



1997 ASSEMBLY BILL 773

February 10, 1998 – Introduced by Representatives GREEN, KRUG, LORGE, MEYER, JENSEN, PLALE, WARD, KUNICKI, UNDERHEIM, HANSON, GARD, HUBER, SCHAFER, RILEY, ALBERS, BOCK, BRANDEMUEHL, CARPENTER, DUFF, CULLEN, FREESE, HASENOHRL, GOETSCH, KREUSER, GROTHMAN, LA FAVE, HAHN, J. LEHMAN, HOVEN, LINTON, HANDRICK, MURAT, KAUFERT, SPRINGER, KEDZIE, STASKUNAS, KLUSMAN, WASSERMAN, KREIBICH, LADWIG, F. LASEE, LAZICH, M. LEHMAN, MUSSER, NASS, OTT, OURADA, PORTER, SERATTI, VRAKAS, WALKER, COGGS and R. POTTER, cosponsored by Senators MOEN, SCHULTZ, BURKE, HUELSMAN, SHIBILSKI, PANZER, MOORE, DARLING, DECKER, WELCH, GROBSCHMIDT, FITZGERALD, BRESKE, FARROW, C. POTTER, RUDE, WINEKE, ROESSLER, WEEDEN, GEORGE, ROSENZWEIG and JAUCH. Referred to Committee on Judiciary.

1 **AN ACT to amend** 610.01 (intro.) and 613.03 (3); and **to create** 20.145 (1) (h) and
2 chapter 644 of the statutes; **relating to:** formation of mutual insurance holding
3 companies, requiring the exercise of rule-making authority and making an
4 appropriation.

Analysis by the Legislative Reference Bureau

Mutual insurance companies are nonstock corporations that cannot issue stock. Current law authorizes, and specifies the procedures for, a mutual insurance company to convert into a stock corporation.

This bill authorizes, and specifies procedures for, a mutual insurance company to restructure by forming a mutual holding company. Simultaneously with the formation of the mutual holding company, the mutual insurance company becomes a stock insurance company that is wholly owned by the mutual holding company, or by an intermediate stock holding company, if any is created, that is wholly owned by the mutual holding company. Although the mutual holding company that is formed in the restructuring is not an insurance company, it remains under the supervision of the office of the commissioner of insurance.

The restructuring procedure set out in the bill requires the mutual insurance company to file a detailed restructuring plan with the commissioner of insurance (commissioner). The commissioner must hold a hearing on the plan. Along with notice of the hearing, the mutual insurance company must send a copy or a detailed summary of the restructuring plan to all of its policyholders, who may present oral or written testimony at the hearing. After the hearing, the commissioner must

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approve the plan unless the commissioner finds that it violates the law, is unfair and inequitable to the policyholders or is contrary to the interests of the policyholders or the public. If the commissioner approves the restructuring plan, the matter is submitted to a vote of the policyholders at a meeting called for that purpose.

Insurance policies that were issued by the mutual insurance company before the effective date of the restructuring are unaffected by the restructuring and remain in full force with the restructured insurance company, as do all assets and liabilities not specifically transferred to the mutual holding company. The policyholders of the policies issued before the restructuring become members of the mutual holding company with rights equivalent to the rights that they had in the mutual insurance company, including the right to elect the board of directors of the mutual holding company and to vote on conversion or voluntary dissolution of the company and on amendments to the company's articles of incorporation. Policyholders of policies that are issued after the effective date of the restructuring become members of the mutual holding company.

After the restructuring, the mutual holding company may, but only with the approval of the members and the commissioner, issue to investors up to 49% of the stock of the restructured insurance company and any intermediate stock holding company. The mutual holding company must at all times retain control of the restructured insurance company and any intermediate stock holding company through mandatory ownership of 51% of the voting stock. The bill provides for mandatory subscription rights to policyholders in any initial public offering of the restructured insurance company's or any intermediate stock holding company's stock. In addition, the bill prohibits the directors, officers and management of the mutual holding company, the restructured insurance company and any intermediate stock holding company, other than in their capacity as policyholders subscribing for stock on the same basis as other policyholders, from owning any voting stock either in the restructured insurance company or in any intermediate stock holding company for the first year after the initial sale of voting stock to 3rd parties. After the first year, directors, officers and management are individually restricted to owning no more than 5%, and in the aggregate restricted to owning no more than 10%, of the voting stock of the restructured insurance company or any intermediate stock holding company.

The bill sets out various requirements related to the structure and operation of a mutual holding company formed in the restructuring authorized under the bill. Those provisions address such issues as member rights, record-keeping requirements, compensation to directors and officers, subsequent restructuring, conversion into a stock corporation and voluntary and involuntary dissolution.

Finally, the bill also provides for a few variations on the restructuring process. A service insurance corporation may simultaneously convert into a mutual insurance company and restructure in the manner provided in the bill for mutual insurance companies. A restructuring mutual insurance company may propose to acquire, or merge or consolidate with, one or more domestic or foreign insurers as part of its restructuring plan. A domestic or foreign mutual insurance company may merge its policyholders' membership interests into an existing mutual holding

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SUBCHAPTER I

GENERAL PROVISIONS

644.02 Definitions. (1) In this chapter, unless the context otherwise requires:

(a) “Board” means the board of directors or board of trustees, as the case may be, of the converting insurance company.

(b) “Converted insurance company” means an insurance company that converted under this chapter from a mutual insurance company to a stock insurance company, or from a service insurance corporation to a mutual insurance company and then to a stock insurance company, and formed a mutual holding company.

(c) “Converted life insurance company” means a life insurance company that converted under this chapter from a mutual life insurance company to a stock insurance company and formed a mutual holding company.

(d) “Converting insurance company” means a domestic mutual insurance company or a domestic service insurance corporation undergoing restructuring under this chapter.

(e) “Dividend plan” means a plan to provide reasonable assurances as to the policyholder dividend scales of the participating individual policies and contracts of a converted insurance company in the life insurance business in force on the date specified in the dividend plan for which the insurer had an experience-based dividend scale payable in the year of the plan by creating any of the following:

1. Covenants of the converted insurance company or the mutual holding company, or both.

2. One or more closed blocks. Assets of the converted insurance company shall be allocated to the closed block in an amount that produces cash flows, together with anticipated revenues from the closed block business, expected to be sufficient to

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1 support the closed block business, including provision for payment of claims and
2 those expenses and taxes specified in the dividend plan, and provision for
3 continuation of the dividend scales in effect on the effective date of the restructuring
4 under this chapter if the experience underlying such dividend scales continues. Any
5 plan under this subdivision may provide for conditions under which the converted
6 insurance company may cease to maintain any closed block and for the allocation of
7 assets to that closed block.

