CHAPTER 66A

MUTUAL COMPANIES

66A.01 SCOPE OF CHAPTER.

ORGANIZATION

66A.02 APPLICABILITY OF BUSINESS CORPORATION STATUTES.
66A.03 INCORPORATION.
66A.06 RENEWAL OF CORPORATE EXISTENCE.
66A.07 MEMBERSHIP; MEETINGS; NOTICES; VOTING.

REGULATION

66A.08 REQUIREMENTS.
66A.09 KINDS OF BUSINESS AUTHORIZED.
66A.10 ADDITIONAL REQUIREMENTS.
66A.11 REVOCATION OF LICENSE.

INTERNAL OPERATIONS

66A.12 MUTUAL FIRE COMPANIES; PREMIUMS; CONTINGENT LIABILITY.
66A.13 MUTUAL FIRE COMPANIES; REQUIREMENTS WHEN NOTE GIVEN.
66A.14 DIVIDENDS.
66A.15 ASSESSMENTS.
66A.16 GUARANTY FUNDS.

CONTRACT PROVISIONS

66A.17 MUTUAL FIRE INSURANCE COMPANIES; PROVISIONS AS TO POLICIES LAPSING.
66A.18 VOTING AND NOTICE.
66A.19 CONTINGENT LIABILITY.

MISCELLANEOUS

66A.21 DOMESTIC MUTUAL INSURANCE COMPANIES, SEPARATION OF ASSESSABLE AND NONASSESSABLE BUSINESSES.
66A.215 SPECIAL PROVISIONS RELATING TO HAIL, TORNADO, AND CYCLONE COMPANIES.
66A.221 ORGANIZATION.
66A.23 ASSESSMENTS; NOTICE; PAYMENTS; COLLECTION.
66A.24 OFFICERS; DUTIES; COMPENSATION; BONDS.
66A.25 PROXIES; RESTRICTIONS.
66A.26 PROPERTY INSURABLE.
66A.27 LIMITATION ON EXPENSES.
66A.28 REPORTS; DELINQUENCY; POWERS OF COMMISSIONER.
66A.29 ARBITRATION REQUIRED.
66A.30 TRANSFER OF RISKS AND REINSURANCE.
66A.31 MERGER AND CONSOLIDATION.
66A.311 EXEMPTION; FIRE, HAIL, AND TORNADO ASSOCIATIONS MAINTAINED BY MEMBERS OF ONE RELIGIOUS DENOMINATION.
66A.32 PREREQUISITES OF LIFE COMPANIES.
66A.33 TEMPORARY CAPITAL STOCK OF MUTUAL LIFE COMPANIES.
66A.34 DIVIDENDS.
66A.35 GUARANTY FUNDS.
66A.36 STOCK AND MUTUAL LIFE INSURANCE COMPANIES.
66A.37 APPLICATION.
66A.38 VOTING RIGHTS.
66A.39 CONVERSION OF EXISTING COMPANIES; AMENDMENT OF CERTIFICATES OF INCORPORATION.
66A.40 MUTUAL INSURANCE HOLDING COMPANIES.
66A.41 MUTUAL COMPANY CONVERSION TO STOCK COMPANY.
66A.42 DOMESTIC INSURANCE CORPORATIONS MAY BECOME MUTUAL CORPORATIONS.
66A.43 MAY ACQUIRE CAPITAL STOCK.

66A.01 SCOPE OF CHAPTER.

This chapter shall apply to mutual insurance companies other than: assessment benefit associations, fraternal benefit societies, township mutual insurance companies and title insurers. Sections 66A.08 to 66A.311 do not apply to mutual life insurance companies.

Sections 60A.07, subdivision 1, clauses (1) and (2); 66A.34; 66A.35; 66A.36; 66A.37; 66A.38; and 66A.39, do not apply to mutual property and casualty insurance companies.

History: *1967 c 395 art 7 s 1; 1992 c 564 art 1 s 54; 2005 c 69 art 2 s 11,18; 2014 c 198 art 4 s 8*

ORGANIZATION

66A.02 APPLICABILITY OF BUSINESS CORPORATION STATUTES.

Subdivision 1. **General.** Chapter 302A shall apply to domestic mutual insurance companies except to the extent inconsistent with any provisions in this chapter or sections 60A.07, 66A.32, and 66A.33, or otherwise in conflict with any provisions in chapters 60A to 79A. Provisions of chapter 302A relating to share certificates, classes of shares, share values, or any other provisions relevant only to stock companies do not apply to mutual insurance companies.

Subd. 2. **Mutual holding companies.** For purposes of sections 66A.01 to 66A.07 and 66A.21, unless the context clearly suggests otherwise, "domestic mutual insurance company" is deemed to include domestic mutual insurance holding companies organized under section 66A.40 and "member" is deemed to include members of a domestic mutual insurance holding company as specified in section 66A.40, subdivision 1, paragraph (b). For purposes of section 60A.07, subdivisions 1, 1a, 1c, 1d, and 1e, a domestic mutual insurance holding company is deemed to be an insurance corporation.

Subd. 3. **Terms.** For purposes of applying chapter 302A to domestic mutual insurance companies, members of a domestic mutual insurance company must be treated in the same manner as shareholders of a stock corporation, except as otherwise provided in this chapter. Every member of the mutual insurance company shall be deemed to hold one share of the company for purposes of applying provisions of chapter 302A relating to voting. Mutual insurance companies are not included in the definitions of "closely held corporation," "publicly held corporation," or "issuing public corporation." The term "distribution" does not include dividends paid on participating policies issued by the mutual insurance company or any reorganized insurance company subsidiary in the case of a mutual insurance holding company.

Subd. 4. **Exceptions.** The following provisions of chapter 302A do not apply to domestic mutual insurance companies: sections 302A.011, subdivisions 2, 6, 6a, 7, 10, 20, 21, 25, 26, 27, 28, 29, 31, 32, and 37 to 59; 302A.105; 302A.137; 302A.161, subdivision 19; 302A.201, subdivision 2; 302A.401 to 302A.429; 302A.433, subdivisions 1, paragraphs (a), (b), (c), and (e), and 2; 302A.437, subdivision 2; 302A.443; 302A.445, subdivisions 3 to 6; 302A.449, subdivision 7; 302A.453 to 302A.457; 302A.461; 302A.463; 302A.471 to 302A.473; 302A.553; 302A.601 to 302A.651; 302A.671 to 302A.675; 302A.682 to 302A.691; and 302A.701 to 302A.791. Those clauses of section 302A.111 that refer to any of the sections previously referenced in this subdivision do not apply to domestic mutual insurance companies. The following sections of chapter 302A are modified in their application to domestic mutual insurance companies in the manner indicated:

(1) with regard to section 302A.133, the articles may be amended pursuant to section 302A.171 by the incorporators or by the board before the issuance of any policies by the company;

(2) with regard to section 302A.135, subdivision 2, a resolution proposing an amendment to the certificate of authority must be filed with the corporate secretary no less than 30 days before the meeting to consider the proposed amendment;

(3) with regard to section 302A.161, subdivision 19 of that section does not apply, except this must not be construed to limit the power of a mutual insurance company from issuing securities other than stock;

(4) with regard to section 302A.201, the references in subdivision 1 of that section to "subdivision 2" and "section 302A.457 " do not apply;

(5) with regard to section 302A.203, the board shall consist of no less than five directors;

(6) with regard to section 302A.215, subdivisions 2 and 3 of that section only apply if the corporation's certificate of incorporation provides cumulative voting;

(7) with regard to section 302A.433, subdivision 1 of that section, special meetings of the members may be called for any purpose or purposes at any time by a person or persons authorized in the articles or bylaws to call special meetings, and with regard to subdivision 3 of that section, special meetings must be held on the date and at the time and place fixed by a person or persons authorized by the articles or bylaws to call a meeting; and

(8) with regard to section 302A.435, if the company complies substantially and in good faith with the notice requirements of section 302A.435, the company's failure to give any member or members the required notice does not impair the validity of any action taken at the members' meeting.

History: *1967 c 395 art 7 s 2; 2005 c 69 art 2 s 12,18; 1Sp2005 c 7 s 2; 2006 c 204 s 10,11; 2008 c 344 s 42; 2015 c 39 s 1*

66A.03 INCORPORATION.

Domestic mutual insurance companies must be incorporated in accordance with the provisions of section 60A.07, subdivision 1.

History: *1967 c 395 art 7 s 3; 1994 c 426 s 13; 2005 c 69 art 2 s 13*

66A.04 [Repealed, 2005 c 69 art 2 s 19]

66A.05 [Repealed, 2005 c 69 art 2 s 19]

66A.06 RENEWAL OF CORPORATE EXISTENCE.

Any domestic mutual insurance company, heretofore or hereafter organized and existing under the laws of this state, whose period of duration has expired or is about to expire, may, on or before the date of the expiration, or within six months after the date of expiration, renew its corporate existence from the date of the expiration for any period permitted by the laws of this state, by the adoption of a resolution to that effect by the affirmative vote of three-fourths of the members present, in person or by proxy, at a regular meeting of the members, or at any special meeting called for that expressly stated purpose, and by causing the resolution to be embraced in a certificate duly executed by its president and secretary or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed by law for the execution, approval, filing, recording, and publishing of an original certificate of incorporation or articles of association.

History: *1967 c 395 art 7 s 6; 2005 c 69 art 2 s 14*

66A.07 MEMBERSHIP; MEETINGS; NOTICES; VOTING.

Subdivision 1. **Property/casualty companies.** Every policyholder in a mutual insurance company, other than a life insurance company, shall be a member thereof while the policy is in force, entitled to one vote for each policy held, and notified of the time and place of holding its meetings either personally or by imprint upon the front or back of every policy, or in the premium notice, receipt or certificate of renewal, substantially as follows:

"NOTICE OF ANNUAL MEETING

The policyholder named herein is hereby notified: while this policy is in force you are by virtue thereof a member of the (name of company) and that the annual meeting of said company is held at its home office at (address) on the ..... day of ..... each year at ..... o'clock ..... m."

Notice given in this manner is deemed to comply with the requirements of section 302A.435.

Subd. 2. **Life insurance companies.** (a) Unless otherwise approved by the commissioner of commerce, a domestic mutual life insurance company member is any person who is listed on the records of the company as the owner of an in-force policy, and each member is entitled to one vote regardless of the number of policies owned by the member or the amounts of coverage provided to the member. For purposes of this section, "policy" means a policy or contract of insurance, including an annuity contract issued by the company, but excluding individual noncontributory insurance policies for which the premiums are paid by a financial institution, association, employer, or other institutional entity. Except as otherwise provided in the company's certificate or bylaws, a person covered under a group policy is not a member by virtue of such coverage, except that a person insured under a group life insurance policy is a member if: (1) the person is insured under a group life policy under which cash value has accumulated and some cash value is allocated to the insured person; and (2) the group policyholder makes no contribution to the premiums or deposits for the policy.

(b) Every member of a mutual life insurance company must be notified of its annual meetings by a written notice mailed to the member's address, or by an imprint on the front or back of the policy, premium notice, receipt, or certificate of renewal, substantially as follows:

"The policy owner is hereby notified that by virtue of his or her ownership of this policy, the policy owner is a member of the ..... Insurance Company, and that the annual meetings of said company are held at its home office on the .... day of .... in each year, at .... o'clock."

For mutual life insurance holding companies, the notice of the annual meeting may be modified to reflect that the policy owner, by virtue of his or her ownership of a policy issued by a subsidiary insurance company reorganized under section 66A.40, is a member of the mutual insurance holding company. Notice given in this manner is deemed to comply with the requirements of section 302A.435.

Subd. 3. **Proxies.** (a) Except as otherwise provided in paragraphs (b) and (c), proxies for voting at meetings of members of domestic mutual insurance companies are governed by the provisions of section 302A.449, subdivisions 1 to 6 and 8.

(b) A member may vote by proxy at any regular or special meeting of the members by filing a written proxy appointment with the secretary of the company at its home office at least five days before the first meeting at which it is to be used, unless a different time period is specified in the company's bylaws.

(c) A member may cast or authorize the casting of a vote by telephonic transmission or authenticated electronic communication, in accordance with section 302A.449, if permitted by the bylaws of the company.

Subd. 4. **Membership interest.** A domestic mutual insurance company must keep a list of members as part of its books and records. Membership interest in a domestic mutual insurance company must be uncertificated. A membership interest in a domestic mutual insurance company does not constitute a security as defined in section 80A.41 (30). No member of a mutual insurance company may transfer or pledge membership in the mutual insurance company or any right arising from the membership except as attendant to the valid transfer or assignment of the member's policy issued by the mutual insurance company. A member of a mutual insurance company is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the company. No assessments of any kind may be imposed upon the members of a mutual

insurance company by the directors or members, or because of any liability of any company owned or controlled by the mutual insurance company or because of any act, debt, or liability of the mutual insurance company, except as may otherwise be provided in the company's articles or bylaws. A member's interest in the mutual insurance company shall automatically terminate upon cancellation, nonrenewal, expiration, or termination of the member's policy with the insurance company that gave rise to the member's membership interest.

Subd. 5. **Quorum.** The number of members present in person or by proxy at a member meeting are a quorum for the transaction of business, unless a larger proportion or number is provided in the articles or bylaws. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion or number otherwise required for a quorum.

History: *1967 c 395 art 7 s 7; 1986 c 444; 2005 c 69 art 2 s 15,18; 2006 c 204 s 12; 2008 c 344 s 43,44; 2009 c 86 art 1 s 12*

66A.075 [Repealed, 2005 c 69 art 2 s 19]

REGULATION

66A.08 REQUIREMENTS.

Subdivision 1. **Casualty lines.** No mutual insurance company hereafter organized shall be licensed to transact any of the kinds of business specified in section 60A.06, subdivision 1, clause (3), (5), (6), (8), (9), (10), (12), (13), (14), or (15), except upon compliance with the following conditions:

(1) It shall have not less than 300 bona fide applications for policies of insurance of each kind sought to be written, signed by at least 300 members, covering at least 300 separate risks, each risk, within the maximum net single risk described in clause (2) and one year's premiums thereon paid in cash, and admitted assets of not less than $100,000, which admitted assets shall not be less than five times the maximum net single risk, and shall have on deposit with the commissioner in accordance with section 60A.10, subdivision 4, as security for all of its policyholders, stock or bonds of this state or of the United States or bonds of any of the municipalities of this state, or personal obligations secured by first mortgage on real estate within this state worth, exclusive of buildings, the amount of the lien, and bearing interest of not less than three percent per annum, to an amount the actual market value of which, exclusive of interest, shall never be less than $100,000;

(2) It shall not expose itself to any loss on any one risk or hazard, except as provided in this clause, in an amount exceeding ten percent of its net assets, actual and contingent. For the purposes of this section contingent assets mean the aggregate amount of the contingent liability of its members for the payment of loss and expenses not provided for by its cash funds. Contingent liability, for the purposes of this section, means an amount not to exceed one annual premium as stated in the policy. No portion of any risk or hazard which has been reinsured, as authorized by the laws of this state, shall be included in determining the limitation of risk prescribed by this section. For the purpose of transacting employers' liability and workers' compensation insurance, each employee shall be considered a separate risk for determining the maximum single risk;

(3) It shall maintain unearned premiums and other reserves, separately for each kind of business, upon the same basis as that required of domestic stock insurance companies transacting the same kind of business;

(4) Except as expressly provided in this chapter, it shall comply with all the provisions of the laws of this state relating to the organization and internal management of mutual fire insurance companies in so far as the same may be applicable and not inconsistent with chapter 66A.

