# WEST VIRGINIA CODE CHAPTER 33 ARTICLE 27A

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## §33-27A-1. Short Title.

This article may be cited as the “West Virginia Mutual to Mutual Insurance Holding Company Act.”

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## §33-27A-2. Definitions.

As used in this article:

“Intermediate holding company” means a stock corporation that owns all of the shares of voting stock of one or more recognized stock companies after a reorganization pursuant to this article. “Intermediate holding company” also means a stock company that is the parent or subsidiary of another intermediate holding company.

“Mutual insurance company” means a domestic or foreign mutual Insurance company. “Mutual insurance holding company” means a domestic mutual insurance holding company incorporated pursuant to a reorganization plan adopted pursuant to this article, which company is the parent company of a reorganized stock company or of an intermediate holding company.

“Policyholder” means the person, group of persons, association, corporation, partnership, member or other entity named as the insured under a mutual policy of insurance.

“Reorganization plan” means a reorganization plan adopted by a mutual insurance company’s board of directors in accordance with the provisions of this article.

“Reorganized stock company” means the domestic or foreign stock insurance company resulting from a domestic or foreign mutual insurance company’s reorganization under this article.

“Voting Stock” means securities of any class or any ownership interests having voting power for the election of directors, trustees, or management of a person, other than securities having voting power only as a result of the occurrence of a contingency.

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**§33-27A-3. Conversion of mutual insurance company into stock company that is majority owned subsidiary of mutual insurance holding company.**

(a) A mutual insurance company, by itself or together with one or more mutual insurance companies acting pursuant to a joint reorganization plan, may reorganize in accordance with the requirements of this article, notwithstanding other provisions of this chapter or the provisions of §23-2C-3 of this code.

(b) (1) Such a reorganization plan may only be adopted by the affirmative vote of not less than two-thirds of the mutual insurance company's board of directors.

(2) At any time prior to the mailing of the notice to policyholders required pursuant to §33-27A-4 of this code, a mutual insurance company's board of directors may amend the reorganization plan by affirmative vote of not less than two-thirds of the board of directors. At any time before a reorganization plan has received approval of the Insurance Commissioner, a mutual insurance company's board of directors may withdraw the reorganization plan by the affirmative vote of not less than two-thirds of the board of directors.

(c) A reorganization plan shall provide for the incorporation of a mutual insurance holding company, and shall provide for the continuation of the corporate existence of the mutual insurance company as a stock insurance company.

(d) A reorganization plan shall provide that all of the initial shares of voting stock of a reorganized stock company shall be issued to its parent mutual insurance holding company or to an intermediate holding company. Nothing in this article shall be construed as limiting or restricting the authority of a reorganized stock company or of an intermediate holding company to issue securities other than voting stock.

(e) A reorganization plan shall provide that the membership interests of the policyholders of a mutual insurance company shall become membership interests in the mutual insurance holding company, and that concurrently the policyholder's membership interests in the mutual insurance company shall be extinguished.

(f) A reorganization plan shall provide that the policyholders of the reorganized stock company shall become members of the mutual insurance holding company in accordance with the articles of the incorporation and of the mutual holding company.

(g) A reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the voting stock of the reorganized stock company. Alternatively, a reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the voting stock of an intermediate holding company, which intermediate holding companies shall at all times own all of the voting stock of the reorganized stock company. The shares of voting stock required to be owned by the mutual insurance holding company, and by the intermediate holding company, if any, shall not be

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pledged, hypothecated, or in any way incumbered with regard to any obligation, guarantee or commitment undertaken by or on behalf of the mutual insurance holding company, or the intermediate holding company, if any.

(h) The board of directors of a mutual insurance company shall file all of the following with the Insurance Commissioner within 90 days after adopting a reorganization plan:

(1) The reorganization plan;

(2) The forms of notices to be provided to policyholders;

(3) The form of proxy, if any, to be solicited from policyholders;

(4) The proposed articles of incorporation for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company. The articles of incorporation shall be signed by the chairperson of the board, the president or vice-president, and by the secretary or an assistant secretary of the mutual insurance company.

