

## CHAPTER 42

(HB 342)

AN ACT relating to insurance.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A domestic mutual insurer may convert to a stock insurer by amendment of its articles of incorporation and upon compliance with the requirements of Sections 1 to 14 of this Act and the applicable requirements of this subtitle and Subtitle 3 of this chapter.*
- (2) *A domestic mutual insurer shall only convert to a stock insurer in accordance with a plan of conversion approved by the commissioner.*

SECTION 2. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 14 of this Act, unless the context requires otherwise:*

- (1) *"Converting mutual" means a domestic mutual insurer that adopts a plan of conversion under Section 3 of this Act that will result in the insurer converting into a domestic stock insurer.*
- (2) *"Eligible member" means:*
  - (a) *Any person who is a member of the converting mutual on the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion;*
  - (b) *Any person who has been a member of the converting mutual within the last three (3) years prior to the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion; and*
  - (c) *Any person who is a certificate holder under a group policy if the person meets the condition in paragraph (a) or (b) of this subsection and inclusion of the certificate holder as an eligible member is necessary for a fair and equitable distribution.*
- (3) *"Former mutual" means the domestic stock insurer resulting from the conversion of a converting mutual to a stock insurer pursuant to a plan of conversion in accordance with Sections 1 to 14 of this Act.*
- (4) *"Membership interests" means:*
  - (a) *The voting rights of members of a domestic mutual insurer as provided by law and by the insurer's articles of incorporation and bylaws; and*
  - (b) *The rights of members of a domestic mutual insurer to receive cash, stock, or other consideration in the event of a conversion to a stock insurer under Sections 1 to 14 of this Act or a dissolution under KRS 304.24-430.*
- (5) *"Plan of conversion" means the plan of conversion described in Section 3 of this Act and includes the proposed amendment to the converting mutual's articles of incorporation, unless the context requires otherwise.*

SECTION 3. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The board of directors of the converting mutual shall adopt a resolution proposing the amendment of its articles of incorporation in accordance with KRS 304.24-080 and proposing a plan of conversion.*
- (2) *The plan of conversion shall:*
  - (a) *Describe the manner in which the proposed conversion shall occur and the insurer and any other business entity that will result from or be directly affected by the conversion, including the former mutual and any affiliate;*
  - (b) *Provide that the membership interests in the converting mutual shall be extinguished as of the effective date of the conversion;*
  - (c) *Require the fair and equitable distribution of aggregate consideration to the eligible members, upon the extinguishing of their membership interests, which shall be equal to the fair value of the converting mutual as determined under a fair formula:*
    1. *Describe the manner in which the fair value of the converting mutual shall be determined or established;*
    2. *Describe the form or forms of consideration that shall be distributed to the eligible members; and*
    3. *Specify relevant classes, categories, or groups of eligible members, and describe the method or formula that shall be used for the equitable allocation of the aggregate consideration among the eligible members;*
  - (d) *Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends that shall be implemented through establishment of a closed block or other method acceptable to the commissioner in compliance with Sections 1 to 14 of this Act;*
  - (e) *Specify the effective date of the plan of conversion and distributions to eligible members; and*
  - (f) *Include all other provisions that are necessary for, or material to, the implementation of the conversion.*
- (3) *The plan of conversion may include any other provisions that the converting mutual deems necessary or reasonable.*

SECTION 4. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The converting mutual shall file with the commissioner an application for approval of the plan of conversion.*
- (2) *The application shall consist of the following:*
  - (a) *The plan of conversion;*
  - (b) *A certificate of the secretary of the converting mutual regarding the adoption of the plan of conversion;*
  - (c) *A statement of the reasons for the proposed conversion and why it is in the best interests of the converting mutual and its eligible members, including an analysis of*

*the risks and benefits to the converting mutual and its members and a comparison of the risks and benefits of reasonable alternatives to a conversion;*