Subd. 2. **Fire lines.** (1) **General.** No policy shall be issued by a mutual fire insurance company hereafter organized until not less than $750,000 of insurance, in not less than 300 separate risks, upon property located in this state, has been subscribed for and entered upon the books and the premiums thereon for one year paid in cash, which premiums shall aggregate not less than $7,500 in cash.

(2) **Exceptions.** When the mutual insurance company is organized to issue policies exclusively upon one of the specified lines of business listed below, it may issue policies insuring such risks by complying with the following requirements:

(a) Those organized to insure creamery and cheese factory buildings, their contents and equipments, and the dwelling house and contents, and barn, livestock, and vehicles of the owner of the creamery or factory, may issue policies when not less than $50,000 of insurance, in not less than 25 separate risks, upon these buildings and contents in this state, has been subscribed for and so entered and the premiums thereon for one year paid in cash, which premiums shall aggregate not less than $1,000 in cash; and the name of every such company shall include the words "Mutual creamery fire insurance company," and it shall issue no policy except upon the class of risks aforesaid.

Any company heretofore organized and doing business under this clause, which for 15 years prior to the passage of Laws 1935, chapter 97, has insured creamery and cheese factory buildings, their contents and equipments, and the dwelling houses and contents and barn, livestock, and vehicles of the owner of the creamery or factory, and which has assets of $100,000, may issue policies in addition thereto to cover farmers' elevators, cooperatively owned warehouses, cooperative filling stations, cooperative oil companies, and all cooperatively owned or organized enterprises;

(b) Those organized to insure the stock in trade, tools, and fixtures of retail hardware dealers, the buildings containing the same, and the dwelling house and its contents, barns, livestock, and vehicles owned by these dealers, may issue policies when not less than $500,000 of insurance, in not less than 200 separate risks, upon such property in this state, has been subscribed for and entered upon its books and the premiums thereon for one year paid in cash, which premiums shall aggregate not less than $5,000 in cash; and the name of every such company shall include the words "Mutual retail hardware fire insurance company," and it shall issue no policy except as above specified;

(c) Those organized to insure dwelling houses, their contents, barns, livestock, and vehicles, exclusively, may issue policies when not less than $250,000 of insurance, in not less than 200 separate risks, upon such property located within this state, has been subscribed for and entered upon their books and the premiums thereon for one year paid in cash, which premiums shall aggregate not less than $2,500 in cash; and the name of every such company shall include the words "Mutual dwelling house fire insurance company," and it shall issue no policy except upon the class of risks aforesaid;

(d) Those organized to insure printing material, machinery, and stock in trade of newspaper publishers and printers, the buildings containing the same, and the dwelling house and its contents, barns, livestock, and vehicles, when such buildings and contents are owned and occupied by the owner of the printing material, machinery, and stock in trade may issue policies when not less than $200,000 of insurance, in not less than 200 separate risks, upon such property located in this state, has been subscribed for and entered upon such companies' books and the premiums thereon for one year paid in cash, which premiums shall aggregate not

less than $2,000 in cash; and the name of every such company shall include the words "Mutual publishers' fire insurance company," and it shall issue no policy except upon the class of risks aforesaid;

(e) Those organized to insure grain elevators, warehouses and cribs, machinery, grain, sacks, and tools appurtenant to or contained in such elevators, warehouses, and cribs, and dwelling house and contents, barns, livestock, and vehicles when such buildings and contents are owned and occupied by the owner of the grain elevator, may issue such policies when not less than $100,000 of insurance, in not less than 50 separate risks, upon such property in this state, has been subscribed for and entered upon the books of such companies and the premiums thereon for one year paid in cash, which premiums shall aggregate not less than $1,000 in cash; and the name of the company shall include the words "Mutual grain dealers' fire insurance company," and it shall issue no policy except upon the class of risks aforesaid; and

(f) Those organized to insure exclusively the property of any one church or any one religious denomination, and the church property and equipment and furnishings thereof of any one church or any one religious denomination may issue policies when not less than $100,000, in not less than 50 separate risks, upon these properties, has been subscribed for and so entered, and the premiums thereon for one year paid in cash, which premiums shall aggregate not less than $1,000 in cash; and the name of every such company shall include the words "Mutual denominational fire insurance company," and it shall issue no policy except upon the class of risks aforesaid. This section shall not be construed as a repeal of section 66A.311.

Subd. 3. **Marine lines.** (1) **Requirements.** Every mutual marine company, before issuing any policy, shall have an agreement duly executed by solvent subscribers to the amount of at least $300,000, substantially as follows: "We, the subscribers, severally agree to pay to the (name of company), on demand, the whole or such part of the amounts set opposite our names, respectively, as may be called, from time to time, for its use, to pay losses and expenses not otherwise provided for"; and this agreement, endorsed with the certificate of the president and a majority of the directors that these subscribers are known to them and that they believe each to be solvent, shall be filed with and approved by the commissioner.

When from death or other cause a deficiency exists in the subscription fund, the same shall be made good by new subscriptions certified in the same manner as the original. Subscribers shall be entitled to annual dividends of two percent upon the amount of their subscriptions from the profits of the company and reimbursed from future profits for all money they shall pay to the company for its uses under their agreement, with interest thereon.

(2) **Dividends and retirement of subscriptions.** The net profits or dividend surplus of every such company shall be annually divided among the insured whose policies terminated during the year, in proportion to their contribution thereto. These dividends shall be made only in scrip certificates payable out of the accumulated profits or surplus, and this accumulation shall be kept and invested as a separate fund in trust for the redemption of these certificates and for losses and expenses, as herein provided. Until redeemed, these certificates shall be subject to future losses and expenses and reduced in case the redemption fund is drawn upon for payment of these losses and expenses, but no part of this fund shall be used for payment of losses or expenses, except when and to the extent that the cash assets are insufficient therefor; and when any portion thereof is so used the outstanding certificates shall be reduced proportionately so that the fund shall at all times equal the unredeemed certificates. The net income of the redemption fund shall be divided annually among the holders of its certificates, or it may make such certificates with a special rate of interest payable from the income of its invested funds. As these profits accumulate and are invested, subscriptions of an equal amount shall be canceled. The maximum of accumulations and profits shall be $300,000 and all excess of profits beyond that amount shall be applied annually to the payment of the certificates in the order of their issue. The certificates shall be forthwith payable when the company ceases to issue policies and the fund is no longer liable to be drawn upon for the payment of losses.

(3) **Government; liability of officers and directors.** Every domestic mutual marine company shall be governed by the provisions applicable to mutual fire companies and each subscriber to the subscription fund shall be a member during the term of subscription and entitled to one vote. If a subscriber fails to pay the subscription or any assessment thereon and it is shown that any director or officer knowingly certified falsely as to that subscriber, the person so certifying shall be liable for the amount thereof. If any such company is at any time liable for losses beyond the amount of its net assets, the president and directors shall be personally liable for all losses on insurance effected while the company remains in such condition.

Subd. 4. **Employers' liability and workers' compensation.** (1) **Organization.** (a) **Subscribers and articles of incorporation.** Twenty or more persons may form an incorporated mutual employers' liability insurance association for the purpose of insuring themselves and such other persons, firms, or corporations as may become subscribers to the association against liability for compensation payable under the terms of the workers' compensation law and for the purpose of insuring against loss or damage by the sickness, bodily injury, or death by accident of any person employed by the insured or for whose injury or death the insured is responsible.

They shall subscribe and acknowledge a certificate specifying:

(i) the name, general nature of its business, and the principal place of transacting the same; (such name shall distinguish it from all other corporations, domestic or foreign, authorized to do business in this state and end with "company," "corporation," "association," or the word "incorporated");

(ii) the period of its duration;

(iii) the names and places of residence of the incorporators;

(iv) in what board its management shall be vested and the names and addresses of those composing the board until the first election, a majority of whom shall always be residents of the state;

(v) the highest amount of indebtedness or liability to which the corporation shall at any time be subject; and

(vi) the territory within which the association may do business.

It may contain any other lawful provisions defining and regulating the powers or business of the corporation, its officers, directors, trustees, and members.

The certificate of incorporation of every such corporation shall be submitted to the commissioner for approval and, if approved, one copy thereof shall be filed with the secretary of state and one copy with the commissioner.

(b) **Bylaws and seal.** Such association shall have the power to make bylaws for the government of its officers and the conduct of its affairs, to alter and amend the same, and to adopt a common seal.

(c) **Annual meeting; voting rights.** The annual meeting for the election of directors shall be held at such time as the bylaws of the association may direct. Of the time and place of the meeting at least 30 days previous written or printed notice shall be given to the subscribers, or the notice may be given by publication, not less than three times, in at least two daily or weekly newspapers published in the city or county wherein the association has its principal office and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices. Subscribers who, during the preceding calendar year, have paid into the treasury of the association premiums amounting to more than one-half of the total premiums received by it during that year, shall constitute a quorum. At this annual meeting the subscribers shall elect,

by ballot, from their own number, not less than five directors, a majority of whom shall be residents of this state, to serve for at least one year and until their successors are duly chosen. The association may provide in its bylaws for the division of its board of directors into two, three, or four classes, and for the election thereof at its annual meetings in such manner that the members of one class only shall retire and their successors be chosen each year. Vacancies may be filled by election by the board until the next annual meeting. In the choice of directors and in all meetings of the association, each subscriber shall be entitled to one vote for every $100, or any fraction thereof, paid by the subscriber in premiums into the treasury of the association during the preceding calendar year. Subscribers may vote by proxy and the record of all votes shall be made by the secretary and show whether the same were cast in person or by proxy and shall be evidence of all these elections. Not less than three directors shall constitute a quorum. The directors shall annually choose by ballot a president, who shall be a member of the board; a secretary; a treasurer, who may be either the president or secretary; and such other officers as the bylaws may provide; and fix the salaries of the president and the secretary, as well as the salaries or compensation of such other officers and agents as the bylaws prescribe. Vacancies in any office may be filled by the directors or by the subscribers, as the bylaws shall prescribe.

(2) **Requirements.** (a) **Number of risks to qualify.** These associations shall not begin to issue policies until a list of subscribers with the number of employees of each which, in the aggregate, must number not less than 5,000, together with such other information as the commissioner may require, shall have been filed at the Department of Commerce, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement of all the subscribers that they will take the policies subscribed for within 30 days of the granting of a license by the commissioner. In case of associations organized exclusively for the purpose of insuring creameries, cheese factories, and livestock shipping associations, these associations may begin to issue policies when the number of employees insured aggregates 300.

Upon the filing of the certificate provided for in this section, the commissioner shall make such investigations as deemed proper and, if the findings warrant it, grant a license to the association to issue policies.

(b) **Number of risks required to continue in business.** If at any time the number of subscribers falls below 20, or the number of subscribers' employees within the state falls below 5,000, no further policies shall be issued until the total number of subscribers amounts to not less than 20, whose employees within the state are not less than 5,000. In case of associations organized for the purpose of insuring creameries, cheese factories, and livestock shipping associations, the number of subscribers must not fall below 200, nor the number of subscribers' employees within the state below 300.

(3) **Additional powers.** (a) **May write automobile insurance.** Any such company authorized to write workers' compensation or liability insurance under this subdivision, when its articles of incorporation so provide, shall be permitted to insure against loss or damage to automobiles or other vehicles and their contents by collision, fire, burglary, or theft, and other perils of operation, and against liability for damage to persons or property of others by collision with such vehicles, and to insure against any loss or hazard incident to the ownership, operation, or use of motor or other vehicles, as specified in section 60A.06, subdivision 1, clause (12).

(b) **May write glass insurance.** Any company authorized to write workers' compensation or liability insurance under this subdivision when its articles of incorporation so provide shall be permitted to insure against loss or damage by breakage of glass located or in transit.

(c) **Special powers.** Any company organized under this subdivision which, for 15 years prior to the passage of Laws 1935, chapter 136, has exclusively insured creameries, cheese factories, and livestock shipping associations, and which has assets of $100,000 or more, may write public liability and compensation insurance coverage of creameries, cheese factories, shipping associations, farmers' elevators, cooperatively owned warehouses, cooperative filling stations, cooperative oil companies and all cooperatively owned or organized enterprises.

(4) **Internal operation.** (a) **Policies.** Policies of insurance issued by any such association may be made either with or without the seal thereof and they shall be signed by the president, or such other officers as may be designated by the directors for that purpose, and attested by the secretary.

(b) **Classification of risks.** The board of directors may divide the subscribers into groups in accordance with the nature of their business and the probable risk of injury therein. In such case they shall fix all premiums, make all assessments, and determine and pay all dividends by and for each group in accordance with the experience thereof, but all funds of the association and the contingent liability of all subscribers shall be available for the payment of any claim against the association; provided, that (as between the association and its subscribers) until the whole of the contingent liability of the members of any group shall be exhausted, the general funds of the association and the contingent liability of the members of other groups shall not be available for the payment of losses and expenses incurred by such group in excess of the earned premiums paid by the members thereof.

(c) **Classification to be filed.** A statement of any proposed distribution of subscribers into groups shall be filed with the Department of Commerce.

(d) **Rates.** The board of directors shall determine the amount of premiums which the subscribers of the association shall pay for their insurance in accordance with the nature of the business in which the subscribers are engaged and the probable risk of injury to their employees under existing conditions, and it shall fix premiums at such amounts as in its judgment shall be sufficient to enable the association to pay to its subscribers all sums which may become due and payable to their employees under provisions of law and the expenses of conducting the business of the association. In fixing the premium payable by any subscriber, the board of directors may take into account the condition of the plant, workroom, shop, farm, or premises of the subscriber in respect to the safety of those employed therein as shown by the report of any inspector appointed by the board and it may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the plant, workroom, shop, farm, or premises of the subscribers in respect to the safety of their employees may justify and may increase the premiums of any subscriber neglecting to provide safety devices required by law, or disobeying the rules or regulations made by the board of directors in accordance with the provisions of clause (4)(g).

(e) **Premiums; contingent liability.** Every such company shall charge and collect on each policy a premium equal to one year's premium on the policy issued and state in the policy the estimated annual premium and provide in its bylaws for the determination of the actual premium and for the payment of same when determined. The premium thus determined shall be known as the annual premium on the policy. The company shall provide in its bylaws and specify in its policies the maximum contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash fund. The contingent liability of a member shall not be less than a sum equal and in addition to one annual premium, nor more than a sum equal to five times the amount of the annual premium or, in case of a policy written for less than one year, the contingent liability shall not be less than the proportionate fractional part of the annual premium, nor more than five times the proportionate fractional part of the annual premium. The contingent liability of the policyholder shall be plainly and legibly stated in each policy as follows: "The maximum contingent liability of the policyholder under this policy shall be a sum equal to ..... annual premium (or premiums)."

(f) **Assessments.** When the liabilities, including unearned premiums and such other reserves as are or may be required by law and the commissioner, are in excess of the admitted assets computed on the basis allowed for its annual statement, it shall make an assessment upon its policyholders based upon the amount of one annual premium as written in the policy and not to exceed the amount of five annual premiums.

If it becomes necessary to levy the assessment, as provided by this section, no policies shall be issued until the admitted assets of the association are in excess of its liabilities.

(g) **Power of board of directors.** The board of directors shall be entitled to inspect the plant, workroom, shop, farm, or premises of any subscriber and for this purpose to appoint inspectors, who shall have free access to all such premises during regular working hours, and the board of directors shall likewise from time to time be entitled to examine by their auditor or other agent the books, records, and payrolls of any subscribers for the purpose of determining the amount of premium chargeable to the subscriber.

The board of directors shall make reasonable rules and regulations for the prevention of injuries upon the premises of subscribers; and may refuse to insure, or may terminate the insurance of, any subscriber who refuses to permit these examinations and disregards such rules or regulations, and forfeit all premiums previously paid, but the termination of the insurance of any subscriber shall not release the subscriber from liability for the payment of assessments then or thereafter made by the board of directors to make up deficiencies existing at the termination of the insurance.

