

Regular Session, 2009

SENATE BILL NO. 138

BY SENATOR WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURERS. Provides for demutualization of mutual non-life insurers and mutual holding companies. (8/15/09)

1 AN ACT

2 To enact Subpart H-2 of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to

3 be comprised of R.S. 22:237 through 237.13, relative to the conversion of mutual

4 non-life insurers and mutual insurance holding companies; to provide definitions; to

5 require a plan of reorganization; to provide with respect to consideration and

6 dividend protections; to provide for approval by the commissioner of insurance after

7 a public hearing; to provide with respect to approval by qualified voters; to provide

8 limitations; to require the filing of a certificate of compliance; to provide for the

9 effect of reorganization; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Subpart H-2 of Chapter 2 of Title 22 of the Louisiana Revised Statutes  
12 of 1950, comprised of R.S. 22:237 through 237.13, is hereby enacted to read as follows:

13 **SUBPART H-2. CONVERSIONS OF DOMESTIC MUTUAL NON-LIFE**

14 **INSURERS AND MUTUAL INSURANCE HOLDING COMPANIES**

15 **§237. Corporate reorganization**

16 **The conversion of a mutual non-life insurer or a mutual non-life**

17 **insurance holding company pursuant to R.S. 22:71 and 72 shall also comply**

1 with the provisions of this Subpart. "Mutual non-life insurer" and "mutual  
2 non-life insurance holding company" shall have the meanings as set forth in  
3 R.S. 22:237.2.

4 §237.1. Applicability of provisions

5 The provisions of R.S. 22:71 and 72 shall apply to a demutualization of  
6 a mutual non-life insurance holding company which resulted from the  
7 reorganization of a domestic mutual non-life insurance company reorganized  
8 pursuant to R.S. 22:231 as if it were a mutual life insurance company.

9 §237.2. Definitions

10 As used in this Subpart, the following terms shall have the respective  
11 meanings hereinafter set forth, unless the context shall otherwise require:

12 (1) "Adoption date" means the date as of which the board of directors  
13 of the reorganizing mutual initially approves and adopts the plan of  
14 reorganization.

15 (2) "Affiliate" means a person who directly, or indirectly through one or  
16 more intermediaries, controls or is controlled by or is under common control  
17 with the person specified.

18 (3) "Commissioner" means the commissioner of insurance, or his deputy,  
19 or the Department of Insurance, as appropriate.

20 (4) "Control" means the same as that set forth in R.S. 22:692.

21 (5) "Dividend protections" means provisions in a plan of reorganization  
22 designed to protect, through a closed block or other means, the reasonable  
23 dividend expectations of policyholders who own individual, dividend-paying  
24 policies.

25 (6) "Effective date" means the date upon which the reorganization of the  
26 reorganizing mutual is effective, as provided in R.S. 22:237.10.

27 (7) "Eligible member" means a person who, on the adoption date, owns,  
28 or is deemed by the plan of reorganization to own, a policy of a mutual insurer  
29 or a reorganized insurer that is, or that is deemed by the plan of reorganization

1 to be, in force with such insurer on such adoption date, or a person who is  
2 deemed eligible by the plan of reorganization.

3 (8) "Member" means: (a) with respect to a mutual insurer, a  
4 policyholder who owns or is deemed by the plan of reorganization to own a  
5 policy of the mutual insurer; or (b) with respect to a mutual insurance holding  
6 company, a member of such mutual insurance holding company, as defined in  
7 such company's articles of incorporation and bylaws or as defined in the plan  
8 of reorganization.

9 (9) "Membership interest" means: (a) with respect to a mutual insurer,  
10 all rights and interests of a policyholder as a member arising under the mutual  
11 insurer's articles of incorporation and bylaws, by law or otherwise, which rights  
12 include but are not limited to the right, if any, to vote and the right, if any, with  
13 regard to the surplus of the mutual insurer not apportioned or declared by the  
14 board of directors for policyholder dividends; or (b) with respect to a mutual  
15 insurance holding company, all rights and interests of the member arising  
16 under the mutual insurance holding company's articles of incorporation and  
17 bylaws, by law or otherwise, which rights include but are not limited to the  
18 right, if any, to vote and the right, if any, to receive consideration upon the  
19 demutualization or liquidation of the mutual insurance holding company.

20 (10) "Mutual insurance holding company" and "mutual non-life  
21 insurance holding company" both mean a domestic mutual holding company  
22 formed as a result of the conversion of a mutual insurer as defined in this  
23 Subpart pursuant to R.S. 22:231 et seq., and R.S. 22:691 et seq., in accordance  
24 with a plan of reorganization approved by the commissioner.