8 3. A combination of subds. 1. and 2. or any other means of providing reasonable
9 assurances that the commissioner approves.

10 (f) "Dividend scales" means the equitable apportionment of divisible surplus
11 by the board.

12 (g) "Divisible surplus" means the annual distribution described in s. 632.62 (4)
13 (b) as a payment made to policyholders as determined by the board.

14 (h) "Intermediate stock holding company" means a corporation that satisfies
15 all of the following:

- 16 1. The corporation was incorporated under ch. 180.
- 17 2. At least 51% of the corporation's voting stock is held directly or indirectly by
18 a mutual holding company.
- 19 3. The corporation holds directly or indirectly at least 51% of the voting stock
20 of a converted insurance company.

21 (i) "Member" means any of the following:

- 22 1. For a converting mutual insurance company, a policyholder who, by the
23 records of the converting insurance company and by its articles of incorporation and
24 bylaws, is a holder of a membership interest in the converting insurance company.

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1 2. For a converting service insurance corporation, a policyholder shown on the
2 books and records of the converting insurance company on the effective date of the
3 restructuring.

4 (j) "Membership interests" means the voting rights of a member arising under
5 the statutes and the articles of incorporation and bylaws of the converting insurance
6 company, including the right to vote for the board and the right to vote on any plan
7 of conversion, voluntary dissolution or amendment of the articles of incorporation.
8 On and after the effective date of the restructuring, "membership interests" means
9 the voting rights of a member arising under the statutes and the articles of
10 incorporation and bylaws of the mutual holding company, including the right to vote
11 for the board and the right to vote on any plan of conversion, voluntary dissolution
12 or amendment of the articles of incorporation. "Membership interests" does not
13 include members' rights in surplus, if any.

14 (k) "Mutual holding company" means a mutual insurance holding company.

15 (L) "Policyholder" means the person identified in the records of the converting
16 insurance company or the converted insurance company under s. 611.51 (9) (c).

17 (m) "Rights in surplus" means any rights of a member arising under the
18 converting insurance company's articles of incorporation or ch. 611 to a return of the
19 surplus in respect of policies or contracts of the converting insurance company that
20 may exist with regard to the surplus not apportioned or declared by its board as
21 divisible surplus, including rights of members to a distribution of such surplus in
22 dissolution or conversion proceedings under ch. 611. On and after the effective date
23 of the restructuring, "rights in surplus" means any rights of a member of the mutual
24 holding company arising under its articles of incorporation or this chapter to the net
25 worth of the mutual holding company, including rights of members of the mutual

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1 holding company to a distribution of any portion of the net worth of the mutual
2 holding company in conversion proceedings under s. 644.25 or dissolution
3 proceedings under s. 644.28 or 644.29. "Rights in surplus" shall not include any right
4 to divisible surplus expressly conferred solely by the terms of an insurance policy or
5 annuity contract.

6 (n) "Voting stock" means stock of any class or any ownership interest having
7 voting power for the election of directors, trustees or management. All references to
8 a specified percentage of voting stock shall mean stock having the specified
9 percentage of the voting power for the election of directors, trustees or management,
10 including stock having such power only by reason of the happening of a contingency.

11 (2) Except when inconsistent with the definitions given in this chapter, the
12 definitions of ss. 600.03 and 610.01 apply to this chapter. In the provisions of chs.
13 181 and 611 that are made applicable to this chapter or incorporated into this chapter
14 by reference, all of the following apply:

15 (a) "Corporation" includes a mutual holding company formed under this
16 chapter.

17 (b) "Department" means the commissioner.

18 (c) "Mutual" includes a mutual holding company.

19 (d) "Nonassessable mutual" includes a mutual holding company.

20 (e) "Policyholder" includes a member.

21 (f) "This chapter" includes this chapter.

22 **644.03 Scope and purposes. (1) SCOPE.** This chapter applies to all mutual
23 insurance holding companies organized under the laws of this state.

24 (2) **PURPOSES.** The purposes of this chapter are to provide complete,
25 self-contained procedures for the formation of mutual insurance holding companies.

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1 A corporation organized as a mutual insurance holding company under this chapter
2 may be organized for any lawful purpose and shall hold directly or indirectly as a
3 subsidiary at least one stock insurance company converted from a mutual insurance
4 company or from a service insurance corporation that converted to a mutual
5 insurance company. A mutual holding company is not an insurer.

6 **644.04 Restructuring. (1)** On the effective date of a restructuring under this
7 chapter, all of the following shall occur:

8 (a) The converting insurance company shall become a domestic stock insurance
9 company.

10 (b) All membership interests and rights in surplus of the converting insurance
11 company shall be extinguished and the members of the converting insurance
12 company shall become members of the mutual holding company in accordance with
13 this chapter and the articles of incorporation and bylaws of the mutual holding
14 company.

15 (c) All shares of the voting stock of the converting insurance company shall be
16 acquired and retained by the mutual holding company or, if created, an intermediate
17 stock holding company.

18 (d) All of the shares of voting stock of any intermediate stock holding company
19 shall be acquired and retained by the mutual holding company.

20 **(2)** Any intermediate stock holding company created at the time of the
21 restructuring to hold the stock of the converting insurance company shall be
22 incorporated under ch. 180 and may engage in any business or activity permitted by
23 ch. 180.

24 **(3)** Subject to s. 611.33, the converted insurance company and any
25 intermediate stock holding company may thereafter issue to 3rd parties debt

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1 securities, stock other than voting stock and, subject to s. 644.15, voting stock, so long
2 as all of the following are true:

3 (a) No shares of stock representing more than 49% of the voting power of all
4 issued and outstanding voting stock of either the converted insurance company or
5 the intermediate stock holding company, if any, are issued to 3rd parties.