- (d) A five (5) year business plan of the former mutual, including five (5) year financial projections, detailed descriptive narrative, and all relevant assumptions;*
- (e) Any plans or proposals that the former mutual or any affiliate company may have to raise additional capital through the issuance of stock or otherwise; and any other plans that the former mutual or any affiliate company may have to sell or otherwise issue stock to any person, including the adoption of any employee compensation or benefit plan under which stock may be issued;*
- (f) Any plans or proposals that the former mutual or any affiliate company may have to liquidate or dissolve any company, to sell any material assets, or to merge or consolidate with any person, or to make any other material change in investment policy, business, corporate structure, or management;*
- (g) Any plans or arrangement for a delayed distribution of consideration to eligible members, or restrictions on sale or transfer of stock or other securities;*
- (h) A plan of operation for any closed block established for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends;*
- (i) Copies of the current articles of incorporation and bylaws of the converting mutual;*
- (j) Copies of any proposed articles of incorporation and bylaws of the former mutual;*
- (k) A list of individuals who are or have been selected to become directors or officers of the former mutual and of any affiliate, or the individuals who perform or will perform duties customarily performed by a director or officer, including the following information:*
  - 1. The individual's principal occupation;*
  - 2. All offices and positions the individual has held in the preceding five (5) years;*
  - 3. Any criminal convictions of the individual;*
  - 4. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;*
  - 5. Information concerning the supervision, rehabilitation, or liquidation of any insurer or the bankruptcy of any corporation or other entity of which the individual was an officer or director;*
  - 6. Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;*
  - 7. Information concerning the revocation of any state or federal license issued to the individual; and*
  - 8. Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.*

- (l) A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;*
- (m) An actuarial opinion and supporting memorandum;*
- (n) A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort. These plans may consist of:*

  - 1. Appointing a registrar and transfer agent for the stock or other securities;*
  - 2. Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;*
  - 3. Listing the stock or other securities on a national or other securities exchange;*
  - 4. Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities;*
  - 5. Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effective date of the plan of conversion, in order to facilitate the development of a public market; and*
  - 6. Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or an affiliate at market value without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with discounted brokerage commissions or fees;*
- (o) Any additional information, documents, or materials that the converting mutual deems necessary or reasonable; and*
- (p) Any other additional information, documents, or materials that the commissioner may request in writing.*
- (3) (a) The actuarial opinion shall address whether:*

  - 1. The methodology or formulas used to determine the total aggregate consideration to be distributed to eligible members is reasonable and appropriate;*
  - 2. The methodology or formulas used to allocate consideration among the eligible members is reasonable and appropriate;*
  - 3. The financial condition of the former mutual will not be adversely diminished; and*

4. *If a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of the policy dividends, the plan of operation, and the sufficiency of the assets allocated to the closed block, is reasonable.*
- (b) *The actuarial opinion shall be provided by a qualified and independent actuary who is a member of the American Academy of Actuaries. The opinion shall be given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given.*
- (c) *The opinion shall be supported by a memorandum of the actuary, describing the calculations made and the assumptions used in the calculations.*

SECTION 5. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner shall have ninety (90) days to review the plan of conversion after it is filed. Upon completion of the review, the commissioner shall schedule a public hearing on the plan of conversion.*
- (2) *The commissioner shall hold a hearing upon the plan of conversion in accordance with KRS 304.2-310.*
- (3) *The converting insurer shall present evidence that the plan of conversion complies with Sections 1 to 14 of this Act.*
- (4) *Persons wishing to make comments and submit information may submit written statements prior to the public hearing and may appear and be heard at the hearing. These comments shall be part of the record and shall be considered by the commissioner before issuing an order on the plan of conversion.*
- (5) *At least forty-five (45) days prior to the hearing date, the converting mutual shall provide information regarding the hearing to the eligible members and its other policyholders and certificate holders. The information provided shall include a brief statement of the subject of the hearing, the date, time, and location of the hearing, a description of members eligible to vote on the plan of conversion, and a statement indicating the location at which the public portion of the application may be examined. This information shall be provided by mail or by other means approved by the commissioner.*
- (6) *Following the hearing, the commissioner shall, by order, approve, conditionally approve, or disapprove the plan of conversion. The commissioner may require, as a condition of approval of the plan of conversion, modification of the proposed plan of conversion. The insurer shall file the amendments required by the conditional approval within thirty (30) days of the date of the order. The commissioner may grant an extension for filing amendments for good cause shown. If the applicant does not timely file the required amendments, the plan of conversion shall be deemed disapproved.*

SECTION 6. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner shall approve the plan of conversion if the commissioner finds, following the hearing, that the plan of conversion:*

