

40-4003a. Plan of conversion; terms and conditions. The plan of conversion shall comply with the terms and conditions set forth in subsection (a), (b), (c) or (d) as follows:

(a) Plan of conversion in which policyholders exchange their membership interests for cash, securities, policy credits, dividends, subscription rights or other consideration, or some combination thereof. A mutual insurer seeking to convert pursuant to this subsection may do so by:

(1) Filing a plan of conversion containing:

(A) A description of the structure, forms and allocation of the proposed consideration to the policyholders, the projected range of the number of shares of capital stock, if any, to be issued by the new stock insurer or parent company of the new stock insurer, or any other company, and such other proposed conditions and provisions as determined by the mutual insurer not to be inconsistent with this act. As used in this act, "parent company" means any company which on or after the effective date of the conversion owns, directly or indirectly, 51% or more of the capital stock of the new stock insurer;

(B) a description of any amendments to the insurer's articles of incorporation;

(C) provisions establishing the method by which the initial board of directors of the stock insurer will be selected; and

(D) any other additional information as the commissioner of insurance may reasonably request.

(2) providing consideration to the policyholders entitled thereto in the form of cash, stock, policy credits, dividends, subscription rights, a combination thereof or such other valuable consideration as the commissioner may approve. With the approval of the commissioner, such consideration may be paid into a trust or other account or entity existing for the benefit of policyholders, which is established by the company for the purpose of effecting the conversion.

(b) Plan of conversion in which policyholders exchange their membership interests solely for subscription rights. A mutual insurer seeking to convert to a stock insurer pursuant to this subsection may do so by:

(1) Filing a plan of conversion containing:

(A) A provision that each policyholder is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company and that, in the aggregate, all policyholders shall have the right, prior to the right of any other party, to purchase 100% of the capital stock of the converted company. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

(i) A corporation organized for the purpose of purchasing and holding the stock of the converted stock company;

(ii) a stock insurance company owned by the mutual company into which the mutual company will be merged; or

(iii) an unaffiliated stock insurance company or other corporation that will purchase the stock of the converted stock company;

(B) a provision that the subscription rights shall be allocated in whole shares among the policyholders using a fair and equitable formula. This formula may, but need not, take into account how the different classes of policies of the policyholders contributed to the surplus of the mutual company or any other factors that may be fair and equitable;

(C) a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by policyholders exercising subscription rights received under this section;

(D) at the option of the converting company, a provision that any shares of capital stock not subscribed to by policyholders exercising subscription rights received under this section may be sold in a public offering or through a private placement or other alternative method approved by the commissioner that is fair and equitable to policyholders. The offering to others of shares not purchased by policyholders exercising such subscription rights shall be at a price not less than the offering price to such policyholders;

(E) a provision which sets the total price of the capital stock equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by one or more qualified experts. This pro forma market value may be the value that is estimated to be necessary to attract full subscription for the shares, as indicated by the independent evaluation and may be stated as a range of pro forma market value;

(F) a provision which sets the purchase price per share of capital stock equal to any reasonable amount;

(G) a provision that any person or group of persons acting in concert shall not acquire, in the public offering or pursuant to the exercise of subscription rights, more than 5% of the capital stock of the converted stock company, except with the approval of the commissioner. This limitation does not apply to any entity that is to purchase 100% of the capital stock of the converted company as part of the plan of conversion approved by the commissioner; and

(H) a provision that the rights of a holder of a surplus note to participate in the conversion, if any, shall be governed by the terms of the surplus note; and

(2) providing subscription rights to the policyholders entitled thereto in accordance with the provisions of the plan of conversion as described in paragraph (1). With the approval of the commissioner, stock that will be issued pursuant to such subscription rights may be provided to a trust or other account or entity existing for the benefit of policyholders which is established by the company for the purpose of effecting the conversion.

(c) Plan of conversion in which policyholders exchange their membership interests for membership interests in a mutual holding company.