6 (b) At least 51% of the voting stock of the converted insurance company is at
7 all times owned by the mutual holding company or by the intermediate stock holding
8 company, at least 51% of whose voting stock is held by the mutual holding company,
9 and such 51% interests in the converted insurance company and any intermediate
10 stock holding company are not conveyed, transferred, assigned, pledged, subjected
11 to a security interest or lien, placed in a voting trust, encumbered or otherwise
12 hypothecated or alienated by the mutual holding company or by the intermediate
13 stock holding company. Any conveyance, transfer, assignment, pledge, security
14 interest, lien, placement in a voting trust, encumbrance, or hypothecation or
15 alienation of, in or on the 51% of the voting shares of the converted insurance
16 company or the intermediate stock holding company in violation of this paragraph
17 shall be void in inverse chronological order of the date of such conveyance, transfer,
18 assignment, pledge, security interest, lien, placement in a voting trust,
19 encumbrance, hypothecation or alienation as to the shares necessary to constitute
20 51% of such voting stock.

21 (4) For purposes of the calculations under this section and under s. 644.13, any
22 issued and outstanding securities of the converted insurance company or any
23 intermediate stock holding company that are convertible into voting stock are
24 considered to be issued and outstanding voting stock.

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1 or as a stock insurance company subsidiary of an intermediate stock holding
2 company that is a subsidiary of the mutual holding company. The converted
3 insurance company may continue to use the word "mutual" in its name if the name
4 includes the abbreviation "SI" for stock insurer, or the words "stock insurer".

5 (2) RESOLUTION OF THE BOARD. The board shall pass a resolution to the effect
6 that restructuring is fair and equitable to policyholders. The resolution shall specify
7 the reasons for and the purposes of the proposed restructuring, and explain the
8 manner in which the restructuring is expected to benefit policyholders.

9 (3) ADOPTION OF PLAN. The board shall adopt a mutual holding company plan.
10 The mutual holding company plan shall set forth the reasons for and the purposes
11 of the proposed restructuring, explain how the restructuring is expected to benefit
12 policyholders and provide for amending the converting insurance company's articles
13 of incorporation to give effect to the restructuring from a mutual, nonstock
14 corporation into a stock corporation.

15 (4) SUBMISSION OF PLAN. The board shall submit the mutual holding company
16 plan to the commissioner for approval, together with all of the following:

17 (a) The proposed articles and bylaws of the mutual holding company, which
18 shall comply with s. 644.09, of the converted insurance company, which shall comply
19 with s. 611.12, and of any intermediate stock holding company.

20 (b) So much of the following information pertaining to the mutual holding
21 company as the commissioner reasonably requires:

22 1. The names and, for the preceding 10 years, all addresses and all occupations
23 of all proposed directors and officers.

24 2. All agreements relating to the mutual holding company to which any
25 proposed director or officer is a party.

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1 3. The amount and sources of the funds available for organization expenses and
2 initial operating expenses.

3 4. The proposed compensation of directors and officers.

4 5. The proposed capital.

5 6. A business plan of the mutual holding company for the first 5 years of
6 operation.

7 (c) Such other relevant documents or information as the commissioner
8 reasonably requires.

9 **(5) PLAN CONTENTS.** (a) The plan shall include all of the following:

10 1. A description of any plans for the initial sale of voting stock to 3rd parties
11 by the converted insurance company or any intermediate stock holding company, or
12 a statement that the converted insurance company or intermediate stock holding
13 company has no current plans for the sale of voting stock.

14 2. A description of any plans for the transfer of assets and assumption of
15 obligations, including any one or more subsidiaries of the converting insurance
16 company, to the mutual holding company or to the intermediate stock holding
17 company.

18 (b) 1. A plan for the initial sale of voting stock shall be adequately described
19 under par. (a) 1. if it contains all of the following:

20 a. A statement of intent to conduct an initial sale of voting stock of the converted
21 insurance company or of any intermediate stock holding company within a specified
22 time after the effective date of the restructuring.

23 b. A description of the maximum percentage of the stock to be sold.

24 c. A description of the process to be used in offering the stock and setting the
25 initial sale price for the stock.

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1 d. A description of the rights of members to subscribe to the stock offering if the
2 initial sale of voting stock by the converted insurance company or any intermediate
3 stock holding company involves an initial public offering.

4 e. Such other information as may be prescribed by the commissioner.

5 2. No plan for the initial sale of voting stock that is approved by policyholders
6 as part of the approval of a mutual holding company conversion plan under sub. (8)
7 or by members as part of an approval under s. 644.15 shall be effective for more than
8 the specified time under subd. 1. a. after the effective date of the restructuring or the
9 date on which the plan is approved by members under s. 644.15 (1), whichever is
10 applicable.

11 **(5m)** ADDITIONAL PLAN CONTENTS FOR SERVICE INSURANCE CORPORATIONS. If the
12 converting insurance company is a service insurance corporation, in addition to
13 satisfying the requirements under sub. (5), the plan shall state all of the following:

14 (a) That those persons who are policyholders of the converting service
15 insurance corporation on the date of the resolution under sub. (2) and who remain
16 policyholders on the record date established by the board for the vote under sub. (8)
17 shall have the right to vote on the plan under sub. (8).

18 (b) That the members of the mutual holding company shall be those persons
19 who are policyholders of the converting service insurance corporation on the effective
20 date of the restructuring, and that thereafter membership shall be as provided in
21 sub. (10) (d).

22 (c) Any other conditions that the commissioner may require relating to the
23 company's conversion from a service insurance corporation to a mutual holding
24 company.

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1 **(6) HEARING.** (a) The commissioner or a hearing examiner designated by the
2 commissioner shall hold a hearing after receipt of a mutual holding company plan.

3 (b) 1. Notice of the hearing shall be mailed by the converting insurance
4 company not more than 60 days and not less than 10 days before the scheduled date
5 of the hearing to the last-known address of each person who was a policyholder of
6 the converting insurance company on the date of the resolution under sub. (2),
7 together with a copy of the mutual holding company plan, or a copy of a summary of
8 the plan if the commissioner approves the summary, and any comment that the
9 commissioner considers necessary for the adequate information of policyholders.
10 Failure to mail notice to a policyholder does not invalidate a proceeding under this
11 subsection if the commissioner determines that the converting insurance company
12 has substantially complied with this subdivision and has attempted in good faith to
13 mail notice to all policyholders entitled to notice.

