

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 726

An Act to amend and reenact §§ 38.2-1005 and 38.2-1005.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10 of Title 38.2 an article numbered 1.1, consisting of sections numbered 38.2-1005.1:1 through 38.2-1005.1:13, relating to mutual insurance holding companies.

[H 2255]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1005 and 38.2-1005.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 10 of Title 38.2 an article numbered 1.1, consisting of sections numbered 38.2-1005.1:1 through 38.2-1005.1:13, as follows:

§ 38.2-1005. Certain mutual companies and societies not to become stock companies without approval of Commission.

No mutual insurance company, *mutual assessment property and casualty insurer*, cooperative nonprofit life benefit company, mutual assessment life, accident and sickness company, burial society, or fraternal benefit society shall be converted into a stock corporation unless such conversion and the plan for conversion are approved by the Commission. The insurer shall comply with § 38.2-1028 before approval for conversion is granted by the Commission unless the Commission finds that the insurer will have the required capital and surplus within a reasonable time after conversion. *A society or other nonstock company licensed under any chapter of this title except Chapter 10 (§ 38.2-1000 et seq.) shall be licensed as a mutual insurer subject to § 38.2-1029 prior to seeking approval for conversion under § 38.2-1005.1 or § 38.2-1005.1:9.*

§ 38.2-1005.1. Conversion of a domestic mutual insurer to a domestic stock insurer.

A. Any domestic mutual insurer may convert to a domestic stock insurer pursuant to a plan of conversion approved by the Commission.

B. The Commission shall approve any such plan of conversion if, after giving notice and an opportunity to be heard to the policyholders of the domestic mutual insurer, the Commission determines that:

1. The terms and conditions of the plan are fair and equitable to the policyholders of the domestic mutual insurer;

2. The plan is subject to approval by a vote of more than two-thirds of all votes cast on the plan at a meeting of the members of the domestic mutual insurer called for that purpose at which a quorum is present;

3. Except as otherwise provided in subdivision 4 of this subsection, the plan allocates and directs that the entire stock ownership interests and other consideration to be distributed pursuant to the plan of conversion be distributed to the policyholders of the domestic mutual insurer;

4. In the case of a domestic mutual insurer that converted from a health services plan that was in existence prior to December 31, 1987, the plan of conversion allocates and distributes to the State Treasurer, in addition to any shares of stock that the Commonwealth may be entitled to receive as a policyholder, shares of stock or cash or both with a value equal to the surplus, computed in accordance with generally accepted accounting principles, of such health services plan on December 31, 1987, plus ten million dollars; and

5. Immediately after the conversion, the insurer will have the fully paid capital stock and surplus required by applicable law.

C. A plan of conversion that utilizes a statutory merger in order to effect a conversion may be approved ~~under~~ *in accordance with* this section and § 38.2-1005.1:9, and the provisions of § 38.2-1018 shall not be applicable to such plan of conversion.

Article 1.1.

Formation of Mutual Insurance Holding Company; Conversion of Mutual Holding Company to Stock Holding Company.

§ 38.2-1005.1:1. *Definitions.*

As used in this article:

"Converted company" means a stock insurance company incorporated and organized under the laws of this Commonwealth that continues in existence after a reorganization under this article in connection with the formation of a mutual holding company.

"Converted mutual holding company" means the stock corporation into which a mutual holding company has been converted pursuant to § 38.2-1005.1:9.

"Eligible member" means a member as of the date the board of directors of a mutual company

adopts a plan of MHC conversion under this article. For the conversion of a mutual holding company, the term eligible member means a member of the mutual holding company who is of record on the date the board of directors of the mutual holding company adopts a plan of conversion authorized pursuant to this article.

"Intermediate holding company" means a corporation authorized to issue one or more classes of capital stock, the corporate purposes of which include holding, directly or indirectly, the voting stock of a converted company.