25 (11) "Mutual insurer" and "mutual non-life insurer" both mean for  
26 purposes of this Subpart a domestic mutual insurer subject to Subpart C of  
27 Chapter 2 of this Title that is authorized to transact any lines of insurance in  
28 this state, except the lines described in R.S. 22:47 (1), (2), and (9) but does not  
29 mean a domestic nonprofit mutual association as described in R.S. 22:124 nor

1 an insurer organized pursuant to R.S. 23:1393 et seq.

2 (12) "Parent corporation" means a stock corporation that is or has been  
3 organized for the purpose of acquiring, directly or indirectly, all of the common  
4 shares of a reorganized insurer.

5 (13) "Person" means an individual, a corporation, a partnership, an  
6 association, a joint stock company, a trust, an unincorporated organization, a  
7 limited liability company, a limited liability partnership, a government or  
8 governmental agency, a state or political subdivision of a state, board, estate,  
9 trustee or fiduciary, or any other legal entity.

10 (14) "Plan of reorganization" means the plan of reorganization adopted  
11 by the reorganizing mutual in compliance with this Subpart.

12 (15) "Policy" means an individual or group policy of insurance or  
13 annuity contract issued, or deemed by the plan of reorganization to have been  
14 issued, by a mutual insurer or by a reorganized insurer. If a policy is a group  
15 policy, the individual certificates or other evidences of interests in the group  
16 policy shall not be treated as separate policies; however, in the case of a policy  
17 or contract that was issued to a trust or group established or deemed by the  
18 plan of reorganization to have been established by the mutual insurer or the  
19 reorganized insurer, the reorganizing mutual may provide in its plan of  
20 reorganization that each certificate or other evidence of interest is deemed to be  
21 a policy for the sole purpose of determining the rights, if any, of the holders of  
22 those certificates to receive consideration under the plan of reorganization.

23 (16) "Policyholder" means a person who, on the basis of the records and  
24 the organizational documents of the mutual insurer or reorganized insurer, is  
25 deemed to be a policyholder of such insurer.

26 (17) "Qualified voter" is a member of the reorganizing mutual that is  
27 entitled to vote on matters coming before corporate meetings of the  
28 reorganizing mutual pursuant to its articles of incorporation and bylaws.

29 (18) "Reorganized company" means either: (a) a reorganized insurer

1 resulting from the reorganization of a mutual insurer under this Subpart; or (b)  
2 a reorganized insurance holding company.

3 (19) "Reorganized insurance holding company" means a former mutual  
4 insurance holding company reorganized as a stock insurance holding company,  
5 or a stock insurance holding company into which a mutual insurance holding  
6 company has been merged, pursuant to a plan of reorganization under this  
7 Subpart.

8 (20) "Reorganized insurer" means: (a) with respect to a conversion of a  
9 mutual insurer under this Subpart, the domestic stock insurer into which a  
10 mutual insurer is being or has been reorganized; or (b) with respect to the  
11 conversion of a mutual insurance holding company under this Subpart, any  
12 former mutual insurance company previously reorganized as a stock insurance  
13 company as part of a mutual insurance holding company reorganization under  
14 R.S. 22:231 et seq., and R.S. 22:695 et seq., or under the mutual insurance  
15 holding company laws of another state.

16 (21) "Reorganizing mutual" means a mutual insurer or mutual  
17 insurance holding company that is reorganizing pursuant to this Subpart.

18 §237.3. Conversion of mutual insurers and mutual insurance holding  
19 companies authorized

20 A. A mutual insurer may, pursuant to R.S. 22:71 and 72 and the  
21 provisions of this Subpart, reorganize into a stock insurance company that may  
22 be or become a subsidiary of a parent corporation that is or has been formed for  
23 the purpose of acquiring, directly or indirectly, all of the common stock of such  
24 reorganized insurer.

25 B. A mutual insurance holding company may, pursuant to the provisions  
26 of this Subpart, reorganize into a stock insurance holding company.

27 §237.4. Plan of reorganization

28 A. A reorganizing mutual seeking to reorganize pursuant to the  
29 provisions of this Subpart shall submit a proposed plan of reorganization to the

1 commissioner. The plan of reorganization shall include the following:

2 (1) A statement analyzing the benefits and risks attendant to the  
3 proposed reorganization, including the rationale for the reorganization.

4 (2) A statement indicating how the reorganization will protect the  
5 immediate and long-term interests, and serve the best interests of policyholders.

