



LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER:46

NJSA: 17:1C-1 to 17:1C-14

"Domestic Mutual Life Insurance -- conversion to Stock Life Companies"

BILL NO: A130 (Substituted for S1095)

SPONSOR(S): Bateman and Doria

DATE INTRODUCED: May 28, 1998

COMMITTEE:

ASSEMBLY: Banking and Insurance

SENATE: ~~~~

AMENDED DURING PASSAGE:No

DATE OF PASSAGE:

ASSEMBLY: June 18, 1998

SENATE: June 22, 1998

DATE OF APPROVAL: July 1, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Original

(Amendments during passage denoted by superscript numbers)

A130

SPONSORS STATEMENT: *Yes* (Begins on page 13 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*Yes*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

S1095

SPONSORS STATEMENT: *Yes* (Begins on page 13 of original bill)
(Bill and Sponsors Statement identical to A130)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes* (Identical to Assembly Statement for A130)

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *No*

THE FOLLOWING WERE PRINTED:

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REPORTS:

974.90 I59 1996a

New Jersey. Dept. of Insurance. Multi-state Life Insurance Task Force.

Report of the...conduct examination of the Prudential Insurance Company of America, July 9, 1996.

HEARINGS: *No*

NEWSPAPER ARTICLES:

"Prudential conversion bill passed by Senate," 6-23-98, Bergen Record, p. A3.

"Prudential bill sent to Governor," 6-23-98, Newark Star Ledger, p. 37.

"Pru did its homework to get state's blessing," 7-2-98, Newark Star Ledger, p. 43

ASSEMBLY, No. 130

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MAY 28, 1998

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

**Assemblymen Talarico, Thompson, Senators Cardinale, Codey, Singer and
Furnari**

SYNOPSIS

Provides for the conversion of domestic mutual life insurers to domestic stock life insurers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/23/1998)

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2

1 AN ACT to provide for the conversion of domestic mutual life insurers
2 to domestic stock life insurers.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Adoption date" means the date as of which the board of directors
9 of the mutual insurer initially approves and adopts the plan of
10 reorganization;

11 "Closed block" means a block of participating business operated for
12 the exclusive benefit of the policies included therein for policyholder
13 dividend purposes only;

14 "Effective date" means the date upon which the reorganization of
15 the mutual insurer is effective, as provided in section 9 of this act;

16 "Eligible policyholder" means a policyholder who owns, or is
17 deemed by the plan of reorganization to own, a policy that is, or that
18 is deemed by the plan of reorganization to be, in force on the adoption
19 date, or a policyholder who is deemed eligible by the plan of
20 reorganization, including as a result of reinstatement in accordance
21 with the terms of the policy or the plan of reorganization, or
22 otherwise;

23 "Fair and equitable" means that any action undertaken pursuant to
24 this act with respect to a plan of reorganization, provides for full and
25 proper consideration of the aggregate membership interests and
26 corresponding values of eligible policyholders, in no manner
27 discriminates improperly among eligible policyholders and
28 appropriately protects the interests of eligible policyholders before and
29 subsequent to the reorganization;

30 "Membership interest" means all rights and interests of a
31 policyholder as a member of a mutual insurer arising under the mutual
32 insurer's charter or certificate of incorporation and bylaws, by law or
33 otherwise, which rights include, but are not limited to, the right, if any,
34 to vote and the right, if any, with regard to the surplus of the mutual
35 insurer not apportioned or declared by the board of directors for
36 policyholder dividends;

37 "Mutual insurance holding company" means a holding company
38 based on a mutual plan which at all times owns, directly or indirectly
39 through one or more intermediate stock holding companies, a majority
40 of the voting securities of a reorganized insurer;

41 "Mutual insurer" means, in the case of a plan of reorganization
42 under this act, a domestic mutual insurer authorized to write the kind
43 of business defined in N.J.S.17B:17-3 and is reorganizing pursuant to
44 a plan of reorganization;

45 "Parent corporation" means a stock corporation that is or has been
46 organized for the purpose of acquiring, directly or indirectly, pursuant

1 to the plan of reorganization, all or substantially all of the common
2 shares of the reorganized insurer;

3 "Person" means an individual, partnership, firm, association,
4 corporation, joint-stock company, limited liability company, limited
5 liability partnership, trust, government or governmental agency, state
6 or political subdivision of a state, board, estate, trustee or fiduciary,
7 or any other legal entity;

8 "Plan of reorganization" means the plan of reorganization adopted
9 by the mutual insurer in compliance with section 3 of this act;

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

22 "Policyholder" means the owner or deemed owner of a policy, as
23 determined in accordance with the definition of "policyholder" set
24 forth in N.J.S.17B:18-13 or N.J.S.17B:18-23, as applicable, and any
25 additional rules as are set forth in the plan of reorganization;

26 "Qualified voter" has the meaning set forth in N.J.S. 17B:18-13 or
27 N.J.S.17B:18-23, as applicable; and

28 "Reorganized insurer" means the domestic stock insurer into which
29 a mutual insurer has been reorganized in accordance with this act.

30

31 2. A domestic mutual life insurer authorized to write the kind of
32 business defined in N.J.S.17B:17-3, which life insurer may also be
33 authorized to write other kinds of business under Title 17B of the New
34 Jersey Statutes, may pursuant to the provisions of this act reorganize
35 into a domestic stock life insurer that may be or become a subsidiary
36 of another stock corporation that is or has been organized for the
37 purpose of acquiring, directly or indirectly, all or substantially all of
38 the common stock of the reorganized insurer, provided that the use of
39 a mutual insurance holding company shall not be permitted.

40

41 3. The reorganization of a mutual insurer shall be accomplished
42 pursuant to a plan of reorganization that complies with the following
43 requirements:

44 a. The plan of reorganization shall have been duly adopted by
45 action of not less than three-fourths of the members of the entire board
46 of directors of the mutual insurer.

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1 b. The plan of reorganization shall: (1) specify the manner in
2 which the proposed reorganization shall occur and the reasons for the
3 proposed reorganization; (2) be fair and equitable to the policyholders
4 of the mutual insurer; (3) promote the best interest of the mutual
5 insurer and its policyholders; (4) provide for the enhancement of the
6 operations of the reorganized insurer; (5) not be contrary to law; and
7 (6) not be detrimental to the public.

8 c. The plan of reorganization shall provide that all membership
9 interests in the mutual insurer shall be extinguished as of the effective
10 date; shall require the distribution of consideration, in a fair and
11 equitable manner, to all eligible policyholders upon extinguishment of
12 their membership interests; shall specify the manner in which the
13 aggregate value of the consideration shall be determined and the
14 method by which the consideration shall be allocated among eligible
15 policyholders; and shall provide for the reasonable dividend
16 expectations of policyholders.

17 (1) With respect to that consideration, eligible policyholders shall
18 be allocated in the aggregate one hundred per centum (100%) of the
19 common stock of the reorganized insurer or its parent corporation,
20 provided, however, that the commissioner may approve the sale of
21 additional shares of stock of the reorganized insurer or its parent
22 corporation if the mutual insurer demonstrates: (a) a need for
23 additional capital, or (b) that the sale would not significantly dilute the
24 value of the shares distributed to the policyholders.

25 (2) The method for allocating consideration among eligible
26 policyholders shall be fair and equitable. The method shall provide for
27 each eligible policyholder to receive (a) a fixed component of
28 consideration or a variable component of consideration, or both; or (b)
29 any other component of consideration acceptable to the commissioner.
30 Any component shall reflect, based upon fair and equitable formulas,
31 methods and assumptions, factors such as estimated proportionate
32 contributions of classes or groupings of policies and contracts to the
33 aggregate component of consideration being distributed to eligible
34 policyholders or other factors the commissioner may approve.

35 (3) The consideration to be distributed to eligible policyholders
36 shall consist of cash, stock of the reorganized insurer or the parent
37 corporation, or if appropriate for tax or other reasons, additional life
38 insurance or annuity benefits, any combination of these forms of
39 consideration, or other forms of consideration acceptable to the
40 commissioner. The form or forms of consideration to be distributed
41 to a class or category of eligible policyholders may differ from the
42 form or forms of consideration to be distributed to another class or
43 category of eligible policyholders. The choice of the form or forms of
44 consideration to be distributed to a class or category of eligible
45 policyholders shall take into account such factors as the type of policy
46 with respect to which the consideration is being distributed, the

1 country of residence or tax status of the eligible policyholders or other
2 appropriate factors; provided, however, that, if the consideration to be
3 distributed to one or more classes or categories of eligible
4 policyholders will be in a form other than common stock of a publicly
5 traded company, the plan of reorganization shall include a provision
6 for determining, in a reasonable manner, the value of the consideration
7 by means of reference to (a) the estimated market value of the
8 reorganized insurer based upon an independent evaluation by a
9 qualified expert; (b) the per share public market value of the registered
10 common stock of the reorganized insurer or its parent corporation; or
11 (c) by another method acceptable to the commissioner.

12 (4) If the plan of reorganization does not provide for registration
13 and public trading of the common stock of the reorganized insurer or
14 the parent corporation as of the effective date, the plan of
15 reorganization shall require the reorganized insurer or the parent
16 corporation, as applicable, to use good faith efforts, to encourage and
17 assist in the establishment of a market for the common stock of the
18 reorganized insurer or the parent corporation as soon as reasonably
19 possible and in any event not later than two years after the effective
20 date of the reorganization, including obtaining a listing for the stock
21 on a national exchange, facilitating coverage by research analysts,
22 conducting management presentations to potential investors and
23 analysts and securing the commitment of at least one market maker,
24 which may be a specialist firm, to make a market in the common stock.

25 (5) Within two years after the effective date of the reorganization,
26 the reorganized insurer or its parent corporation, as applicable, shall
27 make available to each eligible policyholder who received and retained
28 shares of stock with minimal aggregate value upon reorganization, a
29 procedure to dispose of those shares of stock at market value without
30 brokerage commissions or similar fees under a plan approved by the
31 commissioner. The plan of reorganization shall include a provision for
32 determining, in a reasonable manner, the market value of the shares by
33 means of reference to (a) the estimated market value of the
34 reorganized insurer based upon an independent evaluation by a
35 qualified expert; (b) the per share public market value of the registered
36 common stock of the reorganized insurer or its parent corporation; or
37 (c) by another method acceptable to the commissioner.

38 d. (1) The plan of reorganization of a mutual insurer shall provide
39 for the reasonable dividend expectations of policyholders through
40 establishment of a closed block or other method acceptable to the
41 commissioner. The sole purpose of any dividend protection provision
42 shall be to provide for reasonable policyholder dividend expectations,
43 and it is not intended that the provision shall provide in any way for
44 the distribution of consideration to eligible policyholders for the
45 extinguishment of membership interests as set forth in subsection c. of
46 this section. If a closed block is utilized, (a) the closed block shall be

1 operated for the exclusive benefit of policies and contracts included
2 therein, (b) no costs or expenses incurred in connection with the
3 reorganization shall be charged to the closed block, and (c) subject to
4 termination of the closed block pursuant to paragraph (3) of this
5 subsection d., none of the assets, including the revenue therefrom,
6 allocated to the closed block shall revert to the benefit of the
7 stockholders of the reorganized insurer.

8 (2) Any provision for dividend expectations may be limited to
9 participating individual life insurance policies and participating
10 individual annuity contracts in force or deemed to be in force by the
11 plan of reorganization on the effective date of the plan of
12 reorganization for which the mutual insurer has an experience-based
13 dividend scale due, paid or accrued by action of the board of directors
14 of the mutual insurer in the year in which the plan of reorganization is
15 adopted; provided, however, that (a) policies that would be includible
16 but for the fact that their recent issuance results in no dividends for an
17 initial period, may be included, and (b) policies that are in force as
18 extended term insurance may be included, and (c) other categories of
19 policies and benefits not described in this subparagraph may be
20 included or excluded, subject to the approval of the commissioner.

21 (3) If a closed block is utilized, the assets allocated therein,
22 together with the revenue from the closed block, shall be reasonably
23 sufficient to support the business in the closed block until the time the
24 last policy in the closed block has terminated, including payment of
25 claims and those expenses and taxes as are specified in the plan of
26 reorganization, and to provide for continuation of dividend scales in
27 effect on the adoption date, if the experience underlying those scales
28 continues, and for appropriate adjustments in the scales if the
29 experience changes. The plan of reorganization shall provide that the
30 assets assigned to a closed block will consist of: (a) a list of
31 designated assets of the mutual insurer's general account or specified
32 segments thereof, which list shall change periodically to reflect the
33 acquisition and disposition of assets, or (b) a designated portion of
34 each and every asset of the mutual insurer's general account or
35 specified segments thereof, which portion shall change periodically to
36 reflect the cash flows of the closed block, or (c) a combination of
37 both. The plan of operation for any closed block that is established
38 shall specify which of the methods of assignment of closed block
39 assets is being used, and shall set forth the methods by which the
40 designations referred to in subparagraphs (a), (b) and (c) of this
41 paragraph are changed during the course of closed block operations.
42 The plan of reorganization shall: require the reorganized insurer to
43 submit to the commissioner periodic reports, in a form acceptable to
44 the commissioner, that account for and describe the operations of the
45 closed block; and as specified in the plan, provide for periodic reviews
46 of, and reports on, the closed block by an independent actuary in

1 accordance with paragraph (4) of this subsection d. The plan of
2 reorganization may provide for conditions under which the
3 reorganized insurer, with the approval of the commissioner, may cease
4 to maintain the closed block.

5 (4) Both the mutual insurer and the commissioner shall each
6 appoint one or more qualified and independent actuaries for the
7 purpose of providing actuarial certifications with respect to:

8 (a) The reasonableness and sufficiency of the assets allocated to the
9 closed block, if a closed block is provided; and

10 (b) The reasonableness and appropriateness of the methodology
11 and underlying assumptions used to allocate consideration among
12 eligible policyholders.