"Member" means a person who, on the records of a mutual company and pursuant to the articles of incorporation or bylaws of a mutual company, is deemed to be the holder of a membership interest in a mutual company. The term member also includes a person insured under a group policy if:

1. The person is insured or covered under a group life insurance policy or group annuity contract under which funds are accumulated and allocated to the respective persons covered under such policy or contract;

2. The person has the right to direct the application of the funds so allocated;

3. The group policyholder does not pay any portion of the premiums or deposits for the policy or contract; and

4. The mutual company has the names and addresses of the persons covered under the group life insurance policy or group annuity contract.

When a plan of MHC conversion has become effective under this article, the term "member" shall mean a member of the mutual holding company created by such plan.

"Mutual company" means a mutual insurance company incorporated and organized under the laws of this Commonwealth and licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of this title.

"Mutual holding company" or "MHC" means a corporation organized under the provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) in connection with the reorganization of a mutual company under this article. A MHC shall be subject to the provisions of this article and any other provisions of this title that are applicable to mutual companies and not inconsistent with the provisions of this article. The articles of incorporation of a MHC shall state:

1. That the corporation is organized under this article as a MHC;

2. That the MHC shall hold not less than a majority of the shares of voting stock of a converted company or an intermediate holding company that, in turn, directly or indirectly holds all of the voting shares of a converted company;

3. That the corporation is not authorized to issue capital stock except in accordance with the provisions of § 38.2-1005.1:9;

4. That its members shall have the rights specified in this article and its articles of incorporation and bylaws; and

5. That its assets shall be subject to inclusion in the estate of the converted company in any proceeding initiated against the converted company under Chapter 15 (§ 38.2-1500 et seq.) of this title.

"Plan of MHC conversion" or "plan" means a plan adopted pursuant to this article by the board of directors of a mutual company for the conversion of a mutual company into a direct or indirect stock subsidiary of a mutual holding company.

"Policy" includes any group or individual policy or contract issued by a mutual company, including an annuity contract, but does not include a certificate of insurance issued in connection with a group policy or contract.

"Policyholder" means the holder of a policy other than a reinsurance contract.

§ 38.2-1005.1:2. Formation of mutual holding company and conversion of mutual company.

A mutual company, upon approval of the Commission, may reorganize by forming a mutual holding company and continue the corporate existence of the reorganizing mutual company as a stock insurance company in accordance with the provisions of this article. At the time a plan of MHC conversion becomes effective and without any further action:

1. The mutual company shall become a stock corporation, the membership interests of the policyholders in the mutual company shall be deemed extinguished and all eligible members of the mutual company shall become members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company and the applicable provisions of this article and Chapter 10 (§ 38.2-1000 et seq.) of this title; and

2. All of the shares of capital stock of the converted company shall be issued to the mutual holding company that, at all times thereafter, shall own not less than a majority of the issued shares of the voting stock of the converted company; however, either at the time the conversion becomes effective or, with the Commission's approval, at any later time, the voting shares of the converted company may be held by one or more intermediate holding companies so long as the mutual holding company at all times owns, directly or indirectly, a majority of the voting shares of the converted company.

§ 38.2-1005.1:3. Mutual holding company membership interest.

A. A member of a mutual holding company shall not transfer membership in the company or any right arising from membership.

B. A member of a mutual holding company shall not, as a member, be personally liable for or

subject to assessment on account of any act, debt, liability or obligation of the MHC or of any entity owned or controlled by the MHC.

C. A membership interest in a mutual holding company shall not constitute a security under the laws of the Commonwealth.

§ 38.2-1005.1:4. Contents of plan of MHC conversion.

A plan of MHC conversion shall:

A. Include:

1. The reasons for the proposed conversion; and
2. The effect of the proposed conversion on the mutual company's existing policies.

