CHAPTER 644

DOMESTIC MUTUAL INSURANCE HOLDING COMPANIES

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Cross-reference: See definitions in ss. 600.03, 610.01, and 628.02.
Cross-reference: See also ch. Ins 40, Wis. adm. code.

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

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

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

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

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

1. The corporation was incorporated under ch. 180.

2. At least 51 percent of the corporation's voting stock is held directly or indirectly by a mutual holding company.

3. The corporation holds directly or indirectly at least 51 percent of the voting stock of a converted insurance company.

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

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

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

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

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

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

(m) "Rights in surplus" means any rights of a member arising under the converting insurance company's articles of incorporation or ch. 611 to a return of the surplus in respect of policies or contracts of the converting insurance company that may exist

with regard to the surplus not apportioned or declared by its board as divisible surplus, including rights of members to a distribution of such surplus in dissolution or conversion proceedings under ch. 611. On and after the effective date of the restructuring, "rights in surplus" means any rights of a member of the mutual holding company arising under its articles of incorporation or this chapter to the net worth of the mutual holding company, including rights of members of the mutual holding company to a distribution of any portion of the net worth of the mutual holding company in conversion proceedings under s. 644.25 or dissolution proceedings under s. 644.28 or 644.29. "Rights in surplus" shall not include any right to divisible surplus expressly conferred solely by the terms of an insurance policy or annuity contract.

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

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

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

(b) "Department" means the commissioner.

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

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

(e) "Policyholder" includes a member.

(f) "This chapter" includes this chapter.

History: 1997 a. 227.

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

(2) PURPOSES. (a) The purposes of this chapter are to provide complete, self-contained procedures for the formation of mutual insurance holding companies. Subject to par. (b), a corporation organized as a mutual insurance holding company under this chapter may be organized for any lawful purpose and shall hold directly or indirectly as a subsidiary at least one stock insurance company converted from a mutual insurance company or from a service insurance corporation that converted to a mutual insurance company. A mutual holding company is not an insurer.

(b) A corporation organized as a mutual insurance holding company under this chapter may engage, directly or indirectly, in a business that is subject to regulation under another statute of this state only if not prohibited by, and subject to all limitations of, the other statute.

History: 1997 a. 227.

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

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

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

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

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

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

(3) The converted insurance company, subject to s. 611.33, and any intermediate stock holding company may thereafter issue to 3rd parties debt securities, stock other than voting stock and, subject to s. 644.15, voting stock, so long as all of the following are true:

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

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

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

History: 1997 a. 227; 1999 a. 30.

644.05 General corporate powers and procedures. (1) POWERS. Subject to s. 644.19 (2) and (3), s. 181.0302 (intro.), (1) to (15), (18) and (19) applies to mutual holding companies.

(2) EFFECT OF UNAUTHORIZED CORPORATE ACTS. Section 181.0304 applies to mutual holding companies, except that, for purposes of this subsection, "attorney general" used in s. 181.0304 (3) means "commissioner".

(4) WAIVER OF NOTICE AND INFORMAL ACTION BY MEMBERS OR DIRECTORS. Sections 181.0704, 181.0706, 181.0821 and 181.0823 apply to mutual holding companies. For purposes of this subsection, "board" used in s. 181.0821 includes "committee of the board of a mutual holding company".

History: 1997 a. 227; 1999 a. 30.

644.06 Registered agent for service of process. Sections 601.715, 601.72 (1) (a), (2) and (3) to (5) and 601.73 apply to mutual holding companies, except that, for purposes of this chapter, "authorized insurer" used in s. 601.715 means mutual holding company and "insurer" used in s. 601.72 (1) (a) and (2) means mutual holding company.

History: 1997 a. 227.

SUBCHAPTER II

MUTUAL INSURANCE HOLDING COMPANIES

644.07 Restructuring procedures. (1) FORMATION OF MUTUAL HOLDING COMPANY. (a) 1. A domestic mutual insurance company organized under ch. 611 may restructure by forming a mutual holding company in accordance with this section.

2. A domestic service insurance corporation organized under ch. 613 may restructure by simultaneously converting to a mutual insurance company that is subject to ch. 611 and forming a mutual holding company in accordance with this section.

(b) The mutual holding company may use the word "mutual" in its name. The restructuring shall continue the corporate existence of the converting insurance company as a stock insurance company subsidiary of the mutual holding company or as a stock insurance company subsidiary of an intermediate stock holding company that is a subsidiary of the mutual holding company. The converted insurance company may continue to use the word "mutual" in its name if the name includes the abbreviation "SI" for stock insurer, or the words "stock insurer".

