

1 A bill to be entitled
2 An act relating to stock and mutual insurance
3 companies; amending s. 628.715, F.S.;
4 authorizing a mutual insurance holding company
5 to merge the membership interests of certain
6 mutual insurance companies into the mutual
7 insurance holding company under certain
8 circumstances; authorizing a mutual insurance
9 holding company to merge or consolidate with,
10 or acquire the assets of, certain entities;
11 authorizing the Department of Insurance to
12 retain certain consultants for merger
13 evaluation purposes; requiring certain
14 companies to pay consultant costs; providing a
15 methodology for determining the rights of
16 certain merging entities; amending ss. 628.231
17 and 628.723, F.S.; authorizing directors of
18 domestic insurers and mutual insurance holding
19 companies to consider certain factors while
20 taking corporate action in discharging their
21 duties; amending s. 628.729, F.S.; conforming a
22 reference to a qualification period; creating
23 s. 628.730, F.S.; providing for merger of a
24 mutual insurance holding company into its
25 intermediate holding company; requiring a plan
26 and agreement of merger; requiring approval by
27 the Department of Insurance; providing
28 requirements for distribution of assets and
29 liabilities; authorizing sales of shares of the
30 mutual insurance holding company for certain
31 purposes; requiring the department to hold a

1 public hearing on the merger; requiring the
2 plan and agreement of merger to be voted on by
3 members of the mutual insurance holding
4 company; providing an effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. Paragraphs (d) and (e) of subsection (1)
9 and paragraph (b) of subsection (2) of section 628.715,
10 Florida Statutes, are amended, and paragraph (f) is added to
11 subsection (1) of said section, to read:

12 628.715 Merger and acquisitions.--Subject to
13 applicable requirements of this chapter, a mutual insurance
14 holding company may:

15 (1)

16 (d) Acquire a stock insurance company through the
17 merger of such stock insurance subsidiary with a stock
18 insurance company or interim stock insurance company
19 subsidiary of the mutual insurance holding company; ~~or~~

20 (e) Acquire the stock or assets of any other person to
21 the same extent as would be permitted for any not-for-profit
22 corporation under chapter 617 or, if the mutual insurance
23 holding company writes insurance, a mutual insurance company; ~~or~~

24 (f) Jointly, with a domestic or foreign mutual
25 insurance company which redomesticates pursuant to s. 628.520,
26 file an application with the department, pursuant to the
27 provisions of this part, to merge the domestic or foreign
28 mutual insurance company policyholder's membership interests
29 into the mutual insurance holding company. The reorganizing
30 mutual insurance company may merge with the mutual insurance
31 holding company's stock subsidiary or continue its corporate

1 existence as a domestic stock insurance company subsidiary.

2 The members of the foreign mutual insurance company may
3 approve in a contemporaneous vote both the redomestication
4 plan and the agreement for merger and reorganization; or

5 (g) Merge or consolidate with, or acquire the assets
6 of, a domestic or foreign reciprocal insurance company, a
7 group self-insurance fund, or any other similar entity.

8 (2) A reorganization pursuant to this section is
9 subject to the applicable procedures prescribed by the laws of
10 this state applying to corporations formed for profit, except
11 as otherwise provided in this subsection.

12 (a) The plan and agreement for merger shall be
13 submitted to and approved by a majority of the members,
14 policyholders, or subscribers of each domestic mutual
15 insurance holding company, mutual insurance company, stock
16 insurance company, or domestic or foreign reciprocal insurance
17 company, involved in the merger who vote either in person or
18 by proxy thereon at meetings called for the purposes pursuant
19 to such reasonable notice and procedure as has been approved
20 by the department.

21 (b) No such merger shall be effectuated unless in
22 advance thereof, the plan and agreement therefor have been
23 filed with the department and approved by it after a public
24 hearing, which shall be held within 90 days after receipt by
25 the department of such plan and agreement. The department may
26 retain outside consultants to evaluate the merger. The
27 domestic mutual insurance holding company shall pay reasonable
28 costs associated with retaining such consultants. Such
29 payments shall be made directly to the consultant. The
30 department shall give such approval unless it finds such plan
31 or agreement:

1 1. Is inequitable to the policyholders of any domestic
2 insurer involved in the merger or the members of any domestic
3 mutual insurance holding company involved in the merger; or

4 2. Would substantially reduce the security of and
5 service to be rendered to policyholders of a domestic insurer
6 in this state.

7 (c) All of the initial shares of the capital stock of
8 the reorganized subsidiary insurance company shall be issued
9 either to the mutual insurance holding company, or to an
10 intermediate holding company which is wholly owned by the
11 mutual insurance holding company. The membership interests of
12 the policyholders of the reorganized insurance company shall
13 become membership interests in the mutual insurance holding
14 company. Policyholders of the reorganized insurance company
15 shall be members of the mutual insurance holding company in
16 accordance with the articles of incorporation and bylaws of
17 the mutual insurance holding company. The mutual insurance
18 holding company shall at all times own a majority of the
19 voting shares of the capital stock of the reorganized
20 subsidiary insurance company.

