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## DIGEST

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Walsworth

SB No. 138

Proposed 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 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. Authorizes the commissioner to promulgate procedures, rules, and regulations for the conduct of the public hearing. 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 provides that an aggrieved party may appeal the commissioner's final order to the Nineteenth Judicial District Court within 30 days of the order. Also allows the aggrieved party to apply for a stay of the commissioner's order. Limits the district court review of any order of the commissioner to the certified administrative record and the issues raised before the commissioner. Provides that 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.

Proposed law further 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% 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.

(Adds R.S. 22:237 - 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".

##### Senate Floor Amendments to engrossed bill.

1. Makes technical corrections.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the reengrossed bill.

1. Deletes from proposed law a provision that would have required the commissioner's public hearing on the plan of reorganization to be held pursuant to outdated provisions of the Insurance Code relative to public hearings as well as a provision that would have required that the hearing be held within 90 days after the plan of reorganization has been filed. Instead authorizes the commissioner to promulgate procedures, rules, and regulations for the conduct of the hearing.
2. Deletes from proposed law a provision that would have required that procedures and requirements for the commissioner's order and the appeal thereof be pursuant to outdated provisions of the Insurance Code relative to such procedures and provisions of the Administrative Procedure Act providing for hearings by administrative law judges. Instead provides that an aggrieved party may appeal the order to the Nineteenth Judicial District Court within 30 days of the order. Also allows the aggrieved party to apply for a stay of the order.