(5) Such other documents or information as may be required by the Insurance Commissioner.

(i) Nothing in this article shall limit or restrict an intermediate holding company's authority to form or acquire the control of other corporations, whether domestic or foreign, profit or nonprofit.

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## §33-27A-4. Voting rights of mutual policyholders regarding reorganization; notice of public hearing.

(a) A reorganization plan adopted by a mutual insurance company's board of directors shall be voted upon by the mutual insurance company's policyholders at a policyholders meeting. A policyholder is entitled to cast only one vote, in person or by proxy, on the reorganization plan regardless of the number of policies or contracts that the policyholder may own or hold. Only proxies specifically related to the reorganization plan shall be used in determining whether the reorganization plan is approved.

(b) All policyholders shall be given notice of the policyholders meeting to vote upon the reorganization plan at least 30 days prior to the date fixed for the policyholder's meeting. Notice of the time and place of such meeting shall be sent by mail to each policyholder at the policyholder's post office address as it appears on the books and records of the company. The notice shall include a summary of the reorganization plan adopted by the board of directors, including an analysis of the material financial aspects and potential for dissolution of the policyholder's interests in the mutual insurance company under the reorganization plan, a uniform ballot for voting on the question of the reorganization plan, and a statement informing the policyholders that the Insurance Commissioner may fix a time and place for a public hearing on the reorganization plan, to be held within 30 days after the Insurance Commissioner's receipt of written notice from the of the policyholders approval of the reorganization plan.

(c) A reorganization plan shall be approved upon receiving the affirmative vote of at least a majority of the votes cast by policyholders.

(d) If a reorganization plan is approved at the policyholder's meeting:

(1) The board of directors of the mutual insurance company shall provide the Insurance Commissioner with written notice of that approval within 10 days after the policyholder's meeting.

(2) The Insurance Commissioner may within 10 days after receiving notice from the board of directors, provide written notice to the mutual insurance company of the commissioner's intent to conduct one or more public hearings on the reorganization plan. At a minimum, the Insurance Commissioner's notice to the mutual insurance company shall include a time and a place for the first public hearing which shall be held within 30 days after the commissioner's receipt from the board of directors.

(3) Within 10 days after the mutual insurance company's receipt of a notice from the Insurance Commissioner of his or her intent to conduct one or more public hearings on the reorganization plan, if such notice is provided, the mutual insurance company shall provide notice of the time and place of such hearing by causing this information to be published once each week for two consecutive weeks in a newspaper with statewide circulation and in the county of the state in which the mutual insurance company has its principle office.

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(e) The proposed articles of incorporation for the mutual insurance holding company and a reorganized stock company and if applicable, for the intermediate holding company, as filed with the Insurance Commissioner, shall also be voted on by the mutual insurance company's policyholders at the policyholder meeting held pursuant to this section. The articles of incorporation shall be adopted upon receiving the affirmative vote of at least a majority of those casts by policyholders.

(f) At all public hearings conducted by the Insurance Commissioner pursuant to this article, the commissioner may summon and compel attendance and testimony of witnesses and the production of books and papers. The Insurance Commissioner shall hear the testimony of the person that is claiming to be adversely affected by the reorganization plan, and of others wishing to comment on the reorganization plan. Such persons may present a position and offer comments concerning the reorganization plan, including a position and comments concerning whether the reorganization plan is fair and equitable to the mutual insurance company policyholders and whether it complies with the provisions of this article.

(g) A mutual insurance company's failure to provide a member or members with notice required by this section shall not impair the validity of any action taken under this article, if the mutual insurance company has complied substantially and in good faith with all those requirements. The determination as to such compliance shall be made by the Insurance Commissioner.