13 The actuaries shall be members of the American Academy of
14 Actuaries. The certifications provided shall be in a form satisfactory
15 to the commissioner and shall be made in accordance with professional
16 standards and practices generally accepted by the actuarial profession
17 and those other factors as the actuary in his professional judgment
18 believes are reasonable and appropriate at the time the certification is
19 made. The certification shall be accompanied by a memorandum of the
20 actuary, in a form satisfactory to the commissioner, describing the
21 calculations made in support of the certification and the assumptions
22 used in the calculations. The memoranda shall be and remain
23 confidential and shall not be subject to public inspection or copying
24 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).
25

26 4. a. Upon the affirmative vote of not less than three-fourths of
27 the members of the entire board of directors of the mutual insurer, the
28 mutual insurer shall file with the commissioner an application for
29 approval of, and permission to reorganize pursuant to, a plan of
30 reorganization. The application shall include the following:

31 (1) The plan of reorganization and exhibits thereto which shall
32 include:

33 (a) an explanation of the manner and basis upon which the
34 reorganization shall occur;

35 (b) the method of allocation of the consideration to be distributed
36 to policyholders, including an actuarial certification of the
37 reasonableness and appropriateness of the methodology used to
38 allocate consideration among eligible policyholders; and

39 (c) the method by which the dividend expectations of policyholders
40 will be preserved including, if the plan utilizes a closed block, the plan
41 of operation of the closed block and an actuarial certification of the
42 reasonableness and sufficiency of the assets allocated to the closed
43 block;

44 (2) A fairness opinion addressed to the board of directors of the
45 mutual insurer from a qualified, nationally recognized investment
46 banker that the provision of common stock, cash and policy benefits

1 upon the extinguishment of the policyholders' membership interests
2 pursuant to the plan of reorganization is fair to the eligible
3 policyholders, as a group, from a financial point of view;

4 (3) A business plan of the reorganized insurer including five-year
5 financial projections;

6 (4) A certification that the plan of reorganization has been duly
7 adopted by action of not less than three-fourths of the members of the
8 entire board of directors of the mutual insurer;

9 (5) The actuarial memoranda accompanying the certifications of
10 the independent actuary appointed by the mutual insurer as required
11 by paragraph (4) of subsection d. of section 3 of this act;

12 (6) Certified copies of the proposed charter or certificate of
13 incorporation and bylaws of the reorganized insurer;

14 (7) The proposed forms of the notice of hearing to policyholders
15 and for publication required by subsection d. of this section and the
16 notice of the meeting of policyholders required by subsection c. of
17 section 5 of this act, and any other notices required by the plan of
18 reorganization;

19 (8) Any information provided to the board of directors of the
20 mutual insurer in connection with its review and approval of the plan
21 of reorganization, except materials that are protected by attorney-
22 client privilege;

23 (8) Any other additional information that the mutual insurer
24 believes is necessary; and

25 (9) Any other additional information that the commissioner in his
26 sole discretion deems necessary.

27 b. The commissioner in his sole discretion shall determine, within
28 thirty days of submission of the application, whether the application is
29 complete and whether the forms of notice submitted pursuant to
30 paragraph (7) of subsection a. of this section are adequate and may be
31 provided to policyholders.

32 c. The application and supporting documents shall be public
33 documents except that the business plan, the financial projections, the
34 actuarial memoranda and any other information that the commissioner
35 determines could result in harm to the mutual insurer, harm to the
36 reorganized insurer, or a reduction of values to eligible policyholders,
37 if disclosed, shall be considered confidential. This confidentiality will
38 not extend to information provided by the mutual insurer that the
39 commissioner deems necessary to be provided to policyholders to
40 evaluate the plan of reorganization.

41 d. Upon determining that the application is complete and the forms
42 of notice are adequate, the commissioner shall designate a date for a
43 public hearing on the plan of reorganization. The public hearing may
44 be held on one or more days, the first commencing within 90 days after
45 the date on which the commissioner determines the application is
46 complete, unless the mutual insurer requests, and the commissioner

1 agrees to, a longer period for the purpose of preparing and distributing
2 the notices required by this subsection and subsection c. of section 5
3 of this act. The hearing shall be in the nature of a legislative hearing
4 and shall not constitute or be considered, a contested case under the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.). The mutual insurer shall provide policyholders with at least 45
7 days' notice of the hearing, the notice to be in the form, and provided
8 in the manner, that the commissioner approves pursuant to subsection
9 b. of this section. The mutual insurer shall cause notice of the time
10 and place of the public hearing to be published at least two times at
11 intervals of not less than one week, the first publication to be not more
12 than 45 days and the last publication not less than 15 days prior to the
13 public hearing in at least two newspapers of general circulation
14 throughout the United States. The notice of the hearing shall state the
15 purpose thereof and the time and the place where the hearing will
16 occur. The purpose of the hearing shall be to receive comments and
17 information for the purpose of aiding the commissioner in making a
18 decision on the plan of reorganization. Persons wishing to make
19 comments and submit information may submit written statements prior
20 to the public hearing and may appear and be heard at the hearing.

21 e. The hearing shall be conducted by the commissioner or, at the
22 commissioner's discretion, his designee, who shall report to and advise
23 the commissioner on the matter, and the determination or order issued
24 by the commissioner shall have the same force and effect as if the
25 commissioner had conducted the hearing personally. The
26 commissioner's order or determination shall be issued within 45 days
27 after the closing of the record of the hearing by the commissioner or
28 the hearing officer, as applicable, which record shall not be closed until
29 the time it includes certification of the vote on the plan of
30 reorganization by the mutual insurer's qualified voters as required by
31 section 5 of this act. The commissioner shall issue a written decision
32 detailing the reasons why the mutual insurer's plan of reorganization
33 is approved or disapproved.

34 f. The commissioner shall approve the application and permit the
35 reorganization pursuant to the plan of reorganization if he finds,
36 following a public hearing, that: (1) the application conforms to the
37 requirements of this section; (2) the plan is fair and equitable to the
38 policyholders of the mutual insurer; (3) the plan promotes the best
39 interest of the mutual insurer and its policyholders; (4) the plan
40 provides for the enhancement of the operations of the reorganized
41 insurer; (5) the plan is not contrary to law; (6) the plan is not
42 detrimental to the public; and (7) after giving effect to the
43 reorganization, the reorganized insurer will have an amount of capital
44 and surplus the commissioner deems to be reasonably necessary for its
45 future solvency.

1 g. The commissioner may engage the services of advisors and
2 consultants, which may include, but are not limited to, lawyers,
3 actuaries, accountants, investment bankers, compensation and
4 employee benefit plan consultants or any combination thereof, to
5 advise him on any matters related to the reorganization. All
6 reasonable costs related to the development and examination of, and
7 deliberations concerning, a plan of reorganization and other related
8 matters, including those reasonable costs attributable to the use by the
9 commissioner of advisors and consultants, shall be paid by the mutual
10 insurer that makes the filing or initiates the discussions about a plan of
11 reorganization for services prior to the effective date and by the
12 reorganized insurer for services after the effective date.

13 h. The commissioner's order approving or disapproving a plan of
14 reorganization shall be a final agency decision subject to appeal in
15 accordance with, and within the time periods specified by, the Rules
16 Governing the Courts of the State of New Jersey.

17

18 5. a. Subject to the provisions of subsection b. of this section, the
19 plan of reorganization shall be approved by a vote of not less than
20 two-thirds of the votes of the mutual insurer's qualified voters voting
21 thereon in person or by attorney or proxy, except in the case of a
22 mutual insurer that holds its elections pursuant to N.J.S. 17B:18-18 to
23 17B:18-28, inclusive, in which case voting shall be in person or by
24 ballot, at a meeting of policyholders called for that purpose. The
25 meeting of policyholders shall occur after the hearing required
26 pursuant to subsection e. of section 4 of this act. Pursuant to N.J.S.
27 17B:18-14 or subsection d. of N.J.S. 17B:18-26, as applicable, each
28 qualified voter shall be entitled to cast only one vote, irrespective of
29 the number or value of policies held, unless the mutual insurer's
30 charter or bylaws provide otherwise. The commissioner shall have the
31 power to supervise and direct and prescribe rules governing the
32 procedure for the conduct of voting on the plan of reorganization to
33 the extent, consistent with the provisions of this section, he deems
34 necessary to insure a fair and accurate vote. These powers shall
35 include, but not be limited to, power to examine, supervise and
36 approve: (1) the determination of qualified voters entitled to notice of
37 and to vote on the plan of reorganization; (2) the giving of notice of
38 the policyholders' meeting; (3) the content of the proxy form or ballot;
39 (4) the receipt, custody, safeguarding, verification and tabulation of
40 proxy forms and ballots; and (5) the resolution of any disputes.

41 b. The number of qualified voters who vote on the plan of
42 reorganization shall equal or exceed, in the aggregate, (1) one million
43 qualified voters, or (2) that lesser number of qualified voters as the
44 commissioner shall approve.

45 c. All qualified voters shall be given notice of their opportunity to
46 vote on the plan of reorganization, which notice shall be in a form

1 approved by the commissioner and accompanied by a copy of the plan
2 of reorganization or a summary thereof which shall also be in a form
3 approved by the commissioner, and any other explanatory information
4 that the commissioner approves or requires. The notice shall be
5 mailed, or provided by some other method or methods as may be
6 approved by the commissioner, not less than 45 days before the date
7 of the meeting of policyholders to vote on the plan of reorganization.
8 The notice may be combined with the notice of the hearing described
9 in subsection d. of section 4 of this act.

10 d. The mutual insurer shall use good faith efforts to encourage
11 qualified voters to vote on the plan of reorganization. These efforts
12 shall be specified in the plan of reorganization and may include, but
13 need not be limited to, establishing a toll-free call center, establishing
14 an Internet site, adding messages to routine policy statements,
15 providing written communications to qualified voters, and advertising
16 in national publications.

17
18 6. Except as otherwise specifically provided in the plan of
19 reorganization, prior to and for a period of three years following the
20 effective date of the reorganization, no person or persons acting in
21 concert, other than the reorganized insurer or any employee benefit
22 plans or trusts sponsored by the reorganized insurer, shall directly or
23 indirectly offer to acquire or acquire in any manner the beneficial
24 ownership of five percent or more of any class of a voting security of
25 the reorganized insurer or any person that owns or controls a majority
26 or all of the voting securities of the reorganized insurer without the
27 prior approval by the commissioner of an application for acquisition
28 filed by that person with the commissioner. The application for
29 acquisition shall contain the information required by subsection b. of
30 section 2 of P.L.1970, c.22 (C.17:27A-2) and any other information
31 required by the commissioner. The commissioner shall not approve an
32 application for acquisition unless he finds that the requirements of
33 subsection d. of section 2 of P.L. 1970, c. 22 (C.17:27A-2) will be
34 satisfied and, additionally, that: a. the acquisition would not frustrate
35 the plan of reorganization as approved by the policyholders and the
36 commissioner; b. the board of directors of the reorganized insurer or
37 its parent corporation, as applicable, has approved the acquisition or
38 extraordinary circumstances not contemplated in the plan of
39 reorganization have arisen that would warrant their approval of the
40 acquisition; and c. the acquisition would be in the interest of the
41 policyholders of the reorganized insurer. No security that is the
42 subject of any agreement or arrangement regarding acquisition or that
43 is acquired or to be acquired in contravention of this section or of an
44 order of the commissioner may be voted at any shareholders' meeting,
45 and any action of shareholders requiring the affirmative vote of a

1 percentage of shares may be taken as though the securities were not
2 issued and outstanding; provided, however, that no action taken at a
3 meeting shall be invalidated by the voting of those securities unless the
4 action would materially affect control of the reorganized insurer or a
5 person that owns or controls a majority or all of the voting securities
6 of the reorganized insurer or unless the courts of this State have so
7 ordered.

8
9 7. No director, officer, agent or employee of the mutual insurer
10 shall receive any fee, commission or other valuable consideration,
11 other than his usual regular salary and compensation, whatsoever, that
12 is contingent upon the plan of reorganization becoming approved or
13 effective or is based upon a director, officer, agent or employee aiding,
14 promoting or assisting in the approval or effectuation of the plan of
15 reorganization. Subject to the approval of the commissioner, the
16 mutual insurer may provide in its plan of reorganization for employee
17 benefit and compensation arrangements, including arrangements
18 involving the use of the stock of the reorganized insurer or stock of its
19 parent corporation, which are to become effective simultaneously with
20 the plan of reorganization; provided, however, that no member of the
21 board of directors may be included in any such arrangement that
22 becomes effective at that time.

23
24 8. If the mutual insurer complies substantially and in good faith
25 with the requirements of this act with respect to any required notice
26 to policyholders, its failure in any case to give the notice to any person
27 or persons entitled thereto shall not impair the validity of the actions
28 and proceedings taken under this act or entitle a person to any
29 injunctive or other relief with respect thereto.

30
31 9. The reorganization shall be effective upon the date when the
32 specified requirements within the plan of reorganization are satisfied.
33 On or prior to the effective date of the reorganization, the mutual
34 insurer shall file with the commissioner a certificate stating that: a. all
35 of the conditions set forth in the plan of reorganization, including a
36 final order by the commissioner granting permission to reorganize in
37 accordance with the plan pursuant to subsection f. of section 4 of this
38 act and approval by policyholders pursuant to section 5 of this act,
39 have been satisfied and b. the board of directors of the mutual insurer
40 has not abandoned or amended the plan of reorganization pursuant to
41 section 11 of this act.