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

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

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

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

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

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

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

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

4. The proposed compensation of directors and officers.

5. The proposed capital.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The notice, the plan or a summary of the plan and any comments under subd. 1. shall also be mailed by the converting insurance company not more than 60 days and not less than 10 days before the scheduled date of the hearing to the commissioner

of every jurisdiction in which the converting insurance company is authorized to do any business.

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

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

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

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

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

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

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

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

(d) *Effect on policyholders.* A policyholder who has a membership interest in the converting insurance company on the effective date of the restructuring shall become a member of the mutual holding company. Policyholders of policies or contracts that are issued by a converted insurance company after the effective date of its conversion under this section shall become members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company and the applicable provisions of this chapter immediately upon issuance of the policy. The articles and bylaws of the mutual holding company may provide that a policyholder of any other insurance company that is or becomes a subsidiary of the mutual holding company may become a member of the mutual holding company. In no event shall a person remain a member after he or she ceases to be a policyholder.

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

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

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

(11) EXPENSES. The converting insurance company may not pay compensation of any kind to any person in connection with the mutual holding company plan other than regular salaries to

the company's personnel. This subsection does not prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, financial advisers, actuaries or other consultants for services performed in the independent practice of their professions. All expenses of the restructuring, including the expenses incurred by the commissioner and the prorated salaries of any involved office staff members of the office of the commissioner of insurance, shall be borne by the converting insurance company.

History: 1997 a. 227.

644.08 Reservation of corporate name. Sections 181.0402 and 181.0403 (2), (3) and (3m) apply to mutual holding companies.

History: 1997 a. 227; 1999 a. 30.

644.09 Articles, amendments, bylaws and principal officers. (1) ARTICLES. Section 181.0202 applies to the articles of a mutual holding company, except that all of the following apply:

(a) The name of the mutual holding company shall include the word "mutual" and shall comply with s. 181.0401 (2) to (4).

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

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

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

(2) AMENDMENT OF ARTICLES. A mutual holding company may amend its articles in the manner provided in ss. 181.1001, 181.1002 (1), 181.1003, 181.1005 and 181.1006, except that papers required by those sections to be filed with the department of financial institutions shall instead be filed with the commissioner. The articles may be amended in any desired respect, including substantial changes of its original purposes, except that no amendment may be made that is contrary to sub. (1). In addition to the requirements of s. 181.1005, the articles of amendment of a mutual holding company shall, if mail voting is used, state the number of members voting by mail and the number of such members voting for and against the amendment. No amendment may become effective until the articles of amendment have been filed with the commissioner. No amendment shall affect any existing cause of action in favor of or against such mutual holding company, any civil, criminal, administrative or investigatory proceeding to which the mutual holding company is a party or the existing rights of persons other than members. In the event that the corporate name is changed by amendment, no suit brought by or against such mutual holding company under its former name shall abate for that reason.

(3) BYLAWS. The bylaws of a mutual holding company shall comply with this chapter. A copy of the bylaws and any amendments to the bylaws shall be filed with the commissioner within 60 days after adoption. Subject to this subsection, ss. 181.0206, 181.0207 and 181.1021 apply to mutual holding companies.

(4) PRINCIPAL OFFICERS. Sections 181.0840 and 181.0841 apply to mutual holding companies.

History: 1997 a. 227; 1999 a. 30.

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

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

(b) In the case of a domestic mutual, no grounds for disapproval exist under s. 611.73 (3) (a) and the domestic mutual has complied with s. 644.07 (2) to (8). The converting insurance company and any domestic mutual that the converting insurance company proposes to acquire, or merge or consolidate with, may adopt one plan. The commissioner may combine the hearings required under s. 644.07 (6) for the converting insurance company and any domestic mutual that is the subject of the acquisition by, or merger or consolidation with, the converting insurance company. Section 644.07 (9), (10) (b) to (f), and (11) applies to a domestic mutual acquired by, merged into, or consolidated with a converting insurance company under this section.

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

History: 1997 a. 227; 2013 a. 279.

644.11 Restructuring of domestic or foreign mutual with existing domestic mutual holding company. (1) DEFINITION. In this section, "existing domestic mutual holding company" means a mutual holding company formed under this chapter.

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

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

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

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

3. The commissioner shall approve the proposed plan of

merger unless he or she finds that the plan is not fair and equitable to members or is contrary to the interests of members.

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

(d) *Commissioner issues new certificate of authority if approved.* If under par. (b) the policyholders of the converting insurance company approve the plan of restructuring and under par. (c) the members of the existing domestic mutual holding company approve the plan of merger, the commissioner shall issue a new certificate of authority to the converting insurance company. The issuance of the certificate of authority shall be conclusive evidence of compliance with this subsection.