- (a) *Complies with the provisions of this chapter and all other applicable laws;*
  - (b) *Is fair and equitable to the eligible members and the other policyholders of the converting mutual;*
  - (c) *Is actuarially reasonable and appropriate;*
  - (d) *Will not jeopardize the financial stability of the former mutual or prejudice the interest of its policyholders; and*
  - (e) *Provides that the former mutual shall be able to satisfy the requirements for issuance of a certificate of authority to write the kinds of insurance for which the converting mutual is presently authorized.*
- (2) *The commissioner shall, at the converting mutual's expense, hire accountants, actuaries, attorneys, financial advisors, investment bankers, and other experts as may be necessary to assist the commissioner in reviewing all matters under Sections 1 to 14 of this Act that are related to the plan of conversion and the application. The commissioner may at any time require the converting mutual to deposit an amount of money with the department in anticipation of expenses to be incurred by the commissioner under this subsection.*
- (3) *The commissioner may consider the effect of any action taken by the converting insurer within a three (3) year period immediately prior to the filing of the plan of conversion if the action taken by the insurer has a material effect on the fairness and equity of the plan of conversion.*

SECTION 7. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual shall be submitted to a vote of the members of the converting mutual, as provided in this section and in KRS 304.24-095.*
- (2) *The meeting of members shall be held no later than ninety (90) days after the issuance of the commissioner's order of approval of the plan of conversion or after the filing of all amendments in compliance with the order of conditional approval of the plan of conversion.*
- (3) *The converting mutual shall give written notice of the right to vote on the plan of conversion to the members of the converting mutual entitled to vote. The notice shall be accompanied by explanatory information concerning the plan of conversion and may be accompanied by proxy solicitation materials. The notice and accompanying information and materials shall not be provided to the members until approved by the commissioner. The notice and accompanying materials shall include:*
- (a) *A brief statement of the subject of the meeting;*
  - (b) *The date, time, and location of the meeting;*
  - (c) *A description of the member's right to attend and participate in the meeting;*
  - (d) *A description of the nature and amount of consideration that will be provided to the eligible members upon completion of the conversion;*

- (e) If reasonably ascertainable by the converting mutual, a description of the form and amount or approximate amount of consideration to be provided to the particular member to whom the notice is addressed;*
  - (f) A copy of the plan of conversion and summary of the plan; and*
  - (g) A reference to the applicable statutory provisions.*
- (4) The notice required by subsection (3) of this section shall achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner.*
- (5) The notice shall be mailed, or provided by some other method or methods as may be approved by the commissioner, not less than thirty (30) days before the date of the meeting of members to vote on the plan of conversion.*
- (6) Only persons who are members of the converting mutual on both the date the converting mutual's board of directors adopts the resolution proposing the plan of conversion and the record date for the meeting established by the board of directors shall be entitled to vote on the plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual. Each voting member shall be entitled to vote in accordance with KRS 304.24-210.*
- (7) Notwithstanding KRS 304.24-210, a member may vote by proxy only if:*
  - (a) The proxy was solicited and obtained from the member for the express and sole purpose of voting on the plan of conversion, amendments to the articles of incorporation and bylaws, and any other matter materially related to the plan of conversion; and*
  - (b) The proxy solicitation materials were provided to the commissioner prior to sending the materials to the members.*
- (8) The plan of conversion and the proposed amendment to the converting mutual's articles of incorporation shall be approved by the members upon receiving the affirmative votes of at least two-thirds (2/3) of the members voting at the meeting in person or by proxy.*

SECTION 8. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Upon the effective date of the plan of conversion:*
  - (a) The converting mutual shall be converted from a domestic mutual insurer to a domestic stock insurer, and the former mutual shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a stock insurer existing under this chapter;*
  - (b) The membership interests of every member and policyholder of the converting mutual shall be extinguished and cease; and*
  - (c) The rights of every policyholder, certificate holder, and other insured of the converting mutual under any contract of insurance shall continue in force in accordance with the terms, provisions, and conditions of the contract, including rights, if any, to dividends.*

- (2) *The former mutual shall be a continuation of the existence of the original converting mutual. The conversion in no way shall annul, modify, or change any of the original converting mutual's existing suits, rights, contracts, or liabilities. The former mutual shall be vested in all the rights, franchises, and interests of the converting mutual in and to every species of property without any deed or transfer, and the former mutual shall succeed to all the obligations and liabilities of the converting mutual and retain all rights and contracts existing prior to effectiveness of the conversion.*

