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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 1. FIRE AND MARINE INSURANCE [1880 - 10108.1] (*Part 1 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 4. General Mutual Insurers [4010 - 4097.20] (*Chapter 4 added by Stats. 1963, Ch. 1772.*)

ARTICLE 9. Merger, Consolidation, Reinsurance, or Transfer of Assets and Liabilities [4090 - 4096] (*Article 9 added by Stats. 1975, Ch. 824.*)

4090. By following the procedure specified in this article, any domestic mutual 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, another insurer, domestic or foreign. Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code and Article 1 (commencing with Section 11535) of Chapter 14 of Part 2 of Division 2 do not apply to any such transaction.

(*Amended by Stats. 1995, Ch. 728, Sec. 4. Effective January 1, 1996.*)

4091. The plan and agreement by which any such transaction is to be effected shall be approved by a resolution of the majority of the board of directors of each domestic mutual insurer reciting 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 mutual insurer and its members. The plan and agreement shall thereafter be submitted to the commissioner, who shall examine the same and require such provisions to be inserted in the agreement and such actions to be taken in connection with the transaction including, but not limited to the following:

- (a) The terms and conditions of the transaction.
- (b) Any fee, commission, or other valuable consideration whatsoever, other than regular salary and compensation paid to any director, officer, agent, or employee of the domestic mutual insurer in connection with the transaction.
- (c) At the expense of the applicant, an opinion as to the fairness of the terms of the plan and an appraisal of the fair value of each insurer, together with the respective equity interests of the members therein, by one or more qualified disinterested persons appointed by the domestic mutual insurer with the approval of the commissioner unless the commissioner finds that such an opinion or appraisal is not necessary to protect the interests of current members of the domestic mutual insurer.
- (d) The contents of the notice of the vote on the transaction by the members of each domestic mutual insurer that is a party thereto.
- (e) The manner and form of voting thereon by the members of each such domestic mutual insurer.
- (f) Any other change as the commissioner may deem necessary in order that the transaction may be fair, just, and equitable to the parties to the transaction and their respective policyholders, owners, creditors, and the public.

(*Amended by Stats. 1995, Ch. 728, Sec. 5. Effective January 1, 1996.*)

4092. When any such plan and agreement shall have been approved by the commissioner, with any changes required by him, the same shall be approved in the case of each domestic mutual insurer that is a party to the transaction by not less than two-thirds of the votes cast by the members thereof represented in person or by proxy at a meeting called to consider the same. At least 30 days before the day fixed for the meeting, notice of such meeting and its purpose shall be given to the members at their addresses appearing on the books maintained at the home office of the insurer. With respect to members whose addresses do not appear on such 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 such meeting the presence in person or by proxy of 10 percent of such members of such insurer shall constitute a quorum. In the absence of a quorum the members present at the meeting in person or by proxy may adjourn the meeting to a later date. No further notice need be given of the date to which the meeting is adjourned.

(*Added by Stats. 1975, Ch. 824.*)

4093. 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 corporation there shall also be filed with the commissioner evidence of an approval, consent, or authorization as may be 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 the commissioner's requirements, he or she shall issue a certificate approving the plan and agreement and the transaction shall become effective when the certificate, the agreement, and any other documents required by law have been filed with the Secretary of State.

The fee for issuing the certificate approving the transaction shall be six thousand three hundred fifty dollars (\$6,350), payable in advance with the filing with the commissioner of the first papers relating to the proposed transaction; eight dollars (\$8) shall be charged for each signed and sealed or certified copy thereof issued as part of the same transaction in which the original certificate is issued.

(Amended by Stats. 2017, Ch. 534, Sec. 53. (AB 1699) Effective January 1, 2018.)

4094. 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 corporation which shall succeed to and assume all the obligations and liabilities of the merged, consolidating, or transferring corporation in the same manner as if incurred or contracted by the surviving, consolidated, or continuing corporation.

(Added by Stats. 1975, Ch. 824.)

4095. In the event a mutual insurer is merged, consolidated, or part of a reorganization under the procedures specified in this article, and the surviving, consolidated, or continuing company is an incorporated stock insurer, the plan shall provide for the manner of converting or exchanging the equity interests of current members in the domestic mutual insurer into shares, subscription rights, warrants, options, cash, dividends, premium credits, certificates of contribution, or any other interests that may be provided in the plan. However, notwithstanding the foregoing, the equity interest of a policyholder in the mutual insurer may be converted or exchanged solely into premium credits if the plan and agreement shall so provide, but only at the policyholder's election. Any person holding a subscription note or other debt instrument evidencing a capital contribution to the domestic mutual insurer shall be entitled upon demand to have the note or debt instrument redeemed for cash or securities as provided in the plan. The plan may provide for additional securities to be sold to directors, officers, employees, and former members of the domestic mutual 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 policyholders. Notwithstanding any other provision of law, conversion or exchange constitutes full payment and discharge of the members' property interest in the domestic mutual insurer and the members have no other rights with respect thereto, except for rights relating to a continuing debt or equity interest that a former member holds in the surviving insurer.

(Added by Stats. 1995, Ch. 728, Sec. 7. Effective January 1, 1996.)

4096. In the event a domestic mutual insurer is merged, consolidated, or a part of a reorganization under the procedures specified in this article, and the surviving, consolidated, or continuing company is a nonadmitted insurer, the plan of merger 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.

(Added by Stats. 1995, Ch. 728, Sec. 8. Effective January 1, 1996.)