(h) **Investments.** The association shall invest and keep invested all its funds of every description, excepting such cash as may be required in the transaction of its business, in accordance with the laws of this state or relating to the investment of funds of domestic insurance companies.

No such association shall purchase, hold, or convey real estate except as provided by section 60A.11, subdivision 6.

(i) **Withdrawal of subscriber.** Any subscriber of the association who has complied with all its rules and regulations may withdraw therefrom by written notice to that effect sent by the subscriber by certified mail to the association and this withdrawal shall become effective on the first day of the month immediately following the tenth day after the receipt of the notice, but the withdrawal shall not release the subscriber from liability for the payment of assessments thereafter made by the board of directors to make up deficiencies existing at the date of withdrawal and the subscriber shall be entitled to the subscriber's share of any dividends earned at the date of withdrawal.

(5) **Miscellaneous.** (a) **Perjury by officer.** Any officer of the association who shall falsely make oath to any certificate required to be filed with the commissioner shall be guilty of perjury.

(b) **Foreign mutual employers' liability association.** Any mutual employers' liability insurance association of another state, upon compliance with all laws governing such corporations in general and the provisions of this subdivision may be admitted to transact business in this state. These associations shall pay to the Department of Commerce the fees prescribed by section 60A.14, subdivision 1.

(c) **Winding up affairs.** When the contracts of insurance issued by these associations shall cover in the aggregate less than 5,000 employees or, in the case of associations organized for the purpose of insuring creameries, cheese factories, and livestock shipping associations, less than 300 employees, the association shall forthwith notify the commissioner of that fact and if, at the expiration of six months from the notice, the aggregate number of employees covered by the contracts of insurance shall be less than 5,000, or, in the

case of associations organized for the purpose of insuring creameries, cheese factories, and livestock shipping associations, less than 300 employees, the commissioner shall proceed under the provisions of chapter 60B.

History: *1967 c 395 art 7 s 8; 1969 c 708 s 63; 1974 c 425 s 8; 1975 c 359 s 23; 1976 c 181 s 2; 1978 c 465 s 11; 1978 c 674 s 60; 1983 c 289 s 114 subd 1; 1984 c 618 s 2; 1984 c 655 art 1 s 92; 1985 c 234 s 1; 1986 c 444; 2005 c 69 art 2 s 16,18*

66A.09 KINDS OF BUSINESS AUTHORIZED.

Nothing in this chapter shall be deemed to authorize or permit mutual insurance companies to engage in any kind of insurance not included in section 60A.06, subdivision 1, clauses (1) to (15) or authorized under section 60A.06, subdivision 2.

History: *1967 c 395 art 7 s 9; 1978 c 465 s 12*

66A.10 ADDITIONAL REQUIREMENTS.

When the articles of incorporation of any mutual insurance company not having a guaranty fund of the amount required by section 66A.16, subdivision 2, provide, it may transact any and all kinds of business as set forth in section 60A.06, subdivision 1, clauses (1) to (15), and as authorized under section 60A.06, subdivision 2, subject to the conditions and restrictions as to the kinds of insurance which may be combined by a like stock insurance company and subject to the restrictions contained in the laws of this state with reference to general writing mutual insurance companies transacting the same kinds of business. Nothing in this section shall be construed as prohibiting a company issuing policies with a contingent liability from creating a guaranty fund as authorized by section 66A.16, subdivision 3. Any mutual company, however organized, may amend its articles to provide for the doing of two or more kinds of business specified in section 60A.06, subdivision 1, clauses (1) to (15) or authorized under section 60A.06, subdivision 2.

History: *1967 c 395 art 7 s 10; 1978 c 465 s 13*

66A.11 REVOCATION OF LICENSE.

In case of the failure of any insurance company to comply with any of the provisions of sections 66A.08, 66A.09, 66A.10, 66A.14, 66A.15, and 66A.16, subdivisions 1 and 2, its right to transact insurance business in this state shall cease and it shall be the duty of the commissioner to immediately proceed under chapter 60B or declare its license revoked and, in case of such revocation, the company shall not be again licensed to transact business in this state for a period of one year from the date of the revocation.

History: *1967 c 395 art 7 s 11; 1969 c 708 s 63*

INTERNAL OPERATIONS

66A.12 MUTUAL FIRE COMPANIES; PREMIUMS; CONTINGENT LIABILITY.

Every mutual fire company shall charge and collect on each policy a premium, in cash or in notes absolutely payable, or it may accept a deposit of cash equal to one year's premium on the policy issued and while the deposit remains intact collect all future premiums on the policy by assessments thereon, and shall also provide in its bylaws, and specify in its policies, the maximum contingent mutual liability of its members for payment of losses and expenses not provided for by its cash fund. The contingent liability of a member shall not be less than a sum equal to and in addition to one annual premium, nor more than a sum equal to five times the amount of such annual premium or, in case of a policy written for less than one year, the contingent liability shall not exceed the amount of premium written in the policy. The total amount of the

liability of the policyholder shall be plainly and legibly stated upon each policy. When any reduction shall be made in the contingent liability of members, such reduction shall apply proportionally to all policies in force. Mutual insurance companies complying with section 66A.16, subdivision 3, may issue policies without a contingent liability; but the fact that there is no contingent liability must be plainly and legibly stated in the policies.

History: *1967 c 395 art 7 s 12*

66A.13 MUTUAL FIRE COMPANIES; REQUIREMENTS WHEN NOTE GIVEN.

Except as provided in section 66A.12, when a note or other written evidence of indebtedness is given for any premium due, or to become due, upon any insurance of property, except marine, the same shall be full payment therefor and operate to continue the same in full force during the term thereof, except that when any such note or other written evidence of indebtedness is not paid at maturity the policy for which the same was premium, in whole or in part, may be canceled upon notice and in the same manner as though the premium was paid in cash and the surrender of the note or other written evidence of indebtedness shall constitute a return or payment of the unearned portion of premium, and in such event the parties liable on the note or evidence of indebtedness shall be liable for and shall pay the premium earned prior to the cancellation and no more. In case of any cancellation of a policy, any note or notes, or written evidence of indebtedness given for whole or part of the premium thereon may be by insurer returned to the insured in lieu of cash to the extent of the unpaid amount thereof, plus accrued interest. No note given for premiums or deposit for assessment, or both, or for any part of either, shall be negotiable and every assignment thereof shall be subject to all existing defenses. Nor shall any such notes be valid for any purpose unless the words "not negotiable" are plainly and legibly written or printed across the face thereof.

History: *1967 c 395 art 7 s 13*

66A.14 DIVIDENDS.

The board of directors of any mutual insurance company may from time to time fix and determine the amounts to be paid during the year as dividends or a refund of savings and gains to policyholders; provided, that no dividend or refund shall discriminate between members of the same class and no dividend or refund shall be declared or distributed except out of the net divisible surplus of the company, and no company shall pay or credit a policyholder any sum in anticipation of a future dividend or refund.

History: *1967 c 395 art 7 s 14*

66A.15 ASSESSMENTS.

Subdivision 1. **Mutual fire insurance companies.** When the net assets of any mutual insurance company are insufficient for the payment of incurred losses and expenses above its unearned premium reserve, as provided by law, it shall make an assessment for the amount required ratably upon its members liable thereto. The order for assessment shall be duly entered upon its records, with a statement of its condition at the date thereof, including all cash assets, deposit notes, and contingent amount liable to the assessment, the amount of the assessment, and the particular losses or other liabilities for which it is made. This record shall be signed by each director voting for the order before any part of the assessment is collected and any person liable thereto may inspect and take a copy thereof.

The commissioner may by written order relieve the company from an assessment or other proceedings to restore the assets during the time fixed in the order, when the deficiency does not exceed ten percent of its admitted assets.

When, by reason of depreciation, loss, or otherwise, the net assets, after providing for other debts, are less than the required premium reserve upon policies the deficiency shall be restored by assessment, as provided in this subdivision, notice of which shall be filed with the commissioner. When the board of directors or the commissioner shall be of the opinion that the insolvency of any company is probable, the board or, upon its failure so to do, the commissioner may order two assessments made, the first to determine what each policyholder should equitably pay or receive in case of withdrawal from the company and cancellation of the policy; the second, such further sum as each should pay to reinsure the unexpired term at the same rate as the first insurance. The directors shall forthwith cause written notice and demand of payment to be served personally or by mail upon each policyholder subject thereto.

After adjustment of the first assessment, every policy upon which the second assessment shall not be paid shall be canceled; but in no case shall there be credited upon a policy more than if canceled by the board of directors under the bylaws. If, within two months after the last assessment is payable, the amount of the policies whose holders have paid the same is less than $500,000, all other policies shall be void and the company shall continue only for the purpose of adjusting the deficiency or excess of premiums and settling outstanding claims. No assessment shall be valid against a policyholder who has not been duly notified thereof in writing within one year after the expiration or cancellation of the policy.

Subd. 2. **Casualty companies.** All policies issued by such companies shall provide for a premium or premium deposit payable in cash and, except as herein provided, for a contingent liability of the members at least equal to the premium or premium deposit as adjusted by audit, if any. If at any time the admitted assets are less than the reserves and other liabilities, the company shall immediately collect upon policies with a contingent liability a sufficient proportionate part thereof to restore such assets and the commissioner may, when such deficiency does not exceed ten percent of its admitted assets, by written order direct that proceedings to restore such assets be deferred during the period of time fixed in such order. The contingent liabilities, if any, of the policyholders shall be plainly and legibly stated in every policy in terms of either dollars or premiums.

History: *1967 c 395 art 7 s 15; 1986 c 444*

66A.16 GUARANTY FUNDS.

Subdivision 1. **Mutual fire insurance companies.** A mutual fire insurance company may be formed with, or an existing fire insurance company may establish, a guaranty fund divided into certificates of $10 each, or multiples thereof, and this guaranty fund shall be invested in the same manner as is provided for the investment of capital stock of insurance companies. The certificate holders of the guaranty fund shall be entitled to an annual dividend of not more than ten percent on their respective certificates, if the net profits or unused premiums left after all losses, expenses, or liabilities then incurred, with reserves for reinsurance, are provided for shall be sufficient to pay the same; and, if the dividends in any one year are less than ten percent, the difference may be made up in any subsequent year or years from the net profits. Approval of the commissioner must be obtained before accrual for or payment of the dividend, or any repayment of principal.

The guaranty fund shall be applied to the payment of losses and expenses when necessary and, if the guaranty fund be impaired, the directors may make good the whole or any part of the impairment from future profits of the company, but no dividend shall be paid on guaranty fund certificates while the guaranty fund is impaired.

The holder of the guaranty fund certificate shall not be liable for any more than the amount of the certificate which has not been paid in and this amount shall be plainly and legibly stated on the face of the certificate.

Each certificate holder of record shall be entitled to one vote in person or by proxy in any meeting of the members of the company for each $10 investment in guaranty fund certificates. The guaranty fund may be reduced or retired by vote of the policyholders of the company and the assent of the commissioner, if the net assets of the company above its reinsurance reserve and all other claims and obligations and the amount of its guaranty fund certificates and interest thereon for two years last preceding and including the date of its last annual statement shall not be less than 50 percent of the premiums in force.

Due notice of this proposed action on the part of the company shall be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken.

In mutual fire insurance companies with a guaranty fund, the certificate holders shall be entitled to choose and elect from among their own number or from among the policyholders at least one-half of the total number of directors.

If any mutual fire insurance company with a guaranty fund ceases to do business, it shall not divide among its certificate holders any part of its assets or guaranty fund until all its debts and obligations have been paid or canceled.

Foreign mutual fire insurance companies having a guaranty fund shall not be required to make their certificate of guaranty fund conform to the provisions of this section, but when the certificates do not conform therewith the amount thereof shall be charged as a liability.

Subd. 2. **Mutual casualty companies.** Any mutual insurance company which establishes and maintains, over and above its liabilities and the reserves required by law of a like stock insurance company, a guaranty fund available for the payment of losses and expenses at least equal to the capital stock required of a like stock insurance company may issue policies of insurance without contingent liability, and when the articles of incorporation of any mutual insurance company having this guaranty fund provide, the company may transact any and all of the kinds of business as set forth in section 60A.06, subdivision 1, clauses (1) to (15), subject to the restrictions and limitations imposed by law on a like stock insurance company, and any domestic mutual company having a guaranty fund equal to the amount of capital stock required of a like stock insurance company may insure the same kinds of property and conduct and carry on its business, subject only to the restrictions and limitations applicable to like domestic stock insurance companies.

Subdivision 1 shall not apply to this guaranty fund except that the guaranty fund of the company shall be invested in the same manner as is provided by law for the investment of its other funds. Every such company shall in its annual statement show as separate items the amount of the guaranty fund and the remaining divisible surplus, and the aggregate of these items shall be shown as surplus to policyholders.

A guaranty fund may be created, in whole or in part, in either or both of the following ways:

(1) where an existing mutual company has a surplus, the members of the company may at any regular or special meeting set aside from and out of its surplus such sum as shall be fixed by resolution to be transferred to and thereafter constitute, in whole or in part, the guaranty fund of the company; or

(2) by the issuance of guaranty fund certificates, as specified in this subdivision, the same to be issued upon the conditions and subject to the rights and obligations specified in this subdivision.

Any such company establishing a guaranty fund, as provided in this subdivision, may, subject to the restrictions and limitations imposed by law as to a like stock insurance company, amend its articles to provide for the doing by it of one or more of the kinds of insurance business specified in section 60A.06, subdivision 1, clauses (1) to (15).

The policy liability of any such mutual company issuing policies without a contingent liability shall, as to these policies, be computed upon the same basis as is applicable to like policies issued by stock insurance companies. Where any such company shall issue five-year term policies, wherein the premiums shall be payable in annual or biennial installments and no premium note is taken by the company as payment of the full term premium, the company then shall be required to maintain a reserve fund on only the portion of premiums actually collected from time to time under these term policies and no company so creating a guaranty fund shall issue policies without a contingent liability after the guaranty fund shall be impaired or reduced below the capital required of a like stock insurance company doing the same kind or kinds of insurance. Any company having a guaranty fund may insure, without a contingent liability, any kind or class of property which a like stock company may insure.

Any director, officer, or member of any mutual insurance company, or any other person, may advance to the company any sum of money necessary for the purposes of its business or to enable it to comply with any of the requirements of the law, including the creation, in whole or in part, of a guaranty fund to enable it to do one or more of the kinds of business specified in this subdivision, and for the creation by a company issuing policies with a contingent liability of a guaranty fund, in such amount as the board of directors shall determine, for the protection of policyholders of the company, and the moneys, together with the interest thereon as may have been agreed upon, not exceeding ten percent per annum, shall be repaid only out of the surplus remaining after providing for all reserves, if any, and other liability, and which shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any money to the company, and the amount of the advance remaining unpaid shall be reported in each annual statement.

The company shall issue to each person advancing money for the creation of a guaranty fund a certificate or certificates specifying the amount advanced. These certificates may be assigned by the holder and the transfer recorded upon the books of the company. The holders of the guaranty fund certificates shall be entitled to annual interest thereon at the rate agreed upon, if the net profits of the company, after all losses, expenses, liabilities, and legal reserves, if any, have been paid or provided for, are sufficient to pay the same. If the net profits of the company in any year are insufficient to pay the full amount of interest agreed upon, the difference may be paid in any subsequent year from the net profits of the subsequent years, if approval of the commissioner is obtained before accrual for or payment of the interest.