(1) A plan of conversion adopted pursuant to this subsection shall provide that the mutual insurer will become a stock insurer and that the owners of policies of the converted insurer that are in force on the effective date of the plan of conversion or thereafter will become members of a mutual holding company organized pursuant to paragraph (2) for as long as their policies remain in force;

(2) a mutual insurer seeking to convert to a stock insurer pursuant to this subsection may do so by:

(A) Forming a mutual holding company and continuing the corporate existence of the insurer as a stock insurance company that is a wholly-owned subsidiary (except to the extent qualifying shares are required to be held by directors of an insurance company admitted and authorized to do business in Kansas pursuant to K.S.A. 40-305 and amendments thereto) of a stock holding company of which at least 51% of the voting stock is held by the mutual holding company;

(B) forming a mutual holding company and continuing the corporate existence of the insurer as a stock insurance company of which at least 51% of the voting stock is held by the mutual holding company; or

(C) forming a mutual holding company and continuing the corporate existence of the insurer as a stock insurance company with another ownership structure that is approved by the commissioner with at least 51% of the voting stock of the stock insurance company is ultimately held by the mutual holding company.

(3) a mutual holding company is not an insurer for purposes of this act, but the provisions of this act with regard to corporate organization and procedure of mutual insurers and the election of directors by mutual insurers, and those provisions of chapter 17 of the Kansas Statutes Annotated and amendments thereto that are applicable to mutual insurers, shall apply to the mutual holding company;

(4) a mutual holding company and any stock holding company shall each be deemed to be a "holding company" of the insurer within the meaning of article 33 of chapter 40 of the Kansas Statutes Annotated and amendments thereto. Approval of the plan of conversion by the commissioner pursuant to this act shall constitute approval of the acquisition of control by the mutual holding company and stock holding company, if applicable, under K.S.A. 40-3304 and amendments thereto, without any separate filings or other action;

(5) a mutual holding company shall not dissolve, liquidate or wind-up and dissolve except through proceedings under article 36 of chapter 40 of the Kansas Statutes Annotated and amendments thereto for the liquidation or dissolution of the converted insurer or as the commissioner of insurance may otherwise approve. A mutual holding company may, however, convert to a stock corporation in accordance with the terms of this article and a plan of conversion approved by the commissioner of insurance to be fair and equitable after a hearing upon notice to the company's members;

(6) the charter of the mutual holding company shall be filed with the commissioner and shall contain the matters required to be contained in the charter of a mutual insurer by article 5 or article 12 of chapter 40 of the Kansas Statutes Annotated and amendments thereto, as applicable, except that the name of the mutual holding company shall contain the word "mutual" and shall not contain the word "insurance" and the company's powers shall not include doing an insurance business;

(7) the commissioner of insurance may, by adoption of rules and regulations, require a mutual holding company to file annual statements with the commissioner in such form as the commissioner prescribes;

(8) any subsidiaries of the company that have been reorganized pursuant to this act and amendments thereto may remain as subsidiaries of such company or become subsidiaries of the mutual or stock holding company provided that if such subsidiaries shall become subsidiaries of a stock holding company, then the reorganized company shall be reimbursed the value of its holdings in such subsidiaries, as reflected on the company's most recently filed financial statements, in the event shares of the stock holding company are or

have been issued to other than the mutual holding company;

(9) with the written approval of the commissioner, and subject to conditions that the commissioner may impose, a mutual holding company may:

- (A) Merge or consolidate with, or acquire the assets of, a mutual holding company;
- (B) together with its converted insurer subsidiary, merge or consolidate with or acquire the assets of any other insurer; or
- (C) engage in any other merger, consolidation or acquisition transaction which may be approved by the commissioner;

(10) a member of a mutual holding company is not, as a member, personally liable for the acts, debts, liabilities or obligations of such company. No assessment of any kind may be imposed upon the members of a mutual holding company by the board of directors, members or creditors of such company or because of any liability of any company owned or controlled by the mutual holding company or because of any act, debt or liability of the mutual holding company;

(11) a membership interest in a mutual holding company shall not constitute a security under the laws of this state; and

(12) the commissioner shall retain jurisdiction over any mutual holding company or stock holding company organized pursuant to this section to assure that policyholder interests are protected; and

(13) as used in this section, "at least 51% of the voting stock" means shares of the capital stock which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of capital stock of the company for the election of directors and on all other matters submitted to a vote of the shareholders of the company.

