

Committee Substitute for House Bill No. 215

An act relating to stock and mutual insurance companies; amending s. 628.715, F.S.; authorizing a mutual insurance holding company to merge the membership interests of certain mutual insurance companies into the mutual insurance holding company under certain circumstances; authorizing a mutual insurance holding company to merge or consolidate with, or acquire the assets of, certain entities; authorizing the Department of Insurance to retain certain consultants for merger evaluation purposes; requiring certain companies to pay consultant costs; providing a methodology for determining the rights of certain merging entities; amending ss. 628.231 and 628.723, F.S.; authorizing directors of domestic insurers and mutual insurance holding companies to consider certain factors while taking corporate action in discharging their duties; amending s. 628.729, F.S.; conforming a reference to a qualification period; creating s. 628.730, F.S.; providing for merger of a mutual insurance holding company into its intermediate holding company; requiring a plan and agreement of merger; requiring approval by the Department of Insurance; providing requirements for distribution of assets and liabilities; authorizing sales of shares of the mutual insurance holding company for certain purposes; requiring the department to hold a public hearing on the merger; requiring the plan and agreement of merger to be voted on by members of the mutual insurance holding company; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (d) and (e) of subsection (1) and paragraph (b) of subsection (2) of section 628.715, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of said section, to read:

628.715 Merger and acquisitions.—Subject to applicable requirements of this chapter, a mutual insurance holding company may:

(1)

(d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company; ~~or~~

(e) Acquire the stock or assets of any other person to the same extent as would be permitted for any not-for-profit corporation under chapter 617 or, if the mutual insurance holding company writes insurance, a mutual insurance company;

(f) Jointly, with a domestic or foreign mutual insurance company which redomesticates pursuant to s. 628.520, file an application with the department, pursuant to the provisions of this part, to merge the domestic or foreign mutual insurance company policyholder's membership interests into

the mutual insurance holding company. The reorganizing mutual insurance company may merge with the mutual insurance holding company's stock subsidiary or continue its corporate existence as a domestic stock insurance company subsidiary. The members of the foreign mutual insurance company may approve in a contemporaneous vote both the redomestication plan and the agreement for merger and reorganization; or

(g) Merge or consolidate with, or acquire the assets of, a domestic or foreign reciprocal insurance company, a group self-insurance fund, or any other similar entity.

(2) A reorganization pursuant to this section is subject to the applicable procedures prescribed by the laws of this state applying to corporations formed for profit, except as otherwise provided in this subsection.

(a) The plan and agreement for merger shall be submitted to and approved by a majority of the members, policyholders, or subscribers of each domestic mutual insurance holding company, mutual insurance company, stock insurance company, or domestic or foreign reciprocal insurance company, involved in the merger who vote either in person or by proxy thereon at meetings called for the purposes pursuant to such reasonable notice and procedure as has been approved by the department.

(b) No such merger shall be effectuated unless in advance thereof, the plan and agreement therefor have been filed with the department and approved by it after a public hearing, which shall be held within 90 days after receipt by the department of such plan and agreement. The department may retain outside consultants to evaluate the merger. The domestic mutual insurance holding company shall pay reasonable costs associated with retaining such consultants. Such payments shall be made directly to the consultant. The department shall give such approval unless it finds such plan or agreement:

1. Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger; or

2. Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in this state.

(c) All of the initial shares of the capital stock of the reorganized subsidiary insurance company shall be issued either to the mutual insurance holding company, or to an intermediate holding company which is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized subsidiary insurance company.

(d) For property and casualty insurers, the rights of the members of the merging entities under s. 628.729, for a period of 3 years after the merger, shall be the proportionate share of the total surplus of the merging entities as determined by the percentage of the surplus contributed by each of the merging entities to the total surplus of the surviving entity on the date of the merger.

Section 2. Subsection (5) is added to section 628.231, Florida Statutes, to read:

628.231 Directors; number, election.—

(5) In discharging his or her duties, a director may consider such factors as the directors deem relevant, including, but not limited to, the long-term prospects and interests of the corporation and its shareholders, the social, economic, legal, or other effects of any action on the employees, suppliers, or policyholders of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation. The director may also consider the short-term and long-term interests of the insurer, including, but not limited to, benefits that may accrue to the insured from the insurer's long-term plans, the possibility that such interests may be best served by the continued independence of the insurer, the resources, intent, and past, present, and potential conduct of any person seeking to acquire control of the insurer, and any other relevant factors.

Section 3. Subsection (5) is added to section 628.723, Florida Statutes, to read:

628.723 Directors; number; election.—

(5) In discharging his or her duties, a director may consider such factors as the directors deem relevant, including, but not limited to, the long-term prospects and interests of the corporation and its shareholders, the social, economic, legal, or other effects of any action on the employees, suppliers, or policyholders of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation. The director may also consider the short-term and long-term interests of the insurer, including, but not limited to, benefits that may accrue to the insured from the insurer's long-term plans, the possibility that such interests may be best served by the continued independence of the insurer, the resources, intent, and past, present, and potential conduct of any person seeking to acquire control of the insurer, and any other relevant factors.

Section 4. Subsection (1) of section 628.729, Florida Statutes, is amended to read:

628.729 Member's share of assets on voluntary dissolution.—

(1) Upon any voluntary dissolution of a domestic mutual insurance holding company, its assets remaining after discharge of its indebtedness, if any, and expenses of administration, shall be distributed to existing persons who

were its members at any time within the 3-year period preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is earlier; except, if the department has reason to believe that those in charge of the management of the mutual insurance holding company have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, the department may enlarge the 3-year ~~5-year~~ qualification period by such additional time as the department may deem to be reasonable.

Section 5. Section 628.730, Florida Statutes, is created to read:

628.730 Merger with intermediate holding company.—

(1) A mutual insurance holding company may, pursuant to a plan and agreement of merger approved by the department, in accordance with s. 628.715, ((2)(b), merge into its intermediate holding company. The surviving intermediate holding company shall assume all of the assets and liabilities of the mutual insurance holding company, and all of the stock of the intermediate holding company owned by the mutual insurance holding company immediately prior to the merger shall be distributed to existing persons who were members of the mutual insurance holding company at any time within the 3-year period preceeding the date of such merger.

(2) The distributive share of each such member shall be determined by a formula based upon such reasonable classifications of members as the department may approve.

(3) For purposes of creating a public market for the shares of the intermediate holding company, the mutual insurance holding company may, immediately prior to the merger, sell or cause the intermediate holding company to sell to the public up to 25 percent of its capital stock representing no more than 25 percent of the voting stock of the intermediate holding company.

(4) The department shall hold a public hearing to allow public comment on the plan and agreement of merger. The hearing must be held within 90 days after receipt of the department of the proposed plan and agreement of merger.

(5) The plan and agreement of merger shall be submitted to the members of the mutual holding company for their approval and shall take effect only if approved by a majority of the members of the mutual insurance holding company who vote either in person or by proxy on such merger at a meeting called for the purpose of voting on such merger, pursuant to reasonable notice and procedures as approved by the department.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor June 14, 2000.

Filed in Office Secretary of State June 14, 2000.