company or the stock of another corporation that is

371 participating in the conversion plan, as provided in section 6(a)(3)(A) of this Act. Other classes
372 of subscribers that may be approved by the [commissioner] include, without limitation,
373 members of the mutual insurer that became members after the date fixed for establishing eligible
374 members, brokers, agents, or other producers or their directors, officers, or employees that
375 represent the mutual insurer, the shareholders of another corporation that is participating in the
376 conversion plan, as provided in section 6(a)(3)(A) of this Act, or the shareholders of another
377 corporation that is a party to an acquisition, merger, consolidation, or other similar transaction
378 with the mutual insurer.

379 (e) The plan may provide for the creation of a liquidation account for the benefit of
380 members in the event of voluntary liquidation subsequent to conversion in an amount equal to
381 the surplus of the mutual company, exclusive of the principal amount of any surplus note, on the
382 last day of the quarter immediately preceding the date of adoption of the plan.

383

384 Section 9. [*Alternative Plan of Conversion.*]

385 (a) The governing body may adopt a plan of conversion that does not rely in whole or in
386 part upon issuing nontransferable subscription rights to members to purchase stock of the
387 converted stock company if the [commissioner] finds that the plan does not prejudice the
388 interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent
389 of this Act. Subject to a finding of the [commissioner] that an alternative plan is fair and
390 equitable and is not inconsistent with the purpose and intent of this Act, an alternative plan may:

391 (1) Include the merger of a domestic mutual insurer into a domestic or foreign
392 stock insurer.

393 (2) Provide for issuing transferable or redeemable subscription rights.

394 (3) Provide for issuing stock, cash, policyholder credits, or other consideration, or
395 any combination of the foregoing, to policyholders instead of subscription rights.

396 (4) Provide for partial conversion of the mutual company and formation of a
397 mutual holding company in accordance with subsection (b) of this section. For purposes of this
398 Act, a mutual holding company shall be a holding company organized in the mutual form which
399 maintains direct or indirect voting control of an insurance company.

400 (5) Set forth another plan containing any other provisions approved by the
401 [commissioner].

402 (b) The [commissioner] may approve a partial conversion and formation of a mutual
403 holding company provided that the mutual insurer is not insolvent or in hazardous financial
404 condition according to information supplied in its most recent annual or quarterly statement filed
405 with the [commissioner] or as determined by a financial examination performed by the
406 [commissioner] pursuant to [insert citation]. The [commissioner] may retain, at the mutual
407 company's expense, any qualified expert, including counsel and financial advisors, not otherwise
408 a part of the [commissioner's] staff to assist in reviewing whether the plan may be approved by
409 the [commissioner].

410 (c) Conversion of mutual holding company.

411 (1) A mutual holding company that has been formed pursuant to subsection (b) of
412 this section may convert to stock form only in accordance with the provisions of this Act. Solely
413 for purposes of establishing the process for the conversion of a mutual holding company to stock
414 form, references in this [Act] to a mutual insurer shall be deemed to include a mutual holding
415 company.

416 (2) Any stock issued by a subsidiary insurance company or subsidiary holding
417 company of a mutual holding company to people other than the parent mutual holding company
418 shall be exchanged for the stock issued by the parent mutual holding company in connection
419 with the conversion of the parent mutual holding company to stock form or any corporation

420 participating in the conversion of the mutual holding company pursuant to Section 6(a)(3)(A).
421 The parent mutual holding company and the subsidiary holding company or insurance company
422 must demonstrate to the satisfaction of the [commissioner] that the basis for the exchange is fair
423 and reasonable.

424 (3) If a subsidiary holding company or insurance company has issued shares to an
425 entity other than the mutual holding company, the conversion of the mutual holding company to
426 stock form may not be consummated unless a majority of the shares issued to the entities other
427 than the mutual holding company vote in favor of the conversion. This requirement applies in
428 addition to any otherwise required policyholder or shareholder votes.
429

430 Section 10. [*Effective Date of Plan.*] A plan is effective when the [commissioner] has
431 approved the plan, the voting members have approved the plan and adopted the certificate of
432 incorporation of the converted stock company, and the certificate of incorporation is filed in the
433 [office of the secretary of state] of this [state].
434

435 Section 11. [*Rights of Members Whose Policies are Issued After Adoption of Plan and*
436 *Before Effective Date.*]

437 (a) All members whose policies are issued after the proposed plan has been adopted by
438 the governing body and before the effective date of the plan shall be sent a written notice
439 regarding the plan upon issuance of such policy.