SECTION 9. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The total aggregate consideration to be distributed to the eligible members shall be determined under a fair formula. The total aggregate consideration shall not be less than the converting mutual's total surplus or surplus as regards policyholders; plus the value of all nonadmitted assets; plus a reasonable present equity in reserves, if any; minus any adjustments for contributed or borrowed surplus.*
- (2) *The consideration to be distributed to the eligible members shall be cash, stock, or other securities of the former mutual or of an affiliate, additional paid up insurance or annuity benefits, or any combination of these forms of consideration or other forms of consideration described in the plan of conversion and approved by the commissioner.*
- (3) *The form of consideration to be distributed to a class, category, or group of eligible members may differ from the form of consideration to be distributed to another class, category, or group of eligible members. The choice of the form of consideration may take into account such factors as the type of policies with respect to which the consideration is being distributed, the country or state of residence or tax status of the eligible members, the length of time that eligible members have been members of the converting mutual, or other appropriate factors or circumstances described in the plan of conversion.*
- (4) *Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. That period of time shall not exceed six (6) months, unless approved by the commissioner.*

SECTION 10. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*In determining whether the method or formula in the plan of conversion is fair and equitable, the commissioner may consider the following factors:*

- (1) *Voting rights;*
- (2) *Number of eligible members;*
- (3) *Length of membership in the converting mutual;*
- (4) *Premiums paid by members;*
- (5) *Policy limits;*
- (6) *Risk of line of insurance;*



- (7) *Sources of the proportionate contributions to historical surplus, based on such groupings, classification, historical information, assumptions, and projections as are actuarially sound and reasonable;*
- (8) *For a converting mutual that is a property and casualty company, the net earned premiums each eligible member has paid to the converting mutual, compared to the total net earned premiums paid by all eligible members, in each case during the period of time specified in the plan of conversion; and*
- (9) *Any other relevant factors the commissioner may deem appropriate.*

SECTION 11. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No dividend preservation provisions shall provide in any way or substitute for the distribution of consideration to eligible members upon extinguishing their membership interests.*
- (2) *Any dividend preservation provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of conversion on the effective date of the plan of conversion for which the converting mutual insurer has an experience-based dividend scale due, paid, or accrued by action of the board of directors of the converting mutual in the year in which the plan of reorganization is adopted, except that:*
  - (a) *Policies that would be included but for the fact that their recent issuance results in no dividends for an initial period, may be included;*
  - (b) *Policies that are in force as extended term insurance may be included; and*
  - (c) *Other categories of policies and benefits not described in this subsection may be included or excluded with approval of the commissioner.*

SECTION 12. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of this section apply if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders.*
- (2) *The converting mutual shall prepare a written plan of operation for the closed block, consistent with the requirements of this section and the other applicable requirements of Sections 1 to 14 of this Act.*
- (3) *The closed block shall be operated for the exclusive benefit of policies and contracts included in it. No costs or expenses incurred in connection with the conversion shall be charged to the closed block.*
- (4) *The assets allocated to the closed block, together with the revenue from the closed block, shall be calculated to be reasonably sufficient to support the business in the closed block until the last policy in the closed block has terminated, including payment of claims and those expenses and taxes as are specified in the plan of conversion, and to provide for continuation of dividend scales in effect on the adoption date of the plan of conversion, if the experience underlying those scales continues and for appropriate adjustments in the scales if the experience changes.*
- (5) *The assets to a closed block shall be specified in the plan of operation and must consist of:*

- (a) *A list of designated assets of the converting mutual's general account or specified segments, which list shall change periodically to reflect the acquisition and disposition of assets;*
  - (b) *A designated portion of each asset of the converting mutual's general account or specified segments thereof, which portion shall change periodically to reflect the cash flows of the closed block; or*
  - (c) *Assets designated by a combination of the methods described in paragraphs (a) and (b) of this subsection.*
- (6) *The plan of operation shall specify which of those methods of assignment of closed block assets is being used and shall set forth the methods by which the designations referred to in subsection (5) of this section are changed during the course of closed block operations.*
  - (7) *The former mutual shall submit to the commissioner annual reports, in a form acceptable to the commissioner, that account for and describe the operations of the closed block; and as specified in the plan of operation provide for annual reviews of, and reports and opinions on, the closed block by an independent actuary.*
  - (8) *The plan of operation shall provide for the conditions under which the former mutual may terminate the closed block.*
  - (9) *The former mutual shall not distribute any residual assets of the closed block until the plan for distribution of the residual assets is approved by the commissioner.*