42
43 10. Upon the effective date, the mutual insurer shall immediately
44 become a stock insurer, all membership interests shall be extinguished,
45 and the reorganized insurer will act in good faith to convey
46 consideration to policyholders eligible to receive consideration under

1 the plan of reorganization within 45 days, pursuant to the terms of the
2 plan of reorganization. The reorganized insurer shall be a continuation
3 of the original mutual insurer, and the reorganization in no way shall
4 annul, modify or change any of the original mutual insurer's existing
5 suits, rights, contracts or liabilities, except as provided in the plan of
6 reorganization. After reorganization, the reorganized insurer shall
7 exercise all the rights and powers and perform all the duties conferred
8 or imposed by law upon insurers writing the classes of insurance
9 written by it, and shall be vested in all the rights, franchises and
10 interests of the mutual insurer in and to every species of property
11 without any deed or transfer and the reorganized insurer shall succeed
12 to all the obligations and liabilities of the mutual insurer, and retain all
13 rights and contracts existing prior to conversion, except as provided
14 in the plan.

15

16 11. The mutual insurer may, by action of not less than
17 three-fourths of its board of directors, abandon or amend the plan of
18 reorganization at any time before the effective date. No amendment
19 made after the public hearing required by subsection d. of section 4 of
20 this act shall change the plan in a manner which the commissioner
21 determines is materially disadvantageous to any of the policyholders
22 unless a further public hearing is held on the plan as amended.

23

24 12. The commissioner may, in his discretion, promulgate rules and
25 regulations to implement this act.

26

27 13. The directors and officers of the mutual insurer, unless
28 otherwise specified in the plan of reorganization, shall serve as the
29 directors and officers of the reorganized stock insurer until new
30 directors and officers are duly elected pursuant to the articles of
31 incorporation and bylaws of the reorganized stock insurer.

32

33 14. Within 90 days following the public announcement by a mutual
34 insurer of its intent to demutualize pursuant to this act, the mutual
35 insurer shall provide notice of its intent to demutualize to all former
36 policyholders who are at the time of the notice eligible to reinstate
37 their policies. The notice shall be in a form and distributed in a
38 manner approved by the commissioner.

39

40 15. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill provides for the reorganization (or conversion) of a
46 domestic mutual life insurer to a domestic stock life insurer that may

1 be a subsidiary of another stock corporation that has been organized
2 for the purpose of acquiring all or substantially all of the common
3 stock of the reorganized insurer.

4 To reorganize a domestic mutual insurer, three-fourths of the
5 members of its board of directors must adopt a plan of reorganization.
6 The plan must: specify the manner in which the proposed
7 reorganization shall occur and the reasons for the proposed
8 reorganization; be fair and equitable to the policyholders of the mutual
9 insurer; promote the best interest of the mutual insurer and its
10 policyholders; provide for the enhancement of the operations of the
11 reorganized insurer; not be contrary to law; and not be detrimental to
12 the public. The plan must require the distribution of consideration, in
13 a fair and equitable manner, to all eligible policyholders upon
14 extinguishment of their membership interests and must specify the
15 manner in which the aggregate value of that consideration is
16 determined and the method of allocation among eligible policyholders.
17 With certain exceptions, eligible policyholders must be allocated, in
18 the aggregate, 100% of the common stock of the reorganized insurer
19 or its parent corporation. The plan of reorganization of a mutual
20 insurer must provide for the reasonable dividend expectations of
21 policyholders through establishment of a closed block (a block of
22 participating business operated for the exclusive benefit of the policies
23 included in the block) or other method acceptable to the
24 commissioner.

25 The insurer must file with the commissioner an application for
26 approval of a plan of reorganization. The application must include,
27 among other items: (1) the plan of reorganization which must include
28 an explanation of the manner and basis upon which the reorganization
29 will occur, the method of allocation of the consideration to be
30 distributed to policyholders, and the method by which the dividend
31 expectations of eligible policyholders will be preserved; (2) a fairness
32 opinion from a qualified, nationally recognized investment banker that
33 the provision of common stock, cash and policy benefits for
34 policyholders in the plan of reorganization is fair to eligible
35 policyholders, as a group, from a financial point of view; (3) a
36 business plan with five-year financial projections; (4) actuarial
37 memoranda; and (5) the certificate of incorporation and bylaws of the
38 reorganized insurer.

39 After the commissioner determines that the application is complete,
40 the commissioner shall set a date for a public hearing on the plan of
41 reorganization, which shall occur within 90 days after the application
42 is determined to be complete. The insurer must provide policyholders
43 with at least 45 days' notice of the hearing and must have the notice
44 published twice in at least two newspapers of general circulation
45 throughout the United States. The hearing shall be conducted by the
46 commissioner, or his designee, and the commissioner's order or

1 determination shall be issued within 45 days after the closing of the
2 record. The commissioner shall issue a written decision detailing the
3 reasons why the mutual insurer's plan to reorganize is approved or
4 disapproved. The commissioner may engage the services of advisors
5 and consultants to advise him on the reorganization, with the
6 reasonable cost thereof being paid for by the insurer.

7 The commissioner shall approve the application and permit the
8 reorganization if he finds that: (1) the plan is fair and equitable to the
9 policyholders of the mutual insurer; (2) the plan promotes the best
10 interest of the mutual insurer and its policyholders; (3) the plan
11 provides for the enhancement of the operations of the reorganized
12 insurer; (4) the plan is not contrary to law; (5) the plan is not
13 detrimental to the public; and (6) the reorganized insurer will have
14 capital and surplus in an amount the commissioner deems to be
15 reasonably necessary for its future solvency.

16 The commissioner's order approving or disapproving a plan of
17 reorganization shall be a final agency decision subject to appeal to the
18 court.

19 After the hearing, the plan of reorganization shall be approved by
20 a vote of not less than two-thirds of the votes of the mutual insurer's
21 qualified voters voting and each qualified voter shall be entitled to cast
22 only one vote, irrespective of the number or value of policies held,
23 unless the mutual insurer's charter or by laws provide otherwise. The
24 number of qualified voters who vote on the plan of reorganization
25 must equal or exceed, in the aggregate, one million voters or such
26 lesser number approved by the commissioner.

27 Except as otherwise specifically provided in the plan or
28 reorganization, prior to and for a period of three years following the
29 effective date of the reorganization, no person, other than the
30 reorganized insurer, shall directly or indirectly offer to acquire or
31 acquire the beneficial ownership of five percent or more of any class
32 of a voting security of the reorganized insurer or any person that owns
33 or controls a majority or all of the voting securities of the reorganized
34 insurer without the prior approval by the commissioner. The
35 commissioner shall not approve the acquisition unless it complies with
36 current law, does not frustrate the plan of reorganization, is approved
37 by the board of directors of the reorganized insurer or its parent
38 corporation, and is in the interest of policyholders of the reorganized
39 insurer.

40 The mutual insurer may, by action of not less than three-fourths of
41 its board of directors, abandon or amend the plan of reorganization at
42 any time before the effective date of that plan.

ASSEMBLY, No. 130

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MAY 28, 1998

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

**Assemblymen Talarico, Thompson, Senators Cardinale, Codey, Singer and
Furnari**

SYNOPSIS

Provides for the conversion of domestic mutual life insurers to domestic stock life insurers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/23/1998)

A130 BATEMAN, DORIA

2

1 AN ACT to provide for the conversion of domestic mutual life insurers
2 to domestic stock life insurers.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Adoption date" means the date as of which the board of directors
9 of the mutual insurer initially approves and adopts the plan of
10 reorganization;

11 "Closed block" means a block of participating business operated for
12 the exclusive benefit of the policies included therein for policyholder
13 dividend purposes only;

14 "Effective date" means the date upon which the reorganization of
15 the mutual insurer is effective, as provided in section 9 of this act;

16 "Eligible policyholder" means a policyholder who owns, or is
17 deemed by the plan of reorganization to own, a policy that is, or that
18 is deemed by the plan of reorganization to be, in force on the adoption
19 date, or a policyholder who is deemed eligible by the plan of
20 reorganization, including as a result of reinstatement in accordance
21 with the terms of the policy or the plan of reorganization, or
22 otherwise;

23 "Fair and equitable" means that any action undertaken pursuant to
24 this act with respect to a plan of reorganization, provides for full and
25 proper consideration of the aggregate membership interests and
26 corresponding values of eligible policyholders, in no manner
27 discriminates improperly among eligible policyholders and
28 appropriately protects the interests of eligible policyholders before and
29 subsequent to the reorganization;

30 "Membership interest" means all rights and interests of a
31 policyholder as a member of a mutual insurer arising under the mutual
32 insurer's charter or certificate of incorporation and bylaws, by law or
33 otherwise, which rights include, but are not limited to, the right, if any,
34 to vote and the right, if any, with regard to the surplus of the mutual
35 insurer not apportioned or declared by the board of directors for
36 policyholder dividends;

37 "Mutual insurance holding company" means a holding company
38 based on a mutual plan which at all times owns, directly or indirectly
39 through one or more intermediate stock holding companies, a majority
40 of the voting securities of a reorganized insurer;

41 "Mutual insurer" means, in the case of a plan of reorganization
42 under this act, a domestic mutual insurer authorized to write the kind
43 of business defined in N.J.S.17B:17-3 and is reorganizing pursuant to
44 a plan of reorganization;

45 "Parent corporation" means a stock corporation that is or has been
46 organized for the purpose of acquiring, directly or indirectly, pursuant

1 to the plan of reorganization, all or substantially all of the common
2 shares of the reorganized insurer;

3 "Person" means an individual, partnership, firm, association,
4 corporation, joint-stock company, limited liability company, limited
5 liability partnership, trust, government or governmental agency, state
6 or political subdivision of a state, board, estate, trustee or fiduciary,
7 or any other legal entity;

8 "Plan of reorganization" means the plan of reorganization adopted
9 by the mutual insurer in compliance with section 3 of this act;

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

22 "Policyholder" means the owner or deemed owner of a policy, as
23 determined in accordance with the definition of "policyholder" set
24 forth in N.J.S.17B:18-13 or N.J.S.17B:18-23, as applicable, and any
25 additional rules as are set forth in the plan of reorganization;

26 "Qualified voter" has the meaning set forth in N.J.S. 17B:18-13 or
27 N.J.S.17B:18-23, as applicable; and

28 "Reorganized insurer" means the domestic stock insurer into which
29 a mutual insurer has been reorganized in accordance with this act.

30

31 2. A domestic mutual life insurer authorized to write the kind of
32 business defined in N.J.S.17B:17-3, which life insurer may also be
33 authorized to write other kinds of business under Title 17B of the New
34 Jersey Statutes, may pursuant to the provisions of this act reorganize
35 into a domestic stock life insurer that may be or become a subsidiary
36 of another stock corporation that is or has been organized for the
37 purpose of acquiring, directly or indirectly, all or substantially all of
38 the common stock of the reorganized insurer, provided that the use of
39 a mutual insurance holding company shall not be permitted.

40

41 3. The reorganization of a mutual insurer shall be accomplished
42 pursuant to a plan of reorganization that complies with the following
43 requirements:

44 a. The plan of reorganization shall have been duly adopted by
45 action of not less than three-fourths of the members of the entire board
46 of directors of the mutual insurer.

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1 b. The plan of reorganization shall: (1) specify the manner in
2 which the proposed reorganization shall occur and the reasons for the
3 proposed reorganization; (2) be fair and equitable to the policyholders
4 of the mutual insurer; (3) promote the best interest of the mutual
5 insurer and its policyholders; (4) provide for the enhancement of the
6 operations of the reorganized insurer; (5) not be contrary to law; and
7 (6) not be detrimental to the public.

8 c. The plan of reorganization shall provide that all membership
9 interests in the mutual insurer shall be extinguished as of the effective
10 date; shall require the distribution of consideration, in a fair and
11 equitable manner, to all eligible policyholders upon extinguishment of
12 their membership interests; shall specify the manner in which the
13 aggregate value of the consideration shall be determined and the
14 method by which the consideration shall be allocated among eligible
15 policyholders; and shall provide for the reasonable dividend
16 expectations of policyholders.

17 (1) With respect to that consideration, eligible policyholders shall
18 be allocated in the aggregate one hundred per centum (100%) of the
19 common stock of the reorganized insurer or its parent corporation,
20 provided, however, that the commissioner may approve the sale of
21 additional shares of stock of the reorganized insurer or its parent
22 corporation if the mutual insurer demonstrates: (a) a need for
23 additional capital, or (b) that the sale would not significantly dilute the
24 value of the shares distributed to the policyholders.

25 (2) The method for allocating consideration among eligible
26 policyholders shall be fair and equitable. The method shall provide for
27 each eligible policyholder to receive (a) a fixed component of
28 consideration or a variable component of consideration, or both; or (b)
29 any other component of consideration acceptable to the commissioner.
30 Any component shall reflect, based upon fair and equitable formulas,
31 methods and assumptions, factors such as estimated proportionate
32 contributions of classes or groupings of policies and contracts to the
33 aggregate component of consideration being distributed to eligible
34 policyholders or other factors the commissioner may approve.

35 (3) The consideration to be distributed to eligible policyholders
36 shall consist of cash, stock of the reorganized insurer or the parent
37 corporation, or if appropriate for tax or other reasons, additional life
38 insurance or annuity benefits, any combination of these forms of
39 consideration, or other forms of consideration acceptable to the
40 commissioner. The form or forms of consideration to be distributed
41 to a class or category of eligible policyholders may differ from the
42 form or forms of consideration to be distributed to another class or
43 category of eligible policyholders. The choice of the form or forms of
44 consideration to be distributed to a class or category of eligible
45 policyholders shall take into account such factors as the type of policy
46 with respect to which the consideration is being distributed, the

1 country of residence or tax status of the eligible policyholders or other
2 appropriate factors; provided, however, that, if the consideration to be
3 distributed to one or more classes or categories of eligible
4 policyholders will be in a form other than common stock of a publicly
5 traded company, the plan of reorganization shall include a provision
6 for determining, in a reasonable manner, the value of the consideration
7 by means of reference to (a) the estimated market value of the
8 reorganized insurer based upon an independent evaluation by a
9 qualified expert; (b) the per share public market value of the registered
10 common stock of the reorganized insurer or its parent corporation; or
11 (c) by another method acceptable to the commissioner.