B. Provide that:

1. All policies of the converted company in force on the effective date of the conversion shall continue in force under the terms of those policies, except that all voting and other membership rights of the policyholders provided for under the policies or under the laws of this Commonwealth and any provisions for contingent liability of members shall be extinguished on the effective date of the plan of MHC conversion.

2. The holders of participating policies in force on the date of conversion shall continue to have the right to receive dividends as provided in such policies, if any. However, except in the case of a mutual company's life insurance policies, guaranteed renewable accident and sickness insurance policies, and non-cancelable accident and sickness insurance policies, if any, a plan may provide that the converted stock company will issue the insured a nonparticipating policy as a substitute for the participating policy on the renewal date of the participating policy next following the date the plan becomes effective.

3. If a mutual life insurance company has participating life insurance policies in force on the effective date of the plan of conversion, the converted company will maintain such participating life policies as a closed block of business for dividend purposes, except that any or all classes of group participating policies may be excluded from the closed block. The plan shall provide for the establishment of one or more segregated accounts in connection with the closed block of business and shall allocate to such segregated accounts sufficient assets of the mutual company so that the assets so allocated, together with the revenue for the closed block of business, are sufficient to support the closed block including, but not limited to, the payment of claims, expenses, taxes and any dividends that are provided for under the terms of the participating policies with appropriate adjustments in the dividends for experience changes. The plan shall be accompanied by an opinion of a qualified actuary or appointed actuary who meets the standards provided in this title or the Commission's regulations for the submission of actuarial opinions as to the adequacy of reserves or assets. The actuarial opinion shall relate to the adequacy of the assets allocated to the segregated accounts of the closed block and shall be based on methods of analysis deemed appropriate for such purposes by the Actuarial Standards Board. The amount of assets allocated to the segregated accounts of the closed block shall be based upon the mutual company's most recent annual statement updated to the effective date of the conversion. After the effective date of the conversion, the converted company shall keep a separate accounting for the closed block and shall make and include in each annual statement to be filed with the Commission a separate statement showing gains, losses and expenses properly attributable to the closed block. With the Commission's prior approval, assets allocated to the closed block of business that are in excess of the amount of assets necessary to support the policies then remaining in the closed block shall revert to the benefit of the converted company. Notwithstanding the provisions of this subdivision, the Commission may waive the requirement for the establishment of a closed block of participating policies when it deems a waiver to be in the best interests of the participating policyholders of the mutual company.

C. Include the requirements for granting membership interest to persons who become policyholders of the converted company subsequent to the effective date of the conversion.

D. Include information sufficient to demonstrate that the financial condition of the converted company will not be diminished by the plan of MHC conversion.

E. Include a description of any current proposal to issue shares of the converted company or an intermediate holding company to the public or to other persons or entities who are not direct or indirect subsidiaries of the mutual holding company.

F. Include the identity of each of the proposed directors and officers of the mutual holding company and each intermediate holding company, if any, together with such biographical information the Commission may require.

G. Include such other information as the Commission considers appropriate for inclusion in the plan of MHC conversion.

§ 38.2-1005.1:5. Adoption and approval of plan of MHC conversion.

A. The board of directors of a mutual company may adopt a plan of MHC conversion that is consistent with the provisions of § 38.2-1005.1:4 by the affirmative vote of not less than two-thirds of the members of the board. At any time before approval of the plan by the mutual company's eligible members, the board of directors, by affirmative vote of not less than two-thirds of its members, may amend or withdraw the plan.

B. After a plan of MHC conversion has been adopted by the board of directors, the plan and all

amendments subsequently adopted shall be filed with the Commission for review and approval. In addition to the plan and supporting documents, the filing shall include (i) the form of notice to eligible members required by subdivision E 1 of this section, (ii) the form of any proxy to be solicited from eligible members together with all material to be distributed in connection with such solicitation, (iii) the proposed articles of incorporation and bylaws of the mutual holding company and each intermediate holding company, if any, and (iv) the revised articles of incorporation and bylaws of the converted company.

