WEST VIRGINIA CODE: §33-31-19

§33-31-19. Conversion to or merger with reciprocal insurer.

(a) An association captive insurance company, risk retention group, or industrial insured captive insurance company formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefore and the provisions of this section.

(b) Any plan for such conversion or merger shall provide a fair and equitable plan for purchasing, retiring or otherwise extinguishing the interests of the stockholders and policyholders of a stock insurer and the members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members or policyholders.

(c) In the case of a conversion authorized under subsection (a) of this section:

(1) Such conversion shall be accomplished under such reasonable plan and procedure as approved by the commissioner. The commissioner may not approve any plan of conversion unless the plan:

(A) Satisfies the provisions of subsection (b) of this section;

(B) Provides for a hearing, of which notice is given or to be given to the captive insurance company, its directors, officers and policyholders, and, in the case of a stock insurer, its stockholders, and in the case of a mutual insurer, its members, all of which persons shall be entitled to attend and appear at such hearing. If notice of a hearing is given and no director, officer, policyholder, member or stockholder requests a hearing, the commissioner may cancel such hearing;

(C) Provides a fair and equitable plan for the conversion of stockholder, member or policyholder interests into subscriber interests in the resulting reciprocal insurer, substantially proportionate to the corresponding interests in the stock or mutual insurer: Provided, That this requirement shall not preclude the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and

(D) Is approved:

(i) In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; and

(ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting thereof at which a quorum is present;

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(2) The commissioner shall approve such plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subdivision (2), subsection (d), section six of this article;

(3) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue such amended certificate of authority to the company's attorney-in-fact;

(4) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective; and

(5) Upon the effectiveness of such conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of such conversion.

(d) A merger authorized under subsection (a) of this section shall be accomplished substantially in accordance with the procedures set forth in sections twenty-five and twenty-eight, article five of this chapter, except that, solely for purposes of such merger:

(1) The plan of merger shall satisfy the provisions of subsection (b) of this section;

(2) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;

(3) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(4) If a subscribers' advisory committee does not have a president or secretary, the officers of such committee having substantially equivalent duties shall be deemed the president or secretary of such committee;

(5) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subdivision (2), subsection (d), section six of this article. If the commissioner approves the articles of merger, the commissioner shall endorse the commissioner's approval thereon and the surviving insurer shall present the same to the Secretary of State at the Secretary of State's office;

(6) Notwithstanding section four of this article, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section: Provided, That there shall be no more than one authorized insurance company surviving such merger; and

(7) An alien insurer may be a party to a merger authorized under subsection (a) of this section: Provided, That the requirements for a merger between a domestic and a foreign

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insurer under section twenty-five, article five of this chapter shall apply to a merger between a domestic and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under section twenty-five, article five of this chapter and such other jurisdictions shall be the equivalent of a state for purposes of section twenty-five, article five of this chapter.

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