SECTION 13. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as specifically provided in the plan of conversion, for a period of five (5) years following the effective date of the conversion, no person or persons acting in concert, other than the former mutual, any affiliate, any employee benefit plans, or trusts sponsored by the former mutual or affiliate, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the former mutual or any affiliate company without the prior approval by the commissioner of a statement filed by that person with the commissioner. The statement shall contain the information required by subsection (2) of Section 15 of this Act and any other information required by the commissioner.*
- (2) *The commissioner shall not approve the acquisition if the commissioner finds that:*
  - (a) *The requirements of subsection (4)(a) of Section 15 of this Act have not been satisfied;*
  - (b) *The acquisition will frustrate the fair and equitable plan of conversion as approved by the members and the commissioner;*
  - (c) *The acquisition or change of control will result in unjust enrichment of the acquiring persons to the detriment of the eligible members of the converting mutual; and*
  - (d) *The acquisition would not be in the best interest of the present and future policyholders of the former mutual, without regard to any interest of policyholders as shareholders of the former mutual or any affiliate company.*
- (3) *The requirements of this section shall be in addition and supplemental to any other filings or approvals required by this chapter or otherwise by law.*

SECTION 14. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***During the one (1) year period following the effective date of the plan of conversion, neither the former mutual nor any affiliate company shall sell or issue, or adopt any plan or benefit program providing for the sale or issuance of, any stock or other equity security except:***

- (1) As disclosed in the approved plan of conversion; or***
- (2) As otherwise approved by the commissioner, upon a finding that the stock transaction:***
  - (a) Will not frustrate the plan of conversion as approved by the members and the commissioner; and***
  - (b) Is not adverse to the best interests of the policyholders of the former mutual, without regard to any interests of policyholders as shareholders of the former mutual or any affiliate company.***

Section 15. KRS 304.37-120 is amended to read as follows:

- (1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.
  - (a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- (2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:
  - (a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and
    1. If the person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or

2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph.
- (b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for merger or other acquisition of control, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; but if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.
- (c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.
- (d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.
- (e) The number of shares of any security referred to in subsection (1) of this section which the acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method used to determine the fairness of the proposal.
- (f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of by each acquiring party.
- (g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.
- (h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid.
- (i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of

the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

- (j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates.
  - (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section.
  - (l) Any additional information as the commissioner may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.
  - (m) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.
  - (n) If any material change occurs in the facts in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.
- (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.
- (4) (a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing he finds that:
- 1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;

2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:
    - a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
    - b. The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
    - c. The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
  3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
  4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;
  5. The competence, experience, and integrity of persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
  6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (b) The public hearing required by this section shall be conducted as directed in KRS Chapter 304.2.
- (c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed acquisition of control.
- (5) The provisions of this section shall not apply to:
- (a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or
  - (b) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section; *or*
  - (c) ***Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under Sections 1 to 14 of this Act, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in Section 2 of this Act.***
- (6) The following shall be violations of this section:

- (a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or
  - (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval.
- (7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his true and lawful attorney

upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his last known address by the Secretary of State in the same manner as service of process on foreign insurers. Section 16. KRS 304.37-150 is amended to read as follows:

- (1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this *chapter*~~[subtle]~~ or of any rule, administrative regulation, or order issued by the commissioner may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this *chapter*~~[subtle]~~ or of any rule, administrative regulation, or order issued by the commissioner, the insurer or the commissioner may apply to the Circuit Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of KRS 304.37-130 or *any other provision of this chapter, or* any rule, administrative regulation, or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as required by the nature of the case and the interest of the insurer's policyholders, creditors, shareholders, or the public.
- (2) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this *chapter*~~[subtle]~~ or any rule, administrative regulation, or order issued by the commissioner, the Circuit Court for Franklin County or the Circuit Court for the county in which the insurer has its principal place of business may, upon notice the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the appropriate order to effectuate the provisions of this subtitle.
- (3) Notwithstanding any other provisions of law, for the purposes of this *chapter*~~[subtle]~~ the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 17. KRS 304.37-525 is amended to read as follows:

- (1) *Sections 1 to 14 of this Act are*~~[KRS 304.24-380 is]~~ not applicable to a reorganization or merger under KRS 304.37-505 and 304.37-510.

- (2) *Sections 1 to 14 of this Act are* ~~KRS 304.24-380 is~~ applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company organized under Subtitle 24 of this chapter as if it were a mutual insurance company.

Section 18. Sections 1 to 14 of this Act may be cited as the Kentucky Insurer Demutualization Act.

Section 19. The following KRS section is repealed:

304.24-380 Converting mutual insurer.

**Approved February 25, 2000**