C. Upon receipt of the plan and other documents specified in subsection B of this section, the Commission shall conduct a review of the plan. The Commission shall approve the plan if it determines that the provisions of this article have been complied with and that the plan is fair and equitable as regards the interests of the members of the mutual company. The Commission may in its discretion order a public hearing for the purpose of determining whether the plan complies with the conditions listed in the preceding sentence. The Commission may retain, at the mutual company's expense, any qualified expert not a member of its staff to assist in its review of the plan.

D. The Commission may condition approval of the plan upon such conditions, stipulations or provisions as it determines are reasonably necessary to protect policyholder interests of the converted company, including, but not limited to:

1. Its prior approval of:

- a. Any acquisition or formation of affiliate entities of the mutual holding company;
- b. The capital structure of any intermediate holding company or any subsequent change thereto;
- c. Any initial public offering or other issuance of equity or debt securities of an intermediate holding company or the converted company by private sale or public offering; and
- d. Expansion of the activities of the mutual holding company into lines of business, industries or operations not identified or apparent at the time of approval of the plan.

2. Limitations on:

- a. Dividends and distributions, in addition to those otherwise provided by law, if their effect would be to reduce the capital and surplus of the converted company; and
- b. The pledge, encumbrance or transfer of the stock of the converted company.

E. 1. Upon approval of a plan of MHC conversion by the Commission, the plan shall be submitted to a vote of the eligible members at an annual or special meeting of the members of the mutual company held not less than twenty-five nor more than sixty days from the date notice of the meeting is given. Notice of the members' meeting to act on the plan shall be given to each eligible member at the member's address as shown on the company's records not later than forty-five days following the date of the Commission's approval of the plan. The notice shall identify in reasonable detail the benefits and risks of the plan of MHC conversion and shall be accompanied by a copy of the plan or, if authorized by the Commission, a summary thereof; provided, however, that if a summary of the plan is sent with the notice, members shall be advised that a complete copy of the plan will be available without charge upon request. The notice shall state that the Commission has approved the plan but that such approval does not constitute a recommendation that members vote to adopt the plan.

2. Approval of the plan shall be by the affirmative vote of more than two-thirds of the votes cast by eligible members at a meeting at which a quorum is present. Eligible members may vote in person or by proxy. The number of votes an eligible member may cast shall be determined by the bylaws of the mutual company. If the bylaws contain no such provisions, each eligible member shall be entitled to cast one vote.

3. Upon approval of the plan by the eligible members of the mutual company, the articles of incorporation of the mutual holding company, any intermediate holding company, and the converted company shall be adopted and filed with the Commission. In addition, the converted company shall file with the Commission a copy of the minutes of the meeting at which the members approved the plan together with a copy of the bylaws of the mutual holding company, any intermediate holding company, and the converted company. The plan of MHC conversion shall become effective on the date that all of the provisions of this section have been complied with and the new and revised articles of incorporation have been filed and admitted to record in the office of the clerk of the Commission in the manner provided by Chapter 9 (§ 13.1-601 et seq.) of Title 13.1.

§ 38.2-1005.1.6. Corporate existence.

A. Upon conversion of a mutual company to a converted company in accordance with the provisions of this article, the corporate existence of the mutual company shall be continued in the converted company with the original date of incorporation of the mutual company. All rights, franchises and interests of the mutual company in and to any type of property, real, personal, mixed, tangible or intangible, held immediately prior to the effective date of the conversion shall be deemed transferred to and vested in the converted company without further act or deed. Simultaneously, the converted company shall be deemed to have assumed all obligations and liabilities of the mutual company that existed immediately prior to the conversion.

B. Unless otherwise provided in the plan of MHC conversion, the directors and officers of the mutual company shall serve as the directors and officers of the converted company until new directors

and officers of the converted company are elected in accordance with the articles of incorporation and bylaws of the converted company.