440 (b) A member of a life or health insurance company entitled to be sent the notice
441 described in subsection (a) of this section is entitled to rescind the member's policy and receive a
442 full refund of any amounts paid for the policy or contract within [ten (10)] days after such
443 member has received the notice. Except as provided in subsection (c), each member of a property
444 or casualty insurance company entitled to receive the notice provided for in subsection (a) of this
445 section shall be advised of the member's right of cancellation and to a pro rata refund of
446 unearned premiums.

447 (c) No member of a life or health insurance company, or property or casualty insurance
448 company, who has made or filed a claim under such member's insurance policy shall be entitled
449 to any right to receive any refund under subsection (b) of this section. No person who has
450 exercised the rights provided by subsection (b) of this section shall be entitled to make or file any
451 claim under such person's insurance policy.
452

453 Section 12. [*Corporate Existence.*]

454 (a) On the effective date of the conversion, the corporate existence of the mutual
455 company continues in the converted stock company. On the effective date of the conversion, all
456 the assets, rights, franchises, and interests of the mutual company in and to every species of
457 property, real, personal, and mixed, and any accompanying things in action, are vested in the
458 converted stock company without any deed or transfer and the converted stock company assumes
459 all the obligations and liabilities of the mutual company.

460 (b) Unless otherwise specified in the plan of conversion, the people who are directors and
461 officers of the mutual company on the effective date of the conversion shall serve as directors
462 and officers of the converted stock company until new directors and officers of the converted
463 stock company are elected pursuant to the certificate of incorporation and bylaws of the
464 converted stock company.
465

466 Section 13. [*Conflict of Interest.*]

467 (a) A director, officer, agent, or employee of the mutual company shall not receive any
468 fee, commission, or other valuable consideration, other than such person's usual regular salary or

469 compensation, for aiding, promoting, or assisting in a conversion under this Act, except as
470 provided for in the plan approved by the [commissioner]. This provision does not prohibit the
471 payment of reasonable fees and compensation to attorneys, accountants, financial advisors, and
472 actuaries for services performed in the independent practice of their professions, even if the
473 attorney, accountant, financial advisor, or actuary is also a director or officer of the mutual
474 company.

475 (b) For a period of [two (2)] years after the effective date of the conversion, no converted
476 stock company shall implement any non tax-qualified stock benefit plan unless the plan is
477 approved by a majority of votes cast at a duly-convened meeting of shareholders held not less
478 than [six (6)] months after the effective date of the conversion.

479 (c) All the costs and expenses connected with a plan of conversion shall be paid for or
480 reimbursed by the mutual company or the converted stock company. However, if the plan
481 provides for participation by another corporation or stock company in the plan pursuant to
482 section 6(a)(3)(A), the corporation or stock company may pay for or reimburse all or a portion of
483 the costs and expenses connected with the plan.

484
485 Section 14. [*Failure to Give Notice.*] If the mutual company complies substantially and in
486 good faith with the notice requirements of this Act, the mutual company's failure to send a
487 member the required notice does not impair the validity of any action taken under this Act.

488
489 Section 15. [*Limitation on Actions.*] Any action challenging the validity of or arising out
490 of acts taken or proposed to be taken under this Act shall be commenced no later than the latter
491 of [sixty (60)] days after the approval of the plan by the [commissioner] or [thirty (30)] days
492 after notice of the meeting of voting members to approve the plan of conversion is first mailed or
493 delivered to voting members or posted on the mutual company's website.

