

No. 402, S.]

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### CHAPTER 190

AN ACT to create 201.301 of the statutes, relating to procedure for converting a domestic stock life insurance corporation into a mutual life insurance corporation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

201.301 of the statutes is created to read:

201.301 CONVERSION OF DOMESTIC STOCK LIFE INSURANCE CORPORATION INTO A MUTUAL LIFE INSURANCE CORPORATION. (1) DEFINITIONS. Any domestic stock life insurance company may become a mutual company by complying with this section.

(a) The term "conversion" as used in this section means the change of an insurer of one type into an insurer of another type, but not including the change of any mutual insurance company into a stock insurance company.

(b) The term "company" as used in this section shall, unless the context otherwise requires, means a life insurance company.

(c) The term "policyholder" as used in subs. (2) (c) and (4) (i) is the owner or absolute assignee of one or more of the following types of contracts: Individual policy of life insurance or individual annuity contract and shall not include an owner of a group certificate or of a policy providing credit, accident, health, hospitalization, medical, surgical or like insurance benefits, or of a supplementary contract issued upon maturity, either by death or as an endowment, of an original policy or contract or any insurance policy which is being continued in force under a nonforfeiture provision of the policy.

(d) The provisions of chs. 189, 219 and 320 shall not apply to the powers and procedure provided by this section.

(e) The term "commissioner" as used in this section means the commissioner of insurance.

(2) CONVERSION REQUIREMENTS. Any domestic stock life insurance company heretofore or hereafter incorporated under the laws of this state may become a mutual life insurance company, and to that end may formulate and carry out a plan for the acquisition by it of its outstanding capital stock, as follows:

(a) Such plan shall have been adopted by a vote of a majority of the directors of such company.

(b) Such plan shall have been approved by a vote of stockholders representing a majority of the outstanding capital stock at a meeting of stockholders called for such purpose.

(c) Such plan shall have been approved by the vote of a majority of the policyholders who are eligible to vote and who vote at a meeting called for that purpose. Any policyholder, who fulfills the requirements of sub. (1) (c) defining such term, and whose policy or contract amounts to at least \$1,000 and has been in force for at least a year prior to such policyholders' meeting, and who also is eligible under such further rules or regulations as may be prescribed by the commissioner as to voting qualifications at such meeting, shall be eligible to cast one vote thereat, in person, or by proxy or by mail. The reference herein to insurance in the amount of \$1,000 or more is deemed to include any single premium annuity contract having a consideration of \$1,000 or more and any annual premium annuity having an annual consideration of \$100 or more. Written or printed notice of the meeting setting forth a copy of the plan, or a summary of the same and setting the time and place of the special meeting at which it will be considered, shall be given by mailing the notice from the home office of the company at least 30 days prior to the meeting in a sealed envelope, postage prepaid, addressed to each policyholder at his last known postoffice address. The meeting shall be conducted in such manner as may be provided for in the plan, with the approval of the commissioner. The commissioner shall supervise and direct the methods and procedure of the meeting and shall appoint an adequate number of inspectors to conduct the voting at the meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertaining of the validity thereof, the qualifications of the voters and the canvass of the vote. The inspectors, or any one thereof designated by the commissioner, shall certify to the commissioner and to the company the result of the vote, and with respect thereto shall act under such rules as shall be prescribed by the commissioner. All necessary expenses incurred by the commissioner or incurred with his approval by the inspectors appointed by him shall be paid by the company upon the certificate of the commissioner.

(d) Such plan, after approval by the directors, stockholders and policyholders, shall have been executed in duplicate by the company by its president or vice president and its secretary or assistant secretary or officers corresponding thereto and shall have been submitted to the commissioner and within 45 days the plan shall have been approved by him as conforming to this section and as not prejudicial to the policyholders of the company or to the insuring public. If the commissioner does not approve the plan, he shall notify the company in writing of his reasons for the disapproval, and if requested to do so, shall grant the company a hearing. The final action of the commissioner pursuant to this subsection shall be subject to judicial review in the manner provided in ch. 227.