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

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

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

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

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

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

(3) FOREIGN MUTUAL REORGANIZATION. A foreign mutual insurance company organized under the laws of any other state that, if a domestic corporation, would be organized under ch. 611 may restructure by merging its policyholders' membership interests into an existing domestic mutual holding company in accordance with rules promulgated by the commissioner and in compliance with the requirements of any other law or regulation that is applicable to the foreign mutual. The restructuring shall continue the corporate existence of the converting insurance company as a foreign stock insurance company subsidiary of the existing domestic mutual holding company or as a foreign stock insurance company subsidiary of an intermediate stock holding company. The restructuring foreign mutual insurance company may remain a foreign insurer after the restructuring and may be admitted to do business in this state if it meets the applicable requirements of ch. 618. A foreign mutual insurance company that is a party to the restructuring may at the same time redomesticate to this state by complying with the applicable requirements of this state and its state of domicile.

History: 1997 a. 227.

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

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

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

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

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

History: 1997 a. 227.

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

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

(b) "Offer" means any of the following:

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

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

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

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

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

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

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

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

(3) (a) In the event of any violation of sub. (2), or of any action which, if consummated, might constitute such a violation, all voting stock of any intermediate stock holding company or the

converted insurance company that is acquired by any person in excess of the maximum amount permitted to be acquired by such person under sub. (2) shall be considered to be nonvoting stock of any such intermediate stock holding company or converted insurance company, as the case may be.

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

History: 1997 a. 227.

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

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

History: 1997 a. 227; 1999 a. 30.

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

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

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

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

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

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

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

History: 1997 a. 227.

644.16 Board of directors, committees and records. (1) BOARD OF DIRECTORS. Subject to this section, ss. 181.0801 (1) and (2), 181.0802, 181.0811, 611.51 (2), (3), (5) and (8) and 611.53 (1) and (3) apply to mutual holding companies. Section 181.0824 applies to the board of a mutual holding company except as modified by s. 611.10. The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility to do so, except to the extent authorized by ss. 181.0825 and 181.0841.

(2) COMMITTEES OF DIRECTORS. Section 181.0825 applies to mutual holding companies.

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

(b) Any provision of this chapter or of the articles or bylaws of a mutual holding company that requires the keeping of records concerning the names and addresses of members entitled to vote shall be considered complied with by the keeping of a record of the names of policyholders of, and the names and addresses of insureds or persons paying premiums on the policies of, the converted insurance company. Any provision of this chapter or of the articles or bylaws of a mutual holding company that requires the mailing or sending of notices, reports, proposals, ballots or other materials to a member shall be considered complied with if such mailing is made to the insured or the person paying premiums on the policy of the converted insurance company, for delivery to the policyholder.

(4) DIRECTOR CONFLICTS OF INTEREST. Section 611.60 applies to mutual holding companies.

History: 1997 a. 227; 1999 a. 30.

644.17 Removal of officers. Sections 181.0843 and 181.0844 apply to mutual holding companies.

History: 1997 a. 227; 1999 a. 30.

644.18 Directors' and officers' liability and indemnification. (1) LIABILITY. Sections 181.0850 to 181.0855, except s. 181.0855 (2) (c), apply to mutual holding companies.

(2) INDEMNIFICATION. Sections 181.0871 to 181.0881 and 181.0889 apply to mutual holding companies.

(3) INSURANCE. Section 181.0883 applies to mutual holding companies.

(4) DERIVATIVE ACTIONS. Sections 181.0740 to 181.0747 apply to mutual holding companies.

History: 1997 a. 227; 1999 a. 30.

644.19 Executive compensation. (1) GENERAL. Section 611.63 (4) and (5) applies to mutual holding companies.

(2) APPROVAL BY MEMBERS. A benefit plan or amendment to a benefit plan that proposes to provide benefits in the form of stock or stock options of a converted insurance company or any intermediate stock holding company to the directors or officers of the converted insurance company, intermediate stock holding company or mutual holding company may not take effect unless it is submitted to a vote of the members of the mutual holding company and approved by a majority of the members voting. Notice of a meeting at which a vote under this subsection will be taken shall be given in accordance with s. 644.14 (1) or (2).

(3) NOTICE TO COMMISSIONER. The commissioner may by rule require that any action taken by the board of a mutual holding company, or the board of any intermediate stock holding company, on any of the subjects specified in s. 181.0302 (11) to (14) be reported to the commissioner within 30 days after the action is taken.

History: 1997 a. 227; 1999 a. 30.

644.20 Management contract services. A mutual holding company may not be a party to a contract that has the effect of delegating to a person, to the substantial exclusion of the board,

the authority to exercise any management control of the mutual holding company or of any of its major corporate functions.

History: 1997 a. 227.

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

History: 1997 a. 227.

644.22 Securities regulation. A membership interest in a domestic mutual holding company shall not constitute a security, as defined in s. 551.102 (28).

History: 1997 a. 227; 2007 a. 196.

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

History: 1997 a. 227.

