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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.)*

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 3. Reciprocal Insurers [1280 - 1560.19] (*Chapter 3 enacted by Stats. 1935, Ch. 145.)*

ARTICLE 16. Merger of Certain Reciprocal Insurers [1550 - 1559] (*Article 16 added by Stats. 1995, Ch. 728, Sec. 3.)*

1550. This article shall apply only to domestic reciprocal insurers organized after 1974 to provide medical malpractice insurance.
(*Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.*)

1551. By following the procedure specified in this article, any domestic reciprocal insurer described in this article may merge, consolidate, or otherwise unite with or become a part of, or may reinsure all of its policies with, and, upon assumption of all of its liabilities, may transfer all of its assets to, any other domestic reciprocal insurer or an incorporated insurer, domestic or foreign. If an insurer not admitted in California is the surviving entity in the transaction, the plan and agreement shall provide either for that insurer to be admitted to transact insurance in California or for any nonsurviving insurer admitted in California to withdraw from the state. The plan and agreement by which the transaction is to be effected shall be approved by a resolution of a majority of the body exercising the subscribers' rights selected pursuant to Section 1308 for each domestic reciprocal insurer that is a party to the transaction or by such higher number as may be required by the documents governing the reciprocal, before it is submitted to the subscribers for their consideration. The resolution shall specify the reasons for and the purposes of the proposed transaction and the manner in which the transaction is expected to benefit and serve the best interests of the domestic reciprocal insurer and its subscribers. The plan and agreement shall be approved on behalf of each constituent other party by those persons required to approve those transactions by the laws under which that other party is organized or is otherwise governed.
(*Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.*)

1552. The plan and agreement by which the transaction is to be effected shall be submitted to the commissioner, who shall examine it and require those provisions to be inserted in the agreement and any actions to be taken in connection with the transaction, including, but not limited to, (a) the terms and conditions of the transaction, (b) any fee, commission, right, option, benefit, or other valuable consideration paid or offered to or for the benefit of any director, officer, employee, subscriber, agent, or broker of each domestic reciprocal insurer or the insurer's attorney-in-fact in connection with the transaction, (c) the contents of the notice of the vote on the transaction by the subscribers of each domestic reciprocal insurer that is a party thereto, (d) the manner and form of voting thereon by the subscribers of each domestic reciprocal insurer, and (e) any other change, that he or she may deem necessary in order that the transaction may be fair, just, and equitable to the subscribers of each domestic reciprocal insurer that is a party to the transaction, and the transaction is otherwise fair, just, and equitable to the parties to the transaction and their respective policyholders, owners, creditors, and the public. The commissioner shall not approve any transaction if the bylaws, rules, regulations, power of attorney, or instrument affecting the voting or distribution rights of subscribers of a domestic reciprocal insurer have been amended to change those rights within one year prior to the date of filing of the plan and agreement with the commissioner. The subscribers of a domestic reciprocal insurer who shall be eligible to participate in the transaction shall be those persons who are current subscribers of the domestic reciprocal insurer at the date the commissioner approves the plan and agreement for submission to the subscribers for approval pursuant to Section 1553, or at another date determined by the commissioner. No director, officer, agent, or employee of the domestic reciprocal insurer or the insurer's attorney-in-fact shall receive any fee, commission, or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting, or assisting in the transaction, except as set forth in the plan and agreement approved by the commissioner. This provision shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, and actuaries for services performed in the independent practice of their professions, even though they may also be directors of the insurer.

(*Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.*)

1553. When the plan and agreement has been approved by the commissioner, with any changes required by him or her, it shall require the approval of each domestic reciprocal insurer that is a party to the transaction by not less than two-thirds of the votes cast by its subscribers represented in person or by proxy at a meeting called to consider the plan and agreement. At least 30 days before the day fixed for the meeting, notice of the meeting and its purpose shall be given to the subscribers at their addresses appearing on the books maintained at the home office of the insurer. With respect to subscribers whose addresses do not appear on the books of the insurer, notice shall be deemed to have been given if published at least once in some newspaper of general circulation in the county in which the principal office of the insurer is located. At the meeting, the presence in person or by proxy of 10 percent of the subscribers of the insurer shall constitute a quorum. In the absence of a quorum, the subscribers present at the meeting in person or by proxy may adjourn the meeting to a later date. If the meeting is adjourned to the next business day, no further notice need be given of the date to which the meeting is adjourned. If the meeting is adjourned to a date later than the next business day, notice of the date to which the meeting is adjourned shall be given to the subscribers at least 15 days prior to the adjourned meeting date.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)

1554. If one of the insurers that is a party to the transaction is a domestic incorporated insurer, Section 1109 of the Corporations Code shall apply if the transaction is a merger or consolidation, and Section 1113 of the Corporations Code shall also apply if the transaction is a merger.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)

1555. (a) If the vote is in the affirmative, a certified copy of all proceedings relating to the proposed transaction shall be filed with the commissioner. If one of the insurers that is a party to the transaction is a foreign incorporated insurer, there shall also be filed with the commissioner evidence of that approval, consent, or authorization that is required by the laws of the state of incorporation of the foreign insurer. If the commissioner finds that the proceedings have been in accordance with the law and his or her requirements, the commissioner shall issue a certificate approving the plan and agreement and the transaction shall become effective (1) in the case of a merger, when the certificate, the agreement of merger, or the certificate of merger, as applicable, and any other documents required by law have been filed with the Secretary of State, unless a future effective date or time is provided in the agreement of merger or certificate of merger, in which event the merger shall be effective at that future effective date or time, (2) in the case of a consolidation, when any documents required by the commissioner have been filed with and approved by the commissioner, unless a future effective date or time is provided in the agreement of consolidation, in which event the consolidation shall be effective at that future effective date or time, or (3) in the case of another form of transaction, when determined by the commissioner.