14 2. The notice, the plan or a summary of the plan and any comments under subd.
15 1. shall also be mailed by the converting insurance company not more than 60 days
16 and not less than 10 days before the scheduled date of the hearing to the
17 commissioner of every jurisdiction in which the converting insurance company is
18 authorized to do any business.

19 (c) In accordance with such hearing procedures as the commissioner or the
20 designated hearing examiner may prescribe, any policyholder under par. (b) 1. and
21 any commissioner under par. (b) 2. may present written or oral statements at the
22 hearing and may present written statements within a period after the hearing
23 specified by the commissioner or the hearing examiner. The commissioner shall take
24 statements presented under this paragraph into consideration in making the
25 determination under sub. (7).

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1 **(7) APPROVAL BY COMMISSIONER.** (a) The commissioner shall approve the
2 mutual holding company plan unless he or she finds that the plan violates the law,
3 is not fair and equitable to policyholders or is contrary to the interests of
4 policyholders or the public.

5 (b) In considering the plan, the commissioner shall consider whether the
6 restructuring would be detrimental to the safety and soundness of the converting
7 insurance company or the contractual rights and reasonable expectations of the
8 persons who are policyholders on the effective date of the restructuring. The
9 commissioner may take into consideration any conclusions and recommendations on
10 the subject of restructuring published by recognized organizations of professional
11 insurance actuaries. The commissioner may by rule establish standards applicable
12 to a restructuring under this chapter.

13 **(8) APPROVAL BY POLICYHOLDERS.** After approval under sub. (7), the mutual
14 holding company plan shall be submitted at any regular or special meeting of
15 policyholders to a vote of the persons who were policyholders of the converting
16 insurance company on the date of the resolution under sub. (2), and who remain
17 policyholders on the record date established for the vote by the board. Voting shall
18 be in accordance with the articles or bylaws of the converting insurance company, but
19 in no event shall there be less than 20 days' advance notice of any meeting for a vote
20 on approval of a mutual holding company plan, and in no event shall the required
21 vote to approve the plan be less than a majority of those policyholders voting. Notice
22 of such meeting shall be sent to the last-known address of each such policyholder and
23 may be included with any notice sent under sub. (6) (b) 1. Only proxies specifically
24 related to the mutual holding company plan may be used for a vote on approval under
25 this subsection.

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1 **(9) AMENDMENT OR WITHDRAWAL.** At any time before the effective date of the
2 restructuring, the converting insurance company may, by resolution of its board,
3 amend the mutual holding company plan or withdraw the mutual holding company
4 plan. The commissioner shall determine whether any amendment made after the
5 public hearing under sub. (6) changes the mutual holding company plan in a manner
6 that is materially disadvantageous to any of the policyholders of the converting
7 insurance company and, in such case, may require a further public hearing on the
8 plan as amended. If an amendment that the commissioner determines is materially
9 disadvantageous to any of the policyholders is made after the plan has been approved
10 by the policyholders, the plan as amended shall be submitted for reconsideration by
11 the policyholders.

12 **(10) EFFECT OF RESTRUCTURING.** (a) *Continuation of insurance corporation and*
13 *commencement of existence of mutual holding company.* If the policyholders approve
14 the mutual holding company plan under sub. (8), the commissioner shall issue a new
15 certificate of authority to the converting insurance company and a certificate of
16 incorporation to the mutual holding company. Upon issuance of the certificate of
17 incorporation, the legal existence of the mutual holding company shall begin, its
18 articles and bylaws shall become effective and its proposed directors and officers
19 shall take office. The issuance of the certificate of incorporation shall be conclusive
20 evidence of compliance with this section. On the effective date of the restructuring,
21 the converting insurance company shall at once become a stock corporation and is
22 no longer a mutual. The converted insurance company shall be considered to have
23 been organized at the time that the converting insurance company was organized.
24 Except as otherwise provided in the plan, the trustees, directors, officers, agents and

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1 employees of the converting insurance company shall continue in like capacity with
2 the converted insurance company.

3 (b) *Continuation of rights and obligations.* The restructuring of the converting
4 insurance company into a stock insurance company subsidiary of a mutual holding
5 company or an intermediate stock holding company shall in no way annul, modify
6 or change any of such insurer's existing suits, rights, contracts or liabilities, except
7 with respect to the membership interests and rights in surplus, if any, in such insurer
8 that are extinguished as provided in s. 644.04, and the corporate existence of the
9 converting insurance company shall be continued in all respects. The converted
10 insurance company, after restructuring, shall exercise all of the rights and powers
11 and perform all of the duties conferred or imposed by law upon insurers writing the
12 classes of insurance written by the converting insurance company before the
13 effective date of the restructuring, and shall retain the rights and contracts existing
14 prior to restructuring, except with respect to the membership interests and rights in
15 surplus that were extinguished.

16 (c) *Effective date.* The date upon which the commissioner issues the certificate
17 of authority to the converted insurance company shall be the effective date of the
18 restructuring unless a later time is designated in the mutual holding company plan.

19 (d) *Effect on policyholders.* A policyholder who has a membership interest in
20 the converting insurance company on the effective date of the restructuring shall
21 become a member of the mutual holding company. Policyholders of policies or
22 contracts that are issued by a converted insurance company after the effective date
23 of its conversion under this section shall become members of the mutual holding
24 company in accordance with the articles of incorporation and bylaws of the mutual
25 holding company and the applicable provisions of this chapter immediately upon

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1 issuance of the policy. The articles and bylaws of the mutual holding company may
2 provide that a policyholder of any other insurance company that is or becomes a
3 subsidiary of the mutual holding company may become a member of the mutual
4 holding company. In no event shall a person remain a member after he or she ceases
5 to be a policyholder.

6 (e) *Nontransferability of membership interests.* No member of a mutual holding
7 company may transfer such member's membership interests in the mutual holding
8 company or any right arising from such membership interests apart from the policy
9 that gives rise to the membership interest.

10 (f) *Liability of member.* A member of a mutual holding company is not, by virtue
11 of being a member, personally liable for the acts, debts, liabilities or obligations of the
12 mutual holding company.

13 **(10m)** EFFECT ON SERVICE INSURANCE CORPORATION OF DISAPPROVAL OF PLAN.
14 Notwithstanding sub. (1) (a) 2. and s. 644.02 (1) (b), if the converting insurance
15 company is a service insurance corporation, and the commissioner disapproves the
16 mutual holding company plan under sub. (7) or the policyholders disapprove the
17 mutual holding company plan under sub. (8), the converting insurance company
18 shall remain a service insurance corporation subject to ch. 613.

