

CHAPTER 2013-125

Senate Bill No. 356

An act relating to mutual insurance corporations; amending ss. 627.971 and 627.972, F.S.; providing that such corporations include licensed mutual insurers as well as licensed stock insurers; amending s. 617.01401, F.S.; revising the definition of the term “distribution” to exclude a not-for-profit insurance company subsidiary from ch. 617, F.S., relating to not-for-profit corporations; amending s. 628.371, F.S.; providing that certain dividends or distributions by a not-for-profit insurance company to its mutual insurance holding company which meet certain requirements are permitted under part I of ch. 628, F.S., relating to stock and mutual insurers; amending s. 628.703, F.S.; amending definitions relating to mutual insurance holding companies to add provisions for not-for-profit insurance companies and nonprofit health care plans; amending s. 628.707, F.S.; conforming terminology; amending s. 628.715, F.S.; adding not-for-profit insurance companies and nonprofit health plans to provisions relating to mergers and acquisitions; amending s. 628.727, F.S.; authorizing the articles of incorporation and bylaws of a mutual insurance holding company to restrict certain rights of policyholders to receive distributions; providing effective dates.

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

Section 1. Subsection (6) of section 627.971, Florida Statutes, is amended to read:

627.971 Definitions.—As used in this part:

(6) “Financial guaranty insurance corporation” means a stock or mutual insurer licensed to transact financial guaranty insurance business in this state.

Section 2. Subsection (1) of section 627.972, Florida Statutes, is amended to read:

627.972 Organization; financial requirements.—

(1) A financial guaranty insurance corporation must be organized and licensed in the manner prescribed in this code for stock or mutual property and casualty insurers except that:

(a) A corporation organized to transact financial guaranty insurance may, subject to ~~the provisions of~~ this code, be licensed to transact:

1. Residual value insurance, as defined by s. 624.6081;
2. Surety insurance, as defined by s. 624.606;

3. Credit insurance, as defined by s. 624.605(1)(i); and

4. Mortgage guaranty insurance as defined in s. 635.011 ~~if provided that the provisions of chapter 635 are met.~~

(b)1. Prior to the issuance of a license, a corporation must submit to the office for approval, a plan of operation detailing:

- a. The types and projected diversification of guaranties to be issued;
- b. The underwriting procedures to be followed;
- c. The managerial oversight methods;
- d. The investment policies; and
- e. Any other matters prescribed by the office.;

2. An insurer ~~that which~~ is writing only the types of insurance allowed under this part on July 1, 1988, and otherwise meets the requirements of this part, is exempt from ~~the requirements of this paragraph.~~

(c) An insurer transacting financial guaranty insurance is subject to all provisions of this code ~~which that~~ are applicable to property and casualty insurers to the extent that those provisions are not inconsistent with this part.

(d) The investments of an insurer transacting financial guaranty insurance in any entity insured by the corporation may not exceed 2 percent of its admitted assets as of the end of the prior calendar year.

(e) An insurer transacting financial guaranty insurance may only assume those lines of insurance for which it is licensed to write direct business.

Section 3. Subsection (7) of section 617.01401, Florida Statutes, is amended to read:

617.01401 Definitions.—As used in this chapter, the term:

(7) “Distribution” means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(a) A donation or transfer of corporate assets or income to or from another not-for-profit corporation qualified as tax-exempt under s. 501(c) of the Internal Revenue Code or a governmental organization exempt from federal and state income taxes, if such corporation or governmental organization is a member of the corporation making such donation or transfer, is not a distribution for purposes of this chapter.

(b) A dividend or distribution by a not-for-profit insurance company subsidiary to its mutual insurance holding company organized under part III

of chapter 628, directly or indirectly through one or more intermediate holding companies authorized under that part, is not a distribution for the purposes of this chapter.

Section 4. Subsection (5) is added to section 628.371, Florida Statutes, to read:

628.371 Dividends to stockholders.—

(5) A dividend or distribution by a not-for-profit insurance company subsidiary to its mutual insurance holding company, directly or indirectly through one or more intermediate holding companies, pursuant to part III of this chapter, which meets the requirements of this section and which applies to a stock insurer, is permitted under this section.

Section 5. Section 628.703, Florida Statutes, is reordered and amended to read:

628.703 Definitions.—For purposes of this part:

~~(2)~~(1) “Mutual insurance holding company” means an incorporated entity without permanent capital stock which ~~that~~ is organized under this part and whose members are determined in accordance with this part.