(e) Such plan may specify the purchase price to be paid and the method of payment thereof by the company for shares of its capital stock, and in such case the price so specified, except as herein otherwise provided, shall be adhered to. If such plan does not specify the price to be paid for the shares, the company shall first obtain the approval of the commissioner for every payment made for the acquisition of any shares of its capital stock. Such plan may provide that the purchase price of the stock be paid by an instalment method therein described and in such an event shall contain provisions for payment of interest at a specified rate on deferred balances, acceleration of payment of principal balances at the option of the company and a condition that any principal instalment payment which otherwise would be due on any payment date shall be wholly or partially deferred by the company to the extent necessary if the commissioner shall determine that the company, after deducting the payment currently due, will not as of such date be possessed of admitted assets equal to the sum of 1, 2 and 3 defined in par. (f).

(f) Before approving any such plan or any such payment, the commissioner shall be satisfied, by such investigation as he may make or by such evidence as he may require, that the company, after deducting the aggregate sum appropriated by the plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by the plan and subject to approval as aforesaid, after deducting also the amount of such payment, will be possessed of admitted assets in an amount equal to the sum of 1, 2 and 3, as follows:

1. Its entire liabilities, including the net values of its outstanding contracts computed as required by law, and 2. the minimum surplus or guaranty fund required by law for mutual companies, hereafter organized to do the same kind or kinds of business, and 3. an additional contingent surplus deemed by the commissioner necessary to protect its policyholders and the insuring public in view of the past experience of the company, the character of its assets, its present management, and its probable future earnings.

(g) The commissioner shall at all times, in addition to the other powers conferred by this section, have the power either on petition or his motion after hearing on notice to the parties in interest given in the manner prescribed by s. 201.03 (8) (a) to order such changes in the plan as may be promotive of or necessary or incidental to the early accomplishment of the objectives of the plan with due regard of the interests of the policyholders, but no such changes shall substantially affect the basic objectives of the plan or change the purchase price of the stock. Except as hereinabove provided, no change shall be made in any such plan, adopted and approved as aforesaid, except upon the formulation, adoption and approval of a new plan in accordance with the foregoing requirements.

(h) When all of the shares of the outstanding stock of the company have been acquired by the trustees, the trustees shall cause a special

meeting of the stockholders of the company to be called for the purpose of adopting the amendments of articles of incorporation and by-laws indicated to transform the corporation into a mutual life insurance company without stock, and authorize and direct the filing of same with the proper state officials. Upon the issuance of a certificate of amendment by the commissioner the trustees shall then present the certificates for all of the outstanding stock of the company to the secretary of the company for cancellation and the company shall thenceforward be a mutual company without stock. Neither the retirement of the corporation's capital stock nor the amendment of its articles of incorporation shall affect existing suits, rights, or contracts of the corporation. The securities of the company on deposit pursuant to s. 209.01 shall be retained as provided in said section, in trust, for the benefit and security of all of the policyholders of the corporation.

(3) ACQUISITION OF STOCK. If a domestic stock life insurance corporation determines to become a mutual life insurance corporation, it may, in carrying out any plan to that end under this section, acquire any shares of its own stock by gift, bequest, or purchase. Until all of the shares are acquired, any shares so acquired, shall be acquired in trust for the corporation and shall be assigned and transferred on the books of the corporation to not less than 3 nor more than 5 trustees. The shares shall be held by them in trust and be voted by the trustees at all corporate meetings at which stockholders have the right to vote, until all of the capital stock of the corporation is acquired, at which time the entire capital stock shall be retired and canceled and the corporation shall become, thereupon, a mutual life insurance corporation without capital stock.

