

2024 Regular Session

SENATE BILL NO. 289

BY SENATOR STINE

INSURERS. Clarifies with respect to the approval process for the conversion and reorganization of a mutual insurer into a insurance stock company and specifies the expression of the legislature that the intent of the legislature is that these clarifications are procedural and interpretive and apply to all contracts that have not yet been approved by both the insurance commissioner and the mutual members. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 22:237, 237.4(A)(1) and (2), (B)(2) and (3), and (E), and 237.7,
3 and to enact R.S. 22:237.4(A)(6), relative to mutual insurers; to provide with respect
4 to the conversion or reorganization of certain mutual insurers; to provide with
5 respect to the plan of reorganization; to provide with respect to the best interest of
6 the members of the mutual insurer; to provide with respect to the best interest of the
7 policy holders; to provide with respect to the fair and equitable distribution of
8 consideration paid to the members of the mutual insurer; to provide with respect to
9 actuarial reports; to provide with respect to the duties and compensation officers and
10 directors of the mutual insurer; to provide with respect to voting, balloting, and
11 executing proxies by members of the mutual insurer; to provide for legislative intent;
12 to provide for the procedural and interpretive expression of the legislature; to provide
13 for application of legislative expression; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 22:237, 237.4(A)(1) and (2), (B)(2) and (3), and (E), and 237.7 are
16 hereby amended and reenacted and R.S. 22:237.4(A)(6) is hereby enacted to read as follows:

17 §237. Corporate reorganization

1 A. The conversion of a mutual non-life insurer or a mutual non-life insurance
 2 holding company pursuant to R.S. 22:71 and 72 shall also comply with the
 3 provisions of this Subpart. "Mutual non-life insurer" and "mutual non-life insurance
 4 holding company" shall have the meanings as set forth in R.S. 22:237.2.

5 **B. Any conversion or attempted conversion that does not comply with**
 6 **the provision of this Subpart and does not receive the requisite approvals**
 7 **required by the commissioner and by the qualified voters who are members of**
 8 **the mutual insurer in compliance with this Subpart is not enforceable and shall**
 9 **be deemed void.**

10 * * *

11 §237.4. Plan of reorganization

12 A. A reorganizing mutual seeking to reorganize pursuant to the provisions of
 13 this Subpart shall submit a proposed plan of reorganization to the commissioner. The
 14 plan of reorganization shall include **all of** the following:

15 (1) A statement analyzing the benefits and risks attendant to the proposed
 16 reorganization, including the rationale for the reorganization, **and an analysis as to**
 17 **why the reorganization is in the best interest of the mutual members. The**
 18 **ability, or possibility, of the mutual members or policy holders of the**
 19 **reorganizing mutual to obtain insurance from the proposed reorganizing**
 20 **insurer shall not be considered a purported benefit and shall not be included in**
 21 **the statement analyzing the benefits.**

22 (2) A statement indicating how the reorganization will protect the immediate
 23 and long-term interests, and serve the best interests of policyholders **and mutual**
 24 **members.**

25 * * *

26 **(6) A summary statement of the copy of the actuarial report that is**
 27 **required pursuant to R.S. 22:237.5 and that is based upon the actuarial analysis**
 28 **that reflects the opinion of the independent actuary that there is a need**
 29 **sufficient to convert the reorganized mutual insurer into the proposed**

1 **reorganized company.**

2 B. The plan of reorganization shall:

3 * * *

4 (2) Require the distribution of consideration, in a fair and equitable manner,
5 to all eligible members upon extinguishment of the membership interests, **with all**
6 **consideration being paid solely to the members of the reorganizing mutual.**

7 (3) Specify the manner in which the aggregate value of the consideration
8 shall be determined and the method by which the consideration shall be allocated
9 among eligible members, **with all consideration being paid solely to the members**
10 **of the reorganizing mutual.**

11 * * *

12 E. ~~All information, documents, and copies thereof obtained by or disclosed~~
13 ~~to the commissioner, the Department of Insurance, or its designated representative~~
14 ~~in the course of an examination of a proposed plan of reorganization shall be treated~~
15 ~~in accordance with R.S. 22:706~~ **Except as provided in R.S. 22:237.9, a director or**
16 **officer of the mutual insurer shall be prohibited from receiving any**
17 **compensation or other valuable consideration unless that same valuable**
18 **consideration is received by any other mutual member as a result of a**
19 **demutualization conducted pursuant to this Subpart. The prohibition, as it**
20 **relates to restrictions on the directors and the officers compensation, shall apply**
21 **whether the compensation is derived from the proposed reorganizing insurer**
22 **or from any third-party who stands to benefit from the demutualization,**
23 **regardless of whether such third-party is a natural person or a juridical person**
24 **that is organized as a for-profit or not-for-profit corporation, limited liability**
25 **company, trust, partnership, or other entity.**

26 * * *

27 §237.7. Approval by qualified voters

28 A. **(1)** The plan of reorganization shall be approved at a meeting convened for
29 that purpose by a vote of not less than two-thirds of the qualified voters of the

1 reorganizing mutual entitled to vote on matters and present or represented by special
2 ballot or special proxy.

