

CHAPTER 97-216

House Bill No. 793

An act relating to mutual insurance holding companies; creating a new part III of chapter 628, F.S.; providing definitions; prohibiting certain stock transfers; providing application; providing for formation of mutual insurance holding companies; specifying requirements for a plan of reorganization; providing for a public hearing; prohibiting payment of dividends; providing for mergers and acquisitions of mutual insurance holding companies; providing for filing and amending articles of incorporation; providing for bylaws; providing for directors; requiring notice of a change in director; providing for membership; providing for distribution of a member's share upon liquidation; providing for applicability; providing for conversion of a mutual insurance holding company to a stock holding company; providing an effective date.

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

Section 1. Parts III and IV of chapter 628, Florida Statutes, are redesignated as parts IV and V, respectively, and a new part III, consisting of sections 628.701, 628.703, 628.705, 628.707, 628.709, 628.711, 628.713, 628.715, 628.717, 628.719, 628.721, 628.723, 628.725, 628.727, 628.729, 628.731, and 628.733, Florida Statutes, is created to read:

PART III MUTUAL INSURANCE HOLDING COMPANIES

628.701 Scope.—This part applies only to domestic mutual insurance holding companies.

628.703 For purposes of this part:

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

(2) “Subsidiary insurance company” means stock insurance company, the majority of the voting shares of the capital stock of which are at all times owned by a mutual insurance holding company. For purposes of this part, “majority of the voting shares of the capital stock” means 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 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.

(3) “Intermediate holding company” means a holding company 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.

628.705 Prohibition of stock transfers.—

(1) The voting shares of the capital stock of a subsidiary insurance company, which are required by this part in order to maintain a majority of the voting shares, are to be at all times owned by a mutual insurance holding company or one or more intermediate holding companies and the voting shares of the capital stock of any intermediate holding company, which are necessary to satisfy such ownership requirement through indirect ownership, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or any intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in, or on such voting shares of capital stock is in violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to such shares of capital stock. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two or more subsidiary insurance companies or two or more intermediate holding companies which were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations as provided in this section to which the shares of the merging or consolidating former mutual reorganized insurance companies or intermediate holding companies were subject by this section prior to the merger or consolidation.

(2) Voting shares of the capital stock of a subsidiary insurance company or the intermediate holding company may not be acquired by any affiliated member of the holding company system except where the affiliated member of the mutual holding company system is the majority shareholder. A number of shares equal to 5 percent of the outstanding voting shares of the capital stock of one corporate member of the Mutual Insurance Holding Company System selected by the mutual insurance holding company may be issued or sold to directors and officers as part of plan of compensation and such shares shall not be considered part of the majority shares to be owned by the mutual insurance company under subsection (1). A number of shares equal to an additional 5 percent of the outstanding voting shares of the capital stock of one corporate member of the Mutual Insurance Holding Company System selected by the mutual insurance holding company may be issued or sold to employees, which may not include any officer or director, as part of an employee stock dividend or benefit plan and such shares shall not be considered part of the majority shares to be owned by the mutual insurance company under subsection (1). Prior to issuance of shares in

excess of the authorized 5 percent to either officers and directors or employees, pursuant to this section, a fairness opinion shall be rendered by an independent authority acceptable to the department to assure that the long term interests of the shareholders and policyholders are adequately protected. The department shall approve or disapprove the transaction within 30 days after receipt of the fairness opinion. Nothing in this section prohibits any officer or director from purchasing shares of stock at market value which are not part of a plan of compensation, in accordance with the requirements of s. 628.461, and, if such stock is not regularly traded on a national stock exchange, the officer or director purchasing the shares of stock is responsible for establishing its market value.

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:

(1) A mutual insurance holding company shall be organized exclusively under this act and shall be a mutual company without capital stock.

(2) The articles of incorporation of the mutual insurance holding company, and any amendment to such articles or restatement of such articles shall be subject to the approval of the department for compliance with the provisions of this act prior to filing with the Department of State, and shall contain the name of the mutual insurance holding company, which shall include the word "Mutual."

(3) The provisions of chapter 617 shall be deemed to be incorporated into this part to govern a mutual insurance holding company to the extent that this act and the insurance code are silent with respect to the articles of incorporation, bylaws, organization, members, directors, or other matters relating to a mutual insurance holding company.

(4) Nothing in this part shall be construed to require that a mutual insurance holding company be governed by part II of chapter 625.