(4) RIGHTS AND PRIVILEGES OF DISSENTING STOCKHOLDER AND THE CORPORATION. (a) If a stockholder of any domestic stock life insurance corporation planning to become a mutual life insurance corporation under this section files with the corporation, prior to or at the meeting of the stockholders at which the plan is submitted to a vote, a written objection to the plan and does not vote in favor thereof, and the stockholder within 20 days after the plan is approved by the meeting makes written demand on the corporation for payment of the fair cash value of his shares as of the day prior to the date on which the plan is approved by the stockholders, excluding from such fair cash value any appreciation or depreciation in consequence of the mutualization, the stockholder shall be entitled to receive, within 90 days after the fair cash value is agreed upon or determined, upon surrender of his certificates representing his shares such fair cash value thereof, provided that payment shall not be made to the stockholder until the plan shall have been approved by the commissioner. Any stockholder who fails to make such objection or having objected fails to make demand within the 20 day period shall be conclusively presumed to have consented to the plan and shall be bound by the terms thereof. Any such objection and demand for the payment of the fair cash value of shares shall state the number and kind of shares held by the dissenting stockholder making the demand, and the amount which the stockholder claims is their fair cash value. The right of a dissenting stockholder to be paid the fair cash value of his shares shall cease when the corporation, for any reason and in accordance with this section, abandons the plan to mutualize the corporation, or when the commissioner's action becomes final if he should disapprove the plan. No demand for payment of the fair cash value may be withdrawn by the stockholder making the same unless the corporation, by its board of directors, consents to the withdrawal.

(b) Within 10 days after the receipt of any such demand the corporation shall inform the stockholder in writing whether it will pay the

demanded amount, and, if it refuses to pay the amount, it shall offer in writing to pay another amount as the fair cash value.

(c) If, within 30 days after the date of the written demand made by the dissenting stockholder, the value of the shares is agreed upon between the dissenting stockholder and the corporation and the value is approved by the commissioner, payment therefor shall be made within 90 days after the date of the agreement, upon the surrender of the stockholder's certificates representing the shares, provided that payment shall not be made to the stockholder until the plan shall have been approved by the commissioner. Upon payment of the agreed value the dissenting stockholder ceases to have any interest in the shares and ceases to be a stockholder in the corporation, but the shares previously held by him and upon which he has been paid the fair cash value shall be transferred to and held by the trustees appointed under this section for the benefit of the corporation.

(d) If, within the period of 30 days, the stockholder and the corporation do not agree upon the value of the shares, the corporation, or the dissenting stockholder if he has complied with this section, may, within 60 days after the expiration of the 30-day period, petition the circuit court of the county in which the principal office of the company is located, to determine the fair cash value of the shares mentioned in the demand as of the day before the vote was taken approving the plan. If the petition is not filed within the 60-day period, the fair cash value of the shares is conclusively deemed to be equal to the amount offered to the dissenting stockholder by the corporation if any such offer has been made or, if not, then an amount equal to that demanded by the dissenting stockholder.

(e) The petition shall contain a brief statement of the facts and shall show the vote and action objected to and facts entitling the dissenting stockholder to the relief demanded. Upon the filing of the petition, the court, on the motion of the petitioner, shall enter an order fixing a date for hearing, and requiring a notice of the filing and prayer of the petition and of the date for hearing to be given to the respondent or defendant in the manner in which a summons is required to be served or substituted service is required to be made in other cases. On the day fixed for the hearing of the petition, or any adjournment thereof, the court shall determine from the petition and such evidence as is submitted by either party whether the dissenting stockholder is entitled to be paid the fair cash value of any shares, and the number of such shares, and if the court finds and orders that the stockholder is entitled to be paid the fair cash value of any number of shares, the court shall appoint 3 appraisers to determine the fair cash value of such number of shares as of the day before the vote objected to was taken, excluding from such fair cash value any appreciation or depreciation in consequence of the mutualization or vote of the corporation, and the court shall further instruct the appraisers respecting their duties in making the determination. The appraisers shall forthwith proceed to determine the fair cash value and they, or a majority of them, shall make a report of award within 10 days, unless the court increases said time, and shall file the report in the office of the clerk of the circuit court, whereupon, on the motion of either party, the report shall be submitted to the court and considered on such evidence as the court considers relevant, and if the award is found to be reasonable, and is confirmed and approved by the court, judgment shall be rendered against the corporation for the payment of the amount of the award, with interest at 5 per cent from a date which shall be fixed in the judgment.