6 (3) Copies of the articles of incorporation and bylaws of the reorganized  
7 company and any affiliate parent corporation, stockholding companies, and  
8 reorganized insurers.

9 (4) Information sufficient to demonstrate that the financial condition of  
10 any reorganized insurer will not be diminished upon reorganization.

11 (5) A description of any plans for the initial sale of stock of the  
12 reorganizing mutual or any parent corporation or affiliate stockholding  
13 company.

14 B. The plan of reorganization shall:

15 (1) Provide that all membership interests in the reorganizing mutual  
16 shall be extinguished as of the effective date.

17 (2) Require the distribution of consideration, in a fair and equitable  
18 manner, to all eligible members upon extinguishment of the membership  
19 interests.

20 (3) Specify the manner in which the aggregate value of the consideration  
21 shall be determined and the method by which the consideration shall be  
22 allocated among eligible members.

23 (4) Provide dividend protections for the reasonable dividend  
24 expectations, if any, of policyholders of any reorganized insurer, all as set forth  
25 in R.S. 22:237.5.

26 C. The plan of reorganization shall have been duly adopted by action of  
27 not less than two-thirds of the members of the entire board of directors of the  
28 reorganizing mutual.

29 D. A plan of reorganization filed with the commissioner pursuant to this

1 Section shall be accompanied by the proposed forms of notice required by R.S.  
2 22:237.6(C) and 237.7(C).

3 E. All information, documents, and copies thereof obtained by or  
4 disclosed to the commissioner, the Department of Insurance, or its designated  
5 representative in the course of an examination of a proposed plan of  
6 reorganization shall be treated in accordance with R.S. 22:706.

7 §237.5. Consideration and dividend protections

8 A. In effecting a conversion of a reorganizing mutual, each eligible  
9 member shall be entitled to consideration in an amount equal to his or its  
10 equitable share of the value of the reorganizing mutual as provided for in the  
11 plan of reorganization.

12 (1) The consideration to be distributed to eligible members may consist  
13 of cash, stock of the reorganized company or its parent corporation,  
14 subscription rights, or if appropriate for tax or other reasons, additional life  
15 insurance and annuity benefits, any combination of these forms of  
16 consideration, or other forms of consideration acceptable to the commissioner.  
17 The form or forms of consideration to be distributed to an eligible member may  
18 differ according to the class or category of policy owned by the eligible member.  
19 The choice of the form or forms of consideration to be distributed to eligible  
20 members in accordance with the class or category of policy owned by such  
21 members may take into account such factors as the type of policy with respect  
22 to which the consideration is being distributed and the amount being distributed  
23 with respect to such policies, the country of residence, or tax status of the  
24 member or other appropriate factors; however, if the consideration to be  
25 distributed to an eligible member will be in a form other than common stock of  
26 a publicly traded company, the plan of reorganization shall include provisions  
27 for determining, in a reasonable manner, the value of the consideration by  
28 means of reference to the per share public market value of the registered  
29 common stock of the reorganized company or its parent corporation or another

1 method acceptable to the commissioner, which provisions may, but are not  
2 required to, include an appraisal or valuation.

3 (2) The reorganizing mutual shall obtain an opinion addressed to the  
4 board of directors of the reorganizing mutual from a qualified investment  
5 banker that the provision of consideration upon the extinguishment of the  
6 membership interests pursuant to the plan of reorganization is fair to the  
7 eligible members, as a group, from a financial point of view.

8 B. The method of allocating consideration among eligible members shall  
9 be fair and equitable.

10 (1) The method shall provide for each eligible member to receive: (a) a  
11 fixed component of consideration or a variable component of consideration, or  
12 both; or (b) any other component of consideration acceptable to the  
13 commissioner. Components may reflect, based upon fair and equitable  
14 formulas, methods, and assumptions, factors such as (x) the ratio which the net  
15 premiums (gross premiums less return premiums and dividends paid) such  
16 eligible member has properly and timely paid to the insurer as a policyholder  
17 on insurance policies in effect during the three years immediately preceding the  
18 adoption date bears to the total net premiums received by the insurer from all  
19 eligible members as policyholders; or (y) estimated proportionate historical and  
20 prospective contributions to surplus of classes or groupings of policies and  
21 contracts to the aggregate component of consideration being distributed to  
22 eligible members, with each eligible member receiving a distribution in  
23 accordance with the type of policy owned by the eligible member; or (z) other  
24 factors the commissioner may approve.