494
495 Section 16. [*Mutual Company Insolvent or in Hazardous Financial Condition.*]

496 (a) If a mutual company seeking to convert is insolvent or is in hazardous financial
497 condition according to information supplied in its most recent annual or quarterly statement filed
498 with the [department] or as determined by a financial examination performed by the
499 [department] pursuant to [insert citation], the requirements of this Act, including notice to and
500 policyholder approval of the plan of conversion, may be waived at the discretion of the
501 [commissioner], if requested by the mutual company. If a waiver under this section is ordered by
502 the [commissioner], the mutual company shall specify in its plan of conversion:

503 (1) The method and basis for the issuance of the converted stock company's shares
504 of its capital stock to an independent party in connection with an investment by the independent
505 party in an amount sufficient to restore the converted stock company to a sound financial
506 condition.

507 (2) That the conversion shall be accomplished without granting subscription rights
508 or other consideration to the past, present, or future policyholders.

509 (b) Nothing contained in this section shall alter or limit the authority of the
510 [commissioner] under any of the provisions of law.

511
512 Section 17. [*Rules and Regulations.*] The [commissioner] may promulgate rules and
513 regulations to administer and enforce this Act.

514
515 Section 18. [*Laws Applicable to Converted Stock Company.*]

516 (a) No mutual company shall be permitted to convert under this Act, if, as a direct result
517 of the conversion, any person or any affiliate thereof acquires control of the converted stock
518 company, unless that person and such person's affiliates comply with the provisions of [insert

519 citation]. For purposes of this subsection, “control” shall have the meaning given to such term in
520 [insert citation].

521 (b) Except as otherwise specified in this Act, a stock company converted under this Act
522 shall have and may exercise all the rights and privileges and shall be subject to all of the
523 requirements and regulations imposed on stock insurers under this Act and any other laws of this
524 state relating to the regulation and supervision of insurers, but it shall exercise no rights or
525 privileges which other stock insurers may not exercise.
526

527 Section 19. [*Commencement of Business as a Stock Insurer.*] No mutual company shall
528 have the power to engage in the business of insurance as a stock company until it complies with
529 all provisions of this Act.
530

531 Section 20. [*Amendment of Policies.*] A mutual company, by endorsement or rider
532 approved by the [commissioner] and sent to the policyholder, may simultaneously with or at any
533 time after the adoption of a plan of conversion amend any outstanding insurance policy for the
534 purpose of extinguishing the right of the holder of any such policy to share in the surplus of the
535 mutual company. However, this amendment shall be null and void if the plan of conversion is
536 not submitted to the [commissioner] or, if submitted, is disapproved by the [commissioner] or, if
537 approved by the [commissioner], is not approved by the eligible members on or before the first
538 anniversary of its approval by the [commissioner].
539

540 Section 21. [*Prohibition on Acquisitions of Control.*] Except as otherwise specifically
541 provided in section 6 of this Act, from the date a plan of conversion is adopted by the governing
542 body of a mutual company until [three] years after the effective date of the plan of conversion,
543 no person shall directly or indirectly offer to acquire, make any announcement to acquire or
544 acquire in any manner, including making a filing with the [department] for such acquisition
545 under a statute or regulation of this state, the beneficial ownership of [ten percent (10%)] or more
546 of a class of a voting security of the converted stock company or of a person which controls the
547 voting securities of the converted stock company, unless the converted stock company or a
548 person who controls the voting securities of the converted stock company consents to such
549 acquisition and such acquisition is otherwise approved by the [commissioner].
550

551 Section 22. [*Applicability to Existing Mutual Insurers.*]

552 (a) Except as provided in subsection (b) of this section, this Act shall apply to all mutual
553 insurers.

554 (b) [Insert citation] as in effect prior to the enactment of this Act is hereby repealed,
555 except as set forth in the next sentence. [Insert citation] as in effect on the date immediately prior
556 to the enactment of this Act shall apply to any mutual insurer that is a domestic mutual company
557 as of such date that has not submitted a written notice to the [commissioner] under subsection (c)
558 of this section.

559 (c) Any mutual insurer that is a domestic mutual company as of the date immediately
560 prior to the enactment of this Act that otherwise would be subject to the application of [insert
561 citation] as in effect on such date may elect to become subject to the application of this Act
562 instead by submitting to the [commissioner] a written notice to that effect.
563

564 Section 23. [*Severability.*] [Insert severability clause.]

566 Section 24. [*Repealer.*] [Insert repealer clause.]

568 Section 25. [*Effective Date.*] [Insert effective date.]