(b) The fee of the commissioner for considering the proposed transaction and issuing a certificate approving the transaction shall be four thousand two hundred fifty dollars (\$4,250), payable in advance with the filing with the commissioner of the first papers relating to the proposed transaction. Five dollars (\$5) shall be charged for each signed and sealed or certified copy of the certificate issued as part of the same transaction in which the original certificate is issued.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)

1556. (a) If the surviving entity is a domestic incorporated insurer in a merger in which a domestic reciprocal insurer is a constituent party, after approval of the merger by the constituent reciprocal insurer and constituent incorporated insurer, the surviving incorporated insurer shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113 of the Corporations Code.

(b) If the surviving entity is a domestic reciprocal insurer in a merger in which a domestic incorporated insurer is a constituent party, after approval of the merger by the constituent disappearing domestic incorporated insurer and constituent reciprocal insurer, the surviving reciprocal insurer shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (2) of subdivision (g) of Section 1113 of the Corporations Code.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)

1557. (a) Any plan of merger, consolidation, or other unification under this article shall provide that all rights and properties of the parties to the plan of merger, consolidation, or other unification shall accrue to, and become the rights and properties of, the surviving or consolidated or continuing insurer which shall succeed to and assume all the obligations and liabilities of the merged, consolidating, or transferring insurer in the same manner as if incurred or contracted by the surviving, consolidated, or continuing insurer.

(b) All rights of creditors and all liens upon the property of each of the constituent incorporated insurers and constituent reciprocal insurers shall be preserved unimpaired, provided that those liens upon property of a disappearing incorporated insurer or disappearing reciprocal insurer shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing incorporated insurer or disappearing reciprocal insurer may be prosecuted to judgment, which shall bind the surviving incorporated insurer or surviving reciprocal insurer, or the surviving incorporated insurer or surviving reciprocal insurer may be proceeded against or substituted in its place.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)

1558. In the event a domestic reciprocal insurer is merged, is consolidated, or is part of a reorganization pursuant to the procedures specified in this article and the surviving, consolidated, or continuing company is a stock incorporated insurer, the plan shall provide for the manner of converting or exchanging the equity interests of current subscribers in the reciprocal insurer's equity into (a) shares, interests, or other securities of the surviving corporation, and (b) if any interests of the subscribers are not to be converted solely into shares, interests, or other securities of the surviving corporation, cash, property rights, interests, warrants, options, premium credits, or securities that may be in addition to, or in lieu of, shares, interests, or other securities of the surviving corporation. However, notwithstanding the foregoing, the equity interests of current subscribers in the reciprocal insurer's equity may be converted or exchanged solely into premium credits if the plan and agreement so provide but only at the subscriber's election. The conversion or exchange of the equity interests of subscribers shall be on terms fair, just, and equitable to the parties to the transaction, their subscribers, shareholders, owners, and creditors, as approved by the commissioner, and the commissioner shall require an opinion as to the fairness of those terms and an appraisal of the fair value of the domestic reciprocal insurer, together with the respective equity interests therein, by one or more qualified disinterested persons appointed by the reciprocal insurer with the approval of the commissioner, unless the commissioner finds that such an opinion or appraisal is not necessary to protect the interest of current subscribers of the reciprocal insurer. The expense of any such opinion and appraisal shall be borne by the reciprocal insurer. Any person holding a subscription note or other debt instrument evidencing a capital contribution to the domestic reciprocal insurer shall be entitled upon demand to have redeemed that note or debt instrument for cash or securities if securities are offered to current policyholders as part of the transaction. The plan may authorize the sale of securities to members of the governing board, officers, or employees of the domestic reciprocal insurer or its attorney-in-fact, or to subscribers or former subscribers of the domestic reciprocal insurer, in accordance with the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1. Nothing in this section shall preclude the issuance of different securities, subject to the approval of the commissioner, provided that comparable securities shall be issued at prices not less than the conversion or exchange values of any such securities distributed to current subscribers. The conversion or exchange shall constitute full payment and discharge of the subscribers' equity interests in the domestic reciprocal insurer, and the subscribers shall have no other rights with respect thereto, except for rights relating to a continuing debt or equity interest that a former subscriber holds in the surviving insurer.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)

1559. (a) For all purposes for a merger in which the surviving entity is a domestic reciprocal insurer and a domestic incorporated insurer is not a constituent corporation as that term is defined under Section 161 of the Corporations Code, a copy of the certificate of merger duly certified by the commissioner is conclusive evidence of the merger of the constituent reciprocal insurers, either by themselves or together with any foreign incorporated insurers, into the surviving reciprocal insurer.

(b) For all purposes for a merger in which the surviving entity is a domestic reciprocal insurer and a domestic incorporated insurer is a "constituent corporation" as that term is defined under Section 161 of the Corporations Code, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent reciprocal insurers, either by themselves or together with constituent incorporated insurers, into the surviving reciprocal insurers.

(c) For all purposes for a merger in which the surviving entity is a domestic incorporated insurer and the disappearing entity is a domestic reciprocal insurer, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent insurers.

(Added by Stats. 1995, Ch. 728, Sec. 3. Effective January 1, 1996.)