(d) Plan of conversion in which policyholders exchange their membership interests for an option to purchase a proportionate amount of stock in the converted company.

A mutual insurer seeking to convert pursuant to this subsection may do so by filing a plan of conversion containing:

(1) A description of any amendments to the insurer's articles of incorporation to effect a conversion from a mutual corporation into a stock corporation. Any other amendments proposed for the articles of incorporation shall be set forth in the plan.

(2) The establishment of a conversion value, as of the calendar quarter ending immediately preceding the date of the adoption of the resolution specified in subsection (a) of K.S.A. 40-4002, and amendments thereto. The conversion value shall be equal to the company's policyholders' surplus, determined in accordance with the statutory method of accounting used in preparing the last annual statement filed with the commissioner of insurance. The insurer shall submit a list of qualified disinterested appraisers, from which the commissioner shall appoint one or more such appraisers, who shall establish the conversion value in accordance with the above procedure.

(3) The procedure by which each policyholder shall receive a proportionate amount of the conversion value in the manner prescribed herein and in paragraph (4). Such amount shall be based upon net premium paid to the general account of the insurer within three years prior to the date on which the board of directors approved the plan.

(4) Provisions whereby the insurer or any holding company of the insurer shall distribute such proportionate conversion value, in the following method:

(A) Each policyholder will be issued an option to purchase stock in the converted company;

(B) the total stated value of the stock to be issued shall be equal to the conversion value as determined in paragraph (2);

(C) the stock option shall provide that the policyholders may purchase the stock at its stated value;

(D) the maximum amount of stock that may be purchased by each policyholder shall be in proportion to the policyholder's share of the conversion value, with the number of shares rounded to the nearest whole number, plus any shares purchased pursuant to purchased stock options, subject to the limitations provided in subparagraph (J);

(E) policyholders not exercising their option to purchase the stock shall be entitled to sell such option to any person or corporation, including the parent corporation;

(F) the sale of any such stock option shall transfer to the purchaser all rights in and conditions to the option;

(G) all stock options shall be exercised within 60 days from the date such options are distributed to the policyholders and the options shall expire at the end of such sixty-day period;

(H) the converted company or the parent corporation shall purchase, at a price not less than the amount set forth in the plan, all stock options that have not been exercised within 60 days from the date such options are distributed to the policyholders;

(I) the converted company or the parent corporation shall purchase, at the stated value, all stock not purchased pursuant to the stock options and such purchase must be made within 60 days from the date the stock options expire;

(J) notwithstanding the provisions of subparagraph (D), ownership of the voting stock of the insurer is subject to the provisions of K.S.A. 40-4008 and amendments thereto.

The above distribution method shall constitute full payment and discharge of the policyholder's proportionate conversion value, but this provision shall not be held to prohibit the converted company or the parent corporation from including in the plan provisions for the distribution of any other valuable consideration to policyholders. Notwithstanding any other provision of law, the policyholders shall have no other rights resulting from membership in a mutual insurance company with respect to the insurer.

(5) A statement as to the number of shares to be authorized for the insurer and their value. The paid-in capital and surplus of the converted capital stock insurer shall be in an amount not less than two times the minimum initial paid-in capital and surplus required of a domestic stock insurer doing business as of the same date as the converted company, to transact like kinds of insurance.

(6) Provisions establishing the method by which the initial board of directors of the stock insurer will be selected.

History: L. 1997, ch. 107, § 3; L. 1999, ch. 77, § 1; Apr. 15.