

## Article - Insurance

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§3-123.

(a) (1) One or more mutual insurers organized under the laws of any state may consolidate or merge with one or more domestic mutual insurers to form a domestic mutual insurer.

(2) The successor mutual insurer may continue the corporate existence of one or more of the domestic parties to the consolidation or merger.

(b) (1) Mutual insurers consolidating or merging to form a domestic mutual insurer under this section shall enter into a written agreement that:

(i) prescribes the terms and conditions of the consolidation or merger;

(ii) states the name of the successor mutual insurer; and

(iii) includes the successor mutual insurer's amended certificate of incorporation, which shall contain the provisions required by this article for the organization of a mutual insurer.

(2) The agreement shall be:

(i) approved by the vote of a majority of the board of directors of each mutual insurer; and

(ii) submitted to a meeting of members and approved by vote of at least two-thirds of those members of each mutual insurer who vote on the plan in person, by proxy, or by mail.

(3) Notice of the time, place, and purpose of the meeting shall be:

(i) mailed to the members of each mutual insurer not less than 20 days before the date of the meeting; or

(ii) published at least once a week for 3 successive weeks in:

1. a newspaper printed in the county where each mutual insurer has its principal office; and

2. a newspaper printed in one of the two largest cities in each state where the successor mutual insurer will be licensed to do business.

(4) The agreement shall be:

(i) executed in duplicate original under corporate seal by officers authorized to do so on behalf of each of the mutual insurers; and

(ii) submitted, with evidence of its approval, to the Commissioner.

(5) If it appears to the Commissioner that the requirements of this section have been complied with, the Commissioner shall certify approval of the agreement by endorsing it.

(6) A duplicate original of the agreement shall be filed with the Commissioner and a duplicate original of the agreement shall be delivered to the successor mutual insurer.

(c) One or more domestic mutual insurers may consolidate or merge under the laws of any state with one or more foreign mutual insurers to form a successor mutual insurer under the laws of one of the foreign states in which one of the mutual insurers has its domicile.

(d) (1) Each domestic mutual insurer consolidating or merging with a foreign mutual insurer shall follow the procedure required by subsection (b) of this section.

(2) Each foreign mutual insurer shall follow the procedure required by the state of its domicile with respect to a consolidation or merger.

(3) The Commissioner shall require a certificate of approval from the insurance supervisory official of the state of domicile of each foreign insurer that is a party to the agreement certifying that the foreign insurer has complied with the laws of that state on consolidation or merger.

(4) Parties to the agreement of consolidation or merger need not hold a certificate of authority in this State at the time of consolidation or merger if:

(i) an application for a certificate of authority has been filed on behalf of the successor insurer, signed by each party to the agreement; and

(ii) the Commissioner believes the successor insurer:

1. meets the applicable solvency requirements; and

2. has complied or agreed to comply with the laws of this State on the admission and authorization of foreign insurers.

(e) (1) An agreement of consolidation or merger is effective:

(i) on an effective date, if any, stated in the agreement, if the effective date is after the date of approval by the Commissioner; or

(ii) on the date on which the last certificate of approval is executed

by the insurance supervisory official of the state of domicile of any of the parties to the agreement.

(2) Within 15 days after a consolidation or merger agreement becomes effective, a copy of the agreement shall be filed of record in a public office where articles of incorporation are required to be filed by the laws of the state of domicile of any party to the agreement.

(f) After a consolidation or merger, the following conditions apply:

(1) the successor mutual insurer may require the return of the original policies held by each policyholder in each of the mutual insurers consolidated or merged and may issue replacement policies as the policyholders may be entitled to receive;

(2) all rights and properties of the parties to the agreement shall accrue to and become the rights and properties of the successor mutual insurer, and the successor mutual insurer shall succeed to and assume all the obligations and liabilities of the consolidated or merged mutual insurers in the same manner as if incurred or contracted by the successor mutual insurer;

(3) the policyholders of the consolidated or merged mutual insurers shall continue to be subject to all the liabilities, claims, and demands existing against them at or before the consolidation or merger;

(4) an action or proceeding that is pending when the consolidation or merger occurs and to which any of the consolidated or merged mutual insurers is a party is not abated or discontinued because of the consolidation or merger, but the action or proceeding may be prosecuted to final judgment as if the successor mutual insurer were substituted for any insurer consolidated or merged by order of the court in which the action or proceeding is pending;

(5) if the successor mutual insurer is a foreign insurer that must comply with the laws of this State on deposits that are required of a foreign insurer, all deposits that were made in this State by any mutual insurer that is a party to the consolidation or merger agreement shall be delivered to the successor mutual insurer; and

(6) for the purpose of complying with the requirements of law relating to the age of an insurer, the successor mutual insurer is deemed to have the age of the eldest mutual insurer that is a party to the consolidation or merger.

(g) (1) When an agreement of consolidation or merger is filed, a certificate shall be filed with the Commissioner that sets forth all fees, commissions, or other compensation or valuable consideration paid or to be paid to any person for securing or promoting the consolidation or merger.

(2) The certificate shall be:

(i) signed by the president or a vice-president of each party to the

agreement of consolidation or merger;

(ii) attested by the secretary or an assistant secretary of each party to the agreement; and

(iii) verified by affidavit.

(3) A director or officer of any insurer that is a party to a consolidation or merger may not receive, directly or indirectly, any fee, commission, or other compensation or valuable consideration for helping or promoting the consolidation or merger in any manner other than as stated in the agreement of consolidation or merger.

(h) (1) Before approval of an agreement of consolidation or merger, the Commissioner shall examine and review the affairs of the mutual insurers that are parties to the agreement as the Commissioner finds necessary or desirable.

(2) The Commissioner may hold a hearing on the agreement after giving the notice that the Commissioner considers appropriate.

(3) The Commissioner shall approve the agreement before it becomes operative if the Commissioner finds that:

(i) the agreement complies with the Code; and

(ii) the policyholders and members in the successor mutual insurer are protected through adequate reserves and assets for losses and claims then anticipated.

(4) The successor mutual insurer shall bear all expenses in connection with proceedings conducted by the Commissioner under this subsection.

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