The guaranty fund shall be applied to the payment of losses and expenses when necessary and, if the guaranty fund be impaired, the directors may make good the whole or any part of the impairment from future net profits of the company or by the issue and sale of additional guaranty fund certificates, but no interest shall be paid on the guaranty fund certificates while the guaranty fund is impaired. No certificate shall be issued except for money actually paid to the company, which amount shall be plainly and legibly stated therein. The company shall issue certificates only in sums of $10, or multiples thereof; it shall keep a record of the name and address of the person to whom issued and of all assignments thereof. Upon surrender of a certificate duly assigned in writing, the company shall cancel the same and issue a new certificate to the assignee.

Each certificate holder of record shall be entitled to one vote in person or by proxy at any meeting of the members of the company, for each $10 investment in the guaranty fund certificates.

The guaranty fund may be reduced or retired by vote of the board of directors of the company and the assent of the commissioner, if the net assets of the company, above its legal reserves, if any, and all other claims and obligations are sufficient therefor. The certificate holders shall be entitled to choose and elect from among their own members or from among the policyholders at least one-half of the total number of directors.

In case the members of any company by resolution adopted at any regular meeting or special meeting called for that purpose shall determine to wind up and liquidate the business of any such company, the assets thereof shall be applied (1) to the payment of the expense of the liquidation; (2) to the payment of any accrued liability, including losses, if any; (3) to the payment of any unearned premiums on policies in force at the time of the liquidation; (4) to the payment of guaranty fund certificates, if any, together with accrued interest thereon, if any; and (5) the residue shall be distributed according to the provisions of chapter 60B.

Subd. 3. **All mutual companies except those excluded under section 66A.01.** Any mutual company authorized to transact business in this state which establishes and maintains, over and above its liabilities and the reserves required by law of like stock insurance companies, a guaranty fund available for the payment of losses and expenses at least equal to the capital stock required of a like stock insurance company may issue policies of insurance without contingent liability.

Subd. 4. **Conversion of certain mutuals.** (a) Any domestic mutual company qualified to issue policies of insurance without contingent liability as provided by subdivision 3 with surplus of $1,000,000 or less may adopt a plan of conversion to a stock company pursuant to section 60A.07, subdivision 8, clause (4), which authorizes holders of guaranty fund certificates to exchange the certificates for shares of the stock company. Shares of the stock company being formed may be issued during the conversion in exchange for such guaranty fund certificates.

(b) The plan of conversion shall establish the price of the shares to be issued in exchange for the guaranty fund certificates. The price shall be established by an appraisal of the mutual company as an operating company. The appraisal shall be made by an independent certified public accountant. The plan, including the price, shall not be unfair or inequitable to the mutual company policyholders and shall not become effective until approved by the commissioner of commerce.

History: *1967 c 395 art 7 s 16; 1969 c 7 s 27; 1969 c 708 s 63; 1978 c 465 s 14; 1978 c 582 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 2000 c 350 s 9,10*

CONTRACT PROVISIONS

66A.17 MUTUAL FIRE INSURANCE COMPANIES; PROVISIONS AS TO POLICIES LAPSING.

Any mutual company insuring property may provide by its certificate or bylaws that upon failure by any member for 60 days after notification thereof to pay any premium or assessment made upon the member's policy such policy shall lapse and become void without notice or further act by or on behalf of the company. The condition shall be plainly and legibly specified in each policy. Whereupon the company may recover the amount of earned premium or assessment, or both, but no more. Nothing herein contained shall prevent the reinstatement of the lapsed policy by voluntary acceptance of any delinquent assessment before suit.

History: *1967 c 395 art 7 s 17; 1986 c 444*

66A.18 VOTING AND NOTICE.

Required contract provisions concerning voting and notice are contained in section 66A.07.

History: *1967 c 395 art 7 s 18*

66A.19 CONTINGENT LIABILITY.

Required contract provisions concerning contingent liability of the policyholder are contained in sections 66A.12 and 66A.15, subdivision 2.

History: *1967 c 395 art 7 s 19*

MISCELLANEOUS

66A.20 [Renumbered 66A.311]

66A.21 DOMESTIC MUTUAL INSURANCE COMPANIES, SEPARATION OF ASSESSABLE AND NONASSESSABLE BUSINESSES.

Subdivision 1. **Choice of methods.** Any domestic mutual insurance corporation which transacts its business partly on an assessable basis and partly on a nonassessable basis, may separate one plan from the other by either of the following methods:

(1) By transferring its nonassessable policies, and all assets and liabilities attributable thereto to another existing domestic mutual insurance corporation or to a new domestic mutual insurance corporation formed for that specific purpose, provided that in either case, the corporation assuming the risks shall have all its policies on a nonassessable basis; or

(2) By transferring its assessable policies, and all assets and liabilities attributable thereto, to another existing domestic mutual insurance corporation or to a new domestic mutual insurance corporation formed for that specific purpose, provided that in either case, the corporation assuming the risks shall have all its policies on the assessable basis.

Subd. 2. **Existing domestic mutual insurance companies, joint agreement; approval.** The separation can be effected only as a result of a joint agreement entered into, approved and filed as follows:

(1) The board of directors of the ceding and assuming corporations shall, by majority vote, enter into a joint agreement, prescribing the terms and conditions of the separation and the mode of carrying the same into effect, with such other details and provisions as they deem necessary. The agreement shall provide for an adjustment of final figures as may be necessary after a verifying examination of the corporation by the commissioner of commerce as hereinafter provided.

(2) The agreement shall be submitted to the members of the ceding corporation, at a special meeting duly called for the purpose of considering and acting upon the agreement. Notice for such special meeting shall be deemed sufficient if mailed to the policyholders' last known address as shown on the policy records of the corporation. If the holders of two-thirds of the voting power of the members present or represented at the meeting shall vote for the adoption of the agreement, then that fact shall be certified on the agreement by the secretary of the corporation and the agreement so adopted and certified shall be signed and acknowledged by the president and secretary of both the ceding and assuming corporations.

(3) The agreement so adopted, certified and acknowledged shall be delivered to the commissioner of commerce. It shall be the duty of the commissioner to determine, after a verifying examination, if the

provisions thereof are fair and equitable to all concerned and to verify the reasonableness and accuracy of the apportionment of assets, liabilities, and surplus provided for in the agreement.

If the commissioner is satisfied that the agreement is fair and reasonable and that its provisions relating to transfers of assets and assumption of liabilities are equitable to claimants and policyholders, the commissioner shall place a certificate of approval on the agreement and shall file it in the commissioner's office. A copy of the agreement, certified by the commissioner of commerce shall be filed for record in the Office of the Secretary of State and recorded in the office of the county recorder of the counties in this state in which any of the corporate parties to the agreement have their home offices and of any counties in which any of the corporate parties have land, title to which will be transferred under the terms of the agreement.

Subd. 3. **New domestic mutual companies; joint agreement; approval.** (1) If the joint agreement provides for a new domestic mutual insurance corporation to be formed to assume the business ceded, the articles of incorporation for such new corporation shall be prepared and delivered to the commissioner of commerce for approval, together with the agreement as provided in subdivision 2.

(2) Such articles shall be prepared, executed, approved, filed and recorded in the form and manner prescribed in, or applicable to, the particular law or laws under which the new insurance corporation is to be formed.

(3) The Department of Commerce shall grant and the commissioner of commerce shall issue to such new corporation a certificate of authority immediately upon its assumption of the business ceded and upon its making the deposit of securities with the commissioner of commerce, as required by law.

Subd. 4. **Effective date.** The separation shall be effective on the agreed date stated in the joint agreement, upon filing of the same as herein provided.

History: *1967 c 395 art 7 s 21; 1976 c 181 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 2005 c 4 s 12*

66A.215 SPECIAL PROVISIONS RELATING TO HAIL, TORNADO, AND CYCLONE COMPANIES.

Sections 66A.221 to 66A.31 apply only to hail, tornado, and cyclone companies.

History: *2005 c 69 art 2 s 17,18*

66A.22 [Renumbered 66A.221]

66A.221 ORGANIZATION.

Subdivision 1. **Initial requirements.** No company for insurance against loss or damage by hail, tornadoes, cyclones, and hurricanes, or any of these causes, shall issue any policy until at least $200,000 of insurance, in not less than 400 separate risks, upon property located in not less than ten counties, and upon not more than 15 risks of 160 acres each in any one township, have been actually subscribed for and entered on its books and each subscriber has paid a membership fee of $3 for which duplicate receipts have been executed, conditioned for the return thereof at the end of one year if the company has not then completed its organization. Immediately thereafter one of these duplicates shall be delivered to the member and the other, together with the fee, deposited in a solvent bank approved by the commissioner, where the fee shall remain until the company has been licensed to do business, not exceeding such year, when it shall be delivered to it; otherwise to the member. The duplicate and a certificate of the deposit shall be filed with the commissioner within 90 days after deposit.

Subd. 2. **Liability for ratable assessments.** In addition to the premium, every policyholder, in its hail department, shall be liable to a ratable assessment for all losses and expenses incurred while a member in a sum equal to such premium but not exceeding in any one year five percent of the policyholder's insurance, if notified thereof within 90 days after the expiration or cancellation of the policy; or if such policy be for more than one year, within 90 days after the expiration of the year in which assessment is made thereunder.

History: *1967 c 395 art 7 s 22; 1986 c 444; 2005 c 69 art 2 s 18*

66A.23 ASSESSMENTS; NOTICE; PAYMENTS; COLLECTION.

When any assessment has been completed the secretary shall immediately notify each member by mail directed to the member's last known address of the purpose and amount of such assessment and of the member's share thereof, and the person to whom and the time when such payment must be made, which shall not be less than 30, nor more than 90, days thereafter; and such person, if the bylaws so provide, may collect a commission of not more than two percent of each amount in addition thereto.

History: *1967 c 395 art 7 s 23; 1986 c 444*

66A.24 OFFICERS; DUTIES; COMPENSATION; BONDS.

The officers shall perform such duties, receive such compensation, and give such bonds as shall be provided in the bylaws or fixed by the directors; but no salary, past or future, shall be increased except by majority vote of all members present and represented at an annual meeting and no officer or director shall receive any commission, except upon business personally solicited and written by the officer.

History: *1967 c 395 art 7 s 24*

66A.25 PROXIES; RESTRICTIONS.

No proxy shall be received unless dated and actually executed within the preceding 30 days and filed with the secretary at least ten days before the meeting, nor if made to any director or officer.

History: *1967 c 395 art 7 s 25*

66A.26 PROPERTY INSURABLE.

No such company shall insure any other property than country churches and school houses, farm dwellings, mutual or cooperative creameries, cheese factories, barns, and other buildings, and hay, grain, and other farm products therein, or stored or growing on the premises, bedding, wearing apparel, printed books, pictures and frames, household furniture, family stores and provisions while therein or in the cellar beneath, farm implements, vehicles, and machinery on or off the premises, threshing machines, or livestock thereon or running at large, and any and all property of any kind which may be insured by a township mutual fire insurance company, organized under the provisions of sections 67A.01 and 67A.02. No company, in its hail department, shall insure more than 3,200 acres in any one township; there shall be at least one-half mile between each risk assumed by the company, except that risks may be assumed which cover the growing crops upon not more than 320 acres of contiguous or immediately adjacent lands.

History: *1967 c 395 art 7 s 26*

66A.27 LIMITATION ON EXPENSES.

No such company shall incur, lay out, or expend, in any one calendar year, as and for the expenses of conducting this business, more than its application or survey fees and 40 percent of its total premiums or assessments actually collected. No company shall be required to limit its annual expenses to less than $1,000.

History: *1967 c 395 art 7 s 27*

66A.28 REPORTS; DELINQUENCY; POWERS OF COMMISSIONER.

The commissioner shall demand a report of any such company when in the commissioner's judgment the interest of the public or policyholders so require; and the proper officers of the company shall make prompt reply to the demand and answer fully all interrogations regarding its business methods, financial condition, and other matters pertaining to its business. The provisions of chapter 60B shall apply to such companies.

History: *1967 c 395 art 7 s 28; 1969 c 708 s 63; 1986 c 444*

66A.29 ARBITRATION REQUIRED.

Every policy must provide as follows: "In case of loss under this policy and failure of the parties to agree as to the amount of the loss, it is mutually agreed that, on written demand of either party, the company and the insured each shall select a competent appraiser and notify the other of the appraiser selected within ten days of the demand. The appraisers shall first select a competent and disinterested umpire; and, failing for ten days to agree upon the umpire, then, on request of either appraiser, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. By mutual agreement the two appraisers may agree to have the umpire selected by a judge of a court of record and waive the ten-day provision.

The appraisers and the umpire shall then appraise the loss. A written award of any two of these persons determines the amount of loss. The written award of a majority of these referees is final and conclusive upon the parties as to the amount of loss, and this selection, unless waived by the parties, is a condition precedent to any right of action to recover for a loss. No suit for the recovery of any claim by virtue of this policy may be sustained unless commenced within six months after the loss occurred." The policy must also provide the form, manner, and length of notice to be given to the company by the insured of any loss sustained.

History: *1967 c 395 art 7 s 29; 1974 c 161 s 5; 1983 c 208 s 3*

66A.30 TRANSFER OF RISKS AND REINSURANCE.

Every company may transfer its risks to, or reinsure them in, any other domestic or foreign company at the time authorized to do such business in this state, on the mutual or stock plan, by a contract of transfer or reinsurance approved by the commissioner, and by a two-thirds vote of the members present or duly represented and voting at a meeting of the company.

History: *1967 c 395 art 7 s 30*

66A.31 MERGER AND CONSOLIDATION.

Any such mutual company may at any time merge or consolidate with other companies as provided under section 60A.16.

History: *1967 c 395 art 7 s 31*

66A.311 EXEMPTION; FIRE, HAIL, AND TORNADO ASSOCIATIONS MAINTAINED BY MEMBERS OF ONE RELIGIOUS DENOMINATION.

The members of any one church, or of any one religious denomination, may maintain for the exclusive benefit of the members thereof an unincorporated association for the mutual insurance of the property of the members against loss or damage by fire, lightning, hail, or tornado, or all of them. The association shall furnish no insurance except upon the property of an actual member of the church or denomination. It may conduct its business upon the plan and method adopted by it and shall not be required to be licensed by or report to the commissioner.

History: *1967 c 395 art 7 s 20; 2005 c 69 art 2 s 18*

66A.32 PREREQUISITES OF LIFE COMPANIES.

No mutual life company shall be qualified to issue any policy until applications for at least $200,000 of insurance, upon lives of at least 200 separate residents, have been actually and in good faith made, accepted, and entered upon its books and at least one full annual premium thereunder, based upon the authorized table of mortality, received in cash or in absolutely payable and collectible notes. A duplicate receipt for each premium, conditioned for the return thereof unless the policy be issued within one year thereafter, shall be issued, and one copy delivered to the applicant and the other filed with the commissioner, together with the certificate of a solvent authorized bank in the state, of the deposit therein of such cash and notes, aggregating the amount aforesaid, specifying the maker, payee, date, maturity, and amount of each. Such cash and notes shall be held by it not longer than one year, and at or before the expiration thereof to be by it paid or delivered, upon the written order of the commissioner, to such company or applicants, respectively.

History: *1967 c 395 art 1 s 7; 1969 c 7 s 7-13; 1969 c 598 s 1; 1969 c 708 s 63; 1973 c 634 s 2-4; 1976 c 213 s 1-4; 1978 c 465 s 1,2; 1978 c 674 s 60; 1980 c 516 s 2; 1983 c 216 art 1 s 15; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 313 s 2; 1986 c 444; 1991 c 325 art 10 s 4; art 14 s 1; 1992 c 564 art 1 s 15,16,54; 1995 c 214 s 3; 1996 c 446 art 2 s 1,2; 2005 c 69 art 2 s 1-6, 18*

66A.33 TEMPORARY CAPITAL STOCK OF MUTUAL LIFE COMPANIES.