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**§33-27A-5. Review of plan by Insurance Commissioner; filing requirements.**

(a) A mutual insurance company shall not proceed with a reorganization plan approved by the mutual insurance company's policyholders until the reorganization plan has been reviewed by and has received the approval of the Insurance Commissioner and the articles of incorporation for the mutual insurance holding company and reorganized stock company, if any, for an intermediate holding company, have also been examined and approved by the Insurance Commissioner.

(b) The Insurance Commissioner shall approve a reorganization plan if upon review, he or she finds all of the following:

(1) The adoption, approval and contents of the reorganization plan comply with the provisions of this article,

(2) The mutual insurance company has properly filed all documents, forms, and other information required by this article;

(3) The reorganization plan is fair and equitable to the mutual insurance company's policyholders.

(c) The Insurance Commissioner may retain qualified experts, at the mutual insurance company's expense, to assist in reviewing the reorganization plan.

(d) The Insurance Commissioner shall approve or reject the reorganization plan not later than 60 days after the latter of the approval of the reorganization plan by the mutual insurance company's policyholders or the completion of public hearings held in accordance with this article. The Insurance Commissioner may extend this time period by an additional 60 days by providing written agreement to the mutual insurance company.

(e) Upon deciding to approve or reject a reorganization plan, the Insurance Commissioner shall notify the mutual insurance company of the decision by regular mail. If the Insurance Commissioner rejects a reorganization plan, the commissioner's notice shall detail the reasons for the rejection.

(f) A mutual insurance company shall file the following documents with the Insurance Commissioner within 30 days after receiving notice from the commissioner of his or her approval of a reorganization plan:

(1) The minutes of the policyholders meeting at which the reorganization plan was approved;

(2) The articles of incorporation for the mutual insurance holding company and the reorganized stock company, and if applicable, for an intermediate holding company, as adopted by the mutual insurance company's policyholders under this article.

(g) Upon obtaining the approval of the Insurance Commissioner, the mutual insurance

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company's board of directors shall file the following with the Secretary of State:

(1) A Certificate of Reorganization, signed by the chairperson of the board, the president or a vice-president, and a secretary or an assistant secretary of the mutual insurance company. The articles of incorporation for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company as adopted by the mutual insurance company's policyholders pursuant to this article, shall accompany the Certificate of Reorganization.

(2) A statement signed by the chairperson of the board, the president or a vice-president, and the secretary and an assistant secretary, of the mutual insurance company, of the manner of the adoption of the articles of the incorporation for the mutual insurance holding company and the reorganized stock company, and, if factual, for an intermediate holding company;

(3) Copies of the approval obtained from the Insurance Commissioner under this article.

(4) Reorganization plan shall be effective upon the filing of all of the documents and statements required above or at such later date as the Certificate of Reorganization may provide.

(5) After a reorganization plan takes effect, the Insurance Commissioner shall have jurisdiction over the mutual insurance holding company, and if applicable, over an intermediate holding company, in order to ensure that the interests of the mutual insurance company's policyholders are protected.

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## §33-27A-6. Amending articles of incorporation of mutual holding company.

Proposed amendments to the articles of incorporation of a mutual insurance holding company may be adopted at any members' meeting. The board of directors of a mutual insurance holding company shall provide notice of any members meeting conducting a vote on the adoption of the amendment to the articles of incorporation by publication in a newspaper of general circulation, published in the county where the company's principle place of business is located, at least 30 days prior to the members meeting. Where the amendment is not inconsistent with the Constitution and laws of the State of West Virginia and of the United States, the amendment may be adopted by the affirmative vote of at least three-fifths of the members present and voting at the meeting.

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## §33-27A-7. Corporate existence of mutual company continue in recognized stock company.

(a) Upon a reorganization plan taking effect in accordance with this article, the corporate existence of the mutual insurance company shall continue in the reorganized stock company. On the effective date of the reorganization, all of the assets, rights, franchises and interests of the mutual insurance company in and to every species of property whether real, personal, or mixed and in any accompanying causes of action shall be vested in the reorganized stock company without any deed or transfer, and a reorganized stock company shall assume all of the obligations and liabilities of the mutual insurance company.