19 **(11)** EXPENSES. The converting insurance company may not pay compensation
20 of any kind to any person in connection with the mutual holding company plan other
21 than regular salaries to the company's personnel. This subsection does not prohibit
22 the payment of reasonable fees and compensation to attorneys at law, accountants,
23 financial advisers, actuaries or other consultants for services performed in the
24 independent practice of their professions. All expenses of the restructuring,
25 including the expenses incurred by the commissioner and the prorated salaries of

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1 any involved office staff members of the office of the commissioner of insurance, shall
2 be borne by the converting insurance company.

3 **644.08 Reservation of corporate name.** Section 181.07 applies to mutual
4 holding companies.

5 **644.09 Articles, amendments, bylaws and principal officers. (1)**
6 ARTICLES. Section 181.31 applies to the articles of a mutual holding company, except
7 that all of the following apply:

8 (a) The name of the mutual holding company shall include the word "mutual"
9 and shall comply with s. 181.06 (3).

10 (b) The articles shall include provisions for mutual bonds, if any are to be
11 authorized, which shall conform to s. 611.33 (2).

12 (c) The purposes of the mutual holding company shall be limited to those
13 permitted in this chapter.

14 (d) Subject to s. 644.07 (10) (d), the articles may specify those classes of persons
15 who may be members of the mutual holding company or may prescribe the procedure
16 for establishing or removing restrictions on the classes of persons who may be
17 members of the mutual holding company.

18 **(2) AMENDMENT OF ARTICLES.** A mutual holding company may amend its articles
19 in the manner provided in ss. 181.35 to 181.37 and 181.39 in any desired respect,
20 including substantial changes of its original purposes, except that no amendment
21 may be made that is contrary to sub. (1). In addition to the requirements of s. 181.37,
22 the articles of amendment of a mutual holding company shall, if mail voting is used,
23 state the number of members voting by mail and the number of such members voting
24 for and against the amendment. No amendment may become effective until the
25 articles of amendment have been filed with the commissioner. No amendment shall

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1 affect any existing cause of action in favor of or against such mutual holding
2 company, any pending suit to which the mutual holding company is a party or the
3 existing rights of persons other than members. In the event that the corporate name
4 is changed by amendment, no suit brought by or against such mutual holding
5 company under its former name shall abate for that reason.

6 (3) BYLAWS. The bylaws of a mutual holding company shall comply with this
7 chapter. A copy of the bylaws and any amendments to the bylaws shall be filed with
8 the commissioner within 60 days after adoption. Subject to this subsection, s. 181.13
9 applies to mutual holding companies.

10 (4) PRINCIPAL OFFICERS. Section 181.25 (1) and (2) applies to mutual holding
11 companies.

12 **644.10 Acquisition, merger or consolidation as part of the plan.** (1) The
13 converting insurance company may propose to acquire, or to merge or consolidate
14 with, one or more domestic or foreign insurers, or both, as part of a mutual holding
15 company plan under s. 644.07. The commissioner shall approve the acquisition,
16 merger or consolidation as part of the mutual holding company plan and shall
17 approve the continued corporate existence of any domestic insurer that is a party to
18 the plan under this section as a subsidiary of the mutual holding company or any
19 intermediate stock holding company, if any of the following applies:

20 (a) In the case of a domestic stock corporation, no grounds for disapproval exist
21 under s. 611.72 (3).

22 (b) In the case of a domestic mutual, no grounds for disapproval exist under s.
23 611.73 (3) and the domestic mutual has complied with s. 644.07 (2) to (8). The
24 converting insurance company and any domestic mutual that the converting
25 insurance company proposes to acquire, or merge or consolidate with, may adopt one

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1 plan. The commissioner may combine the hearings required under s. 644.07 (6) for
2 the converting insurance company and any domestic mutual that is the subject of the
3 acquisition by, or merger or consolidation with, the converting insurance company.
4 Section 644.07 (9), (10) (b) to (f) and (11) applies to a domestic mutual acquired by,
5 merged into or consolidated with a converting insurance company under this section.

6 (2) Any foreign insurer acquired under a plan under this section may remain
7 a foreign company after such acquisition and may be admitted to do business in this
8 state if it meets the applicable requirements of ch. 618.

9 **644.11 Restructuring of domestic or foreign mutual with existing**
10 **domestic mutual holding company. (1) DEFINITION.** In this section, “existing
11 domestic mutual holding company” means a mutual holding company formed under
12 this chapter.

13 (2) DOMESTIC MUTUAL REORGANIZATION. (a) *Merger with existing domestic*
14 *mutual holding company.* A domestic mutual insurance company organized under
15 ch. 611 may restructure by merging its policyholders’ membership interests into an
16 existing domestic mutual holding company in accordance with this section and any
17 rules promulgated by the commissioner. The restructuring shall continue the
18 corporate existence of the converting insurance company as a stock insurance
19 company subsidiary of the existing domestic mutual holding company or as a stock
20 insurance company subsidiary of an intermediate stock holding company.

21 (b) *Procedures applicable to converting insurance company.* Sections 644.04 (3)
22 and (4) and 644.07 (2) to (6), (8), (9), (10) (b) to (f), (10m) and (11) apply to a domestic
23 mutual insurance company restructuring under this subsection.

24 (c) *Procedures applicable to existing domestic mutual holding company.* 1. The
25 board of the existing domestic mutual holding company into which the converting

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1 insurance company's policyholders' membership interests are proposed to be merged
2 under this subsection shall adopt a resolution approving the proposed plan of merger
3 and directing that it be submitted to the commissioner for approval and to its
4 members for a vote at a regular or special meeting. The existing domestic mutual
5 holding company shall provide written notice of the meeting to each member in the
6 manner provided under s. 644.07 (8) for notice to policyholders of a meeting for a vote
7 on approval of a mutual holding company plan.

8 2. The commissioner may hold a hearing on the plan of merger prior to the
9 meeting at which a vote of the members will be taken. A hearing under this
10 subdivision may be combined with the hearing required under par. (b). The existing
11 domestic mutual holding company shall provide written notice of the hearing to each
12 member in the manner provided under s. 644.07 (6) (b) 1. for notice to policyholders
13 of the hearing under s. 644.07 (6).