A new mutual life insurance company which has complied with the provisions of section 66A.32 or an existing mutual life insurance company may establish, a temporary capital of, such amount not less than $100,000, as may be approved by the commissioner. Such temporary capital shall be invested by the company in the same manner as is provided for the investment of its other funds. Out of the net surplus of the company the holders of the temporary capital stock may receive a dividend which may be cumulative. This capital stock shall not be a liability of the company but shall be retired within a reasonable time and according to terms approved by the commissioner. At the time for the retirement of this capital stock, the holders shall be entitled to receive from the company the par value thereof and any dividends thereon due and unpaid, and thereupon the stock shall be surrendered and canceled. In the event of the liquidation of the company, the holders of temporary capital stock shall have the same preference in the assets of the company as shareholders have in a stock insurance company. Dividends on this stock are subject to section 60D.20, subdivision 2.

Temporary capital stock may be issued with or without voting rights. If issued with voting rights, the holders shall, at all meetings, be entitled to one vote for each $10 of temporary capital stock held.

History: *1967 c 395 art 1 s 7; 1969 c 7 s 7-13; 1969 c 598 s 1; 1969 c 708 s 63; 1973 c 634 s 2-4; 1976 c 213 s 1-4; 1978 c 465 s 1,2; 1978 c 674 s 60; 1980 c 516 s 2; 1983 c 216 art 1 s 15; 1983 c 289 s 114*

subd 1; 1984 c 655 art 1 s 92; 1986 c 313 s 2; 1986 c 444; 1991 c 325 art 10 s 4; art 14 s 1; 1992 c 564 art 1 s 15,16,54; 1995 c 214 s 3; 1996 c 446 art 2 s 1,2; 2005 c 69 art 2 s 1-6, 18

66A.34 DIVIDENDS.

Subdivision 1. **Annual apportionment and accounting of surplus.** Every life insurance company doing business in this state conducted on the mutual plan or in which policyholders are entitled to share in the profits or surplus shall make an annual apportionment and accounting of divisible surplus to each policyholder, beginning not later than the end of the third policy year, on all participating policies hereafter issued; and each such policyholder shall be entitled to and be credited with or paid, in the manner hereinafter provided, such a portion of the entire divisible surplus as has been contributed thereto by that person's policy.

Subd. 2. **Policyholder to choose.** Every policyholder shall, on all participating policies hereafter issued, be permitted, after that person's policy has been in force five years, annually, to select the manner and method of the application of the surplus to be annually apportioned to that person's policy from among those set forth in the policy. All apportioned surplus not actually paid over to the insured, or applied in the reduction of current or future premiums or in the purchase of paid-up insurance or pure endowment additions, shall be credited to the insured and carried as an actual liability and be paid at the maturity of the policy.

Subd. 3. **Waiver prohibited.** No agreement between the company and the policyholder or applicant for insurance shall be held to waive any of the provisions of subdivisions 1 and 2.

Subd. 4. **Policies issued prior to January 1, 1908.** Every life insurance company doing business in this state conducted on the mutual plan, or in which policyholders are entitled to share in the profits or surplus, shall, on all policies of life insurance issued prior to January 1, 1908, under the conditions of which the distribution of surplus is deferred to a fixed or specified time, and contingent upon the policy being in force and the insured living at that time, annually ascertain the amount of surplus to which all such policies as a separate class are entitled, and shall annually apportion to such policies as a class the amount of surplus so ascertained, and carry the amount of such apportioned surplus, plus the actual interest earnings and accretions of such fund, as a distinct and separate liability to such class of policies on and for which the same was accumulated, and no company or any of its officers shall be permitted to use any part of such apportioned surplus fund for any purpose other than the express purpose for which the same was accumulated. This subdivision shall not apply to industrial policies.

Subd. 5. **Required policy provision.** The required policy provision is contained in section 61A.03, subdivision 1, paragraph (f).

History: *1967 c 395 art 2 s 26; 1986 c 444; 2005 c 69 art 2 s 18*

66A.35 GUARANTY FUNDS.

(a) A domestic mutual life insurance company may be formed with, or an existing domestic mutual life insurance company may establish, a guaranty fund divided into certificates of $10 each, or multiples thereof, and this guaranty fund shall be invested in the same manner as is provided for the investment of capital stock of insurance companies.

(b) The certificate holders of the guaranty fund are entitled to an annual dividend of not more than ten percent on their respective certificates, if the net profits or unused premiums left after all losses, expenses, or liabilities then incurred, with reserves for reinsurance, are provided for, are sufficient to pay the annual dividend. If the dividends in any one year are less than ten percent, the difference may be made up in any subsequent year or years from the net profits. Approval of the commissioner must be obtained before accrual for or payment of the dividend, or any repayment of principal.

(c) The guaranty fund must be applied to the payment of losses and expenses when necessary, and, if the guaranty fund is impaired, the directors may make good the whole or any part of the impairment from future profits of the company, but no dividend shall be paid on guaranty fund certificates while the guaranty fund is impaired. The holder of the guaranty fund certificate is not liable for any more than the amount of the certificate which has not been paid in, and this amount must be plainly and legibly stated on the face of the certificate.

(d) Notwithstanding any other provision of law, each certificate holder of record is entitled to one vote in person or by proxy in any meeting of the members of the company for each $10 investment in guaranty fund certificates.

(e) The guaranty fund may be reduced or retired by vote of the policyholders of the company and the assent of the commissioner, if the net assets of the company above its reinsurance reserve and all other claims and obligations and the amount of its guaranty fund certificates and interest on the certificates for two years last preceding and including the date of its last annual statement are not less than 50 percent of the premiums in force. Due notice of this proposed action on the part of the company shall be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken.

(f) In domestic mutual life insurance companies with a guaranty fund, the certificate holders shall be entitled to choose and elect from among their own number or from among the policyholders at least one-half or more of the total number of directors.

(g) If any domestic mutual life insurance company with a guaranty fund ceases to do business, it shall not divide among its certificate holders any part of its assets or guaranty fund until all its debts and obligations have been paid or canceled.

(h) Foreign mutual life insurance companies having a guaranty fund shall not be required to make their certificate of guaranty fund conform to the provisions of this section, but when the certificates do not conform with this section, the amount of the guaranty fund shall be charged as a liability.

History: *2001 c 131 s 15; 2005 c 69 art 2 s 18*

66A.36 STOCK AND MUTUAL LIFE INSURANCE COMPANIES.

Insurance corporations for the transaction of the kinds of business authorized and permitted by section 60A.06, subdivision 1, clause (4), and subject to these provisions and limitations, may be formed having a capital stock, but which shall be controlled by the votes of both stockholders and participating policyholders. All such companies shall be known as stock and mutual companies. Corporations so formed shall have the right to make any contracts which insurance companies formed to transact the same kinds of business upon the stock plan or upon the mutual plan are authorized by law to make.

History: *1967 c 395 art 2 s 33; 2005 c 69 art 2 s 18*

66A.37 APPLICATION.

All provisions of law relating to stock companies and all such provisions relating to mutual companies shall, so far as applicable, relate to and govern such stock and mutual companies and the rights of stockholders and members thereof.

History: *1967 c 395 art 2 s 34; 2005 c 69 art 2 s 18*

66A.38 VOTING RIGHTS.

Unless otherwise provided in the certificate of incorporation or an amendment thereto adopted as provided by section 60A.07, subdivision 1d, or 66A.39, each stockholder of a stock and mutual life insurance company shall, at all meetings, be entitled to one vote for each share of stock held and, except as otherwise provided by law, each holder of a policy entitled to participate in profits or savings shall be a member and, as such, shall be entitled to the number of votes to which that person would be entitled in a mutual company.

History: *1967 c 395 art 2 s 35; 1986 c 444; 2005 c 69 art 2 s 18; art 3 s 11*

66A.39 CONVERSION OF EXISTING COMPANIES; AMENDMENT OF CERTIFICATES OF INCORPORATION.

Any existing stock or mutual insurance company authorized to do the kinds of business referred to in section 66A.36 may amend its certificate of incorporation so as to become a stock and mutual company; provided, that no such amendment shall deprive any stockholder or member or policyholder of the right, at any and all meetings of stockholders and members or policyholders held thereafter, to cast as many votes for directors as are provided by the certificate of incorporation in force at the time of the adoption of such amendment, or by the law in force at such time. No such amendment shall be construed to change the identity of the corporation and it shall thereafter continue to be governed by the laws applicable thereto at the time of such amendment and as amended hereafter and not inconsistent with sections 66A.36 to 66A.39, as well as those relating to the added characteristic of capital stock or mutuality which it shall have acquired by such amendment.

The certificate of incorporation of a stock and mutual life insurance company may be amended in any respect therein provided by section 60A.07, subdivision 1d, in the manner therein provided. The certificate of incorporation of a stock and mutual life insurance company may also be amended in respect to any matter which an original certificate of incorporation of a stock and mutual life insurance company might lawfully have contained, or so as to vest in its board of directors authority to make and alter bylaws subject to the power of the stockholders and members to change or repeal such bylaws, by the affirmative vote, at a regular meeting of stockholders and members or at a special meeting of stockholders and members called for that expressly stated purpose by the board of directors which shall first have proposed the amendment and declared it to be advisable, of (1) a majority of the total number of votes to which all stockholders are entitled, and (2) at least one-fifth of the total number of votes to which all participating policyholder members are entitled, provided the proposed amendment does not receive the negative vote of more than five percent of the total number of votes to which all participating policyholder members are entitled. The certificate of incorporation of a stock and mutual life insurance company may also be amended so as to increase or decrease its capital stock, or so as to change the number and par value of the shares of its capital stock, or so as to limit or deny to stockholders the preemptive right to subscribe to any or all shares of stock which may be authorized to be thereafter issued, by a majority vote of all its shares but without the vote of its members, at a regular meeting or at a special meeting of stockholders called for that expressly stated purpose by the board of directors which shall first have proposed the amendment and declared it to be advisable and not adverse to or in conflict with the rights and interests of the members, provided that if the proposed amendment is to increase or decrease the capital stock or to change the number of the shares of the capital stock, the resolution specifying the proposed amendment and the certificate of amendment shall expressly provide (1) that the stockholders holding all its shares shall, at all meetings, be entitled to the same number of total votes after the amendment is adopted as they were entitled to before the amendment, and (2) that each stockholder shall, at all meetings, be entitled to a fraction of one vote for each share of stock held, the numerator of which fraction shall be the number of shares outstanding before the first such amendment is adopted and the denominator of which fraction shall be the number of shares outstanding. The resolution specifying the

amendment shall be embraced in a certificate duly executed by its president and secretary, or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed for the execution, approval, filing, recording, and publishing of an original certificate of incorporation.

History: *1967 c 395 art 2 s 36; 1986 c 444; 2005 c 69 art 2 s 18; art 3 s 12*

66A.40 MUTUAL INSURANCE HOLDING COMPANIES.

Subdivision 1. **Formation.** (a) A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The commissioner, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval the modifications of the proposed plan of reorganization as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner shall retain jurisdiction over the mutual insurance holding company according to this section and chapter 60D to assure that policyholder and member interests are protected.

(b) All of the initial voting shares of the capital stock of the reorganized insurance company must be issued to the mutual insurance holding company or to an intermediate stock holding company. The membership interests of the policyholders of the reorganized insurance company become membership interests in the mutual insurance holding company. "Membership interests" means those interests described in section 66A.41, subdivision 1, paragraph (m). Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company and their voting rights must be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. Policyholders of any other insurance company subsidiary of a mutual insurance holding company shall not be members of the mutual insurance holding company unless otherwise specified in the articles of incorporation or bylaws of the mutual insurance holding company. For purposes of this paragraph, "other insurance company subsidiary" means an insurance company subsidiary of a mutual insurance holding company that has not reorganized under this chapter or chapter 60A or a comparable statute in another jurisdiction. The mutual insurance holding company shall, at all times, directly or through one or more intermediate stock holding companies, control a majority of the voting shares of the capital stock of the reorganized insurance company, taking into account any potential dilution resulting from convertible securities.

(c) A majority of the board of directors of a mutual insurance holding company must be disinterested directors. For purposes of this section, a director is disinterested if (i) the director is not or has not within the past two years been an officer or employee of the mutual insurance holding company or any subsidiary or predecessor corporation, and (ii) the director does not hold, directly or indirectly, a material ownership interest in any subsidiary of the mutual insurance holding company. An ownership interest is material if it represents more than one-half of one percent of the voting securities of the issuer, or a larger percentage as the commissioner may approve.

Subd. 2. **Merger.** (a) A domestic or foreign mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed according to subdivision 1 and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company or of an intermediate stock holding company. "Membership interests" means those interests described in section 66A.41, subdivision 1, paragraph (m). The commissioner, if satisfied that the interests of the policyholders

of the reorganizing company and the interests of the existing members of the mutual insurance holding company are properly protected and that the merger is fair and equitable to those parties, may approve the proposed merger and may require as a condition of approval the modifications of the proposed merger as the commissioner finds necessary for the protection of the policyholders' or members' interests. The commissioner shall retain jurisdiction, under chapter 60D, over the mutual insurance holding company organized according to this section to assure that policyholder and member interests are protected.

(b) All of the initial voting shares of the capital stock of the reorganized insurance company must be issued to the mutual insurance holding company, or to an intermediate stock holding company. The membership interests of the policyholders of the reorganized insurance company become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company and their voting rights must be determined according to the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall, at all times, directly or through one or more intermediate stock holding companies, control a majority of the voting shares of the capital stock of the reorganized insurance company, taking into account any potential dilution resulting from convertible securities.

(c) A domestic mutual insurance holding company may merge with a domestic or foreign mutual insurance holding company in the manner prescribed for the merger of insurance companies set forth in section 60A.16, with any exceptions or modifications the commissioner may approve.

Subd. 3. **Plan of reorganization; approval by commissioner.** (a) A reorganizing or merging insurer or a merging mutual insurance holding company shall, by the affirmative vote of a majority of its board of directors, adopt a plan of reorganization or merger consistent with the requirements of this section and file the plan with the commissioner. At any time before the approval of a plan by the commissioner, the company, by the affirmative vote of a majority of its directors, may amend or withdraw the plan. The plan must provide for the following:

(1) in the case of a reorganization under subdivision 1, establishing a mutual insurance holding company with at least one stock insurance company subsidiary, or in the case of a reorganization under subdivision 2, a description of the terms and conditions of the proposed merger;

(2) analyzing the benefits and risks attendant to the proposed reorganization, including the rationale for the reorganization and analysis of the comparative benefits and risks of a demutualization under section 66A.41;

(3) protecting the immediate and long-term interests of existing policyholders;

(4) ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic insurance company;

(5) describing a plan providing for membership interests of future policyholders;

(6) describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders;

(7) describing the mutual insurance holding company's plan for distributions to members or other uses of accumulated mutual holding company earnings;

(8) describing the nature and content of the annual report and financial statement to be sent or otherwise made available to each member;

(9) describing a plan to send or otherwise make available to members the annual report and financial statement;

(10) a copy of the proposed mutual insurance holding company's articles of incorporation and bylaws specifying all membership rights;

(11) the names, addresses, and occupational information of all corporate officers and members of the proposed mutual insurance holding company board of directors;

(12) information sufficient to demonstrate that the financial condition of the reorganizing or merging company will not be materially diminished upon reorganization, including information concerning any subsidiaries of the reorganizing or merging insurers that will become subsidiaries of the mutual insurance holding company or an intermediate holding company as part of the reorganization;

(13) a copy of the articles of incorporation and bylaws for any proposed insurance company subsidiary or intermediate holding company subsidiary;

(14) describing any plans for an initial sale or subscription of stock or other securities of the reorganized insurance company or any intermediate holding company; and

(15) any other information requested by the commissioner or required by rule.