(5) In the case of the reorganization of any mutual insurance company organized as a nonprofit corporation under chapter 617, a mutual insurance holding company organized under this part shall be deemed to be a nonprofit corporation.

628.709 Formation of a mutual insurance holding company.—

(1) A domestic mutual insurance company, other than a mutual insurer that issued assessable policies as a mutual insurer and which held a certificate of authority in this state on July 1, 1997, may, pursuant to a plan of reorganization, reorganize as a mutual insurance holding company system that must consist of a mutual insurance holding company and one or more controlled subsidiaries and which may consist of one or more intermediate stock holding companies and other subsidiaries. The reorganization may be effected by the organization of one or more companies, amendment or restatement of the articles of incorporation and bylaws of one or more companies, transfer of assets and liabilities among two or more companies, issu-

ance, acquisition or transfer of capital stock of one or more companies, or merger or consolidation of two or more companies. On and after the effective date of a plan of reorganization, the mutual insurance holding company shall at all times have the power, directly or indirectly, to cast at least a majority of the votes for the election of the board of directors of each controlled subsidiary and any intermediate stock holding company.

(2) All of the initial shares of the capital stock of the insurance company which reorganized as a 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. This restriction does not preclude the subsequent issuance of additional shares of stock by the subsidiary insurance company so long as the mutual insurance holding company at all times owns directly or through one or more intermediate holding companies, a majority of the voting shares of the capital stock of the subsidiary insurance company. The membership interests of the policyholders of the subsidiary insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the subsidiary insurance company which was formerly the mutual insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. Policyholders of any other subsidiary insurance company of the mutual insurance holding company shall not be members of the mutual insurance holding company unless they are policyholders of a subsidiary which was a mutual insurer which merged with the holding company pursuant to s. 628.715.

628.711 Plan of reorganization.—

(1) A plan of reorganization shall include the following provisions:

(a) A description of the structure of the mutual insurance holding company system consistent with the requirements therefor set forth in this act.

(b) A description of the qualifications for membership in and the rights of members of the mutual insurance holding company consistent with the requirements therefor set forth in this act.

(c) A description of the transactions, and parties to such transactions, that will effect the reorganization, including, but not limited to, transfer and assumption of policies, contracts, assets, and liabilities.

(d) A description of corporate restructuring and other corporate transactions that will effect the reorganization, including, but not limited to, organization of companies, amendment or restatement of articles of incorporation or bylaws, and mergers and consolidations.

(e) A description of those persons who shall serve as directors and officers of the mutual insurance holding company, its intermediate stock holding companies, if any, its controlled subsidiaries, and other subsidiaries as of the effective date of the reorganization. The initial directory shall be the directors of the mutual insurance company who shall have terms concurrent with

the terms as directors of the reorganized mutual insurance company unless otherwise specified in the plan.

(f) A representation that, following the reorganization, the material terms and conditions of indemnification or coverage of policyholders of the mutual insurance company shall remain in full force and effect under policies transferred to and assumed by one or more subsidiaries of the mutual insurance holding company or retained by a mutual insurance company that has reorganized either as a mutual insurance holding company that elects to write insurance or a stock subsidiary.

(g) A representation that, following the reorganization, the material terms and conditions of subordinated surplus notes and other contractual obligations, other than those arising under policies described in paragraph (f), of the mutual insurance company shall, subject to the rights of the mutual insurance company under applicable law, and to the extent such obligations are not otherwise satisfied or terminated in accordance with their terms or retained by a mutual insurance holding company or controlled subsidiary, remain in full force and effect upon the transfer of such obligations to, and assumption of such obligations by, one or more subsidiaries of the mutual insurance holding company.

(2) A plan of reorganization must be adopted by the board of directors of the mutual insurance company or, in the case of the formation of any intermediate stock insurance holding company that is not concurrent with the formation of the mutual insurance holding company, by the board of directors of the mutual insurance holding company.

(3) Following the adoption of a plan of reorganization, and prior to the meeting of the mutual insurance company members to approve the plan, the mutual insurance company shall submit to the department the following:

(a) The plan of reorganization, as adopted.

(b) The form of notice to be sent to the mutual insurance company members, informing them of their right to vote on the plan of reorganization.

(c) The form of proxy statement to be sent to the mutual insurance company members, informing them of their right to vote by proxy on the plan of reorganization, and describing the plan.

(d) The form of proxy to be sent to the mutual insurance company members to solicit their vote on the plan of reorganization.

(e) Proposed articles of incorporation, merger, or consolidation, restatements of or amendments to articles of incorporation or bylaws, and plans of merger or consolidation, with respect to each entity to be organized, reorganized or otherwise subject to such action under the plan of reorganization.