14 3. The commissioner shall approve the proposed plan of merger unless he or
15 she finds that the plan is not fair and equitable to members or is contrary to the
16 interests of members.

17 4. The proposed plan of merger shall be approved by the members of the
18 existing domestic mutual holding company upon the affirmative vote of not less than
19 a majority of those members voting in person or by proxy at the meeting required
20 under subd. 1.

21 (d) *Commissioner issues new certificate of authority if approved.* If under par.
22 (b) the policyholders of the converting insurance company approve the plan of
23 restructuring and under par. (c) the members of the existing domestic mutual
24 holding company approve the plan of merger, the commissioner shall issue a new
25 certificate of authority to the converting insurance company. The issuance of the

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1 certificate of authority shall be conclusive evidence of compliance with this
2 subsection.

3 (e) *Effect of restructuring.* On the effective date of the restructuring described
4 in this subsection, all of the following shall occur:

5 1. The converting insurance company shall at once become a stock corporation
6 organized and operating under ch. 611 and is no longer a mutual.

7 2. All membership interests and rights in surplus of the converting insurance
8 company shall be extinguished and the members of the converting insurance
9 company shall become members of the existing domestic mutual holding company
10 in accordance with this chapter and the articles of incorporation and bylaws of the
11 existing domestic mutual holding company.

12 3. All shares of the voting stock of the converting insurance company shall be
13 acquired and retained by the existing domestic mutual holding company or any
14 intermediate stock holding company, 51% or more of whose voting stock is owned by
15 the existing domestic mutual holding company.

16 4. The converted insurance company shall be considered to have been
17 organized at the time that the converting insurance company was organized.

18 5. Except as otherwise provided in the plan, the trustees, directors, officers,
19 agents and employes of the converting insurance company shall continue in like
20 capacity with the converted insurance company.

21 **(3) FOREIGN MUTUAL REORGANIZATION.** A foreign mutual insurance company
22 organized under the laws of any other state that, if a domestic corporation, would be
23 organized under ch. 611 may restructure by merging its policyholders' membership
24 interests into an existing domestic mutual holding company in accordance with rules
25 promulgated by the commissioner and in compliance with the requirements of any

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1 other law or regulation that is applicable to the foreign mutual. The restructuring
2 shall continue the corporate existence of the converting insurance company as a
3 foreign stock insurance company subsidiary of the existing domestic mutual holding
4 company or as a foreign stock insurance company subsidiary of an intermediate stock
5 holding company. The restructuring foreign mutual insurance company may remain
6 a foreign insurer after the restructuring and may be admitted to do business in this
7 state if it meets the applicable requirements of ch. 618. A foreign mutual insurance
8 company that is a party to the restructuring may at the same time redomesticate to
9 this state by complying with the applicable requirements of this state and its state
10 of domicile.

11 **644.12 Transfers of a mutual holding company's place of domicile to**
12 **this state. (1)** A mutual holding company that is domiciled in another state and that
13 desires to become a domestic mutual holding company may submit to the
14 commissioner an application for a certificate of incorporation. The application shall
15 comply with rules promulgated under sub. (2) and shall include or have attached any
16 other relevant documents or information that the commissioner reasonably requires.
17 Upon review of the application, the commissioner may issue a certificate of
18 incorporation if the commissioner determines that all the following are satisfied:

19 (a) The applicant is in compliance with the provisions of this chapter that apply
20 to domestic mutual holding companies.

21 (b) The directors and officers of the applicant are trustworthy and competent
22 and collectively have the competence and experience to engage in the business
23 proposed.

24 (c) The applicant's insurance company subsidiary that converted from a mutual
25 has become a domestic insurer under s. 611.223.

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1 (2) The commissioner shall by rule specify the required contents and form of
2 an application under sub. (1). In determining the required contents, the
3 commissioner shall consider the information and documents that will permit the
4 commissioner to determine whether the requirements of sub. (1) (a) to (c) are
5 satisfied.

6 **644.13 Restrictions on ownership. (1)** In this section:

7 (a) “Beneficial ownership”, with respect to any voting stock, has the same
8 meaning as provided by the rules administering section 16 of the Securities
9 Exchange Act of 1934.

10 (b) “Offer” means any of the following:

11 1. An offer to buy or acquire voting stock, or an interest in voting stock, for
12 value.

13 2. A solicitation of an offer to sell voting stock, or an interest in voting stock,
14 for value.

15 3. A tender offer for voting stock, or an interest in voting stock, for value.

16 4. A request or invitation for tenders of voting stock, or an interest in voting
17 stock, for value.

18 (2) (a) Before the date that is one year after the initial sale to 3rd parties in a
19 public offering of voting stock of the converted insurance company or any
20 intermediate stock holding company, the directors, officers and other members of
21 management of the mutual holding company, any intermediate stock holding
22 company and the converted insurance company are prohibited from acquiring or
23 offering to acquire, in any manner, the legal or beneficial ownership of any class of
24 voting stock of the converted insurance company or intermediate stock holding
25 company, except that this paragraph shall not in any way limit the rights of the

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1 directors, officers or other members of management to exercise subscription rights
2 generally accorded to members of the mutual holding company.

3 (b) Except as otherwise provided by the commissioner by rule, beginning on the
4 date that is one year after the initial sale to 3rd parties of voting stock of the
5 converted insurance company or any intermediate stock holding company, the
6 directors, officers and other members of management of the mutual holding
7 company, any intermediate stock holding company and the converted insurance
8 company may not do any of the following:

9 1. Acting individually, directly or indirectly acquire or offer to acquire, in any
10 manner, the legal or beneficial ownership of more than 5% of any class of voting stock
11 of the converted insurance company or intermediate stock holding company.

12 2. In the aggregate, directly or indirectly acquire or offer to acquire, in any
13 manner, the legal or beneficial ownership of more than 10% of any class of voting
14 stock of the converted insurance company or intermediate stock holding company.

15 (3) (a) In the event of any violation of sub. (2), or of any action which, if
16 consummated, might constitute such a violation, all voting stock of any intermediate
17 stock holding company or the converted insurance company that is acquired by any
18 person in excess of the maximum amount permitted to be acquired by such person
19 under sub. (2) shall be considered to be nonvoting stock of any such intermediate
20 stock holding company or converted insurance company, as the case may be.