12 (4) If the plan of reorganization does not provide for registration
13 and public trading of the common stock of the reorganized insurer or
14 the parent corporation as of the effective date, the plan of
15 reorganization shall require the reorganized insurer or the parent
16 corporation, as applicable, to use good faith efforts, to encourage and
17 assist in the establishment of a market for the common stock of the
18 reorganized insurer or the parent corporation as soon as reasonably
19 possible and in any event not later than two years after the effective
20 date of the reorganization, including obtaining a listing for the stock
21 on a national exchange, facilitating coverage by research analysts,
22 conducting management presentations to potential investors and
23 analysts and securing the commitment of at least one market maker,
24 which may be a specialist firm, to make a market in the common stock.

25 (5) Within two years after the effective date of the reorganization,
26 the reorganized insurer or its parent corporation, as applicable, shall
27 make available to each eligible policyholder who received and retained
28 shares of stock with minimal aggregate value upon reorganization, a
29 procedure to dispose of those shares of stock at market value without
30 brokerage commissions or similar fees under a plan approved by the
31 commissioner. The plan of reorganization shall include a provision for
32 determining, in a reasonable manner, the market value of the shares by
33 means of reference to (a) the estimated market value of the
34 reorganized insurer based upon an independent evaluation by a
35 qualified expert; (b) the per share public market value of the registered
36 common stock of the reorganized insurer or its parent corporation; or
37 (c) by another method acceptable to the commissioner.

38 d. (1) The plan of reorganization of a mutual insurer shall provide
39 for the reasonable dividend expectations of policyholders through
40 establishment of a closed block or other method acceptable to the
41 commissioner. The sole purpose of any dividend protection provision
42 shall be to provide for reasonable policyholder dividend expectations,
43 and it is not intended that the provision shall provide in any way for
44 the distribution of consideration to eligible policyholders for the
45 extinguishment of membership interests as set forth in subsection c. of
46 this section. If a closed block is utilized, (a) the closed block shall be

1 operated for the exclusive benefit of policies and contracts included
2 therein, (b) no costs or expenses incurred in connection with the
3 reorganization shall be charged to the closed block, and (c) subject to
4 termination of the closed block pursuant to paragraph (3) of this
5 subsection d., none of the assets, including the revenue therefrom,
6 allocated to the closed block shall revert to the benefit of the
7 stockholders of the reorganized insurer.

8 (2) Any provision for dividend expectations may be limited to
9 participating individual life insurance policies and participating
10 individual annuity contracts in force or deemed to be in force by the
11 plan of reorganization on the effective date of the plan of
12 reorganization for which the mutual insurer has an experience-based
13 dividend scale due, paid or accrued by action of the board of directors
14 of the mutual insurer in the year in which the plan of reorganization is
15 adopted; provided, however, that (a) policies that would be includible
16 but for the fact that their recent issuance results in no dividends for an
17 initial period, may be included, and (b) policies that are in force as
18 extended term insurance may be included, and (c) other categories of
19 policies and benefits not described in this subparagraph may be
20 included or excluded, subject to the approval of the commissioner.

21 (3) If a closed block is utilized, the assets allocated therein,
22 together with the revenue from the closed block, shall be reasonably
23 sufficient to support the business in the closed block until the time the
24 last policy in the closed block has terminated, including payment of
25 claims and those expenses and taxes as are specified in the plan of
26 reorganization, and to provide for continuation of dividend scales in
27 effect on the adoption date, if the experience underlying those scales
28 continues, and for appropriate adjustments in the scales if the
29 experience changes. The plan of reorganization shall provide that the
30 assets assigned to a closed block will consist of: (a) a list of
31 designated assets of the mutual insurer's general account or specified
32 segments thereof, which list shall change periodically to reflect the
33 acquisition and disposition of assets, or (b) a designated portion of
34 each and every asset of the mutual insurer's general account or
35 specified segments thereof, which portion shall change periodically to
36 reflect the cash flows of the closed block, or (c) a combination of
37 both. The plan of operation for any closed block that is established
38 shall specify which of the methods of assignment of closed block
39 assets is being used, and shall set forth the methods by which the
40 designations referred to in subparagraphs (a), (b) and (c) of this
41 paragraph are changed during the course of closed block operations.
42 The plan of reorganization shall: require the reorganized insurer to
43 submit to the commissioner periodic reports, in a form acceptable to
44 the commissioner, that account for and describe the operations of the
45 closed block; and as specified in the plan, provide for periodic reviews
46 of, and reports on, the closed block by an independent actuary in

1 accordance with paragraph (4) of this subsection d. The plan of
2 reorganization may provide for conditions under which the
3 reorganized insurer, with the approval of the commissioner, may cease
4 to maintain the closed block.

5 (4) Both the mutual insurer and the commissioner shall each
6 appoint one or more qualified and independent actuaries for the
7 purpose of providing actuarial certifications with respect to:

8 (a) The reasonableness and sufficiency of the assets allocated to the
9 closed block, if a closed block is provided; and

10 (b) The reasonableness and appropriateness of the methodology
11 and underlying assumptions used to allocate consideration among
12 eligible policyholders.

13 The actuaries shall be members of the American Academy of
14 Actuaries. The certifications provided shall be in a form satisfactory
15 to the commissioner and shall be made in accordance with professional
16 standards and practices generally accepted by the actuarial profession
17 and those other factors as the actuary in his professional judgment
18 believes are reasonable and appropriate at the time the certification is
19 made. The certification shall be accompanied by a memorandum of the
20 actuary, in a form satisfactory to the commissioner, describing the
21 calculations made in support of the certification and the assumptions
22 used in the calculations. The memoranda shall be and remain
23 confidential and shall not be subject to public inspection or copying
24 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).
25

26 4. a. Upon the affirmative vote of not less than three-fourths of
27 the members of the entire board of directors of the mutual insurer, the
28 mutual insurer shall file with the commissioner an application for
29 approval of, and permission to reorganize pursuant to, a plan of
30 reorganization. The application shall include the following:

31 (1) The plan of reorganization and exhibits thereto which shall
32 include:

33 (a) an explanation of the manner and basis upon which the
34 reorganization shall occur;

35 (b) the method of allocation of the consideration to be distributed
36 to policyholders, including an actuarial certification of the
37 reasonableness and appropriateness of the methodology used to
38 allocate consideration among eligible policyholders; and

39 (c) the method by which the dividend expectations of policyholders
40 will be preserved including, if the plan utilizes a closed block, the plan
41 of operation of the closed block and an actuarial certification of the
42 reasonableness and sufficiency of the assets allocated to the closed
43 block;

44 (2) A fairness opinion addressed to the board of directors of the
45 mutual insurer from a qualified, nationally recognized investment
46 banker that the provision of common stock, cash and policy benefits

1 upon the extinguishment of the policyholders' membership interests
2 pursuant to the plan of reorganization is fair to the eligible
3 policyholders, as a group, from a financial point of view;

4 (3) A business plan of the reorganized insurer including five-year
5 financial projections;

6 (4) A certification that the plan of reorganization has been duly
7 adopted by action of not less than three-fourths of the members of the
8 entire board of directors of the mutual insurer;

9 (5) The actuarial memoranda accompanying the certifications of
10 the independent actuary appointed by the mutual insurer as required
11 by paragraph (4) of subsection d. of section 3 of this act;

12 (6) Certified copies of the proposed charter or certificate of
13 incorporation and bylaws of the reorganized insurer;

14 (7) The proposed forms of the notice of hearing to policyholders
15 and for publication required by subsection d. of this section and the
16 notice of the meeting of policyholders required by subsection c. of
17 section 5 of this act, and any other notices required by the plan of
18 reorganization;

19 (8) Any information provided to the board of directors of the
20 mutual insurer in connection with its review and approval of the plan
21 of reorganization, except materials that are protected by attorney-
22 client privilege;

23 (8) Any other additional information that the mutual insurer
24 believes is necessary; and

25 (9) Any other additional information that the commissioner in his
26 sole discretion deems necessary.

27 b. The commissioner in his sole discretion shall determine, within
28 thirty days of submission of the application, whether the application is
29 complete and whether the forms of notice submitted pursuant to
30 paragraph (7) of subsection a. of this section are adequate and may be
31 provided to policyholders.

32 c. The application and supporting documents shall be public
33 documents except that the business plan, the financial projections, the
34 actuarial memoranda and any other information that the commissioner
35 determines could result in harm to the mutual insurer, harm to the
36 reorganized insurer, or a reduction of values to eligible policyholders,
37 if disclosed, shall be considered confidential. This confidentiality will
38 not extend to information provided by the mutual insurer that the
39 commissioner deems necessary to be provided to policyholders to
40 evaluate the plan of reorganization.

41 d. Upon determining that the application is complete and the forms
42 of notice are adequate, the commissioner shall designate a date for a
43 public hearing on the plan of reorganization. The public hearing may
44 be held on one or more days, the first commencing within 90 days after
45 the date on which the commissioner determines the application is
46 complete, unless the mutual insurer requests, and the commissioner

1 agrees to, a longer period for the purpose of preparing and distributing
2 the notices required by this subsection and subsection c. of section 5
3 of this act. The hearing shall be in the nature of a legislative hearing
4 and shall not constitute or be considered, a contested case under the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.). The mutual insurer shall provide policyholders with at least 45
7 days' notice of the hearing, the notice to be in the form, and provided
8 in the manner, that the commissioner approves pursuant to subsection
9 b. of this section. The mutual insurer shall cause notice of the time
10 and place of the public hearing to be published at least two times at
11 intervals of not less than one week, the first publication to be not more
12 than 45 days and the last publication not less than 15 days prior to the
13 public hearing in at least two newspapers of general circulation
14 throughout the United States. The notice of the hearing shall state the
15 purpose thereof and the time and the place where the hearing will
16 occur. The purpose of the hearing shall be to receive comments and
17 information for the purpose of aiding the commissioner in making a
18 decision on the plan of reorganization. Persons wishing to make
19 comments and submit information may submit written statements prior
20 to the public hearing and may appear and be heard at the hearing.

21 e. The hearing shall be conducted by the commissioner or, at the
22 commissioner's discretion, his designee, who shall report to and advise
23 the commissioner on the matter, and the determination or order issued
24 by the commissioner shall have the same force and effect as if the
25 commissioner had conducted the hearing personally. The
26 commissioner's order or determination shall be issued within 45 days
27 after the closing of the record of the hearing by the commissioner or
28 the hearing officer, as applicable, which record shall not be closed until
29 the time it includes certification of the vote on the plan of
30 reorganization by the mutual insurer's qualified voters as required by
31 section 5 of this act. The commissioner shall issue a written decision
32 detailing the reasons why the mutual insurer's plan of reorganization
33 is approved or disapproved.

34 f. The commissioner shall approve the application and permit the
35 reorganization pursuant to the plan of reorganization if he finds,
36 following a public hearing, that: (1) the application conforms to the
37 requirements of this section; (2) the plan is fair and equitable to the
38 policyholders of the mutual insurer; (3) the plan promotes the best
39 interest of the mutual insurer and its policyholders; (4) the plan
40 provides for the enhancement of the operations of the reorganized
41 insurer; (5) the plan is not contrary to law; (6) the plan is not
42 detrimental to the public; and (7) after giving effect to the
43 reorganization, the reorganized insurer will have an amount of capital
44 and surplus the commissioner deems to be reasonably necessary for its
45 future solvency.

1 g. The commissioner may engage the services of advisors and
2 consultants, which may include, but are not limited to, lawyers,
3 actuaries, accountants, investment bankers, compensation and
4 employee benefit plan consultants or any combination thereof, to
5 advise him on any matters related to the reorganization. All
6 reasonable costs related to the development and examination of, and
7 deliberations concerning, a plan of reorganization and other related
8 matters, including those reasonable costs attributable to the use by the
9 commissioner of advisors and consultants, shall be paid by the mutual
10 insurer that makes the filing or initiates the discussions about a plan of
11 reorganization for services prior to the effective date and by the
12 reorganized insurer for services after the effective date.

13 h. The commissioner's order approving or disapproving a plan of
14 reorganization shall be a final agency decision subject to appeal in
15 accordance with, and within the time periods specified by, the Rules
16 Governing the Courts of the State of New Jersey.

17

18 5. a. Subject to the provisions of subsection b. of this section, the
19 plan of reorganization shall be approved by a vote of not less than
20 two-thirds of the votes of the mutual insurer's qualified voters voting
21 thereon in person or by attorney or proxy, except in the case of a
22 mutual insurer that holds its elections pursuant to N.J.S. 17B:18-18 to
23 17B:18-28, inclusive, in which case voting shall be in person or by
24 ballot, at a meeting of policyholders called for that purpose. The
25 meeting of policyholders shall occur after the hearing required
26 pursuant to subsection e. of section 4 of this act. Pursuant to N.J.S.
27 17B:18-14 or subsection d. of N.J.S. 17B:18-26, as applicable, each
28 qualified voter shall be entitled to cast only one vote, irrespective of
29 the number or value of policies held, unless the mutual insurer's
30 charter or bylaws provide otherwise. The commissioner shall have the
31 power to supervise and direct and prescribe rules governing the
32 procedure for the conduct of voting on the plan of reorganization to
33 the extent, consistent with the provisions of this section, he deems
34 necessary to insure a fair and accurate vote. These powers shall
35 include, but not be limited to, power to examine, supervise and
36 approve: (1) the determination of qualified voters entitled to notice of
37 and to vote on the plan of reorganization; (2) the giving of notice of
38 the policyholders' meeting; (3) the content of the proxy form or ballot;
39 (4) the receipt, custody, safeguarding, verification and tabulation of
40 proxy forms and ballots; and (5) the resolution of any disputes.