(b) Unless otherwise specified in a reorganization plan, those persons who are the directors and officers of a mutual insurance company on the effective date of the reorganization shall serve as the directors and officers of the reorganized stock company until new directors and officers are elected pursuant to the recognized stock company's articles of incorporation.

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## §33-27A-8. Payment of costs and expenses of reorganization.

All costs and expenses for the process of a reorganization under this article shall be paid for or reimbursed by the mutual insurance company, the reorganized stock company, or an intermediate holding company.

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## §33-27A-9. Reorganization of mutual company.

(a) A mutual insurance company may reorganize by merging its policyholders members' interests into a domestic or foreign mutual insurance holding company and continuing the corporate existence of the mutual insurance company as a reorganized stock company. A mutual company reorganizing under this article shall comply with all applicable laws of this state and of foreign jurisdictions, to affect the reorganization.

(b) A domestic or foreign mutual insurance holding company may reorganize by merging or consolidating its membership interests into another domestic or foreign mutual insurance holding company. A domestic or foreign mutual insurance holding company reorganizing under this subdivision shall comply with all applicable provisions of this article and all applicable laws of foreign jurisdictions, to affect the reorganization.

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## §33-27A-10. Membership interest in mutual company.

A membership interest in a mutual insurance holding company is not a security under the laws of this state. No member of a mutual insurance holding company may transfer membership in the mutual insurance holding company or any right arising from membership.

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## §33-27A-11. Applicability of other laws.

(a) The provisions of §33-5-24 of this code shall apply to a mutual insurance holding company as if the mutual insurance holding company were a domestic mutual insurance company. The members of the mutual insurance holding company are deemed to be members of a domestic mutual insurance company for all purposes of all such sections.

(b) For a period of five years following the effective date of a reorganization under this article, no person shall acquire control of a reorganized stock company without compliance with the provisions of §33-27-1 *et seq.* of this code. For purposes of this subdivision, "control" has the same meaning as set out in §33-27-2 of this code, except that control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 5 percent or more of the voting securities of any other person.

(c) An intermediate holding company or if there is no such company, a reorganized stock company shall not issue shares of stock, in addition to the shares issued pursuant to the reorganization plan under which the company was formed, without the prior approval of the mutual insurance holding company as its majority shareholder. The prior approval of the mutual insurance holding company must be evidenced by a resolution of the board of directors of the mutual insurance holding company delivered to the board of directors in the intermediate holding company or the reorganized stock company prior to the issuance of the additional shares.

(d) A mutual insurance holding company, and an intermediate holding company, if any, are deemed to be insurers subject to the provisions of this chapter.

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## §33-27A-12. Holding company treated as insurer.

(a) A mutual insurance holding company, and, if applicable, its intermediate holding company, are deemed to be insurers subject to the provisions of §33-10-1 *et seq.* of this code. A mutual insurance holding company and the intermediate holding company accordingly are deemed to be parties to any proceeding under such article involving an insurance company of the subsidiary of the mutual insurance holding company or of the intermediate holding company as a result of a reorganization under this article.

(b) In any proceeding under §33-10-1 *et seq.* of this code involving a reorganized stock company, the assets of the mutual insurance holding company, and if applicable, its intermediate holding company, are deemed to be assets of the reorganization stock company for purposes of satisfying claims of the policyholders of the reorganized stock company.

(c) A mutual insurance holding company, and, if applicable, its intermediate holding company, shall not be dissolved or liquidated without compliance with the provisions of §33-10-1 *et seq.* of this code. Such companies are deemed to be domestic insurance companies for purposes of a dissolution or liquidation.

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## §33-27A-13. Actions challenging reorganization.

Any action challenging the validity of, or arising out of, actions taken or proposed to be taken in connection with a reorganization under this article shall be commenced no later than 30 days after the effective date of the reorganization.

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## §33-27A-14. Powers of Insurance Commissioner.

The West Virginia Insurance Commissioner may adopt rules as he or she deems necessary to carry out the purposes of this article.

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