21 (b) In addition to the result specified in par. (a), the violation or action is subject
22 to the enforcement procedures under s. 601.64.

23 **644.14 Member rights. (1) COMMUNICATION TO MEMBERS; MEMBER VOTING.**
24 Subject to this section, ss. 611.41, 611.42 (1), (2), (3), (4) (a) and (5), 611.43 and 611.53
25 (2) apply to mutual holding companies.

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1 **(2) NOTICE OF REGULAR MEETINGS AND ELECTIONS.** Notice of the time and place
2 of regular meetings or elections may be given to a member by printing such time and
3 place conspicuously on each policy under which the member derives a membership
4 interest, or in such other reasonable manner as the commissioner approves or
5 requires.

6 **644.15 Sale of voting stock; subscription rights; dividends.** (1) (a) No
7 solicitation for the initial sale to 3rd parties of the voting stock of the converted
8 insurance company or any intermediate stock holding company may be made
9 without the approval of the commissioner under s. 611.31 (2) and without the
10 approval of the commissioner and the members of the mutual holding company as
11 follows:

12 1. If the mutual holding company plan includes a plan for the initial sale of
13 voting stock, such approval shall be given at the time that the mutual holding
14 company plan is approved under s. 644.07 (7) and (8).

15 2. If the mutual holding company plan does not include a plan for the initial
16 sale of voting stock of the converted insurance company or any intermediate stock
17 holding company, the board of the converted insurance company or any intermediate
18 stock holding company, following the procedures under s. 644.07 (2) to (8), may adopt
19 a plan for the initial sale of voting stock to 3rd parties at any future date.

20 (b) Prior to every issue of voting stock of the converted insurance company and
21 any intermediate stock holding company, the commissioner, in addition to the
22 approval required under s. 611.31 (2), shall approve the price of the stock, or the
23 procedure for setting and determining the price of the stock, as fair and equitable to
24 the company issuing the stock.

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1 (2) No initial public offering of voting stock of the converted insurance company
2 or any intermediate stock holding company may be conducted unless the persons
3 who were members of the mutual holding company at the time such offering was
4 approved by resolution of the board are afforded subscription rights in conjunction
5 with the stock offering.

6 (3) If the converted insurance company is a life insurance company, before any
7 approval for the initial sale of voting stock is granted the commissioner shall find the
8 dividend plan fair and equitable to policyholders.

9 (4) Dividends and other distributions to the shareholders of the converted
10 insurance company or any intermediate stock holding company of a converted
11 insurance company may not be made except in compliance with ss. 617.22 and
12 617.225.

13 **644.16 Board of directors, committees and records.** (1) BOARD OF
14 DIRECTORS. Subject to this section, ss. 181.18, 181.21, 611.51 (2), (3), (5) and (8) and
15 611.53 (1) and (3) apply to mutual holding companies. Section 181.22 applies to the
16 board of a mutual holding company except as modified by s. 181.225. The board shall
17 manage the business and affairs of the corporation and may not delegate its power
18 or responsibility to do so, except to the extent authorized by ss. 181.23 and 181.25 (2).

19 (2) COMMITTEES OF DIRECTORS. Section 181.23 applies to mutual holding
20 companies.

21 (3) RECORDS. (a) Section 611.51 (9) (a) and (b) applies to mutual holding
22 companies.

23 (b) Any provision of this chapter or of the articles or bylaws of a mutual holding
24 company that requires the keeping of records concerning the names and addresses
25 of members entitled to vote shall be considered complied with by the keeping of a

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1 record of the names of policyholders of, and the names and addresses of insureds or
2 persons paying premiums on the policies of, the converted insurance company. Any
3 provision of this chapter or of the articles or bylaws of a mutual holding company that
4 requires the mailing or sending of notices, reports, proposals, ballots or other
5 materials to a member shall be considered complied with if such mailing is made to
6 the insured or the person paying premiums on the policy of the converted insurance
7 company, for delivery to the policyholder.

8 (4) DIRECTOR CONFLICTS OF INTEREST. Section 181.225 applies to mutual holding
9 companies.

10 **644.17 Removal of officers.** Section 181.26 applies to mutual holding
11 companies.

12 **644.18 Directors' and officers' liability and indemnification. (1)**
13 LIABILITY. Sections 181.283 to 181.29 apply to mutual holding companies.

14 (2) INDEMNIFICATION. Sections 181.041 to 181.051 apply to mutual holding
15 companies.

16 (3) INSURANCE. Section 181.053 applies to mutual holding companies.

17 (4) DERIVATIVE ACTIONS. Section 181.295 applies to mutual holding companies.

18 **644.19 Executive compensation. (1) GENERAL.** Sections 181.19 and 611.63
19 (4) and (5) apply to mutual holding companies.

20 (2) APPROVAL BY MEMBERS. A benefit plan or amendment to a benefit plan that
21 proposes to provide benefits in the form of stock or stock options of a converted
22 insurance company or any intermediate stock holding company to the directors or
23 officers of the converted insurance company, intermediate stock holding company or
24 mutual holding company may not take effect unless it is submitted to a vote of the

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1 members of the mutual holding company and approved by a majority of the members
2 voting.

3 (3) NOTICE TO COMMISSIONER. The commissioner may by rule require that any
4 action taken by the board of a mutual holding company, or the board of any
5 intermediate stock holding company, on any of the subjects specified in ss. 181.04 (15)
6 and 181.19 be reported to the commissioner within 30 days after the action is taken.

7 **644.20 Management contract services.** A mutual holding company may
8 not be a party to a contract that has the effect of delegating to a person, to the
9 substantial exclusion of the board, the authority to exercise any management control
10 of the mutual holding company or of any of its major corporate functions.

11 **644.21 Annual report of domestic mutual holding company.** Each
12 mutual holding company domiciled in this state shall file such annual report as may
13 be prescribed by the commissioner by rule.

14 **644.22 Securities regulation.** A membership interest in a domestic mutual
15 holding company shall not constitute a security, as defined in s. 551.02 (13).

16 **644.23 Authority to issue mutual bonds and contribution notes.** Section
17 611.33 (2) (a), (b), (c) and (e) applies to mutual holding companies. In the event of
18 dissolution under this chapter, unpaid amounts of principal and interest on
19 contribution notes shall be subordinated to the payment of principal and interest on
20 any mutual bonds issued by the mutual holding company at any time.