644.24 Subsequent restructuring. A mutual holding company, in conjunction with the converted insurance company and any intermediate stock holding company, may merge together and convert into a mutual insurance company if the requirements of ss. 611.72 and 611.75 are met and the members of the mutual holding company vote to approve the merger and conversion into a mutual insurance company.

History: 1997 a. 227.

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

(2) PLAN OF CONVERSION. (a) In this subsection, "net premium" means gross premium less return premium and dividends paid.

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

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

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

3. That each member's equitable share shall be determined by the ratio that the net premium paid by such member to the converted insurance company during the 5 years immediately preceding the resolution specified in subd. 2. bears to the total net premium received by the converted insurance company during the same period.

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

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

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

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

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

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

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

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

History: 1997 a. 227.

644.26 Transfer of business or assets of mutual holding companies. (1) A sale, lease, exchange or other disposition of less than substantially all of the property and assets of a mutual holding company, and the mortgage or pledge of any or all property and assets of a mutual holding company, whether or not made in the usual and regular course of its affairs, may be made upon the terms and conditions authorized by the mutual holding company's board of directors. Unless otherwise provided by the articles of incorporation, consent of the members is not required for a sale, lease, exchange or other disposition of property, or for a mortgage or pledge of property, authorized under this subsection.

(2) A sale, lease, exchange or other disposition of all or substantially all of the property and assets of a mutual holding company may be made upon such terms and conditions as may be authorized in the following manner:

(a) If the articles of incorporation give members the right to vote on the sale, lease, exchange or other disposition of all or substantially all of the mutual holding company's property and assets, the board of directors shall adopt a resolution recommending the sale, lease, exchange or other disposition and directing that it be submitted to a vote at an annual or special meeting of

the members. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the mutual holding company shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by this chapter for providing notice of member meetings. At the meeting, the members may authorize the sale, lease, exchange or other disposition and may authorize the board of directors to fix any or all of the terms and conditions of the sale, lease, exchange or other disposition. The authorization shall be by the affirmative vote of at least two-thirds of the members present or represented by proxy at the meeting. After the authorization by a vote of the members, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange or other disposition, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by the members.

(b) If the articles of incorporation do not give members the right to vote on the sale, lease, exchange or other disposition of all or substantially all of a mutual holding company's property and assets, the sale, lease, exchange or other disposition may be authorized by the vote of the majority of the directors in office.

History: 1997 a. 227; 1999 a. 30.

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

History: 1997 a. 227.

644.28 Voluntary dissolution of domestic mutual holding companies. (1) PLAN OF DISSOLUTION. Subject to this section, ss. 181.1401 to 181.1407 apply to mutual holding companies.

(2) APPROVAL BY THE COMMISSIONER. (a) At least 60 days prior to the submission to members of any proposed voluntary dissolution of a mutual holding company under s. 181.1401, the plan shall be filed with the commissioner. The commissioner may require the submission of additional information relevant to the effect of the proposed dissolution on the solvency of the converted insurance company. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds that dissolution of the mutual holding company would cause the converted insurance company to become insolvent, would be unfair or inequitable to the members of the mutual holding company or would not be in the best interests of the policyholders of the converted insurance company or the public.

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

(3) REVOCATION OF VOLUNTARY DISSOLUTION. If the mutual holding company revokes the voluntary dissolution proceedings under s. 181.1404, a copy of the resolution revoking the voluntary dissolution proceedings adopted under s. 181.1404 shall be filed with the commissioner.

(4) FILING AND RECORDING ARTICLES OF DISSOLUTION AND EFFECT THEREOF. Upon approval by the commissioner under sub. (2) and by the members under s. 181.1401, the mutual holding company shall file articles of dissolution with the commissioner. When the articles are filed, the existence of the mutual holding company shall cease, except for the purpose of suits, other proceedings and appropriate corporate action of members, directors and officers as provided in this chapter and in ss. 181.1401 to 181.1407. Upon the filing of the articles, the commissioner may issue a certificate of dissolution.

(5) DISTRIBUTION OF ASSETS. No distribution may be made to members of a mutual holding company in excess of the amounts to which they would be entitled under s. 645.72 (4) (b) had the converted insurance company not reorganized and formed a mutual holding company. Any excess over such amounts shall be paid into the state treasury to the credit of the common school fund.

History: 1997 a. 227; 1999 a. 30.

644.29 Involuntary dissolution of domestic mutual holding companies. A mutual holding company may at any time during a voluntary dissolution under ss. 181.1401 to 181.1407 apply to the commissioner to have dissolution continued under the commissioner's supervision. Any distribution to members shall be limited in the same manner as under s. 644.28 (5) and any excess over such amounts shall be paid into the state treasury to the credit of the common school fund.

History: 1997 a. 227; 1999 a. 30.