41 b. The number of qualified voters who vote on the plan of
42 reorganization shall equal or exceed, in the aggregate, (1) one million
43 qualified voters, or (2) that lesser number of qualified voters as the
44 commissioner shall approve.

45 c. All qualified voters shall be given notice of their opportunity to
46 vote on the plan of reorganization, which notice shall be in a form

1 approved by the commissioner and accompanied by a copy of the plan
2 of reorganization or a summary thereof which shall also be in a form
3 approved by the commissioner, and any other explanatory information
4 that the commissioner approves or requires. The notice shall be
5 mailed, or provided by some other method or methods as may be
6 approved by the commissioner, not less than 45 days before the date
7 of the meeting of policyholders to vote on the plan of reorganization.
8 The notice may be combined with the notice of the hearing described
9 in subsection d. of section 4 of this act.

10 d. The mutual insurer shall use good faith efforts to encourage
11 qualified voters to vote on the plan of reorganization. These efforts
12 shall be specified in the plan of reorganization and may include, but
13 need not be limited to, establishing a toll-free call center, establishing
14 an Internet site, adding messages to routine policy statements,
15 providing written communications to qualified voters, and advertising
16 in national publications.

17
18 6. Except as otherwise specifically provided in the plan of
19 reorganization, prior to and for a period of three years following the
20 effective date of the reorganization, no person or persons acting in
21 concert, other than the reorganized insurer or any employee benefit
22 plans or trusts sponsored by the reorganized insurer, shall directly or
23 indirectly offer to acquire or acquire in any manner the beneficial
24 ownership of five percent or more of any class of a voting security of
25 the reorganized insurer or any person that owns or controls a majority
26 or all of the voting securities of the reorganized insurer without the
27 prior approval by the commissioner of an application for acquisition
28 filed by that person with the commissioner. The application for
29 acquisition shall contain the information required by subsection b. of
30 section 2 of P.L.1970, c.22 (C.17:27A-2) and any other information
31 required by the commissioner. The commissioner shall not approve an
32 application for acquisition unless he finds that the requirements of
33 subsection d. of section 2 of P.L. 1970, c. 22 (C.17:27A-2) will be
34 satisfied and, additionally, that: a. the acquisition would not frustrate
35 the plan of reorganization as approved by the policyholders and the
36 commissioner; b. the board of directors of the reorganized insurer or
37 its parent corporation, as applicable, has approved the acquisition or
38 extraordinary circumstances not contemplated in the plan of
39 reorganization have arisen that would warrant their approval of the
40 acquisition; and c. the acquisition would be in the interest of the
41 policyholders of the reorganized insurer. No security that is the
42 subject of any agreement or arrangement regarding acquisition or that
43 is acquired or to be acquired in contravention of this section or of an
44 order of the commissioner may be voted at any shareholders' meeting,
45 and any action of shareholders requiring the affirmative vote of a

1 percentage of shares may be taken as though the securities were not
2 issued and outstanding; provided, however, that no action taken at a
3 meeting shall be invalidated by the voting of those securities unless the
4 action would materially affect control of the reorganized insurer or a
5 person that owns or controls a majority or all of the voting securities
6 of the reorganized insurer or unless the courts of this State have so
7 ordered.

8
9 7. No director, officer, agent or employee of the mutual insurer
10 shall receive any fee, commission or other valuable consideration,
11 other than his usual regular salary and compensation, whatsoever, that
12 is contingent upon the plan of reorganization becoming approved or
13 effective or is based upon a director, officer, agent or employee aiding,
14 promoting or assisting in the approval or effectuation of the plan of
15 reorganization. Subject to the approval of the commissioner, the
16 mutual insurer may provide in its plan of reorganization for employee
17 benefit and compensation arrangements, including arrangements
18 involving the use of the stock of the reorganized insurer or stock of its
19 parent corporation, which are to become effective simultaneously with
20 the plan of reorganization; provided, however, that no member of the
21 board of directors may be included in any such arrangement that
22 becomes effective at that time.

23
24 8. If the mutual insurer complies substantially and in good faith
25 with the requirements of this act with respect to any required notice
26 to policyholders, its failure in any case to give the notice to any person
27 or persons entitled thereto shall not impair the validity of the actions
28 and proceedings taken under this act or entitle a person to any
29 injunctive or other relief with respect thereto.

30
31 9. The reorganization shall be effective upon the date when the
32 specified requirements within the plan of reorganization are satisfied.
33 On or prior to the effective date of the reorganization, the mutual
34 insurer shall file with the commissioner a certificate stating that: a. all
35 of the conditions set forth in the plan of reorganization, including a
36 final order by the commissioner granting permission to reorganize in
37 accordance with the plan pursuant to subsection f. of section 4 of this
38 act and approval by policyholders pursuant to section 5 of this act,
39 have been satisfied and b. the board of directors of the mutual insurer
40 has not abandoned or amended the plan of reorganization pursuant to
41 section 11 of this act.

42
43 10. Upon the effective date, the mutual insurer shall immediately
44 become a stock insurer, all membership interests shall be extinguished,
45 and the reorganized insurer will act in good faith to convey
46 consideration to policyholders eligible to receive consideration under

1 the plan of reorganization within 45 days, pursuant to the terms of the
2 plan of reorganization. The reorganized insurer shall be a continuation
3 of the original mutual insurer, and the reorganization in no way shall
4 annul, modify or change any of the original mutual insurer's existing
5 suits, rights, contracts or liabilities, except as provided in the plan of
6 reorganization. After reorganization, the reorganized insurer shall
7 exercise all the rights and powers and perform all the duties conferred
8 or imposed by law upon insurers writing the classes of insurance
9 written by it, and shall be vested in all the rights, franchises and
10 interests of the mutual insurer in and to every species of property
11 without any deed or transfer and the reorganized insurer shall succeed
12 to all the obligations and liabilities of the mutual insurer, and retain all
13 rights and contracts existing prior to conversion, except as provided
14 in the plan.

15

16 11. The mutual insurer may, by action of not less than
17 three-fourths of its board of directors, abandon or amend the plan of
18 reorganization at any time before the effective date. No amendment
19 made after the public hearing required by subsection d. of section 4 of
20 this act shall change the plan in a manner which the commissioner
21 determines is materially disadvantageous to any of the policyholders
22 unless a further public hearing is held on the plan as amended.

23

24 12. The commissioner may, in his discretion, promulgate rules and
25 regulations to implement this act.

26

27 13. The directors and officers of the mutual insurer, unless
28 otherwise specified in the plan of reorganization, shall serve as the
29 directors and officers of the reorganized stock insurer until new
30 directors and officers are duly elected pursuant to the articles of
31 incorporation and bylaws of the reorganized stock insurer.

32

33 14. Within 90 days following the public announcement by a mutual
34 insurer of its intent to demutualize pursuant to this act, the mutual
35 insurer shall provide notice of its intent to demutualize to all former
36 policyholders who are at the time of the notice eligible to reinstate
37 their policies. The notice shall be in a form and distributed in a
38 manner approved by the commissioner.

39

40 15. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill provides for the reorganization (or conversion) of a
46 domestic mutual life insurer to a domestic stock life insurer that may

1 be a subsidiary of another stock corporation that has been organized
2 for the purpose of acquiring all or substantially all of the common
3 stock of the reorganized insurer.

4 To reorganize a domestic mutual insurer, three-fourths of the
5 members of its board of directors must adopt a plan of reorganization.
6 The plan must: specify the manner in which the proposed
7 reorganization shall occur and the reasons for the proposed
8 reorganization; be fair and equitable to the policyholders of the mutual
9 insurer; promote the best interest of the mutual insurer and its
10 policyholders; provide for the enhancement of the operations of the
11 reorganized insurer; not be contrary to law; and not be detrimental to
12 the public. The plan must require the distribution of consideration, in
13 a fair and equitable manner, to all eligible policyholders upon
14 extinguishment of their membership interests and must specify the
15 manner in which the aggregate value of that consideration is
16 determined and the method of allocation among eligible policyholders.
17 With certain exceptions, eligible policyholders must be allocated, in
18 the aggregate, 100% of the common stock of the reorganized insurer
19 or its parent corporation. The plan of reorganization of a mutual
20 insurer must provide for the reasonable dividend expectations of
21 policyholders through establishment of a closed block (a block of
22 participating business operated for the exclusive benefit of the policies
23 included in the block) or other method acceptable to the
24 commissioner.

25 The insurer must file with the commissioner an application for
26 approval of a plan of reorganization. The application must include,
27 among other items: (1) the plan of reorganization which must include
28 an explanation of the manner and basis upon which the reorganization
29 will occur, the method of allocation of the consideration to be
30 distributed to policyholders, and the method by which the dividend
31 expectations of eligible policyholders will be preserved; (2) a fairness
32 opinion from a qualified, nationally recognized investment banker that
33 the provision of common stock, cash and policy benefits for
34 policyholders in the plan of reorganization is fair to eligible
35 policyholders, as a group, from a financial point of view; (3) a
36 business plan with five-year financial projections; (4) actuarial
37 memoranda; and (5) the certificate of incorporation and bylaws of the
38 reorganized insurer.

39 After the commissioner determines that the application is complete,
40 the commissioner shall set a date for a public hearing on the plan of
41 reorganization, which shall occur within 90 days after the application
42 is determined to be complete. The insurer must provide policyholders
43 with at least 45 days' notice of the hearing and must have the notice
44 published twice in at least two newspapers of general circulation
45 throughout the United States. The hearing shall be conducted by the
46 commissioner, or his designee, and the commissioner's order or

1 determination shall be issued within 45 days after the closing of the
2 record. The commissioner shall issue a written decision detailing the
3 reasons why the mutual insurer's plan to reorganize is approved or
4 disapproved. The commissioner may engage the services of advisors
5 and consultants to advise him on the reorganization, with the
6 reasonable cost thereof being paid for by the insurer.

7 The commissioner shall approve the application and permit the
8 reorganization if he finds that: (1) the plan is fair and equitable to the
9 policyholders of the mutual insurer; (2) the plan promotes the best
10 interest of the mutual insurer and its policyholders; (3) the plan
11 provides for the enhancement of the operations of the reorganized
12 insurer; (4) the plan is not contrary to law; (5) the plan is not
13 detrimental to the public; and (6) the reorganized insurer will have
14 capital and surplus in an amount the commissioner deems to be
15 reasonably necessary for its future solvency.

16 The commissioner's order approving or disapproving a plan of
17 reorganization shall be a final agency decision subject to appeal to the
18 court.

19 After the hearing, the plan of reorganization shall be approved by
20 a vote of not less than two-thirds of the votes of the mutual insurer's
21 qualified voters voting and each qualified voter shall be entitled to cast
22 only one vote, irrespective of the number or value of policies held,
23 unless the mutual insurer's charter or by laws provide otherwise. The
24 number of qualified voters who vote on the plan of reorganization
25 must equal or exceed, in the aggregate, one million voters or such
26 lesser number approved by the commissioner.

27 Except as otherwise specifically provided in the plan or
28 reorganization, prior to and for a period of three years following the
29 effective date of the reorganization, no person, other than the
30 reorganized insurer, shall directly or indirectly offer to acquire or
31 acquire the beneficial ownership of five percent or more of any class
32 of a voting security of the reorganized insurer or any person that owns
33 or controls a majority or all of the voting securities of the reorganized
34 insurer without the prior approval by the commissioner. The
35 commissioner shall not approve the acquisition unless it complies with
36 current law, does not frustrate the plan of reorganization, is approved
37 by the board of directors of the reorganized insurer or its parent
38 corporation, and is in the interest of policyholders of the reorganized
39 insurer.

40 The mutual insurer may, by action of not less than three-fourths of
41 its board of directors, abandon or amend the plan of reorganization at
42 any time before the effective date of that plan.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 130

STATE OF NEW JERSEY

DATED: JUNE 1, 1998

The Assembly Banking and Insurance Committee reports favorably Assembly Bill No. 130

This bill provides for the reorganization (or conversion) of a domestic mutual life insurer to a domestic stock life insurer that may be a subsidiary of another stock corporation that has been organized for the purpose of acquiring all or substantially all of the common stock of the reorganized insurer, except that the use of a mutual insurance holding company is not permitted.

To reorganize a domestic mutual insurer, three-fourths of the members of its board of directors must adopt a plan of reorganization. The plan must: specify the manner in which the proposed reorganization shall occur and the reasons for the proposed reorganization; be fair and equitable to the policyholders of the mutual insurer; promote the best interest of the mutual insurer and its policyholders; provide for the enhancement of the operations of the reorganized insurer; not be contrary to law; and not be detrimental to the public. The plan must require the distribution of consideration, in a fair and equitable manner, to all eligible policyholders upon extinguishment of their membership interests and must specify the manner in which the aggregate value of that consideration is determined and the method of allocation among eligible policyholders. Eligible policyholders must be allocated, in the aggregate, 100% of the common stock of the reorganized insurer or its parent corporation. However, the Commissioner of Banking and Insurance may approve the sale of additional shares of stock of the reorganized insurer or its parent corporation if the mutual insurer demonstrates a need for additional capital or that the sale would not significantly dilute the value of the shares distributed to the policyholders.