(b) The commissioner may approve the plan upon finding that the requirements of this section have been fully met and the plan will protect the immediate and long-term interests of policyholders.

(c) The commissioner may retain, at the reorganizing or merging mutual company's expense, any qualified experts not otherwise a part of the commissioner's staff to assist in reviewing the plan.

(d) The commissioner may, but need not, conduct a public hearing regarding the proposed plan. The hearing must be held within 30 days after submission of a completed plan of reorganization to the commissioner. The commissioner shall give the reorganizing mutual company at least 20 days' notice of the hearing. At the hearing, the reorganizing mutual company, its policyholders, and any other person whose interest may be affected by the proposed reorganization, may present evidence, examine and cross-examine witnesses, and offer oral and written arguments or comments according to the procedure for contested cases under chapter 14. The persons participating may conduct discovery proceedings in the same manner as prescribed for the district courts of this state. All discovery proceedings must be concluded no later than three days before the scheduled commencement of the public hearing.

Subd. 4. **Approval by commissioner.** The plan by order shall be approved, conditionally approved, or disapproved within the later of 30 days from the date of the commissioner's receipt of all required information or 30 days after the conclusion of the public hearing. An approval or conditional approval of a plan of reorganization expires if the reorganization is not completed within 180 days after the approval or conditional approval unless the time period is extended by the commissioner upon a showing of good cause.

Subd. 5. **Approval by members.** The plan shall be approved as provided in section 66A.41, subdivision 5, by the eligible members described in paragraphs (a) to (c).

(a) In the case of a formation under subdivision 1, the plan must be approved by the eligible members of the reorganizing insurance company.

(b) In the case of a merger under subdivision 2, paragraph (a), the plan must be approved by the eligible members of the merging insurance company and by the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged. The vote of the eligible

members of the mutual insurance holding company is not required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

(c) In the case of a merger of two mutual insurance holding companies under subdivision 2, paragraph (c), the plan must be approved by the eligible members of both companies. The vote of the eligible members of the surviving mutual holding company is not required if the commissioner determines that the merger would not be material to the financial condition of the surviving company.

Subd. 6. **Incorporation.** A mutual insurance holding company shall be incorporated pursuant to section 60A.07, subdivision 1, and this chapter. The articles of incorporation and any amendments to the articles of the mutual insurance holding company are subject to approval of the commissioner in the same manner as those of an insurance company. Members of a mutual insurance holding company shall be entitled to vote on all matters required to be submitted to domestic mutual insurance company members in accordance with the requirements of this chapter and chapter 302A.

Subd. 7. **Applicability of certain provisions.** (a) In the event of the insolvency of a mutual insurance holding company, the mutual insurance holding company is considered to be an insurer subject to chapter 60B. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by a court of competent jurisdiction.

(b) A mutual insurance holding company is subject to chapter 60D.

(c) As a condition to approval of the plan, the commissioner may require the mutual insurance holding company to comply with any provision of the insurance laws necessary to protect the interests of the policyholders as if the mutual insurance holding company were a domestic mutual insurance company.

(d) No person or group of persons other than the chief executive officer of a mutual insurance holding company, or the chief executive officer's designee, shall seek to obtain proxies from the members of the mutual insurance holding company for the purposes of affecting a change of control of the mutual insurance holding company unless that person or persons have filed with the commissioner and have sent to the mutual insurance holding company a statement containing the information required by section 60D.17. Section 60D.17, subdivisions 2 to 7, apply in the event of a proxy solicitation regulated by this paragraph.

(e) For purposes of this subdivision, the term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through membership voting interests, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with, corporate office held by, or court appointment of, the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the membership voting interests of the mutual insurance holding company. This presumption may be rebutted by a showing made in the manner provided by section 60D.19, subdivision 11, that control does not exist in fact. The commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Subd. 8. **Applicability of demutualization provisions.** (a) Except as otherwise provided, section 66A.41 is not applicable to a reorganization or merger according to this section.

(b) Section 66A.41 is applicable to demutualization of a mutual insurance holding company as if it were a mutual insurance company.

(c) Section 66A.41, subdivisions 14 to 16, are applicable to a reorganization or merger under this section.

Subd. 9. **Membership interests.** A membership interest in a domestic mutual insurance holding company does not constitute a security as defined in section 80A.41(30). No member of a mutual insurance holding company may transfer or pledge membership in the mutual insurance holding company or any right arising from the membership except as attendant to the valid transfer or assignment of the member's policy in any reorganized company that gave rise to the member's membership interest. A member of a mutual insurance holding company is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the company. No assessments of any kind may be imposed upon the members of a mutual insurance holding company by the directors or members, or because of any liability of any company owned or controlled by the mutual insurance holding company or because of any act, debt, or liability of the mutual insurance holding company. A member's interest in the mutual insurance holding company shall automatically terminate upon cancellation, nonrenewal, expiration, or termination of the member's policy in any insurance company that gave rise to the member's membership interest.

Subd. 10. **Financial statement requirements.** (a) In addition to any items required under chapter 60D, each mutual insurance holding company shall file with the commissioner, by April 1 of each year, an annual statement consisting of the following:

(1) an income statement, balance sheet, and cash flow statement prepared in accordance with generally accepted accounting principles;

(2) complete information on the status of any closed block formed as part of a plan of reorganization;

(3) an investment plan covering all assets; and

(4) a statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company or an intermediate stock holding company.

(b) The aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than 49 percent of the stock in ownership of any subsidiary insurance holding company or subsidiary insurance company that resulted from a reorganization or merger.

(c) At least 50 percent of the generally accepted accounting principles (GAAP) net worth of a mutual insurance holding company must be invested in insurance company subsidiaries.

Subd. 11. **Sale of stock and payment of dividends.** (a) A reorganized insurance company and an intermediate stock holding company may issue subscription rights and may issue or grant any other securities, rights, options, and similar items to the same extent as any business corporation organized under chapter 302A. However, except as provided in paragraphs (b) to (d), no sale of common or preferred stock of the reorganized insurance company, or of an intermediate stock holding company that directly or indirectly controls a majority of voting shares of the reorganized insurance company, may be made without the commissioner's prior written approval.

(b) A registration statement covering securities that has been approved by the commissioner and filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933 pursuant to any provision of that statute or rule that allows registration of securities to be sold on a delayed or continuous basis may be sold without further approval.

(c) Unless the commissioner has granted the mutual insurance holding company a written exemption from the requirements of this paragraph, any securities which are regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the commissioner, or designated

on the National Association of Securities Dealers automated quotations (NASDAQ) national market system, shall be sold according to the procedure in this paragraph. If the mutual insurance holding company, an intermediate holding company, or a reorganized insurance company intends to offer securities that are governed by this paragraph, that entity shall deliver to the commissioner, not less than ten days before the offering, a notice of the planned offering and information regarding: (1) the approximate number of shares intended to be offered; (2) the target date of sale; (3) evidence the security is regularly traded on one of the public exchanges noted above; and (4) the recent history of the trading price and trading volume of the security. The commissioner is considered to have approved the sale unless within ten days following receipt of the notice, the commissioner issues an objection to the sale. If the commissioner issues an objection to the sale, the security may not be sold until the commissioner issues an order approving the sale.

(d) A reorganized insurance company or intermediate holding company that has issued securities that are regularly traded on one of the exchanges or markets described in paragraph (c), may establish stock option, incentive, and share ownership plans customary for publicly traded companies in the same or similar industries. If the reorganized insurance company or intermediate holding company intends to establish a stock option, incentive or share ownership plan, that entity shall deliver to the commissioner, not less than 30 days before the establishment of the plan, a notice of the proposed plan along with any information about the proposed plan the commissioner requires. The commissioner is considered to have approved the plan unless within 30 days following receipt of the notice, the commissioner issues an objection to the proposed plan. If the commissioner issues an objection to the proposed plan, the plan may not be established until the commissioner issues an order approving the plan. If the commissioner approves the establishment of the stock option, incentive, or share ownership plan, the reorganized insurance company or the intermediate holding company that obtained the approval may sell or issue securities according to the approved plan without further approval.

(e) The total number of shares of capital stock issued by the reorganized insurance company or an intermediate holding company that may be held by directors and officers of the mutual insurance holding company, any intermediate holding company, and of any reorganized insurance company, and acquired according to subscription rights or stock option, incentive, and share ownership plans, may not exceed the percentage limits set forth in section 66A.41, subdivision 11, paragraph (b). Subject to the requirements of subdivision 1, paragraph (c), nothing in this section prohibits the acquisition of any securities of a reorganized insurance company or intermediate stock holding company through a licensed securities broker-dealer by any officer or director of the reorganized company, an intermediate stock holding company, or the mutual insurance holding company.

(f) Dividends and other distributions to the shareholders of the reorganized stock insurance company or of an intermediate stock holding company must comply with section 60D.20. Any dividends and other distributions to the members of the mutual insurance holding company must comply with section 60D.20 and any other approval requirements contained in the mutual insurance holding company's articles of incorporation.

(g) Unless previously approved as part of the plan of reorganization, the initial offering of any voting shares to the public by a reorganized company, a stock insurance company subsidiary, or an intermediate holding company which holds a majority of the voting shares of a reorganized insurance company or stock insurance company subsidiary, must be approved by a majority of votes cast at a regular or special meeting of the members of the mutual insurance holding company. Any issuer repurchase program, plan of exchange, recapitalization, or offering of capital securities to the public, shall, in addition to any other approvals required by law or by the issuer's articles of incorporation, be approved by a majority of the board of directors of the

mutual insurance holding company and by a majority of the disinterested members of the board of directors of the mutual insurance holding company.

Subd. 12. **Provisions in the event of insurer insolvency.** (a) In the event of any insolvency proceeding involving an insolvent stock subsidiary, the assets of the mutual insurance holding company, together with any assets of any intermediate holding company that directly or indirectly controls the insolvent stock subsidiary, must be available to satisfy the policyholder obligations of the insolvent stock subsidiary in an amount determined by the commissioner, but in no event more than the total amount of nonpolicyholder dividends paid by the insolvent stock subsidiary to the mutual insurance holding company, or any intermediate holding company that controls the insolvent stock subsidiary, during the ten-year period immediately preceding the date of insolvency.

(b) In determining the required contribution by the mutual insurance holding company or any intermediate stock holding company which controls the insolvent stock subsidiary, the commissioner shall take into account among other factors:

(1) the possible direct or indirect negative effects of any required contribution on any insurance company affiliate of the insolvent stock subsidiary; and

(2) the possible direct or indirect, long-term, or short-term negative effects on the members of the mutual insurance holding company, other than those members who, are, or were policyholders of the insolvent stock subsidiary.

Nothing in this subdivision limits the powers of the commissioner or the liquidator under chapter 60B.

(c) For purposes of this subdivision, the following terms have the meanings given:

(1) "date of insolvency" means, as to an insolvent stock subsidiary, the date established in accordance with chapter 60B or comparable statute of another state governing the rehabilitation or liquidation of a foreign insolvent stock subsidiary;

(2) "insolvency proceeding" means any proceeding under chapter 60B or comparable statute of another state governing the rehabilitation and liquidation of a foreign insolvent stock subsidiary;

(3) "insolvent stock subsidiary" means any stock insurance company subsidiary of a mutual insurance holding company that resulted from the reorganization of a domestic or foreign mutual insurance company according to subdivision 1 or 2, or any other stock insurance company subsidiary that is subject to an insolvency proceeding, which on the date of insolvency has in force policies that have given rise to membership interests in the mutual insurance holding company;

(4) "control" has the meaning given in section 60D.15, subdivision 4; and

(5) "dividends" include distributions of cash or any other assets.

Subd. 13. **Conversion.** (a) With the approval of the commissioner, a domestic insurance company that previously reorganized under this section into a stock subsidiary of a mutual insurance holding company may convert back into a mutual insurance company. It shall effect the conversion by merging with its parent mutual insurance holding company (a "parent mutual"), but only if the parent mutual owns or controls, directly or indirectly, all of the voting shares of capital stock of the reorganized insurance company. The reorganized subsidiary, as the surviving company, shall continue its corporate existence as a domestic mutual insurance company (a "remutualized company"). A conversion under this subdivision may, but need not,

occur in connection with the simultaneous or subsequent merger of the remutualized company with a domestic or foreign mutual insurance company. Section 66A.42 is not applicable to a conversion under this subdivision.

(b) The conversion can be effected by the parent mutual pursuant to a plan of conversion adopted as follows:

(1) The parent mutual shall, by the affirmative vote of a majority of its board of directors, adopt a plan of conversion consistent with the requirements of this subdivision.

(2) The parent mutual, by the affirmative vote of a majority of its board of directors, may amend the plan at any time before approval of the plan by the commissioner and may withdraw the plan at any time before the effective date of the plan.

(3) The duties of the board of directors of the parent mutual, in considering or acting upon a proposed plan of conversion or related transaction, shall be as set forth in section 302A.251 and, to the extent not inconsistent with that section, the parent mutual's articles of incorporation and bylaws.

(c) The parent mutual shall file with the commissioner an application for approval of, and permission to carry out the reorganization according to, the plan of conversion. The application must include the following:

(1) the plan of conversion;

(2) the form of notice of meeting for eligible members to vote on the plan;

(3) the form of any proxies to be solicited from eligible members;

(4) the proposed articles of incorporation and bylaws of the remutualized company;

(5) information required under chapter 60D if the plan results in a change of control of the remutualizing company;

(6) if required by the commissioner, an independent actuarial opinion on matters affecting the structure or fairness of the plan; and

(7) other information or documentation required by the commissioner or required by rule.

(d) The commissioner shall determine, within 30 days of submission of the application, whether the application is complete.

(e) If the plan of conversion proposes a simultaneous merger of the remutualized company with a foreign or domestic mutual insurance company, the commissioner may conduct concurrent proceedings under this subdivision and section 60A.16.

(f) The commissioner may retain, at the parent mutual's expense, qualified experts not otherwise a part of the commissioner's staff, including without limitation, actuaries, accountants, investment bankers, and attorneys, to assist in reviewing the plan and supplemental materials and valuations.

(g) The commissioner may, but need not, conduct a public hearing regarding the proposed plan of conversion. If a hearing is to be held, the commissioner shall designate a date for the public hearing promptly upon determining that the application is complete and that the forms of notice are adequate. The public hearing must be held on one or more days, the first beginning within 90 days after the date on which the commissioner determines the application is complete, unless the parent mutual requests, and the commissioner agrees to, a longer period for the purpose of preparing and distributing the notices required by this paragraph

and by paragraph (i), clause (1). The hearing shall be in the nature of a legislative hearing and shall not constitute or be considered a contested case under chapter 14. The hearing may be conducted by the commissioner or by a person designated by the commissioner, which designee may be an administrative law judge. The parent mutual shall provide its eligible members with at least 45 days' notice of the hearing, the notice to be in the form, and provided in a manner, approved by the commissioner. The purpose of the hearing is to receive comments and information for the purpose of aiding the commissioner in making a decision on the plan of conversion. Persons wishing to make comments and submit information may submit written statements before the public hearing and may appear and be heard at the hearing. The commissioner's order or determination must be issued within 45 days after the closing of the record of the hearing by the commissioner or the hearing officer, as applicable, which record must not be closed until the record includes certification of the vote on the plan of conversion by the eligible members of the parent mutual. The commissioner shall issue a written decision detailing the reasons why the parent mutual company's plan of conversion is approved or disapproved.