(f) If the appraisers, or a majority of them, fail to make and file an award within 10 days, or within such further time as may be fixed by the court, or the award is not confirmed by the court, it shall summarily

determine the fair cash value of the shares and render judgment therefor. Any judgment shall further provide that simultaneously with its payment the certificates evidencing the shares of stock affected shall be surrendered to the corporation and, upon the failure of the holder thereof to surrender the certificates, the judgment shall stand as a cancellation of the certificates. The costs of the proceedings, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable. Such a proceeding is considered as a special proceeding within the meaning of s. 260.02 and final orders may be reviewed, affirmed, modified or reversed as provided by law. Two or more dissenting stockholders may join as plaintiffs or be joined as defendants in any proceeding under this section, and 2 or more such proceedings may be consolidated.

(g) A stockholder who so objects in writing and demands in writing payment of the fair cash value of any shares shall not be entitled to vote the shares or to exercise any rights respecting the shares or to receive any dividends or distributions thereon, unless the plan of mutualization is abandoned or disapproved by final action of the commissioner or, with the consent of the corporation, the objection and demand are withdrawn; provided that if, prior to such abandonment, dividends are paid in money to stockholders who are of the same class as those dissenting and who are of record on or after the day on which the vote was taken authorizing the mutualization, then an amount of money equal to the dividends otherwise payable upon the dissenting shares shall be paid to the holders of record thereof who would, except for their dissent, be entitled to receive the dividends, and each such payment shall be a credit upon the total amount to be paid for the shares by the corporation. All the holders of the dissenting shares of record at the time of any such abandonment of the plan or at the time of final action by the commissioner disapproving the plan, shall thereupon be restored to the status of a stockholder, and any payments made previously on the shares shall be considered as dividends thereon.

(h) Any stockholder who has assented to the plan or who has been concluded by the vote of the assenting stockholders, and any stockholder who has objected and made demand in writing for the fair cash value of his shares subsequent to which an agreement has been reached fixing the fair cash value, but who fails to surrender his certificates for cancellation upon payment of the amount to which he is entitled, may be ordered to do so by a judgment of the circuit court for the county in which the principal office of the corporation is located, after notice and hearing in an action instituted by the corporation for that purpose and the judgment may provide that upon failure of the stockholder to surrender the certificates for cancellation, the judgment shall stand in lieu of such surrender and cancellation.

(i) At any time before there has been a vote of the policyholders approving a plan of mutualization, the corporation may abandon the plan by the same vote of the directors and of the stockholders as was required for its adoption. Upon such abandonment or if the plan is abandoned for the reason that final action by the commissioner disapproved the plan, the rights of any stockholders to be paid for their stock in accordance with the plan, and the rights of any dissenting stockholders to be paid the fair cash value of their stock, whether or not judgment may have been rendered therefor, shall terminate, and the corporation shall continue to conduct its business as a domestic stock life insurance corporation as though no plan of mutualization had ever been adopted.

(5) APPOINTMENT OF TRUSTEES. The trustees provided for in sub. (3) shall be appointed and vacancies shall be filled by the commissioner.

The trustees shall be qualified directors of the corporation at the time of the appointment and shall continue as trustees until the purpose of the trust is accomplished or abandoned, unless they are removed for cause by the commissioner. The trustees shall file with the commissioner a verified acceptance of their appointment and a declaration that they will faithfully discharge their duties as trustees. The trustees shall give and file with the commissioner bonds in such an amount as under the circumstances the commissioner deems proper, with sureties thereon approved by the commissioner. All dividends and other sums received by the trustees on the shares of stock held by them shall be immediately repaid to the corporation. The necessary expenses of executing the trust shall be paid by the corporation. All shares held by the trustees are considered as admitted assets of the corporation at their par value. After all of the stock has been retired, the commissioner may enter an order discharging the trustees and their sureties upon receipt of and approval of the trustees' final report.

(6) OFFICERS AND DIRECTORS. When a domestic stock life insurance corporation has become converted into a mutual life insurance corporation, the officers and directors of the original corporation shall remain as the officers and directors of the newly converted corporation until the next annual meeting for the election of officers and directors, when their successors shall be elected in the manner provided in the amended articles of incorporation and by-laws previously adopted by the corporation.

Approved June 7, 1955.

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