(f) A proposed business plan for the 3 years following the date of the reorganization.

(g) An audited financial statement prepared on a statutory basis consistent with the Florida Insurance Code, including an actuarial opinion for the

most recent calendar year ended, or a copy thereof, if the statement was previously filed with the department.

(4) The department may hold a public hearing to allow public comment on the plan of reorganization. Any hearing must be held within 30 days after receipt by the department of a completed plan of reorganization. The department may not approve a plan of reorganization unless it finds that it is fair and equitable to the members of the mutual insurance company. Ninety days after filing, the plan of reorganization shall be deemed approved unless it has previously been approved or disapproved by the department. The department shall inform the mutual insurer of the specific reasons for the disapproval of any plan of reorganization.

(5)(a) A plan of reorganization adopted by the board of directors of the applicant may be:

1. Amended by the board of directors of the applicant in response to the comments or recommendations of the department, or any other state or federal agency or governmental entity, before any solicitation of proxies from members of the mutual insurance company to vote on the plan of reorganization, or at any time with the consent of the department, except that any material amendment after the members' approval shall require the members' approval; or

2. Terminated by the board of directors of the applicant at any time before members of the mutual insurance company vote on the plan of reorganization and, otherwise, at any time with the consent of the department.

(b) The plan of reorganization is approved upon the affirmative vote of at least a majority of the votes cast by members of the mutual insurance company, notwithstanding quorum or voting action requirements otherwise applicable to the mutual insurance company to the contrary.

(c) Within 30 days after members have approved the plan of reorganization, the applicant must file with the department the minutes of the meeting at which the plan of reorganization was approved.

628.713 Dividends.—A mutual insurance holding company shall not be authorized to pay dividends or make distributions to mutual insurance holding company members except as may be expressly approved by the department. Neither the adoption nor the implementation of a plan of reorganization shall be deemed to give rise to any obligation by or on behalf of a mutual insurance company to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of the mutual insurance company or otherwise, including, but not limited to, requirements imposed by the conversion and bulk reinsurance provisions of ss. 628.441 and 628.491.

628.715 Merger and acquisitions.—Subject to applicable requirements of chapter 628, 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 act 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 act 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;

(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.

(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 of each domestic mutual insurance holding 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. 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 insur-

ance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized subsidiary insurance company.

628.717 Filing of articles of incorporation.—

(1) No mutual insurance holding company shall be formed unless its articles of incorporation are approved by the department prior to filing the same with and approval by the Department of State as provided by law.

(2) The department shall promptly examine the articles of incorporation; and, if it finds that the articles of incorporation comply with law, the department shall endorse its approval upon each of the originals, place one on file in its office, and return the remaining sets to the incorporators. The incorporators shall promptly file such endorsed articles of incorporation with the Department of State. The articles of incorporation shall be effective when filed with and approved by the Department of State.

628.719 Amendment of articles of incorporation.—

(1) A domestic mutual insurance holding company may amend its articles of incorporation by vote of a majority of those members present or represented by proxy at a lawful meeting of its members, if the notice given members included due notice of the proposal to amend.

(2)(a) Upon adoption of an amendment, the mutual insurance holding company shall make under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the mutual insurance holding company's president or vice president and secretary or assistant secretary and acknowledged before an officer authorized to take acknowledgments. The mutual insurance holding company shall deliver the originals of the certificate to the department.

(b) The department shall promptly examine the certificate of amendment, and, if the department finds that the certificate and the amendment comply with law, the department shall endorse its approval upon each of the originals, place one on file in its office, and return the remaining sets to the mutual insurance holding company. The mutual insurance holding company shall promptly file such endorsed certificates of amendment with the Department of State. The amendment shall be effective when filed with and approved by the Department of State.

628.721 Bylaws.—

(1) The initial board of directors of a mutual insurance holding company shall adopt original bylaws, subject to the approval of the company's members at the next succeeding meeting.

(2) The bylaws shall provide:

(a) That each member is entitled to one vote upon each matter coming to a vote at meetings of members, or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based

upon the amount of insurance in force with the mutual insurance holding company's subsidiaries, or upon the amount of the premiums paid to the mutual insurance holding company's subsidiaries by such member, or upon other reasonable factors. If a person's membership is based upon that person holding an insurance policy from a life insurer, the right to vote may be limited to those members whose policies are other than term and group policies and have been in effect for more than 1 year. A member has the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time.