3 (2)(a) The written form, contents, and method of collection of special
4 ballots and special proxies shall be approved by the commissioner prior to being
5 sent to the qualified voters of the reorganizing mutual and, once approved by
6 the commissioner, shall be posted on the website of the reorganizing mutual.

7 (b) No special ballot or special proxy shall be considered valid for
8 purpose of this Subpart, unless it is executed in writing by the voter subsequent
9 to the approvals required by the commissioner in Subparagraph (a) of this
10 Paragraph.

11 (c) No special proxy may be given verbally or over the phone and be
12 counted in the required vote total unless such approval is confirmed in writing
13 in compliance with Subsection D and E of this Section.

14 B.(1) The meeting of qualified voters to consider the plan of reorganization
15 shall occur after the public hearing before the commissioner, ~~and the~~

16 (2) The closing of the administrative record shall take place after the public
17 hearing conducted by the commissioner and shall not occur until such time as it
18 includes certification by the reorganizing mutual to the commissioner of the vote on
19 the plan of reorganization by the qualified voters of the reorganizing mutual.

20 C. All qualified voters shall be given notice of their opportunity to vote on
21 the plan of reorganization, which notice shall include a copy of the plan of
22 reorganization or a summary thereof and which shall be in a form that the
23 commissioner has determined is adequate, and, therefore, truthful and contains
24 all material facts without any misleading statements and does not omit any
25 material facts, and ~~may~~ shall be provided to qualified voters. The notice may be
26 combined with notice of the public hearing. The notice shall be mailed, or provided
27 by some other method or methods as may be approved by the commissioner, not less
28 than thirty days before the date of the meeting of qualified voters to vote on the plan
29 of reorganization. If the reorganizing mutual complies substantially and in good faith

1 with the notice requirements of this Section, the failure of any person to actually
2 receive any required notice will not impair the validity of any action taken under this
3 Subpart.

4 D. A quorum for the meeting of qualified voters to consider the plan of
5 reorganization shall consist of the qualified voters present or represented by special
6 ballot or special proxy. **If a voter is represented by a special proxy, the written**
7 **proxy shall meet the requirements of Subsection E of this Section.**

8 E.**(1)** Voting, ballot, and **special** proxy submission may take place
9 electronically or telephonically consistent with the requirements of the Louisiana
10 Uniform Electronic Transactions Act, R.S. 9:2601 et seq.; **however, no voting,**
11 **balloting, or special proxy that is taken verbally or telephonically may be**
12 **counted or considered valid unless it is reduced to writing prior to being**
13 **counted for purposes of this Subpart.**

14 **(2) A written vote, ballot, or special proxy may be submitted by the**
15 **qualified voter to the mutual insurer by one of the following methods:**

16 **(a) By United States mail or other delivery courier to the address**
17 **provided by the mutual insurer.**

18 **(b) In person at the offices of the mutual insurer or at a place designated**
19 **by the mutual insurer and approved by the commissioner.**

20 **(c) By electronic mail that is sent by the qualified voter from the email**
21 **address that is on file with the mutual members membership file.**

22 Section 2. It is the intent of the Legislature of Louisiana that Act No. 234 of the 2009
23 Regular Session, as amended, does all of the following:

24 (A) Enacts provisions of law for the purposes of protecting the financial interests and
25 the membership interests of the mutual members who are the qualified voters of the mutual
26 insurer and whose premium dollars funded the mutual insurer's reserve fund and created the
27 solvency and financial stability of the mutual insurer by which the mutual insurer became
28 financially attractive and, therefore, incentivized the purchase, conversion, or reorganization
29 into a reorganized insurance holding company or a reorganized insurer.

1 (B) Requires that the requisite approval of the commissioner of the Department of
2 Insurance and the requisite approval of the mutual members who are the qualified voters of
3 the mutual insurer are suspensive conditions, pursuant to Civil Code Article 1767, to any
4 obligation or contract executed by and between any mutual insurer and any reorganized
5 insurance holding company or a reorganized insurer for the purpose of seeking to reorganize
6 pursuant to R.S. 22:237 et seq.; therefore any provision in any said obligation or contract that
7 contains a penalty provision or a liquidated damages provision are unenforceable unless and
8 until the requisite approvals are obtained because to do otherwise would divest the mutual
9 members of their very financial interest that the legislature sought to protect by enacting Act
10 No. 234 and would interfere and hinder the commissioner of the Department of Insurance's
11 duty to regulate fairly and justly the mutual insurers for the benefit of the policy holders and
12 all other interested parties.

13 Section 3. It is the express intent of the Legislature of Louisiana that the provisions
14 of Civil Code Article 6 be applied to this Act as procedural and interpretative and that the
15 law apply both prospectively and retroactively to all conversions or reorganization plans
16 submitted after 2009 pursuant to Act No. 234 of the 2009 Regular Session, as amended, with
17 respect to all plans of reorganization that have not yet been approved by both the
18 commissioner of the Department of Insurance and the mutual members who are the qualified
19 voters of the mutual insurer.