If the plan of reorganization does not provide for registration and public trading of the common stock of the reorganized insurer or the parent corporation as of the effective date of the plan, the plan shall require the reorganized insurer or the parent corporation to use good faith efforts to encourage and assist in the establishment of a market for the common stock of the reorganized insurer or the parent corporation as soon as reasonably possible, and in any event not later than two years after the effective date of the reorganization. Within two years after the effective date of the reorganization, the

reorganized insurer or its parent corporation, shall make available to each eligible policyholder who received and retained shares of stock with minimal aggregate value upon reorganization, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees under a plan approved by the commissioner. The plan of reorganization of a mutual insurer must provide for the reasonable dividend expectations of policyholders through establishment of a closed block (a block of participating business operated for the exclusive benefit of the policies included in the block for policyholder dividend purposes only) or other method acceptable to the commissioner.

Upon the affirmative vote of not less than three-fourths of the members of the entire board of directors of the mutual insurer, the insurer must file with the commissioner an application for approval of a plan of reorganization. The application must include, among other items: (1) the plan of reorganization which must include an explanation of the manner and basis upon which the reorganization will occur, the method of allocation of the consideration to be distributed to policyholders, and the method by which the dividend expectations of eligible policyholders will be preserved; (2) a fairness opinion from a qualified, nationally recognized investment banker that the provision of common stock, cash and policy benefits for policyholders in the plan of reorganization is fair to eligible policyholders, as a group, from a financial point of view; (3) a business plan with five-year financial projections; (4) actuarial memoranda; and (5) the certificate of incorporation and bylaws of the reorganized insurer.

After the commissioner determines that the application is complete, the commissioner shall set a date for a public hearing on the plan of reorganization, which shall occur within 90 days after the application is determined to be complete. The insurer must provide policyholders with at least 45 days' notice of the hearing and must have the notice published twice in at least two newspapers of general circulation throughout the United States. The hearing shall be conducted by the commissioner, or his designee, and the commissioner's order or determination shall be issued within 45 days after the closing of the record. After the hearing, but before the closing of the record of the hearing, the plan of reorganization shall be approved by a vote of not less than two-thirds of the votes of the mutual insurer's qualified voters voting and each qualified voter shall be entitled to cast only one vote, irrespective of the number or value of policies held, unless the mutual insurer's charter or by-laws provide otherwise. The number of qualified voters who vote on the plan of reorganization must equal or exceed, in the aggregate, one million voters or such lesser number as approved by the commissioner. The commissioner shall issue a written decision detailing the reasons why the mutual insurer's plan to reorganize is approved or disapproved. The commissioner may engage the services of advisors and consultants to advise him on the reorganization, with the reasonable cost thereof being paid for by the

insurer.

The commissioner shall approve the application and permit the reorganization if he finds that: (1) the plan is fair and equitable to the policyholders of the mutual insurer; (2) the plan promotes the best interest of the mutual insurer and its policyholders; (3) the plan provides for the enhancement of the operations of the reorganized insurer; (4) the plan is not contrary to law; (5) the plan is not detrimental to the public; and (6) the reorganized insurer will have capital and surplus in an amount the commissioner deems to be reasonably necessary for its future solvency.

The commissioner's order approving or disapproving a plan of reorganization shall be a final agency decision subject to appeal to the court.

Except as otherwise specifically provided in the plan of reorganization, prior to and for a period of three years following the effective date of the reorganization, no person, other than the reorganized insurer, shall directly or indirectly offer to acquire, or acquire, the beneficial ownership of five percent or more of any class of a voting security of the reorganized insurer or any person that owns or controls a majority or all of the voting securities of the reorganized insurer without the prior approval by the commissioner. The commissioner shall not approve the acquisition unless it complies with current law, does not frustrate the plan of reorganization, is approved by the board of directors of the reorganized insurer or its parent corporation, and is in the interest of policyholders of the reorganized insurer.

The mutual insurer may, by action of not less than three-fourths of its board of directors, abandon or amend the plan of reorganization at any time before the effective date of that plan.

SENATE, No. 1095

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MAY 21, 1998

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator RICHARD J. CODEY

District 27 (Essex)

Co-Sponsored by:

Senators Singer and Furnari

SYNOPSIS

Provides for the conversion of domestic mutual life insurers to domestic stock life insurers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT to provide for the conversion of domestic mutual life insurers
2 to domestic stock life insurers.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Adoption date" means the date as of which the board of directors
9 of the mutual insurer initially approves and adopts the plan of
10 reorganization;

11 "Closed block" means a block of participating business operated for
12 the exclusive benefit of the policies included therein for policyholder
13 dividend purposes only;

14 "Effective date" means the date upon which the reorganization of
15 the mutual insurer is effective, as provided in section 9 of this act;

16 "Eligible policyholder" means a policyholder who owns, or is
17 deemed by the plan of reorganization to own, a policy that is, or that
18 is deemed by the plan of reorganization to be, in force on the adoption
19 date, or a policyholder who is deemed eligible by the plan of
20 reorganization, including as a result of reinstatement in accordance
21 with the terms of the policy or the plan of reorganization, or
22 otherwise;

23 "Fair and equitable" means that any action undertaken pursuant to
24 this act with respect to a plan of reorganization, provides for full and
25 proper consideration of the aggregate membership interests and
26 corresponding values of eligible policyholders, in no manner
27 discriminates improperly among eligible policyholders and
28 appropriately protects the interests of eligible policyholders before and
29 subsequent to the reorganization;

30 "Membership interest" means all rights and interests of a
31 policyholder as a member of a mutual insurer arising under the mutual
32 insurer's charter or certificate of incorporation and bylaws, by law or
33 otherwise, which rights include, but are not limited to, the right, if any,
34 to vote and the right, if any, with regard to the surplus of the mutual
35 insurer not apportioned or declared by the board of directors for
36 policyholder dividends;

37 "Mutual insurance holding company" means a holding company
38 based on a mutual plan which at all times owns, directly or indirectly
39 through one or more intermediate stock holding companies, a majority
40 of the voting securities of a reorganized insurer;

41 "Mutual insurer" means, in the case of a plan of reorganization
42 under this act, a domestic mutual insurer authorized to write the kind
43 of business defined in N.J.S.17B:17-3 and is reorganizing pursuant to
44 a plan of reorganization;

45 "Parent corporation" means a stock corporation that is or has been
46 organized for the purpose of acquiring, directly or indirectly, pursuant

1 to the plan of reorganization, all or substantially all of the common
2 shares of the reorganized insurer;

3 "Person" means an individual, partnership, firm, association,
4 corporation, joint-stock company, limited liability company, limited
5 liability partnership, trust, government or governmental agency, state
6 or political subdivision of a state, board, estate, trustee or fiduciary,
7 or any other legal entity;

8 "Plan of reorganization" means the plan of reorganization adopted
9 by the mutual insurer in compliance with section 3 of this act;

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

22 "Policyholder" means the owner or deemed owner of a policy, as
23 determined in accordance with the definition of "policyholder" set
24 forth in N.J.S.17B:18-13 or N.J.S.17B:18-23, as applicable, and any
25 additional rules as are set forth in the plan of reorganization;

26 "Qualified voter" has the meaning set forth in N.J.S.17B:18-13 or
27 N.J.S.17B:18-23, as applicable; and

28 "Reorganized insurer" means the domestic stock insurer into which
29 a mutual insurer has been reorganized in accordance with this act.

30

31 2. A domestic mutual life insurer authorized to write the kind of
32 business defined in N.J.S.17B:17-3, which life insurer may also be
33 authorized to write other kinds of business under Title 17B of the New
34 Jersey Statutes, may pursuant to the provisions of this act reorganize
35 into a domestic stock life insurer that may be or become a subsidiary
36 of another stock corporation that is or has been organized for the
37 purpose of acquiring, directly or indirectly, all or substantially all of
38 the common stock of the reorganized insurer, provided that the use of
39 a mutual insurance holding company shall not be permitted.

40

41 3. The reorganization of a mutual insurer shall be accomplished
42 pursuant to a plan of reorganization that complies with the following
43 requirements:

44 a. The plan of reorganization shall have been duly adopted by
45 action of not less than three-fourths of the members of the entire board
46 of directors of the mutual insurer.

1 b. The plan of reorganization shall: (1) specify the manner in which
2 the proposed reorganization shall occur and the reasons for the
3 proposed reorganization; (2) be fair and equitable to the policyholders
4 of the mutual insurer; (3) promote the best interest of the mutual
5 insurer and its policyholders; (4) provide for the enhancement of the
6 operations of the reorganized insurer; (5) not be contrary to law; and
7 (6) not be detrimental to the public.

8 c. The plan of reorganization shall provide that all membership
9 interests in the mutual insurer shall be extinguished as of the effective
10 date; shall require the distribution of consideration, in a fair and
11 equitable manner, to all eligible policyholders upon extinguishment of
12 their membership interests; shall specify the manner in which the
13 aggregate value of the consideration shall be determined and the
14 method by which the consideration shall be allocated among eligible
15 policyholders; and shall provide for the reasonable dividend
16 expectations of policyholders.

17 (1) With respect to that consideration, eligible policyholders shall
18 be allocated in the aggregate one hundred per centum (100%) of the
19 common stock of the reorganized insurer or its parent corporation,
20 provided, however, that the commissioner may approve the sale of
21 additional shares of stock of the reorganized insurer or its parent
22 corporation if the mutual insurer demonstrates: (a) a need for
23 additional capital, or (b) that the sale would not significantly dilute the
24 value of the shares distributed to the policyholders.

25 (2) The method for allocating consideration among eligible
26 policyholders shall be fair and equitable. The method shall provide for
27 each eligible policyholder to receive (a) a fixed component of
28 consideration or a variable component of consideration, or both; or (b)
29 any other component of consideration acceptable to the commissioner.
30 Any component shall reflect, based upon fair and equitable formulas,
31 methods and assumptions, factors such as estimated proportionate
32 contributions of classes or groupings of policies and contracts to the
33 aggregate component of consideration being distributed to eligible
34 policyholders or other factors the commissioner may approve.

35 (3) The consideration to be distributed to eligible policyholders
36 shall consist of cash, stock of the reorganized insurer or the parent
37 corporation, or if appropriate for tax or other reasons, additional life
38 insurance or annuity benefits, any combination of these forms of
39 consideration, or other forms of consideration acceptable to the
40 commissioner. The form or forms of consideration to be distributed
41 to a class or category of eligible policyholders may differ from the
42 form or forms of consideration to be distributed to another class or
43 category of eligible policyholders. The choice of the form or forms of
44 consideration to be distributed to a class or category of eligible
45 policyholders shall take into account such factors as the type of policy
46 with respect to which the consideration is being distributed, the

1 country of residence or tax status of the eligible policyholders or other
2 appropriate factors; provided, however, that, if the consideration to be
3 distributed to one or more classes or categories of eligible
4 policyholders will be in a form other than common stock of a publicly
5 traded company, the plan of reorganization shall include a provision
6 for determining, in a reasonable manner, the value of the consideration
7 by means of reference to (a) the estimated market value of the
8 reorganized insurer based upon an independent evaluation by a
9 qualified expert; (b) the per share public market value of the registered
10 common stock of the reorganized insurer or its parent corporation; or
11 (c) by another method acceptable to the commissioner.

12 (4) If the plan of reorganization does not provide for registration
13 and public trading of the common stock of the reorganized insurer or
14 the parent corporation as of the effective date, the plan of
15 reorganization shall require the reorganized insurer or the parent
16 corporation, as applicable, to use good faith efforts, to encourage and
17 assist in the establishment of a market for the common stock of the
18 reorganized insurer or the parent corporation as soon as reasonably
19 possible and in any event not later than two years after the effective
20 date of the reorganization, including obtaining a listing for the stock
21 on a national exchange, facilitating coverage by research analysts,
22 conducting management presentations to potential investors and
23 analysts and securing the commitment of at least one market maker,
24 which may be a specialist firm, to make a market in the common stock.

25 (5) Within two years after the effective date of the reorganization,
26 the reorganized insurer or its parent corporation, as applicable, shall
27 make available to each eligible policyholder who received and retained
28 shares of stock with minimal aggregate value upon reorganization, a
29 procedure to dispose of those shares of stock at market value without
30 brokerage commissions or similar fees under a plan approved by the
31 commissioner. The plan of reorganization shall include a provision for
32 determining, in a reasonable manner, the market value of the shares by
33 means of reference to (a) the estimated market value of the
34 reorganized insurer based upon an independent evaluation by a
35 qualified expert; (b) the per share public market value of the registered
36 common stock of the reorganized insurer or its parent corporation; or
37 (c) by another method acceptable to the commissioner.

38 d. (1) The plan of reorganization of a mutual insurer shall provide
39 for the reasonable dividend expectations of policyholders through
40 establishment of a closed block or other method acceptable to the
41 commissioner. The sole purpose of any dividend protection provision
42 shall be to provide for reasonable policyholder dividend expectations,
43 and it is not intended that the provision shall provide in any way for
44 the distribution of consideration to eligible policyholders for the
45 extinguishment of membership interests as set forth in subsection c. of
46 this section. If a closed block is utilized, (a) the closed block shall be

1 operated for the exclusive benefit of policies and contracts included
2 therein, (b) no costs or expenses incurred in connection with the
3 reorganization shall be charged to the closed block, and (c) subject to
4 termination of the closed block pursuant to paragraph (3) of this
5 subsection d., none of the assets, including the revenue therefrom,
6 allocated to the closed block shall revert to the benefit of the
7 stockholders of the reorganized insurer.