(b) For the election of directors by the members and the number, qualifications, terms of office, and powers of the directors.

(c) The time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be set forth in the policy and without giving other notice of such meeting.

(d) The number, designation, election, terms, and powers and duties of the respective corporate officers.

(e) For deposit, custody, and disbursement of and accounting for corporate funds.

(f) That a quorum at all annual and special meetings of members will consist of all members present and voting in person or by proxy, after due notice of such meeting.

(g) For any other reasonable provisions customary, necessary, or convenient for the management or regulation of the company's corporate affairs, not inconsistent with law.

(3) The mutual insurance holding company shall file within 30 days with the department a copy, certified by the mutual insurance holding company's secretary, of its bylaws and of every modification thereof or addition thereto. The department shall promptly disapprove any bylaw provision deemed by it to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the mutual insurance holding company's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate and bylaw provision disapproved.

628.723 Directors; number; election.—

(1) The affairs of every mutual insurance holding company shall be managed by not less than five directors.

(2) Directors must be elected by the members of the mutual insurance holding company at the annual meeting of members. Directors may be elected for terms of not more than 5 years each and until their successors are elected and have qualified, and, if to be elected for terms of more than 1 year, the mutual insurance holding company's bylaws shall provide for a staggered-terms system under which the terms of a proportionate part of the

members of the board of directors will expire on the date of each annual meeting of members.

(3) A majority of the directors must be citizens of the United States.

(4) If so provided in a mutual insurance holding company's bylaws, a director of such mutual insurance holding company must be a policyholder thereof.

628.725 Notice of change of director or officer.—A mutual insurance holding company shall give the department written notice of any change of personnel among the directors or principal officers of the mutual insurance holding company within 45 days after such change. The written notice shall include all information necessary to allow the department to determine that the mutual insurance holding company's subsidiary stock insurers will be in compliance with s. 624.404(3) and, at a minimum, shall contain information similar to the information required by s. 628.051(2)(b), (c), and (d) for directors of insurance companies.

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 subsidiary health service corporation. Group certificateholders may also be members of the mutual insurance holding company if specified in the bylaws.

(2) Any person, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a mutual insurance holding company. However, the state or any county or municipality may not participate as a member in the profits of any mutual insurance holding company.

(3) No member of a mutual insurance holding company may transfer membership or any right arising therefrom.

(4) A member of a mutual insurance holding company is not, as such, personally liable for the acts, debts, liabilities, or obligations of the company and may not be assessed by the directors of such company.

(5) A membership interest in a mutual insurance holding company shall not constitute a security as defined by s. 517.021.

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 5-year qualification period by such additional time as the department may deem to be reasonable.

(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.

628.731 Application of holding company statutes and regulations.—Each reorganized subsidiary insurance company shall be subject to the applicable laws and rules of this state relating to insurance holding company systems. A mutual insurance holding company shall not be subject to provisions of chapter 628 or rules adopted thereunder with respect to the writing of insurance or required capital or surplus. A mutual insurance holding company system shall be considered an insurance holding company system but shall not require separate approval under chapter 628 for an acquisition of controlling stock, ownership interest, assets, or control, or for a merger or consolidation, share exchange, organization, or reorganization of insurance companies, or other transaction with respect to any action approved pursuant to the provisions of this part.

628.733 Converting mutual insurance holding company.—

(1) A mutual insurance holding company may become a stock holding company under such plan and procedure as may be approved by the department.

(2) The department shall not approve any such plan and procedure unless:

(a) The plan and procedure is subject to approval by vote of not less than a majority of the company's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the department.

(b) The corporate equity of each member is determinable under a fair formula approved by the department, which equity shall be based upon not more than the company's net assets.

(c) The persons entitled to participate in the distribution of stock shall include all current members and all existing persons who had been members within 3 years prior to the date such plan was submitted to the department.

(d) The plan calls for the distribution to each person as specified in paragraph (c) of capital stock or other property of the stock holding company, using each person's equity as determined under paragraph (b).

(e) The plan gives to each member as specified in paragraph (c) a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the new stock holding company, within a designated reason-

able period, and to apply upon the purchase thereof the amount of his equity as determined under paragraph (b).

(f) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others.

(g) The plan provides for payment of cash to each member not electing to apply his or her equity towards the purchase price of stock to which he or she is preemptively entitled. The amount so paid shall be not less than 50 percent of the amount of his or her equity not so used for the purchase of stock. Such cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the member's corporate equity in such mutual insurance holding company.

Section 2. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.