20 Section 4. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

SB 289 Original DIGEST 2024 Regular Session Stine

Present law creates a process by which domestic mutual non-life insurers and mutual insurance holding companies may reorganize into a stock insurance companies that may be or become a subsidiary of a parent corporation or a stock insurance holding company.

Present law requires that a reorganizing mutual insurer submit a plan of reorganization to the commissioner of insurance that must include the following:

- (1) A statement of benefits and risks.
- (2) A statement detailing the protection of immediate and long-term interests of policyholders.
- (3) Copies of the articles of incorporation.
- (4) Information as to the financial condition of any reorganized insurer.
- (5) A description of any plans for the initial sale of stock.

Proposed law retains present law and clarifies that the ability, or possibility, of the mutual members or policy holders of the mutual insurer to obtain insurance from the new stock insurance company is not to be considered a benefit for purposes of the statement analyzing the purported benefits.

Present law requires that the proposed plan of reorganization includes an analysis of the independent actuary that the plan of reorganization is actuarially sound.

Proposed law retains present law and requires that the report of the analysis of the independent actuary be submitted to the insurance commissioner with the plan of reorganization.

Present law mandates that the plan of reorganization be adopted by at least two-thirds of the members of the board of directors of the reorganizing mutual insurer prior to the plan's submission to the commissioner of insurance. Prohibits compensating any director, officer, agent, or employee of the reorganized mutual insurer other than the usual regular salary and customary compensation.

Proposed law retains present law and clarifies that, except for the usual regular salary or compensation that directors or officers receive from the new stock insurance company if the conversion takes place, the directors or officers of the mutual insurer are prohibited from receiving a thing of economic value that will not be received by any other mutual member as a result of the conversion of the mutual insurer into the new stock insurance company. Prohibits the directors or officers of the mutual insurer receiving a prohibited thing of economic value, regardless if the thing of economic value is derived from the new company or from a third-party who stands to benefit from the proposed conversion and regardless of whether the third-party is a natural person or a for-profit or not-for-profit corporation or a limited liability company, partnership, trust, or other entity.

Present law requires that the commissioner of insurance hold a public hearing to hear evidence on whether the plan of reorganization properly protects the interests of the policyholders, serves the best interests of policyholders and members, and is fair and equitable to policyholders. Requires that within 30 days of the public hearing, the commissioner issue a final order or decision approving the plan of reorganization, subject to a two-thirds vote of the members of the mutual insurer.

Present law requires that, after the public hearing before the commissioner, the plan of reorganization be approved by a vote of not less than two-thirds of the qualified voters of the reorganizing mutual insurer. Provides that such vote shall occur at a meeting of the qualified members of the mutual insurer and that all qualified voters be given notice of their opportunity to vote on the plan of reorganization and notice of the public hearing not less than 30 days before the date of the meeting. Provides for telephone and email voting, balloting, and proxy submissions.

Proposed law retains present law and provides that no verbal telephone voting, balloting, or proxy submissions may be counted or considered valid unless it is reduced to writing prior to being counted for purposes of the approval by the mutual insurer's membership. The written proxy may be submitted by the qualified voter to the mutual insurer in one of the following methods:

- (1) By United States mail or other delivery courier.
- (2) In person at the offices of the mutual insurer or at a place designated by the mutual insurer and approved by the commissioner.
- (3) By email that is sent by the qualified voter.

Proposed law provides that it is the intent of the legislature in enacting Act 234 of 2009 of the legislature that created the process by which a mutual insurer may be reorganized into stock insurance company was done because of the legislature's intent to do all of the following:

- (1) Safeguards financial interests and voting rights of the mutual members whose premium dollars funded the mutual insurer's reserve fund and created the solvency and financial stability of the mutual insurer that made the mutual insurer financially attractive and incentivized the purchase, conversion, or reorganization into stock insurance company.
- (2) Clarifies that the required approval of the insurance commissioner and the required approval of the mutual members (qualified voters) are suspensive conditions, pursuant to present law, that must be fulfilled in order to create a valid contract between any mutual insurer and a proposed reorganizing stock insurance company pursuant to present law. Clarifies that any contract that contains a penalty provision or a liquidated damages clause is contingent upon and does not become effective until after the commissioner and the mutual members have both approved the plan of reorganization because to do otherwise would divest the mutual members of their very financial interest that the legislature sought to protect by enacting 2009 Act and would otherwise interfere and hinder the insurance commissioner's fair and just regulation of the mutual insurers for the benefit of the policy holders and all other interested parties.

Present law provides that the legislature may expressly declare its intent that the laws enacted by the legislature are procedural and interpretative in nature and that they are meant to apply both prospectively and retroactively.

Proposed law retains present law and provides that legislature may expressly intend to apply the provisions of proposed law as procedural and interpretative and that the law is intended to apply both prospectively and retroactively to all conversions or reorganization plans submitted after 2009, with respect to all plans of reorganization that have not yet been approved by both the commissioner of insurance and by the mutual members who are the qualified voters of the mutual insurer.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:237, 237.4(A)(1) and (2), and (B)(2) and (3), and (E), and 237.7); adds R.S. 22:237.4(A)(6))