§ 38.2-1005.1:7. Regulation and authority of a mutual holding company.

A. A mutual holding company organized under Title 13.1 (§ 13.1-1 et seq.) pursuant to the authority granted by this article shall have all of the powers granted to a domestic mutual insurance company licensed under Chapter 10 (§ 38.2-1000 et seq.) of this title and shall be subject to the same limitations and restrictions imposed on insurance holding companies by Article 5 (§ 38.2-1322 et seq.) and Article 6 (§ 38.2-1335 et seq.) of Chapter 13 of this title as well as all requirements and provisions of the laws of this Commonwealth that are not inconsistent with the provisions of this article except that a mutual holding company shall not have authority to transact insurance pursuant to this title.

B. Neither the mutual holding company nor any intermediate holding company shall issue or reinsure policies of insurance.

C. A mutual holding company may enter into an affiliation agreement or merger agreement either at the time of the conversion, or at some later time with the approval of the Commission, with any mutual insurance company licensed to transact insurance in this Commonwealth or another mutual holding company. Any such merger agreement may authorize members of the mutual insurance company or other mutual holding company to become members of the mutual holding company. Any such affiliation or merger agreement shall be subject to the provisions of this title relating to transactions entered into by a mutual insurance company organized and licensed under the laws of this Commonwealth.

D. The assets of the mutual holding company shall be held in trust under such arrangements and on such terms as the Commission may approve for the benefit of the policyholders of the converted company. Any residual rights of the MHC in such assets or any of the assets of the MHC determined not to be held in trust shall be subject to a lien in favor of the policyholders of the converted company under such terms as the Commission may approve. Upon conversion of the mutual holding company as provided for in § 38.2-1005.1:9, such assets shall be released from trust in accordance with the plan of conversion approved by the Commission.

§ 38.2-1005.1:8. Diversion of business to affiliates.

Without prior approval of the Commission, neither the converted company nor any person affiliated with or controlling the converted company shall divert business from the converted company to any insurance company affiliated with the converted company if the purpose or effect of such diversion would be to reduce significantly the number of members of the mutual holding company.

§ 38.2-1005.1:9. Conversion of mutual holding company.

A mutual holding company may reorganize as a stock holding company by complying with the applicable provisions of § 38.2-1005.1. For the purposes of effecting such conversion, the mutual holding company shall be deemed a mutual insurer and the converted mutual holding company shall be deemed a stock insurer. Notwithstanding any provision of § 38.1-1005.1 to the contrary, the Commission shall approve the reorganization of the mutual holding company as a stock holding company if the Commission determines that the provisions of applicable law have been complied with and that the reorganization is fair and equitable as regards the interests of the members of the mutual holding company. The Commission may in its discretion order a public hearing for the purpose of determining whether the reorganization complies with such conditions.

§ 38.2-1005.1:10. Conflicts of interest.

No director, officer, agent or employee of a mutual company or other person shall receive any fee, commission or other valuable consideration, other than such person's regular salary or compensation, for in any manner aiding, promoting, arranging, or assisting in a conversion except as set forth in the plan of MHC conversion approved by the Commission. This provision shall not prohibit the payment of reasonable fees and compensation to attorneys, accountants or actuaries for services performed in the independent practice of their professions notwithstanding the fact that such attorney, accountant or actuary is a director of the mutual company.

§ 38.2-1005.1:11. Costs and expenses.

All costs and expenses incurred in connection with a plan of MHC conversion shall be paid either by the mutual company or the converted company.

§ 38.2-1005.1:12. Failure to give notice.

If a mutual company complies substantially and in good faith with the notice requirements in this article, its failure to give any member a required notice shall not impair the validity of any action taken under this article.

§ 38.2-1005.1:13. Limitation on actions.

Any action challenging the validity of or arising out of any act taken or proposed to be taken under this article shall be commenced within thirty days after the date the plan of MHC conversion becomes effective.