(h) The commissioner shall approve the application and permit the conversion according to the plan if the commissioner finds that:

(1) the provisions of this subdivision have been fully met; and

(2) the plan is not unfair or inequitable to the members of the parent mutual.

The commissioner's order approving or disapproving a plan of conversion is a final agency decision subject to appeal according to sections 14.63 to 14.68.

(i)(1) No later than 90 days following the date of the public hearing, if any, or the date the commissioner determines the application is complete if no hearing is held, the parent mutual shall give all eligible members notice of a regular or special meeting of the members called for the purpose of considering the plan and any corporate actions that are a part of, or are reasonably attendant to, the accomplishment of the plan, including without limitation, any proposed merger of the remutualizing company with a domestic or foreign mutual insurance company.

(2) A copy of the plan or a summary of the plan must accompany the notice. The notice must be mailed to each eligible member's last known address, as shown on the parent mutual's records, not less than 45 days before the date of the meeting, unless the commissioner directs a later date for mailing. If the meeting to vote upon the plan is held coincident with the parent mutual's annual meeting of members, only one combined notice of meeting is required. The notice of the meeting of eligible members may be combined with the notice of hearing described in paragraph (g).

(3) If the parent mutual complies substantially and in good faith with the notice requirements of this section, the parent mutual's failure to give any member or members required notice does not impair the validity of an action taken under this section.

(j)(1) The plan must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members.

(2) Eligible members may vote in person or by proxy. The form of any proxy must be filed with and approved by the commissioner.

(k)(1) Following approval by the eligible members, the parent mutual shall file a copy of the converting subsidiary's amended or restated articles of incorporation with the commissioner, together with a certified copy of the minutes of the meeting of the members of the parent mutual at which the plan was adopted and a certified copy of the plan. The commissioner shall review and, if appropriate, approve the amended or

restated articles. After approval by the commissioner, the parent mutual shall file the articles with the secretary of state as provided by section 60A.07, subdivision 1d, and chapter 302A.

(2) The conversion is effective on the date of filing an amendment or restatement of the articles of incorporation with the secretary of state, or on a later date if the plan so specifies.

(l) Upon the effective date of the conversion in accordance with this subdivision:

(1) The corporate existence of the parent mutual is continued in the converted subsidiary. All the rights, privileges, powers, franchises, and interests of the parent mutual in and to all property and things in action belonging to the parent company are considered transferred to and vested in the converted subsidiary without any deed or transfer. Simultaneously, the converted subsidiary is considered to have assumed all the obligations and liabilities of the parent mutual.

(2) The directors and officers of the parent mutual, unless otherwise specified in the plan of conversion, shall serve as directors and officers of the converted subsidiary until new directors and officers of the converted subsidiary are duly elected according to the articles of incorporation and bylaws of the converted subsidiary.

(3) All policies issued by the converted subsidiary in force on the effective date of the conversion remain in force subject to the terms of those policies, except that the membership interests in the parent mutual shall become membership interests in the converted subsidiary, and member voting rights in the converted subsidiary shall be exclusively governed by the converted subsidiary's articles and bylaws.

(4) Except as otherwise provided in the plan of conversion, the converted subsidiary is no longer subject to the requirements of subdivisions 1 to 12 or to the terms of the original plan of reorganization.

(5) At the effective time of the merger, all of the voting shares of capital stock of the converted subsidiary shall be deemed to be redeemed and canceled.

(6) Any provisions of the original plan of reorganization pertaining to the protection of reasonable policyholder dividend expectations may be continued, modified, or extinguished as provided under the plan of conversion and approved by the commissioner.

(m) No director, officer, agent, employee of the parent mutual or the converting subsidiary, or any other person shall receive a fee, commission, or other valuable consideration, other than the person's usual regular salary and compensation, for in any manner aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants, investment bankers, and actuaries for services performed in the independent practice of their professions.

(n) All the costs and expenses connected with a plan of conversion must be paid for or reimbursed by the parent mutual or converted subsidiary except where the plan provides otherwise.

(o)(1) An action challenging the validity of or arising out of acts taken or proposed to be taken according to this section must be commenced within 180 days after the effective date of the conversion.

(2) The parent mutual, the converted subsidiary, or any defendant in an action described in clause (1) may petition the court in the action to order a party to give security for the reasonable attorney fees that may be incurred by a party to the action. The amount of security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

(p) For purposes of this subdivision, the following terms have the meanings given.

(1) "Eligible member" means a person who is a member of the parent mutual, as defined by the parent mutual's articles of incorporation and bylaws, determined as of the record date.

(2) "Membership interests" means all rights as members of the parent mutual, including, but not limited to, the rights to vote.

(3) "Plan of conversion" or "plan" means a plan adopted by a parent mutual's board of directors under this section.

(4) "Record date" means the date that the parent mutual's board of directors adopts a plan of conversion, unless another date is specified in the plan of conversion and approved by the commissioner.

(5) "Converted subsidiary" means a converting subsidiary that has converted into a mutual insurance company under this subdivision.

(6) "Converting subsidiary" means a Minnesota domestic insurance company that previously reorganized under this section that is seeking to convert back into a mutual insurance company in accordance with this subdivision.

History: *1996 c 446 art 2 s 4; 1997 c 231 art 15 s 4-14; 2005 c 69 art 2 s 8, 18; 2006 c 196 art 2 s 1; 2006 c 204 s 2-4; 2010 c 275 art 1 s 13*

66A.41 MUTUAL COMPANY CONVERSION TO STOCK COMPANY.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms in this subdivision have the meanings given them.

(b) "Converting mutual insurer" means a Minnesota domestic mutual insurance company seeking to reorganize according to this section.

(c) "Converting mutual holding company" means a Minnesota domestic mutual insurance holding company seeking to reorganize according to this section.

(d) "Converting mutual company" means a converting mutual insurer or a converting mutual holding company seeking to convert according to this section.

(e) "Reorganized company" means a converting mutual insurer or a converting mutual holding company, as the case may be, that has reorganized according to this section.

(f) "Eligible member" means:

(1) for converting mutual insurers, a policyholder whose policy is in force as of the record date. Unless otherwise provided in the plan, a person covered under a group policy is not an eligible member, except that a person insured under a group life insurance policy is an eligible member if, on the record date:

(i) the person is insured under a group life policy under which cash value has accumulated and some cash value is allocated to the insured person; and

(ii) the group policyholder makes no contribution to the premiums for the group policy; and

(2) for converting mutual holding companies, a person who is a member of the converting mutual holding company, as defined by the converting mutual holding company's articles of incorporation and bylaws, determined as of the record date.

(g) "Plan of conversion" or "plan" means a plan adopted by a converting mutual company's board of directors under this section.

(h) "Policy" means a policy or contract of insurance, including an annuity contract, issued by a converting mutual insurer or issued by a reorganized insurance company subsidiary of a mutual holding company, but excluding individual noncontributory insurance policies for which the premiums are paid by a financial institution, association, employer, or other institutional entity.

(i) "Active participating policy" means an individual policy of a converting mutual company or its subsidiary that: (1) is a participating policy; (2) is among a class of similar policies that have been credited with policy dividends at any time within the 12 months preceding the effective date of the conversion or that will, under the then current dividend scale, be credited with policy dividends if in force on a future policy anniversary; (3) gives rise to membership interests in the converting mutual company; and (4) is in force on the effective date or some other reasonable date identified in the plan.

(j) "Commissioner" means the commissioner of commerce.

(k) "Effective date of a conversion" means the date determined according to subdivision 6.

(l) "Record date" means the date that the converting mutual company's board of directors adopts a plan of conversion, unless another date is specified in the plan of conversion and approved by the commissioner.

(m) "Membership interests" means all rights as members of the converting mutual company, including, but not limited to, the rights to vote and to participate in any distributions of distributable net worth, whether or not incident to the company's liquidation.

(n) "Distributable net worth" means the value of the converting mutual company as of the record date of the conversion, or other date approved by the commissioner, determined as set forth in the plan and approved by the commissioner. The commissioner may approve a valuation method based on any of the following: (1) the surplus as regards policyholders of a converting mutual insurer determined according to statutory accounting principles, which may be adjusted to reflect the current market values of assets and liabilities, together with any other adjustments that are appropriate in the circumstances; (2) the net equity of a converting mutual holding company or a converting mutual insurer determined according to generally accepted accounting principles, which may be adjusted to reflect the current market values of assets and liabilities, together with any other adjustments that are appropriate in the circumstances; (3) the fair market value of the converting mutual company determined by an independent, qualified person; or (4) any other reasonable valuation method.

(o) "Permitted issuer" means: (1) a corporation organized and owned by the converting mutual company or by any other insurance company or insurance holding company for the purpose of purchasing and holding securities representing a majority of voting control of the reorganized company; (2) a stock insurance company owned by the converting mutual company or by any other insurance company or insurance holding company into which the converting mutual company will be merged; or (3) any other corporation approved by the commissioner.

Subd. 2. **Authorization.** In accordance with a plan of conversion established and approved in the manner provided by this section: (1) a mutual insurance company may become a stock insurance company; and (2) a mutual insurance holding company may: (i) become a corporation organized under chapter 302A; (ii) reorganize according to a plan in which a majority or all of the common stock of the reorganized company is acquired by another institution, which may include a subsidiary of the converting mutual holding company;

(iii) reorganize as a part of a liquidation or dissolution of the converting mutual holding company; or (iv) undertake any other reorganization or combination of the foregoing approved by the commissioner.

Subd. 3. **Adoption of plan of conversion by board of directors.** (a) A converting mutual company shall, by the affirmative vote of a majority of its board of directors, adopt a plan of conversion consistent with the requirements of this section.

(b) The converting mutual company, by the affirmative vote of a majority of its board of directors, may amend the plan at any time before approval of the plan by the commissioner and may withdraw the plan at any time before the effective date of the plan.

(c) The duties of the board of directors of a converting mutual company, in considering or acting upon a proposed plan of conversion or related transaction, shall be as set forth in section 302A.251 and, to the extent not inconsistent with that section, the converting mutual company's articles of incorporation and bylaws.

Subd. 4. **Filing of plan of conversion with commissioner.** (a) **Documents to be filed.** The converting mutual company shall file with the commissioner an application for approval of, and permission to reorganize according to, the plan of conversion. The application must include the following:

(1) the plan of conversion;

(2) the form of notice of meeting for eligible members to vote on the plan;

(3) the form of any proxies to be solicited from eligible members;

(4) the proposed articles of incorporation and bylaws of the converted stock company;

(5) information required under chapter 60D if the plan results in a change of control of the converting mutual company;

(6) a basis for determining the converting mutual company's distributable net worth for use in the plan of conversion;

(7) if required by the commissioner, an independent evaluation of the estimated distributable net worth and of the estimated value of any shares to be issued;

(8) if required by the commissioner, an independent actuarial opinion on matters affecting the structure or fairness of the plan; and

(9) other information or documentation requested by the commissioner or required by rule.

(b) **Determination of completeness.** The commissioner shall determine, within 30 days of submission of the application, whether the application is complete.

(c) **Consultants.** The commissioner may retain, at the converting mutual company's expense, qualified experts not otherwise a part of the commissioner's staff to assist in reviewing the plan and supplemental materials and valuations.

(d) **Hearing.** The commissioner may, but need not, conduct a public hearing regarding the proposed plan of conversion. If a hearing is to be held, the commissioner shall designate a date for the public hearing promptly upon determining that the application is complete and that the forms of notice are adequate. The public hearing must be held on one or more days, the first beginning within 90 days after the date on which the commissioner determines the application is complete, unless the converting mutual company requests,

and the commissioner agrees to, a longer period for the purpose of preparing and distributing the notices required by this paragraph and by subdivision 5, paragraph (b). The hearing must be in the nature of a legislative hearing and must not constitute or be considered a contested case under chapter 14. The hearing may be conducted by the commissioner or by a person designated by the commissioner, which designee may be an administrative law judge. The converting mutual company shall provide its eligible members with at least 45 days' notice of the hearing, the notice to be in the form, and provided in a manner, approved by the commissioner. The purpose of the hearing is to receive comments and information for the purpose of aiding the commissioner in making a decision on the plan of conversion. Persons wishing to make comments and submit information may submit written statements before the public hearing and may appear and be heard at the hearing. The commissioner's order or determination must be issued within 45 days after the closing of the record of the hearing by the commissioner or the hearing officer, as applicable, which record must not be closed until the record includes certification of the vote on the plan of reorganization by the eligible members by the converting mutual company. The commissioner shall issue a written decision detailing the reasons why the converting mutual company's plan of conversion is approved or disapproved.

(e) The commissioner shall approve the application and permit the reorganization according to the plan of conversion if the commissioner finds that: (1) the provisions of this section have been fully met; and (2) the plan is not unfair or inequitable to the members of the converting mutual company. The commissioner's order approving or disapproving a plan of conversion is a final agency decision subject to appeal according to sections 14.63 to 14.68.

Subd. 5. **Approval of plan by eligible members.** (a) **Notice.** Within 90 days following the date of the public hearing, if any, or the date the commissioner determines the application is complete if no hearing is held, the converting mutual company shall give all eligible members notice of a regular or special meeting of the members called for the purpose of considering the plan and any corporate actions that are a part of, or are reasonably attendant to, the accomplishment of the plan.

(b) **Notice requirements.** A copy of the plan or a summary of the plan must accompany the notice. The notice must be mailed to each eligible member's last known address, as shown on the converting mutual company's records, not less than 45 days before the date of the meeting, unless the commissioner directs a later date for mailing. If the meeting to vote upon the plan is held coincident with the converting mutual company's annual meeting of members, only one combined notice of meeting is required. The notice of the meeting of eligible members may be combined with the notice of hearing described in subdivision 4, paragraph (d).

(c) **Failure to give notice.** If the converting mutual company complies substantially and in good faith with the notice requirements of this section, the converting mutual company's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

(d) **Voting.** (1) The plan must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members.

(2) Eligible members may vote in person or by proxy. The form of any proxy must be filed with and approved by the commissioner.

(3) The number of votes each eligible member may cast shall be determined by the converting mutual company's bylaws. If the bylaws are silent, or if the commissioner determines that the voting requirements under the bylaws would be unfair or would prejudice the rights of the eligible members, each eligible member may cast one vote.

Subd. 6. **Conversion.** Following approval by the eligible members, the converting mutual company shall file a copy of the company's amended or restated articles of incorporation with the commissioner, together with a certified copy of the minutes of the meeting at which the plan was adopted and a certified copy of the plan. The commissioner shall review and, if appropriate, approve the amended or restated articles. After approval by the commissioner, a converting mutual company shall file the articles with the secretary of state as provided by section 60A.07, subdivision 1d, and chapter 302A.

Subd. 7. **Plan not unfair or inequitable.** A plan of conversion shall not be unfair or inequitable to members. A plan of conversion is not unfair or inequitable if it satisfies the conditions of subdivision 8 or 9. The commissioner may determine that a plan proposed under subdivision 10 or that any other plan proposed under subdivision 12 is not unfair or inequitable to members.

Subd. 8. **Share conversion.** A plan of conversion under this subdivision shall provide for exchange of membership interests in return for shares in the reorganized company or a permitted issuer, according to paragraphs (a) to (c), and shall provide for the reasonable dividend expectations of policyholders of active participating policies as set forth in subdivision 16a.

(a) The membership interests of the eligible members shall be exchanged, for all of the common shares of the reorganized company or a permitted issuer, or for a combination of the common shares of the reorganized company or a permitted issuer, or for a combination of: (1) common shares of the reorganized company or a permitted issuer; and (2) consideration equal to the proceeds of the public sale in the market of the common shares by the issuer or by a trust established according to subdivision 11. The consideration must be allocated among the eligible members in a manner that takes into account the estimated proportionate contribution of each class of eligible members to the aggregate consideration being given.