25 (2) The reorganizing mutual shall obtain an opinion addressed to the  
26 board of directors of the reorganizing mutual from an actuary who is a member  
27 of the American Academy of Actuaries that the methodology and underlying  
28 assumptions for allocation of consideration among eligible members are  
29 reasonable and appropriate and the resulting allocation is fair and equitable.



1           **C. At the option of the reorganizing mutual, any common shares of the**  
2           **reorganized insurer or its parent corporation included in the eligible members'**  
3           **consideration may be placed on the effective date of the reorganization in a**  
4           **trust or other entity existing for the exclusive benefit of eligible members and**  
5           **established for the purpose of effecting the reorganization, such consideration**  
6           **or the proceeds of the sale of such consideration to be distributed to such**  
7           **eligible members by means of a process specified in the plan of reorganization**  
8           **and not to last more than ten years after the effective date of the reorganization**  
9           **or until notification of the death of the eligible member or the death of the**  
10          **insured, whichever occurs first.**

11           **D. The plan of reorganization shall provide for the reasonable dividend**  
12          **expectations, if any, of policyholders of any reorganized insurer through the**  
13          **establishment, or in the case of a reorganizing mutual insurance holding**  
14          **company the continuation, of dividend protections, which may consist of a**  
15          **closed block or any other method acceptable to the commissioner. The sole**  
16          **purpose of any dividend protections shall be to provide for reasonable**  
17          **policyholder dividend expectations, if any.**

18           **(1) Any dividend protection provision may be limited to participating**  
19          **individual policies in force or deemed to be in force by the plan of**  
20          **reorganization on the effective date of the reorganization, or, in the case of a**  
21          **reorganized insurer in a mutual insurance holding company system, on the**  
22          **effective date of its reorganization as such, for which the insurer has or had an**  
23          **experience-based dividend scale due, paid or accrued by action of the board of**  
24          **directors of the insurer in the year in which the plan of reorganization is or was**  
25          **adopted; however, other categories of policies and benefits not described in this**  
26          **Paragraph may be included or excluded, subject to the approval of the**  
27          **commissioner.**

28           **(2) If dividend protections have been provided to policyholders of a**  
29          **reorganized insurer as part of a previous plan of reorganization, such dividend**

1 protections may be continued in effect without change in satisfaction of the  
2 requirements of this Section.

3 **§237.6. Approval by commissioner after public hearing**

4 **A. The commissioner shall hold a public hearing upon notice as set forth**  
5 **in this Section to hear evidence upon whether the plan of reorganization: (1)**  
6 **properly protects the interests of the policyholders as such and as members, (2)**  
7 **serves the best interests of policyholders and members, and (3) is fair and**  
8 **equitable to policyholders and members. The provisions of Subpart G of Part**  
9 **III of Chapter 2 of this Title, R.S. 22:691 et seq., shall not be applicable to any**  
10 **hearing held under this Subpart, and any such hearing shall be governed by the**  
11 **procedures set forth in the Subpart.**

12 **B.(1) Within thirty days after the closing of the administrative record**  
13 **after the public hearing as provided in this Section, the commissioner shall issue**  
14 **a final order or decision approving the plan if satisfied that each of the following**  
15 **conditions are met:**

16 **(a) The interests of the policyholders as such and as members are**  
17 **properly protected.**

18 **(b) The plan of reorganization serves the best interests of policyholders**  
19 **and members.**

20 **(c) The plan of reorganization is fair and equitable to policyholders and**  
21 **members.**

22 **(2) Any such final decision or order by the commissioner shall be subject**  
23 **to any modifications of the plan of reorganization the commissioner finds**  
24 **necessary for the protection of the policyholders and members.**

25 **C. Subject to the review and appeal process under Subsection E of this**  
26 **Section, the commissioner's public hearing shall be the exclusive hearing with**  
27 **respect to the plan of reorganization and shall be held pursuant to the**  
28 **provisions of Chapter 12 of this Title, R.S. 22:2191 et seq., except as otherwise**  
29 **provided in this Section, and within ninety days after the plan of reorganization**

1 has been filed with the commissioner. Not less than thirty days notice of such  
2 public hearing shall be provided by the reorganizing mutual to qualified voters  
3 and to such additional persons and in such manner as may be specified by the  
4 commissioner.

5 D. The commissioner may retain at the reorganizing mutual's expense  
6 such attorneys, actuaries, accountants, and other experts as may be reasonably  
7 necessary to assist the commissioner in his examination of a proposed  
8 conversion, including any part of such examination that may occur, at the  
9 request of a reorganizing mutual, prior to a plan of reorganization having been  
10 filed with the commissioner pursuant to R.S. 22:236.2. Such experts shall  
11 prepare a projection of the amount of time and expenses necessary to complete  
12 the examination, and all work of these experts is subject to review. If the  
13 projected amount of time and expenses required to complete the examination  
14 appear excessive, the reorganizing mutual may petition the commissioner for  
15 appropriate relief, and the commissioner's decision shall be final.