~~(5)~~(2) “Subsidiary insurance company” means:

(a) A stock insurance company, of which the majority of the voting shares of the capital stock of which are at all times owned by a mutual insurance holding company. As used in For purposes of this part, the term “majority of the voting shares of the capital stock” means the shares of the capital stock of such company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock for the election of directors. The ownership of a majority of the voting shares of the capital stock of a former mutual reorganized insurance company which are required by this part to be at all times owned by a mutual insurance holding company includes indirect ownership through one or more intermediate holding companies. However, indirect ownership through one or more intermediate holding companies may shall not result in a mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the former mutual reorganized insurance company; or

(b) A not-for-profit insurance company or nonprofit health care plan, of which the majority of the voting membership interests are at all times owned by a mutual insurance holding company, which entitles the mutual insurance holding company to elect the board of directors of the not-for-profit insurance company or nonprofit health care plan. This also applies to the indirect ownership of the not-for-profit insurance company or nonprofit health care plan through one or more intermediate holding companies. A not-for-profit insurance company subsidiary resulting from reorganization into a not-for-profit mutual insurance company under this part, or which is subsequently organized as an additional subsidiary insurance company of

the holding company, is subject to the Florida Insurance Code and chapter 617 applies to the organization of such company.

~~(1)~~(3) “Intermediate holding company” means:

(a) A holding company ~~that which~~ is a subsidiary of a mutual insurance holding company, and which directly or through a subsidiary intermediate holding company owns a majority of the voting shares of the capital stock of one or more subsidiary insurance companies; or

(b) A holding company that is a not-for-profit corporation and a subsidiary of a mutual insurance holding company, of which a majority of the voting membership interests entitled to elect the board of directors of such corporation are owned, directly or through a subsidiary intermediate holding company, by the mutual insurance holding company.

(3) “Nonprofit health care plan” means a not-for-profit domestic or foreign hospital or medical and surgical service plan or corporation that is licensed in one or more states, issues no capital stock, and is engaged in the business of providing prepaid indemnity or health care benefits.

(4) “Paid premiums” means all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company.

Section 6. Subsection (5) of section 628.707, Florida Statutes, is amended to read:

628.707 Applicability of general corporation statutes.—The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic mutual insurance holding companies, except:

(5) In the case of the reorganization of a ~~any~~ mutual insurance company organized as a not-for-profit nonprofit corporation under chapter 617, a mutual insurance holding company organized under this part shall be deemed to be a not-for-profit nonprofit corporation.

Section 7. Subsection (1) of section 628.715, Florida Statutes, is amended to read:

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

(1)(a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed pursuant to this part ~~aet~~ or any similar entity organization pursuant to laws of any other state;

(b) Either alone or together with one or more intermediate ~~stock~~ holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this part ~~aet~~ or the law of its state of organization;

(c) Together with one or more of its ~~stock insurance company~~ subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company, or the membership interests of a not-for-profit insurance company or nonprofit health care plan;

(d) Acquire a stock insurance company through the merger of the such stock insurance subsidiary with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company, or acquire a not-for-profit insurance company or nonprofit health care plan through the merger of such entities with a mutual insurance company, or with a not-for-profit insurance company subsidiary of the mutual insurance holding company or intermediate holding company;

(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 that ~~which~~ redomesticates pursuant to s. 628.520, file an application with the office, 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.

Section 8. Subsection (1) of section 628.727, Florida Statutes, is amended to read:

628.727 Membership.—

(1) Membership in a mutual insurance holding company shall be determined in accordance with the mutual insurance holding company's articles of incorporation and bylaws and ~~shall~~ be based upon each member holding a policy of insurance with a subsidiary insurance company or a health maintenance contract with a subsidiary health maintenance organization. Group certificateholders may also be members of the mutual insurance holding company if specified in the bylaws. The articles of incorporation and bylaws may provide for one or more classes of members and may restrict the voting or other rights of a class of policyholders of a nonprofit health care plan from receiving distributions pursuant to this chapter if the assets of the nonprofit health care plan may not be treated as assets available for distribution.

Section 9. Except for sections 3 through 8, which shall take effect January 1, 2014, this act shall take effect upon becoming a law.

Approved by the Governor June 7, 2013.

Filed in Office Secretary of State June 7, 2013.