21 **644.24 Subsequent restructuring.** A mutual holding company, in
22 conjunction with the converted insurance company and any intermediate stock
23 holding company, may merge together and convert into a mutual insurance company
24 if the requirements of ss. 611.72 and 611.75 are met and the members of the mutual

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1 holding company vote to approve the merger and conversion into a mutual insurance
2 company.

3 **644.25 Conversion of domestic mutual holding company into a stock**
4 **corporation. (1) CONVERSION PERMITTED AND PROCEDURES.** A mutual holding
5 company formed by a converted insurance company under this chapter may convert
6 into a stock corporation organized under ch.180. Subject to this section, s. 611.76 (1)
7 to (3) and (5) to (11) applies to mutual holding companies.

8 **(2) PLAN OF CONVERSION.** (a) In this subsection, “net premium” means gross
9 premium less return premium and dividends paid.

10 (b) The board of a domestic mutual holding company may adopt a plan of
11 conversion that specifies all of the following:

12 1. The number of shares proposed to be authorized for the new stock
13 corporation, their par value and the price at which they will be offered to members,
14 which price may not exceed 50% of the median equitable share of all members under
15 subd. 2.

16 2. That each member who has been a policyholder of a converted insurance
17 company and has paid premiums within 5 years prior to the resolution passed by the
18 board related to the conversion under this section shall be entitled without
19 additional payment to so much common stock of the new stock corporation as his or
20 her equitable share of the value of the converting mutual holding company will
21 purchase.

22 3. That each member’s equitable share shall be determined by the ratio that
23 the net premium paid by such member to the converted insurance company during
24 the 5 years immediately preceding the resolution specified in subd. 2. bears to the

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1 total net premium received by the converted insurance company during the same
2 period.

3 4. That, if a member's equitable share is sufficient only for the purchase of a
4 fraction of a share of stock, the member shall have the option either to receive the
5 value of the fractional share in cash or to purchase a full share by paying the balance
6 in cash.

7 5. That, notwithstanding subds. 2. to 4., each member who was a policyholder
8 of a converted life insurance company on the date of the resolution specified in subd.
9 2. or within 5 years prior to that date shall be entitled to an equitable share based
10 on a formula that fairly reflects the policyholder's interest in the company and the
11 policies and contracts issued by the company to the policyholder, and that takes into
12 account premiums paid, cash surrender values, policy loans, reserves, surplus
13 benefits payable and other relevant factors.

14 6. That a member's equitable share shall be provided to the member on a
15 uniform basis approved by the commissioner in the form of common stock, cash,
16 increased benefits or lower premiums or a combination of those forms.

17 7. The procedure for stock subscriptions, which shall include a written offer to
18 each such member indicating his or her individual equitable share and the terms of
19 subscription.

20 8. That no common stock under subd. 2. may be issued to persons other than
21 the members under subd. 2. until all subscriptions by the members have been filled
22 and that thereafter any new issue of stock for 5 years after the conversion shall first
23 be offered to the persons who have become shareholders under subd. 2. in proportion
24 to their interests under subd. 2.

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1 9. That no member, other than a member who is a policyholder of a converted
2 life insurance company, may receive a distribution of shares valued in excess of the
3 amount to which he or she is entitled under s. 645.72 (4) (b). Any excess over that
4 amount shall be distributed in shares to the state treasury for the benefit of the
5 common school fund. After 5 years the shares may be sold by the treasurer at his or
6 her discretion and the proceeds credited to the common school fund.

7 10. That, except with the approval of the commissioner, during the first 5 years
8 after the conversion under this section the directors and officers of a mutual holding
9 company with a converted life insurance company subsidiary and persons acting in
10 concert with them may not, in the aggregate, acquire control over more than 5% of
11 the common stock of the converted mutual holding company or any other corporation
12 that acquires control of more than 5% of the common stock of the converted mutual
13 holding company.

14 **(3) AFTER CONVERSION.** Upon the conversion of a mutual holding company
15 under this section, this chapter no longer applies to the mutual holding company, any
16 intermediate stock holding company or the converted insurance company.

17 **644.26 Transfer of business or assets.** Section 181.49 applies to mutual
18 holding companies.

19 **644.27 Merger and consolidation of mutual holding companies.** Section
20 611.73 applies to mutual holding companies.

21 **644.28 Voluntary dissolution of domestic mutual holding companies.**

22 **(1) PLAN OF DISSOLUTION.** Subject to this section, ss. 181.50 to 181.54 and 181.555
23 apply to mutual holding companies, except that the last sentence of s. 181.555 does
24 not apply.

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1 **(2) APPROVAL BY THE COMMISSIONER.** (a) At least 60 days prior to the submission
2 to members of any proposed voluntary dissolution of a mutual holding company
3 under s. 181.50, the plan shall be filed with the commissioner. The commissioner
4 may require the submission of additional information relevant to the effect of the
5 proposed dissolution on the solvency of the converted insurance company. The
6 commissioner shall approve the dissolution unless, after a hearing, the
7 commissioner finds that dissolution of the mutual holding company would cause the
8 converted insurance company to become insolvent, would be unfair or inequitable to
9 the members of the mutual holding company or would not be in the best interests of
10 the policyholders of the converted insurance company or the public.

11 (b) The acquisition of the converted insurance company and any other
12 insurance company owned directly or indirectly by a dissolving mutual holding
13 company shall be subject to ss. 611.71 and 611.72 and ch. 617.

14 **(3) REVOCATION OF VOLUNTARY DISSOLUTION.** If the mutual holding company
15 revokes the voluntary dissolution proceedings under s. 181.53, a copy of the
16 resolution revoking the voluntary dissolution proceedings adopted under s. 181.53
17 shall be filed with the commissioner.

18 **(4) FILING AND RECORDING ARTICLES OF DISSOLUTION AND EFFECT THEREOF.** Upon
19 approval by the commissioner under sub. (2) and by the members under s. 181.50,
20 the mutual holding company shall file articles of dissolution with the commissioner.
21 When the articles are filed, the existence of the mutual holding company shall cease,
22 except for the purpose of suits, other proceedings and appropriate corporate action
23 of members, directors and officers as provided in this chapter and in ss. 181.50 to
24 181.54 and 181.555. Upon the filing of the articles, the commissioner may issue a
25 certificate of dissolution.