16 E. Except as otherwise provided in this Section, the procedures and  
17 requirements for the order and any appeal thereof shall be as set forth in  
18 Chapter 12 of this Title and, to the extent not specified in this Subpart, as set  
19 forth in Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

20 (1) The district court reviewing an order of the commissioner shall  
21 consider only the certified administrative record and the issues raised before the  
22 commissioner. The district court reviewing an order of the commissioner shall  
23 not modify or set aside the order unless the court finds: (a) error to the  
24 prejudice of the appellant's substantial rights arising from the commissioner's  
25 application of the law so grossly as necessarily to imply bad faith; (b) the  
26 commissioner's order or decision was procured by fraud; (c) the commissioner  
27 acted outside of the statutory authority of the Department of Insurance; or (d)  
28 the commissioner's action was arbitrary and capricious. Any appeal of the  
29 district court's review of the commissioner's order shall be taken within thirty

1 days of the judgment of the district court; if no appeal is taken, the right to have  
2 an appellate court review or restrain action under the commissioner's order or  
3 decision shall be preempted and shall forever expire. Collateral attacks on an  
4 order of the commissioner are impermissible and shall be dismissed by the  
5 reviewing court.

6 (2) In any action challenging the validity of or arising out of any action  
7 taken or proposed to be taken under this Subpart, the reorganizing mutual or  
8 reorganized company shall be entitled at any stage of the proceedings before  
9 final judgment to petition the court to require the plaintiff or plaintiffs to give  
10 security for the reasonable costs, including attorney fees, which may be incurred  
11 by the reorganizing mutual or reorganized company, to which security the  
12 reorganizing mutual or reorganized company shall have recourse in such  
13 amount as the court having jurisdiction of such action shall determine upon  
14 termination of such action. The amount of security may thereafter from time  
15 to time be increased or decreased in the discretion of the court having  
16 jurisdiction of such action upon a showing that the security provided has or may  
17 become inadequate or excessive. If the court renders judgment in favor of the  
18 reorganizing mutual or reorganized company, the court may in its discretion  
19 award attorney fees and costs to such prevailing party.

20 F. The provisions of this Section shall apply to all actions challenging the  
21 validity of or arising out of any action taken or proposed to be taken under this  
22 Subpart and R.S. 22:71 and 72.

23 §237.7. Approval by qualified voters

24 A. The plan of reorganization shall be approved at a meeting convened  
25 for that purpose by a vote of not less than two-thirds of the qualified voters of  
26 the reorganizing mutual entitled to vote on matters and present or represented  
27 by special ballot or special proxy.

28 B. The meeting of qualified voters to consider the plan of reorganization  
29 shall occur after the public hearing before the commissioner, and the closing of

1 the administrative record after the public hearing shall not occur until such  
2 time as it includes certification by the reorganizing mutual to the commissioner  
3 of the vote on the plan of reorganization by the qualified voters of the  
4 reorganizing mutual.

5 C. All qualified voters shall be given notice of their opportunity to vote  
6 on the plan of reorganization, which notice shall include a copy of the plan of  
7 reorganization or a summary thereof and which shall be in a form that the  
8 commissioner has determined is adequate and may be provided to qualified  
9 voters. The notice may be combined with notice of the public hearing. The  
10 notice shall be mailed, or provided by some other method or methods as may  
11 be approved by the commissioner, not less than thirty days before the date of  
12 the meeting of qualified voters to vote on the plan of reorganization. If the  
13 reorganizing mutual complies substantially and in good faith with the notice  
14 requirements of this Section, the failure of any person to actually receive any  
15 required notice will not impair the validity of any action taken under this  
16 Subpart.

17 D. A quorum for the meeting of qualified voters to consider the plan of  
18 reorganization shall consist of the qualified voters present or represented by  
19 special ballot or special proxy.

20 E. Voting, ballot, and proxy submission may take place electronically or  
21 telephonically consistent with the requirements of the Louisiana Uniform  
22 Electronic Transactions Act, R.S. 9:2601 et seq.