8 (2) Any provision for dividend expectations may be limited to
9 participating individual life insurance policies and participating
10 individual annuity contracts in force or deemed to be in force by the
11 plan of reorganization on the effective date of the plan of
12 reorganization for which the mutual insurer has an experience-based
13 dividend scale due, paid or accrued by action of the board of directors
14 of the mutual insurer in the year in which the plan of reorganization is
15 adopted; provided, however, that (a) policies that would be includible
16 but for the fact that their recent issuance results in no dividends for an
17 initial period, may be included, and (b) policies that are in force as
18 extended term insurance may be included, and (c) other categories of
19 policies and benefits not described in this paragraph may be included
20 or excluded, subject to the approval of the commissioner.

21 (3) If a closed block is utilized, the assets allocated therein,
22 together with the revenue from the closed block, shall be reasonably
23 sufficient to support the business in the closed block until the time the
24 last policy in the closed block has terminated, including payment of
25 claims and those expenses and taxes as are specified in the plan of
26 reorganization, and to provide for continuation of dividend scales in
27 effect on the adoption date, if the experience underlying those scales
28 continues, and for appropriate adjustments in the scales if the
29 experience changes. The plan of reorganization shall provide that the
30 assets assigned to a closed block will consist of: (a) a list of
31 designated assets of the mutual insurer's general account or specified
32 segments thereof, which list shall change periodically to reflect the
33 acquisition and disposition of assets, or (b) a designated portion of
34 each and every asset of the mutual insurer's general account or
35 specified segments thereof, which portion shall change periodically to
36 reflect the cash flows of the closed block, or (c) a combination of
37 both. The plan of operation for any closed block that is established
38 shall specify which of the methods of assignment of closed block
39 assets is being used, and shall set forth the methods by which the
40 designations referred to in subparagraphs (a), (b) and (c) of this
41 paragraph are changed during the course of closed block operations.
42 The plan of reorganization shall: require the reorganized insurer to
43 submit to the commissioner periodic reports, in a form acceptable to
44 the commissioner, that account for and describe the operations of the
45 closed block; and as specified in the plan, provide for periodic reviews
46 of, and reports on, the closed block by an independent actuary in

1 accordance with paragraph (4) of this subsection d. The plan of
2 reorganization may provide for conditions under which the
3 reorganized insurer, with the approval of the commissioner, may cease
4 to maintain the closed block.

5 (4) Both the mutual insurer and the commissioner shall each
6 appoint one or more qualified and independent actuaries for the
7 purpose of providing actuarial certifications with respect to:

8 (a) The reasonableness and sufficiency of the assets allocated to the
9 closed block, if a closed block is provided; and

10 (b) The reasonableness and appropriateness of the methodology
11 and underlying assumptions used to allocate consideration among
12 eligible policyholders.

13 The actuaries shall be members of the American Academy of
14 Actuaries. The certifications provided shall be in a form satisfactory
15 to the commissioner and shall be made in accordance with professional
16 standards and practices generally accepted by the actuarial profession
17 and those other factors as the actuary in his professional judgment
18 believes are reasonable and appropriate at the time the certification is
19 made. The certification shall be accompanied by a memorandum of
20 the actuary, in a form satisfactory to the commissioner, describing the
21 calculations made in support of the certification and the assumptions
22 used in the calculations. The memoranda shall be and remain
23 confidential and shall not be subject to public inspection or copying
24 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).
25

26 4. a. Upon the affirmative vote of not less than three-fourths of
27 the members of the entire board of directors of the mutual insurer, the
28 mutual insurer shall file with the commissioner an application for
29 approval of, and permission to reorganize pursuant to, a plan of
30 reorganization. The application shall include the following:

31 (1) The plan of reorganization and exhibits thereto which shall
32 include:

33 (a) an explanation of the manner and basis upon which the
34 reorganization shall occur;

35 (b) the method of allocation of the consideration to be distributed
36 to policyholders, including an actuarial certification of the
37 reasonableness and appropriateness of the methodology used to
38 allocate consideration among eligible policyholders; and

39 (c) the method by which the dividend expectations of policyholders
40 will be preserved including, if the plan utilizes a closed block, the plan
41 of operation of the closed block and an actuarial certification of the
42 reasonableness and sufficiency of the assets allocated to the closed
43 block;

44 (2) A fairness opinion addressed to the board of directors of the
45 mutual insurer from a qualified, nationally recognized investment
46 banker that the provision of common stock, cash and policy benefits

1 upon the extinguishment of the policyholders' membership interests
2 pursuant to the plan of reorganization is fair to the eligible
3 policyholders, as a group, from a financial point of view;

4 (3) A business plan of the reorganized insurer including five-year
5 financial projections;

6 (4) A certification that the plan of reorganization has been duly
7 adopted by action of not less than three-fourths of the members of the
8 entire board of directors of the mutual insurer;

9 (5) The actuarial memoranda accompanying the certifications of
10 the independent actuary appointed by the mutual insurer as required
11 by paragraph (4) of subsection d. of section 3 of this act;

12 (6) Certified copies of the proposed charter or certificate of
13 incorporation and bylaws of the reorganized insurer;

14 (7) The proposed forms of the notice of hearing to policyholders
15 and for publication required by subsection d. of this section and the
16 notice of the meeting of policyholders required by subsection c. of
17 section 5 of this act, and any other notices required by the plan of
18 reorganization;

19 (8) Any information provided to the board of directors of the
20 mutual insurer in connection with its review and approval of the plan
21 of reorganization, except materials that are protected by attorney-
22 client privilege;

23 (8) Any other additional information that the mutual insurer
24 believes is necessary; and

25 (9) Any other additional information that the commissioner in his
26 sole discretion deems necessary.

27 b. The commissioner in his sole discretion shall determine, within
28 thirty days of submission of the application, whether the application is
29 complete and whether the forms of notice submitted pursuant to
30 paragraph (7) of subsection a. of this section are adequate and may be
31 provided to policyholders.

32 c. The application and supporting documents shall be public
33 documents except that the business plan, the financial projections, the
34 actuarial memoranda and any other information that the commissioner
35 determines could result in harm to the mutual insurer, harm to the
36 reorganized insurer, or a reduction of values to eligible policyholders,
37 if disclosed, shall be considered confidential. This confidentiality will
38 not extend to information provided by the mutual insurer that the
39 commissioner deems necessary to be provided to policyholders to
40 evaluate the plan of reorganization.

41 d. Upon determining that the application is complete and the forms
42 of notice are adequate, the commissioner shall designate a date for a
43 public hearing on the plan of reorganization. The public hearing may
44 be held on one or more days, the first commencing within 90 days after
45 the date on which the commissioner determines the application is
46 complete, unless the mutual insurer requests, and the commissioner

1 agrees to, a longer period for the purpose of preparing and distributing
2 the notices required by this subsection and subsection c. of section 5
3 of this act. The hearing shall be in the nature of a legislative hearing
4 and shall not constitute or be considered, a contested case under the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.). The mutual insurer shall provide policyholders with at least 45
7 days' notice of the hearing, the notice to be in the form, and provided
8 in the manner, that the commissioner approves pursuant to subsection
9 b. of this section. The mutual insurer shall cause notice of the time
10 and place of the public hearing to be published at least two times at
11 intervals of not less than one week, the first publication to be not more
12 than 45 days and the last publication not less than 15 days prior to the
13 public hearing in at least two newspapers of general circulation
14 throughout the United States. The notice of the hearing shall state the
15 purpose thereof and the time and the place where the hearing will
16 occur. The purpose of the hearing shall be to receive comments and
17 information for the purpose of aiding the commissioner in making a
18 decision on the plan of reorganization. Persons wishing to make
19 comments and submit information may submit written statements prior
20 to the public hearing and may appear and be heard at the hearing.

21 e. The hearing shall be conducted by the commissioner or, at the
22 commissioner's discretion, his designee, who shall report to and advise
23 the commissioner on the matter, and the determination or order issued
24 by the commissioner shall have the same force and effect as if the
25 commissioner had conducted the hearing personally. The
26 commissioner's order or determination shall be issued within 45 days
27 after the closing of the record of the hearing by the commissioner or
28 the hearing officer, as applicable, which record shall not be closed until
29 the time it includes certification of the vote on the plan of
30 reorganization by the mutual insurer's qualified voters as required by
31 section 5 of this act. The commissioner shall issue a written decision
32 detailing the reasons why the mutual insurer's plan of reorganization
33 is approved or disapproved.

34 f. The commissioner shall approve the application and permit the
35 reorganization pursuant to the plan of reorganization if he finds,
36 following a public hearing, that: (1) the application conforms to the
37 requirements of this section; (2) the plan is fair and equitable to the
38 policyholders of the mutual insurer; (3) the plan promotes the best
39 interest of the mutual insurer and its policyholders; (4) the plan
40 provides for the enhancement of the operations of the reorganized
41 insurer; (5) the plan is not contrary to law; (6) the plan is not
42 detrimental to the public; and (7) after giving effect to the
43 reorganization, the reorganized insurer will have an amount of capital
44 and surplus the commissioner deems to be reasonably necessary for its
45 future solvency.

46 g. The commissioner may engage the services of advisors and

1 consultants, which may include, but are not limited to, lawyers,
2 actuaries, accountants, investment bankers, compensation and
3 employee benefit plan consultants or any combination thereof, to
4 advise him on any matters related to the reorganization. All
5 reasonable costs related to the development and examination of, and
6 deliberations concerning, a plan of reorganization and other related
7 matters, including those reasonable costs attributable to the use by the
8 commissioner of advisors and consultants, shall be paid by the mutual
9 insurer that makes the filing or initiates the discussions about a plan of
10 reorganization for services prior to the effective date and by the
11 reorganized insurer for services after the effective date.

12 h. The commissioner's order approving or disapproving a plan of
13 reorganization shall be a final agency decision subject to appeal in
14 accordance with, and within the time periods specified by, the Rules
15 Governing the Courts of the State of New Jersey.

16

17 5. a. Subject to the provisions of subsection b. of this section, the
18 plan of reorganization shall be approved by a vote of not less than
19 two-thirds of the votes of the mutual insurer's qualified voters voting
20 thereon in person or by attorney or proxy, except in the case of a
21 mutual insurer that holds its elections pursuant to N.J.S.17B:18-18 to
22 17B:18-28, inclusive, in which case voting shall be in person or by
23 ballot, at a meeting of policyholders called for that purpose. The
24 meeting of policyholders shall occur after the hearing required
25 pursuant to subsection e. of section 4 of this act. Pursuant to
26 N.J.S.17B:18-14 or subsection d. of N.J.S.17B:18-26, as applicable,
27 each qualified voter shall be entitled to cast only one vote, irrespective
28 of the number or value of policies held, unless the mutual insurer's
29 charter or bylaws provide otherwise. The commissioner shall have the
30 power to supervise and direct and prescribe rules governing the
31 procedure for the conduct of voting on the plan of reorganization to
32 the extent, consistent with the provisions of this section, he deems
33 necessary to insure a fair and accurate vote. These powers shall
34 include, but not be limited to, power to examine, supervise and
35 approve: (1) the determination of qualified voters entitled to notice of
36 and to vote on the plan of reorganization; (2) the giving of notice of
37 the policyholders' meeting; (3) the content of the proxy form or ballot;
38 (4) the receipt, custody, safeguarding, verification and tabulation of
39 proxy forms and ballots; and (5) the resolution of any disputes.

40 b. The number of qualified voters who vote on the plan of
41 reorganization shall equal or exceed, in the aggregate, (1) one million
42 qualified voters, or (2) that lesser number of qualified voters as the
43 commissioner shall approve.

44 c. All qualified voters shall be given notice of their opportunity to
45 vote on the plan of reorganization, which notice shall be in a form
46 approved by the commissioner and accompanied by a copy of the plan

1 of reorganization or a summary thereof which shall also be in a form
2 approved by the commissioner, and any other explanatory information
3 that the commissioner approves or requires. The notice shall be
4 mailed, or provided by some other method or methods as may be
5 approved by the commissioner, not less than 45 days before the date
6 of the meeting of policyholders to vote on the plan of reorganization.
7 The notice may be combined with the notice of the hearing described
8 in subsection d. of section 4 of this act.

9 d. The mutual insurer shall use good faith efforts to encourage
10 qualified voters to vote on the plan of reorganization. These efforts
11 shall be specified in the plan of reorganization and may include, but
12 need not be limited to, establishing a toll-free call center, establishing
13 an Internet site, adding messages to routine policy statements,
14 providing written communications to qualified voters, and advertising
15 in national publications.

16

17 6. Except as otherwise specifically provided in the plan of
18 reorganization, prior to and for a period of three years following the
19 effective date of the reorganization, no person or persons acting in
20 concert, other than the reorganized insurer or any employee benefit
21 plans or trusts sponsored by the reorganized insurer, shall directly or
22 indirectly offer to acquire or acquire in any manner the beneficial
23 ownership of five percent or more of any class of a voting security of
24 the reorganized insurer or any person that owns or controls a majority
25 or all of the voting securities of the reorganized insurer without the
26 prior approval by the commissioner of an application for acquisition
27 filed by that person with the commissioner. The application for
28 acquisition shall contain the information required by subsection b. of
29 section 2 of P.L.1970, c.22 (C.17:27A-2) and any other information
30 required by the commissioner. The commissioner shall not approve an
31 application for acquisition unless he finds that the requirements of
32 subsection d. of section 2 of P.L.1970, c.22 (C.17:27A-2) will be
33 satisfied and, additionally, that: a. the acquisition would not frustrate
34 the plan of reorganization as approved by the policyholders and the
35 commissioner; b. the board of directors of the reorganized insurer or
36 its parent corporation, as applicable, has approved the acquisition or
37 extraordinary circumstances not contemplated in the plan of
38 reorganization have arisen that would warrant their approval of the
39 acquisition; and c. the acquisition would be in the interest of the
40 policyholders of the reorganized insurer. No security that is the
41 subject of any agreement or arrangement regarding acquisition or that
42 is acquired or to be acquired in contravention of this section or of an
43 order of the commissioner may be voted at any shareholders' meeting,
44 and any action of shareholders requiring the affirmative vote of a
45 percentage of shares may be taken as though the securities were not
46 issued and outstanding; provided, however, that no action taken at a

1 meeting shall be invalidated by the voting of those securities unless the
2 action would materially affect control of the reorganized insurer or a
3 person that owns or controls a majority or all of the voting securities
4 of the reorganized insurer or unless the courts of this State have so
5 ordered.