21 (d) For property and casualty insurers, the rights of
22 the members of the merging entities under s. 628.729, for a
23 period of 3 years after the merger, shall be the proportionate
24 share of the total surplus of the merging entities as
25 determined by the percentage of the surplus contributed by
26 each of the merging entities to the total surplus of the
27 surviving entity on the date of the merger.

28 Section 2. Subsection (5) is added to section 628.231,
29 Florida Statutes, to read:

30 628.231 Directors; number, election.--

31

1 (5) In discharging his or her duties, a director may
2 consider such factors as the directors deem relevant,
3 including, but not limited to, the long-term prospects and
4 interests of the corporation and its shareholders, the social,
5 economic, legal, or other effects of any action on the
6 employees, suppliers, or policyholders of the corporation or
7 its subsidiaries, the communities and society in which the
8 corporation or its subsidiaries operate, and the economy of
9 the state and the nation. The director may also consider the
10 short-term and long-term interests of the insurer, including,
11 but not limited to, benefits that may accrue to the insured
12 from the insurer's long-term plans, the possibility that such
13 interests may be best served by the continued independence of
14 the insurer, the resources, intent, and past, present, and
15 potential conduct of any person seeking to acquire control of
16 the insurer, and any other relevant factors.

17 Section 3. Subsection (5) is added to section 628.723,
18 Florida Statutes, to read:

19 628.723 Directors; number; election.--

20 (5) In discharging his or her duties, a director may
21 consider such factors as the directors deem relevant,
22 including, but not limited to, the long-term prospects and
23 interests of the corporation and its shareholders, the social,
24 economic, legal, or other effects of any action on the
25 employees, suppliers, or policyholders of the corporation or
26 its subsidiaries, the communities and society in which the
27 corporation or its subsidiaries operate, and the economy of
28 the state and the nation. The director may also consider the
29 short-term and long-term interests of the insurer, including,
30 but not limited to, benefits that may accrue to the insured
31 from the insurer's long-term plans, the possibility that such

1 interests may be best served by the continued independence of
2 the insurer, the resources, intent, and past, present, and
3 potential conduct of any person seeking to acquire control of
4 the insurer, and any other relevant factors.

5 Section 4. Subsection (1) of section 628.729, Florida
6 Statutes, is amended to read:

7 628.729 Member's share of assets on voluntary
8 dissolution.--

9 (1) Upon any voluntary dissolution of a domestic
10 mutual insurance holding company, its assets remaining after
11 discharge of its indebtedness, if any, and expenses of
12 administration, shall be distributed to existing persons who
13 were its members at any time within the 3-year period
14 preceding the date such liquidation was authorized or ordered,
15 or date of last termination of the insurer's certificate of
16 authority, whichever date is earlier; except, if the
17 department has reason to believe that those in charge of the
18 management of the mutual insurance holding company have caused
19 or encouraged the reduction of the number of members of the
20 insurer in anticipation of liquidation and for the purpose of
21 reducing thereby the number of persons who may be entitled to
22 share in distribution of the insurer's assets, the department
23 may enlarge the 3-year ~~5-year~~ qualification period by such
24 additional time as the department may deem to be reasonable.

25 Section 5. Section 628.730, Florida Statutes, is
26 created to read:

27 628.730 Merger with intermediate holding company.--

28 (1) A mutual insurance holding company may, pursuant
29 to a plan and agreement of merger approved by the department,
30 in accordance with s. 628.715, ((2)(b), merge into its
31 intermediate holding company. The surviving intermediate

1 holding company shall assume all of the assets and liabilities
2 of the mutual insurance holding company, and all of the stock
3 of the intermediate holding company owned by the mutual
4 insurance holding company immediately prior to the merger
5 shall be distributed to existing persons who were members of
6 the mutual insurance holding company at any time within the
7 3-year period preceeding the date of such merger.

8 (2) The distributive share of each such member shall
9 be determined by a formula based upon such reasonable
10 classifications of members as the department may approve.

11 (3) For purposes of creating a public market for the
12 shares of the intermediate holding company, the mutual
13 insurance holding company may, immediately prior to the
14 merger, sell or cause the intermediate holding company to sell
15 to the public up to 25 percent of its capital stock
16 representing no more than 25 percent of the voting stock of
17 the intermediate holding company.

18 (4) The department shall hold a public hearing to
19 allow public comment on the plan and agreement of merger. The
20 hearing must be held within 90 days after receipt of the
21 department of the proposed plan and agreement of merger.

22 (5) The plan and agreement of merger shall be
23 submitted to the members of the mutual holding company for
24 their approval and shall take effect only if approved by a
25 majority of the members of the mutual insurance holding
26 company who vote either in person or by proxy on such merger
27 at a meeting called for the purpose of voting on such merger,
28 pursuant to reasonable notice and procedures as approved by
29 the department.

30 Section 6. This act shall take effect upon becoming a
31 law.