23 §237.8. Limitations on acquisition of beneficial ownership

24 A. Except as otherwise specifically provided in the plan of  
25 reorganization, prior to and for a period of five years following the effective  
26 date of the reorganization, no person or persons acting in concert, other than  
27 the reorganized company or any employee benefit plans or trusts sponsored by  
28 the reorganized company or its corporate affiliates, shall directly or indirectly  
29 offer to acquire or acquire in any manner the beneficial ownership of five

1 percent or more of any class of a voting security of the reorganized company or  
2 any person that owns or controls a majority or all of the voting securities of the  
3 reorganized company without the prior approval by the commissioner of an  
4 application for acquisition filed by that person with the commissioner.

5 B. The commissioner shall not approve an application for acquisition  
6 unless he finds each of the following:

7 (1) The acquisition would not frustrate the plan of reorganization as  
8 approved by the qualified voters and the commissioner.

9 (2) The board of directors of the reorganized company or its parent  
10 corporation, as applicable, has approved the acquisition, or extraordinary  
11 circumstances not contemplated in the plan of reorganization have arisen that  
12 would warrant their approval of the acquisition.

13 (3) The acquisition would be in the best interest of the reorganized  
14 company and policyholders of the reorganized insurer or insurers. In  
15 determining whether an acquisition would be in the best interest of the  
16 reorganized company and policyholders of the reorganized insurer or insurers,  
17 the commissioner may consider such factors as he deems relevant, which may  
18 but are not required to include any or all of the following: (a) the possible  
19 effects on shareholders, employers, suppliers, creditors, and customers of the  
20 reorganized company and its affiliates; (b) possible effects on the economy of  
21 the communities in which the reorganized company is located, and on that of  
22 this state; and (c) company and policyholders of the reorganized insurer or  
23 insurers, including but not limited to the possibility that those interests may be  
24 best served by the continued independence of the reorganized company.

25 C. No security that is the subject of any agreement or arrangement  
26 regarding acquisition or that is acquired or to be acquired in contravention of  
27 this Section or of an order of the commissioner may be voted at any  
28 shareholders' meeting, and any action of shareholders requiring the affirmative  
29 vote of a percentage of shares may be taken as though the securities were not

1 issued and outstanding; however, no action taken at a meeting shall be  
2 invalidated by the voting of those securities unless the action would materially  
3 affect control of the reorganized insurer or a person that owns or controls a  
4 majority or all of the voting securities of the reorganized insurer or unless the  
5 courts of this state have so ordered.

6 §237.9. Limitations on compensation of directors, officers, agents, and  
7 employees

8 Except as set forth in the plan of reorganization approved by the  
9 qualified voters and the commissioner or in a stock-based compensation  
10 program or arrangement using options or other securities previously registered  
11 with the commissioner pursuant to R.S. 22:88 or any successor statute, no  
12 director, officer, agent, or employee of the reorganizing mutual shall receive any  
13 fee, commission, or other valuable consideration, other than his usual regular  
14 salary and compensation, that is contingent upon the plan of reorganization  
15 becoming approved or effective or is based upon aiding, promoting, or assisting  
16 in the approval or effectuation of the plan of reorganization. This Section shall  
17 not prohibit compensation programs or arrangements including programs and  
18 arrangements involving the use of the stock of the reorganized company or its  
19 parent corporation, which are to become effective simultaneously with the plan  
20 of reorganization or thereafter, provided such programs and arrangements are  
21 contained in the plan of reorganization approved by the qualified voters and the  
22 commissioner or in a program or arrangement using options or other securities  
23 previously registered with the commissioner pursuant to R.S. 22:88 or any  
24 successor statute. This Section shall not be deemed to prohibit such a program  
25 or arrangement from being adopted after the effective date of a reorganization.

26 §237.10. Filing of certificate of compliance; effective date of reorganization

27 A. On or prior to the effective date of the reorganization, the  
28 reorganizing mutual shall file with the commissioner a certificate stating that:

29 (1) All of the conditions set forth in the plan of reorganization, including

1 a final order by the commissioner granting permission to reorganize in  
2 accordance with the plan of reorganization pursuant to R.S. 22:237.6 and  
3 approval by qualified voters pursuant to R.S. 22:237.7, have been satisfied.

4 (2) The board of directors of the reorganizing mutual has not abandoned  
5 the plan of reorganization.

6 B. Notwithstanding the provisions of R.S. 12:23, the articles of  
7 incorporation of the reorganizing mutual, or multiple originals thereof, after  
8 having been submitted to and approved by the commissioner, shall be filed with  
9 the office of the secretary of state and recorded in the office of the recorder of  
10 mortgages of the parish in which the registered office of the reorganizing  
11 mutual is situated. Two certified copies of the articles of incorporation, bearing  
12 the certificate of the proper recorder of mortgages, showing the date and hour  
13 when the articles were filed, shall be delivered to the commissioner and one of  
14 said copies recorded in his office; and when all taxes, fees, and charges have  
15 been paid as required by law, the commissioner shall certify the date and hour  
16 when the corporate existence of the reorganized company began.