6
7 7. No director, officer, agent or employee of the mutual insurer
8 shall receive any fee, commission or other valuable consideration,
9 other than his usual regular salary and compensation, whatsoever, that
10 is contingent upon the plan of reorganization becoming approved or
11 effective or is based upon a director, officer, agent or employee aiding,
12 promoting or assisting in the approval or effectuation of the plan of
13 reorganization. Subject to the approval of the commissioner, the
14 mutual insurer may provide in its plan of reorganization for employee
15 benefit and compensation arrangements, including arrangements
16 involving the use of the stock of the reorganized insurer or stock of its
17 parent corporation, which are to become effective simultaneously with
18 the plan of reorganization; provided, however, that no member of the
19 board of directors may be included in any such arrangement that
20 becomes effective at that time.

21
22 8. If the mutual insurer complies substantially and in good faith
23 with the requirements of this act with respect to any required notice
24 to policyholders, its failure in any case to give the notice to any person
25 or persons entitled thereto shall not impair the validity of the actions
26 and proceedings taken under this act or entitle a person to any
27 injunctive or other relief with respect thereto.

28
29 9. The reorganization shall be effective upon the date when the
30 specified requirements within the plan of reorganization are satisfied.
31 On or prior to the effective date of the reorganization, the mutual
32 insurer shall file with the commissioner a certificate stating that: a. all
33 of the conditions set forth in the plan of reorganization, including a
34 final order by the commissioner granting permission to reorganize in
35 accordance with the plan pursuant to subsection f. of section 4 of this
36 act and approval by policyholders pursuant to section 5 of this act,
37 have been satisfied and b. the board of directors of the mutual insurer
38 has not abandoned or amended the plan of reorganization pursuant to
39 section 11 of this act.

40
41 10. Upon the effective date, the mutual insurer shall immediately
42 become a stock insurer, all membership interests shall be extinguished,
43 and the reorganized insurer will act in good faith to convey
44 consideration to policyholders eligible to receive consideration under
45 the plan of reorganization within 45 days, pursuant to the terms of the
46 plan of reorganization. The reorganized insurer shall be a continuation

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

13

14 11. The mutual insurer may, by action of not less than
15 three-fourths of its board of directors, abandon or amend the plan of
16 reorganization at any time before the effective date. No amendment
17 made after the public hearing required by subsection d. of section 4 of
18 this act shall change the plan in a manner which the commissioner
19 determines is materially disadvantageous to any of the policyholders
20 unless a further public hearing is held on the plan as amended.

21

22 12. The commissioner may, in his discretion, promulgate rules and
23 regulations to implement this act.

24

25 13. The directors and officers of the mutual insurer, unless
26 otherwise specified in the plan of reorganization, shall serve as the
27 directors and officers of the reorganized stock insurer until new
28 directors and officers are duly elected pursuant to the articles of
29 incorporation and bylaws of the reorganized stock insurer.

30

31 14. Within 90 days following the public announcement by a mutual
32 insurer of its intent to demutualize pursuant to this act, the mutual
33 insurer shall provide notice of its intent to demutualize to all former
34 policyholders who are at the time of the notice eligible to reinstate
35 their policies. The notice shall be in a form and distributed in a
36 manner approved by the commissioner.

37

38 15. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill provides for the reorganization (or conversion) of a
44 domestic mutual life insurer to a domestic stock life insurer that may
45 be a subsidiary of another stock corporation that has been organized
46 for the purpose of acquiring all or substantially all of the common

1 stock of the reorganized insurer.

2 To reorganize a domestic mutual insurer, three-fourths of the
3 members of its board of directors must adopt a plan of reorganization.
4 The plan must: specify the manner in which the proposed
5 reorganization shall occur and the reasons for the proposed
6 reorganization; be fair and equitable to the policyholders of the mutual
7 insurer; promote the best interest of the mutual insurer and its
8 policyholders; provide for the enhancement of the operations of the
9 reorganized insurer; not be contrary to law; and not be detrimental to
10 the public. The plan must require the distribution of consideration, in
11 a fair and equitable manner, to all eligible policyholders upon
12 extinguishment of their membership interests and must specify the
13 manner in which the aggregate value of that consideration is
14 determined and the method of allocation among eligible policyholders.
15 With certain exceptions, eligible policyholders must be allocated, in
16 the aggregate, 100% of the common stock of the reorganized insurer
17 or its parent corporation. The plan of reorganization of a mutual
18 insurer must provide for the reasonable dividend expectations of
19 policyholders through establishment of a closed block (a block of
20 participating business operated for the exclusive benefit of the policies
21 included in the block) or other method acceptable to the
22 commissioner.

23 The insurer must file with the commissioner an application for
24 approval of a plan of reorganization. The application must include,
25 among other items: (1) the plan of reorganization which must include
26 an explanation of the manner and basis upon which the reorganization
27 will occur, the method of allocation of the consideration to be
28 distributed to policyholders, and the method by which the dividend
29 expectations of eligible policyholders will be preserved; (2) a fairness
30 opinion from a qualified, nationally recognized investment banker that
31 the provision of common stock, cash and policy benefits for
32 policyholders in the plan of reorganization is fair to eligible
33 policyholders, as a group, from a financial point of view; (3) a
34 business plan with five-year financial projections; (4) actuarial
35 memoranda; and (5) the certificate of incorporation and bylaws of the
36 reorganized insurer.

37 After the commissioner determines that the application is complete,
38 the commissioner shall set a date for a public hearing on the plan of
39 reorganization, which shall occur within 90 days after the application
40 is determined to be complete. The insurer must provide policyholders
41 with at least 45 days' notice of the hearing and must have the notice
42 published twice in at least two newspapers of general circulation
43 throughout the United States. The hearing shall be conducted by the
44 commissioner, or his designee, and the commissioner's order or
45 determination shall be issued within 45 days after the closing of the
46 record. The commissioner shall issue a written decision detailing the

1 reasons why the mutual insurer's plan to reorganize is approved or
2 disapproved. The commissioner may engage the services of advisors
3 and consultants to advise him on the reorganization, with the
4 reasonable cost thereof being paid for by the insurer.

5 The commissioner shall approve the application and permit the
6 reorganization if he finds that: (1) the plan is fair and equitable to the
7 policyholders of the mutual insurer; (2) the plan promotes the best
8 interest of the mutual insurer and its policyholders; (3) the plan
9 provides for the enhancement of the operations of the reorganized
10 insurer; (4) the plan is not contrary to law; (5) the plan is not
11 detrimental to the public; and (6) the reorganized insurer will have
12 capital and surplus in an amount the commissioner deems to be
13 reasonably necessary for its future solvency.

14 The commissioner's order approving or disapproving a plan of
15 reorganization shall be a final agency decision subject to appeal to the
16 court.

17 After the hearing, the plan of reorganization shall be approved by
18 a vote of not less than two-thirds of the votes of the mutual insurer's
19 qualified voters voting and each qualified voter shall be entitled to cast
20 only one vote, irrespective of the number or value of policies held,
21 unless the mutual insurer's charter or by laws provide otherwise. The
22 number of qualified voters who vote on the plan of reorganization
23 must equal or exceed, in the aggregate, one million voters or such
24 lesser number approved by the commissioner.

25 Except as otherwise specifically provided in the plan or
26 reorganization, prior to and for a period of three years following the
27 effective date of the reorganization, no person, other than the
28 reorganized insurer, shall directly or indirectly offer to acquire or
29 acquire the beneficial ownership of five percent or more of any class
30 of a voting security of the reorganized insurer or any person that owns
31 or controls a majority or all of the voting securities of the reorganized
32 insurer without the prior approval by the commissioner. The
33 commissioner shall not approve the acquisition unless it complies with
34 current law, does not frustrate the plan of reorganization, is approved
35 by the board of directors of the reorganized insurer or its parent
36 corporation, and is in the interest of policyholders of the reorganized
37 insurer.

38 The mutual insurer may, by action of not less than three-fourths of
39 its board of directors, abandon or amend the plan of reorganization at
40 any time before the effective date of that plan.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1095

STATE OF NEW JERSEY

DATED: JUNE 4, 1998

The Senate Commerce Committee reports favorably Senate Bill No. 1095.

This bill provides for the reorganization (or conversion) of a domestic mutual life insurer to a domestic stock life insurer that may be a subsidiary of another stock corporation that has been organized for the purpose of acquiring all or substantially all of the common stock of the reorganized insurer, except that the use of a mutual insurance holding company is not permitted.

To reorganize a domestic mutual insurer, three-fourths of the members of its board of directors must adopt a plan of reorganization. The plan must: specify the manner in which the proposed reorganization shall occur and the reasons for the proposed reorganization; be fair and equitable to the policyholders of the mutual insurer; promote the best interest of the mutual insurer and its policyholders; provide for the enhancement of the operations of the reorganized insurer; not be contrary to law; and not be detrimental to the public. The plan must require the distribution of consideration, in a fair and equitable manner, to all eligible policyholders upon extinguishment of their membership interests and must specify the manner in which the aggregate value of that consideration is determined and the method of allocation among eligible policyholders. Eligible policyholders must be allocated, in the aggregate, 100% of the common stock of the reorganized insurer or its parent corporation. However, the commissioner may approve the sale of additional shares of stock of the reorganized insurer or its parent corporation if the mutual insurer demonstrates a need for additional capital or that the sale would not significantly dilute the value of the shares distributed to the policyholders.

If the plan of reorganization does not provide for registration and public trading of the common stock of the reorganized insurer or the parent corporation as of the effective date of the plan, the plan shall require the reorganized insurer or the parent corporation to use good faith efforts to encourage and assist in the establishment of a market for the common stock of the reorganized insurer or the parent corporation as soon as reasonably possible and in any event not later than two years after the effective date of the reorganization. Within

two years after the effective date of the reorganization, the reorganized insurer or its parent corporation, shall make available to each eligible policyholder who received and retained shares of stock with minimal aggregate value upon reorganization, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees under a plan approved by the commissioner. The plan of reorganization of a mutual insurer must provide for the reasonable dividend expectations of policyholders through establishment of a closed block (a block of participating business operated for the exclusive benefit of the policies included in the block for policyholder dividend purposes only) or other method acceptable to the commissioner.

Upon the affirmative vote of not less than three-fourths of the members of the entire board of directors of the mutual insurer, the insurer must file with the commissioner an application for approval of a plan of reorganization. The application must include, among other items: (1) the plan of reorganization which must include an explanation of the manner and basis upon which the reorganization will occur, the method of allocation of the consideration to be distributed to policyholders, and the method by which the dividend expectations of eligible policyholders will be preserved; (2) a fairness opinion from a qualified, nationally recognized investment banker that the provision of common stock, cash and policy benefits for policyholders in the plan of reorganization is fair to eligible policyholders, as a group, from a financial point of view; (3) a business plan with five-year financial projections; (4) actuarial memoranda; and (5) the certificate of incorporation and bylaws of the reorganized insurer.

After the commissioner determines that the application is complete, the commissioner shall set a date for a public hearing on the plan of reorganization, which shall occur within 90 days after the application is determined to be complete. The insurer must provide policyholders with at least 45 days' notice of the hearing and must have the notice published twice in at least two newspapers of general circulation throughout the United States. The hearing shall be conducted by the commissioner, or his designee, and the commissioner's order or determination shall be issued within 45 days after the closing of the record. After the hearing but before the closing of the record of the hearing, the plan of reorganization shall be approved by a vote of not less than two-thirds of the votes of the mutual insurer's qualified voters voting and each qualified voter shall be entitled to cast only one vote, irrespective of the number or value of policies held, unless the mutual insurer's charter or by-laws provide otherwise. The number of qualified voters who vote on the plan of reorganization must equal or exceed, in the aggregate, one million voters or such lesser number as approved by the commissioner. The commissioner shall issue a written decision detailing the reasons why the mutual insurer's plan to reorganize is approved or disapproved. The commissioner may engage

the services of advisors and consultants to advise him on the reorganization, with the reasonable cost thereof being paid for by the insurer.

The commissioner shall approve the application and permit the reorganization if he finds that: (1) the plan is fair and equitable to the policyholders of the mutual insurer; (2) the plan promotes the best interest of the mutual insurer and its policyholders; (3) the plan provides for the enhancement of the operations of the reorganized insurer; (4) the plan is not contrary to law; (5) the plan is not detrimental to the public; and (6) the reorganized insurer will have capital and surplus in an amount the commissioner deems to be reasonably necessary for its future solvency.

The commissioner's order approving or disapproving a plan of reorganization shall be a final agency decision subject to appeal to the court.

Except as otherwise specifically provided in the plan of reorganization, prior to and for a period of three years following the effective date of the reorganization, no person, other than the reorganized insurer, shall directly or indirectly offer to acquire, or acquire, the beneficial ownership of five percent or more of any class of a voting security of the reorganized insurer or any person that owns or controls a majority or all of the voting securities of the reorganized insurer without the prior approval by the commissioner. The commissioner shall not approve the acquisition unless it complies with current law, does not frustrate the plan of reorganization, is approved by the board of directors of the reorganized insurer or its parent corporation, and is in the interest of policyholders of the reorganized insurer.

The mutual insurer may, by action of not less than three-fourths of its board of directors, abandon or amend the plan of reorganization at any time before the effective date of that plan.