17 C. The reorganization shall be effective upon the date and hour certified  
18 by the commissioner, which shall be the later of: (1) the date and hour when the  
19 articles of incorporation were filed for record in the office of the proper  
20 recorder of mortgages; or (2) such other date and time specified in the articles  
21 of incorporation as the date and hour when the reorganization shall be effective,  
22 which shall not be later than the tenth day after the date the articles of  
23 incorporation are recorded.

24 §237.11. Effect of reorganization

25 A. With respect to the conversion of a mutual insurer, upon the effective  
26 date, the mutual insurer shall immediately become a stock insurer, all  
27 membership interests shall be extinguished, and the reorganized insurer or its  
28 parent corporation will act in good faith to convey consideration to eligible  
29 members pursuant to the plan of reorganization. The reorganized insurer shall



1 be a continuation of the mutual insurer, and the reorganization in no way shall  
2 annul, modify, or change any of the mutual insurer's existing suits, rights,  
3 contracts, or liabilities, except as provided in the plan of reorganization. After  
4 reorganization, the reorganized insurer shall exercise all the rights and powers  
5 and perform all the duties conferred or imposed by law upon insurers writing  
6 the classes of insurance written by it, and shall be vested in all the rights,  
7 franchises, and interests of the mutual insurer in and to every species of  
8 property without any deed or transfer, and the reorganized insurer shall  
9 succeed to all the obligations and liabilities of the mutual insurer, and retain all  
10 rights and contracts existing prior to conversion, except as provided in the plan  
11 of reorganization.

12 B. With respect to the conversion of a mutual insurance holding  
13 company, upon the effective date, the membership interests of the members of  
14 the mutual insurance holding company shall be extinguished, and the  
15 reorganized company shall act in good faith to convey consideration to eligible  
16 members pursuant to the plan of reorganization. Each reorganized insurer  
17 within the mutual insurance holding company system will continue its corporate  
18 existence as a stock insurer within a stock insurance holding company system,  
19 and the reorganization shall in no way annul, modify, or change any of such  
20 reorganized insurer's existing suits, rights, contracts, or liabilities, except as  
21 provided in the plan of reorganization.

22 §237.12. Abandoning or amending plan of reorganization

23 The reorganizing mutual may, by action of not less than two-thirds of its  
24 board of directors, abandon or amend the plan of reorganization at any time  
25 before the effective date. No amendment made after the public hearing required  
26 by R.S. 22:237.6 shall change the plan of reorganization in a manner which the  
27 commissioner determines is materially disadvantageous to policyholders or  
28 members unless a further public hearing is held on the plan as amended.

29 §237.13. Directors and officers of the reorganized company

1                    **The directors and officers of the reorganizing mutual, unless otherwise**  
 2                    **specified in the plan of reorganization, shall serve as the directors and officers**  
 3                    **of the reorganized company until new directors and officers are duly elected**  
 4                    **pursuant to the articles of incorporation and bylaws of the reorganized**  
 5                    **company.**

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Cheryl Horne.

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#### DIGEST

Walsworth (SB 138)

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

Present law defines "mutual insurer" and "mutual non-life insurer." Proposed law excludes the Louisiana Workers' Compensation Corporation from this definition.

Proposed law requires that a reorganizing mutual non-life insurers and mutual insurance holding companies 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 mandates that the plan of reorganization be adopted by at least two-thirds of the members of the board of directors or the reorganizing mutual non-life insurer.

Proposed law details how each eligible member of the reorganizing mutual non-life insurer is to be awarded consideration in the form of cash, stock, or other forms of consideration acceptable to the commissioner. Provides for an opinion addressed to the board of directors from a qualified investment banker that the consideration is fair from a financial point of view.

Proposed law provides that any common shares of the reorganized insurer or its parent corporation be placed in a trust or other entity existing on the effective date of the reorganization for the exclusive benefit of eligible members for no more than ten years.

Proposed law requires that the plan of reorganization provide for the reasonable dividend expectations, if any, and protections of the policyholders. Provides that any dividend protections provision may be limited to participating in individual non-life insurance policies and participating annuity contracts in force or deemed to be in force on the effective date of the reorganization.

Proposed law mandates 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. Provides that within 30 days of the public hearing, the commissioner shall issue a final order or decision approving the plan of reorganization subject to any modifications the commissioner deems necessary.

Proposed law makes the commissioner's public hearing the exclusive hearing with respect to the plan of reorganization and must be held within 90 days after the plan of reorganization has been filed. Provides that the commissioner may retain, at the expense of the reorganizing insurer, experts to assist in the conversion overview. Requires such experts to prepare a projection of the amount of time and expense necessary to complete the examination giving the mutual insurer the option to petition the commissioner for appropriate relief.

Proposed law limits the district court review of any order of the commissioner to the certified administrative record and the issues raised before the commissioner. The district court shall not modify or set aside the order unless the court finds any of the following:

1. Gross error to the prejudice of the appellant's substantial rights as necessarily to imply bad faith.
2. The commissioner's order or decisions was procured by fraud.
3. The commissioner acted outside the statutory authority of the Department of Insurance.
4. The commissioner's actions were arbitrary and capricious.

Requires that an appeal of a district court ruling occur within 30 days of the judgement.

Proposed law entitles the reorganizing mutual insurer to petition the court to require the plaintiff to give security for the reasonable costs which may be incurred by the reorganizing mutual insurer. Allows the amount of the security to be increased or decreased at the discretion of the court having jurisdiction. Provides for the awarding of attorney fees and costs to the prevailing reorganizing mutual insurer or reorganized company.

Proposed law requires that 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 to be held after the public hearing before the commissioner. Provides that all qualified voters shall 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 electronic voting, ballot and proxy submissions.

Proposed law prohibits anyone other than the reorganized company or any employee benefit plan or trust sponsored by the reorganized company from, directly or indirectly, offering to acquire the beneficial ownership of 5 percent or more of any class of a voting security of the reorganized company for a period of five years following the effective date of the reorganization without the prior approval of the commissioner.

Proposed law stipulates that the commissioner shall not approve an application for acquisition unless he finds each of the following:

1. The acquisition would not frustrate the plan of reorganization as approved by the qualified voters and the commissioner.
2. The board of directors of the reorganized company has approved the acquisition.
3. The acquisition would be in the best interest of the reorganized company and

policyholders of the reorganized insurer.

Authorizes the commissioner to consider the possible effects on the new corporation, the economy of the state and communities in which the reorganized company is located, as well as long-term and short-term interests of the reorganized company.

Proposed law prohibits any security that is the subject of any agreement or arrangement regarding acquisition of an order of the commissioner to be voted on at any shareholder's meeting. Provides that no action taken at a meeting shall be invalidated by the voting of those securities unless the action would materially effect control of the reorganized insurer.

Proposed law prohibits compensating any director, officer, agent, or employee of the reorganized mutual insurer other than the usual regular salary and compensation. Permits compensation programs or arrangements involving the use of stock of the reorganized company as long as they are included in the plan of reorganization and approved by the qualified voters and the commissioner.

Proposed law requires the reorganizing mutual insurer to file with the commissioner a certificate of compliance and articles of incorporation. Requires that, once approved, the articles of incorporation be filed with the secretary of state and recorded in the office of the recorder of mortgages of the parish in which the reorganized mutual insurer is situated. Provides that the reorganization shall be effective upon the date and hour certified by the commissioner.

Proposed law requires that upon the effective date, the reorganized mutual insurer shall become a stock insurer and must convey consideration to all eligible members pursuant to the plan of reorganization. Provides that the reorganized insurer shall be a continuation of the mutual insurer and shall exercise all rights and powers conferred by law upon insurers writing the classes of insurance and retain all rights and contracts existing prior to conversion.

Proposed law provides that with respect to the conversion of a mutual insurance holding company, the membership interests of the members shall be extinguished and the reorganized company must act in good faith to convey consideration to the eligible members. Provides that each reorganized insurer within the mutual insurance holding company system will continue its corporate existence as a stock insurer without change to any of the existing insurer's rights, suits, and contracts.

Proposed law permits abandonment or amendment of the plan of reorganization upon not less than two-thirds of its board of directors and prior to the effective date. Provides that no amendment made after the public hearing shall change the plan of reorganization in a manner in which the commissioner determines to be materially disadvantageous to policyholders or members unless another public hearing is held.

Proposed law requires directors and officers of the reorganizing mutual insurer to serve as the directors and officers of the reorganized company until new directors and officers are duly elected.

Effective August 15, 2009.

(Adds R.S. 22:237 through 237.13)

#### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Exempts the Louisiana Workers' Compensation Corporation from the definition of "mutual insurer" and "mutual non-life insurer".

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Technical corrections.