(b) Unless the anticipated issuance within a shorter period is disclosed in the plan of conversion, the issuer of common shares shall not, within two years after the effective date of reorganization, issue either of the following:

(1) any of its common shares or any securities convertible with or without consideration into the common shares or carrying any warrant to subscribe to or purchase common shares; and

(2) any warrant, right, or option to subscribe to or purchase the common shares or other securities described in paragraph (a), except for the issue of common shares to or for the benefit of eligible members according to the plan of conversion and the issue of nontransferable subscription rights for the purchase of common shares being granted to officers, directors, or a tax qualified employee benefit plan of the reorganized company or its parent company, if any, or a permitted issuer, according to subdivision 11.

(c) Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares within two years of the effective date of the conversion or a longer period as disclosed in the plan of conversion. Within one year after any offering of stock other than the initial distribution, but no later than six years after the effective date of the conversion, the reorganized company shall offer to make available to eligible members who received and retained shares of common stock or securities described in paragraph (b), clause (1), a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees.

Subd. 9. **Distribution of distributable net worth.** A plan of conversion under this subdivision shall provide for the exchange of the membership interests of the eligible members in return for a distribution of the converting mutual company's distributable net worth and shall provide for the issuance of new shares of the reorganized company or a permitted issuer, and shall provide for the reasonable expectations of policyholders of active participating policies as set forth in subdivision 16a.

(a) Distributions by the converting mutual company under this subdivision shall be distributed to eligible members in a form or forms selected by the converting mutual company. The form of distribution may consist of cash, securities of the reorganized company, securities of another institution, a certificate of contribution, additional life insurance, annuity benefits, increased dividends, reduced premiums, or other equitable consideration or any combination of forms of consideration. The consideration, if any, given to a class or category of eligible members may differ from the consideration given to another class or category of eligible members. A certificate of contribution must be repayable in ten years, be equal to 100 percent of the value of the eligible members' membership interest, and bear interest at the highest rate charged by the reorganized company or its insurance company subsidiary for policy loans on the effective date of the conversion.

(b) The consideration must be allocated among the eligible members in a manner that is fair and equitable and that takes into account the estimated proportionate contribution of each class of eligible members to the aggregate consideration being given.

(c) The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated value in the market of the shares on the initial offering date. The estimated value must take into account all of the following:

(1) the pro forma fair market value of the reorganized company;

(2) the consideration to be given to policyholders according to paragraph (a);

(3) the proceeds of the sale of the shares; and

(4) any additional value attributable to the shares as a result of a purchaser or a group of purchasers who acted in concert to obtain shares in the initial offering, attaining, through such purchase, control of the reorganized company or its parent corporation.

(d) If a purchaser or a group of purchasers acting in concert is to attain control in the initial offering, the converting mutual company shall not, directly or indirectly, pay for any of the costs or expenses of conversion of the converting mutual company, whether or not the conversion is effected, except with permission of the commissioner.

Subd. 10. **Subscription rights.** A plan of conversion under this subdivision shall provide for exchange of the eligible members' membership interests in return for the protection of the reasonable dividend expectations of the policyholders of active participating policies, for the creation of a liquidation account to protect the interests of eligible members, for the issuance of subscription rights to eligible members, and shall provide for the issuance of shares by the reorganized company, each according to paragraphs (a) to (j).

(a) The plan of conversion shall provide for the protection of the reasonable dividend expectations of policyholders of active participating policies as provided in subdivision 16a.

(b) The reorganized company or its parent corporation or a permitted issuer shall issue and sell shares of one or more classes having a total price equal to the estimated value of the shares in the market on the initial offering date taking into account the proceeds of the sale of shares and the consideration given to eligible members.

(c) The eligible members shall receive nontransferable preemptive subscription rights to purchase all of the common shares of the issuer according to paragraph (b).

(d) The preemptive subscription rights to purchase the common shares must be allocated among the eligible members in whole shares in a fair and equitable manner and as provided in the plan, taking into account the estimated proportionate contribution of each class of eligible members to the total amount of the eligible members' consideration. The plan must provide a fair and equitable means for the allocation of shares in the event of an oversubscription. The plan must further provide that any shares of capital stock not subscribed by eligible members may be sold in a public offering through an underwriter, unless the number of shares unsubscribed is so small in number so as not to warrant the expense of a public offering, in which case the plan may provide for the purchase of the unsubscribed shares by private placement or through any fair and equitable alternative means approved by the commissioner.

(e) The number of the common shares that a person, together with any affiliates or group of persons acting in concert, may subscribe or purchase in the reorganization, must be limited to not more than five percent of the common shares. For this purpose, neither the members of the board of directors of the reorganized company nor its parent corporation, if any, are considered to be affiliates or a group of persons acting in concert solely by reason of their board membership.

(f) Unless the common shares have a public market when issued, officers and directors of the issuer and their affiliates shall not, for at least three years after the date of conversion, purchase common shares of the issuer, except with the approval of the commissioner.

(g) Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares.

(h) The issuer shall not, for at least three years following the conversion, repurchase any of its common shares except according to a pro rata tender offer to all shareholders, or with the approval of the commissioner.

(i) A liquidation account must be established for the benefit of eligible members in the event of a complete liquidation of the reorganized company. The liquidation account must be equal to the distributable net worth of the converting mutual company as of the effective date of the conversion. The function of the liquidation account is solely to establish a priority on liquidation and its existence does not restrict the use or application of the distributable net worth of the reorganized company except as specified in paragraph (j). The liquidation account must be allocated equitably as of the effective date of conversion among the then eligible members. The amount allocated to an eligible member must not increase and must be reduced to zero when the policy or contract giving rise to the membership interests of the owner terminates. In the event of a complete liquidation of the reorganized company, the eligible members among which the liquidation account is allocated are entitled to receive a liquidation distribution in the amount of the liquidation account before any liquidation distribution is made with respect to shares.

(j) Until the liquidation account has been reduced to zero, the reorganized company shall not declare or pay a cash dividend on, or repurchase any of, its common shares (i) in case of a converting mutual insurer, in an amount in excess of its cumulative earned surplus generated after the conversion determined according to statutory accounting principles, or (ii) in the case of a converting mutual holding company, in an amount in excess of its retained earnings, if the effect would be to cause the amount of the distributable net worth of the reorganized company to be reduced below the then amount of the liquidation account.

Subd. 11. **Optional provisions.** A plan under subdivision 8, 9, or 10 may include, with the approval of the commissioner, any of the provisions in paragraphs (a) and (b).

(a) A plan may provide that any shares of the stock of the reorganized company or its parent corporation or a permitted issuer included in the eligible members' consideration must be placed on the effective date of the conversion in a trust or other entity existing for the exclusive benefit of the eligible members and

established solely for the purposes of effecting the reorganization. Under this option, the shares placed in trust must be sold over a period of not more than 40 years and the proceeds of the shares must be distributed using the distribution priorities prescribed in the plan. Eligible members shall have the option to sell their shares at any time following the date specified in the plan, which date may not be later than two years following the effective date of the plan.

(b) A plan may provide that the directors and officers of the converting mutual company may receive warrants, options, or nontransferable subscription rights to purchase capital stock of the reorganized company or its parent or a permitted issuer.

(c) A plan may provide that only eligible members whose policies were in force as of a specified date are eligible to receive compensation under the plan, which date must be no earlier than one year before the effective date of the plan.

Subd. 12. **Alternative plan of conversion.** In lieu of selecting a plan of conversion provided for in subdivision 8, 9, or 10, the converting mutual company may convert according to a plan approved by the commissioner if the commissioner finds that the plan does not prejudice the interests of the eligible members, is fair and equitable, and is based upon the fair market value of the converting mutual company, and is a fair and equitable allocation of any consideration to be given eligible members. The commissioner may retain, at the converting mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing the fair market value of the company and in determining whether the alternative plan may be approved.

Subd. 13. **Effect of conversion.** (a) Upon the conversion of a converting mutual company to a reorganized company according to this section, the corporate existence of the converting mutual company is continued in the reorganized company. All the rights, franchises, and interests of the converting mutual company in and to all property and things in action belonging to this property, is considered transferred to and vested in the reorganized company without any deed or transfer. Simultaneously, the reorganized company is considered to have assumed all the obligations and liabilities of the converting mutual company.

(b) The directors and officers of the converting mutual company, unless otherwise specified in the plan of conversion, shall serve as directors and officers of the reorganized company until new directors and officers of the reorganized company are duly elected according to the articles of incorporation and bylaws of the reorganized company.

(c) All policies in force on the effective date of the conversion continue to remain in force under the terms of those policies, except that any voting rights of the members provided for under the policies are extinguished on the effective date of the conversion.

(d) All membership interests in the converting mutual company are extinguished on the effective date of a conversion.

Subd. 14. **Conflict of interest.** No director, officer, agent, employee of the converting mutual company, or any other person shall receive a fee, commission, or other valuable consideration, other than the person's usual regular salary and compensation, for in any manner aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants, investment bankers, and actuaries for services performed in the independent practice of their professions.

Subd. 15. **Costs and expenses.** All the costs and expenses connected with a plan of conversion must be paid for or reimbursed by the converting mutual company or the reorganized company except where the plan provides otherwise.

Subd. 16. **Limitation of actions.** (a) An action challenging the validity of or arising out of acts taken or proposed to be taken according to this section must be commenced within 180 days after the effective date of the conversion.

(b) The converting mutual company, the reorganized company, or any defendant in an action described in paragraph (a), may petition the court in the action to order a party to give security for the reasonable attorney fees that may be incurred by a party to the action. The amount of security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

Subd. 16a. **Continuance of participating policy dividends.** (a) To the extent required by this section, the plan of reorganization of a converting mutual insurer that is a mutual life insurance company or of a converting mutual holding company that has a life insurance company subsidiary shall make adequate provision for the protection of the reasonable dividend expectations of the policyholders of active participating policies, either through the establishment of a closed block or other method acceptable by the commissioner.

(b) A closed block must be operated as follows:

(1) The converting mutual company's active participating policies may be operated by the reorganized company as a closed block of participating business.

(2) Assets must be allocated to the closed block of participating business in an amount that ensures that the assets, together with the anticipated revenue from the closed block, are reasonably expected to be sufficient to permit the closed block to pay all policy benefits, including dividends according to the current dividend scale, and other items as appropriate. The plan must be accompanied by an opinion of an independent qualified actuary who meets the standards set forth in the insurance laws or rules for the submission of actuarial opinions as to the adequacy of reserves or assets. The opinion must relate to the adequacy of the assets allocated to support the closed block of business. The actuarial opinion must be based on methods of analysis considered appropriate for those purposes by the actuarial standards board.

(3) The reorganized company shall keep a separate accounting for the closed block and shall make and include in the annual statement to be filed with the commissioner each year a separate statement showing the gains, losses, and expenses properly attributable to the closed block.

(4) The closed block must be reviewed periodically by an independent, qualified actuary for compliance with the requirements of the plan and this subdivision and a copy of the report must be provided to the commissioner and the reorganized company.

(5) Notwithstanding the establishment of a closed block, the entire assets of the company that issued the policies must be available for the payment of benefits to policyholders. Payment must first be made from the assets supporting the closed block until exhausted, and then from the general assets of the company which issued the policies.

Subd. 17. **Supervisory conversions.** The commissioner may waive or alter any of the requirements of this section to protect the interests of policyholders or members if the converting mutual company is subject to the commissioner's administrative supervision under chapter 60G or rehabilitation under chapter 60B.

Subd. 18. **Postconversion acquisition.** Prior to and for a period of three years following the date when the distribution of consideration to the eligible members in exchange for their membership interests is completed under a plan of conversion according to this section, no person other than the reorganized company shall directly or indirectly acquire or offer to acquire in any manner ownership or beneficial ownership of ten percent or more of any class of voting security of the reorganized company, or of any affiliate of the reorganized company which controls, directly or indirectly, a majority of the voting power of the reorganized company, without the prior approval of the commissioner. For the purposes of this subdivision, the terms "affiliate" and "person" have the meanings given in section 60D.15, and the term "reorganized company" includes any successor of the reorganized company.

History: *1996 c 446 art 2 s 3; 1997 c 231 art 15 s 1-3; 1999 c 177 s 7; 2002 c 336 s 1; 2005 c 69 art 2 s 7, 18; 2006 c 204 s 1; 2008 c 344 s 45*

66A.42 DOMESTIC INSURANCE CORPORATIONS MAY BECOME MUTUAL CORPORATIONS.

Any domestic insurance corporation heretofore or hereafter incorporated for the transaction of the kinds of business authorized and permitted by section 60A.06, subdivision 1, and having capital stock may become a mutual corporation and to that end may formulate and carry out a plan for the acquisition by it of its outstanding capital stock, and for the mutualization of such corporation, as follows:

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

(b) Such plan shall have been submitted to the commissioner of commerce and shall have been approved as conforming to the requirements of this section and section 66A.43 and as not prejudicial to the policyholders of such company or to the insuring public.

(c) 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 that purpose. Stockholders may vote in person or by proxy filed with the company at least five days before the meeting at which it is to be used. Notice of such meeting shall be given by mailing such notice from the home office of such company at least 30 days prior to such meeting in a sealed envelope, postage prepaid, directed to each stockholder at the address shown on the stock records of the company.

(d) Such plan shall have been approved by a majority of the votes cast by policyholders (whether or not members) who vote at a meeting called for that purpose. Eligibility of policyholders, whether or not members of the company, and the number of votes to which each is entitled, shall be determined by the laws of Minnesota relating to the rights of members of domestic mutual insurance companies to vote at company meetings. Policyholders may vote in person or by proxy filed with the company at least five days before the meeting at which it is to be used. Notice of such meeting shall be given by mailing such notice from the home office of such company at least 30 days prior to such meeting in a sealed envelope, postage prepaid, directed to each policyholder at the address shown on the policy records of the company. Such meeting shall be conducted in such manner as may be provided for in such plan, with the approval of the commissioner. The commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said 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. Such inspectors, or any one thereof designated by the commissioner, shall certify to the commissioner and to such company the result of such 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 the commissioner's approval by the inspectors appointed, shall be paid by such company upon the certificate of the commissioner.

(e) Approval of the plan by stockholders and policyholders as above provided may be given at a joint meeting thereof.

(f) Such plan may specify the purchase price to be paid by such company for shares of its capital stock, and in such case the price so specified shall be adhered to. If such plan does not specify the price to be paid for such shares, such company shall first obtain the approval of the commissioner for every payment made for the acquisition of any shares of its capital stock.

(g) Such plan may authorize the board of directors of the company to provide for participation in the surplus of the company by holders of policies which do not by their terms provide for such participation or which provide for a limited participation only, and may include appropriate proceedings to confer upon policyholders the right to vote at meetings of the company. Policyholders upon whom the right to vote is so conferred shall have the same voting rights and shall be entitled to the same notice of annual meeting as members of domestic mutual insurance companies.

(h) Before approving any such plan or any such payment, the commissioner shall be satisfied, by making investigation or such evidence as the commissioner may require, that such company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such 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) and (2) as follows:

(1) Its entire liabilities, including the net value of its outstanding contracts computed as provided by law, and (2) the contingency reserve deemed by the commissioner necessary to protect its policyholders and the insuring public, in view of the past experience of such company, the character of its assets, its present management and its probable future earnings.

The commissioner's action in refusing to give any approval required by this section shall be subject to review by any court of competent jurisdiction.

Such plan may be amended by vote of stockholders representing a majority of the outstanding capital stock and by a majority of the votes cast by policyholders who vote at the meeting, but in such case the plan shall not become effective until approved, as amended, by vote of a majority of the directors of such company and by the commissioner.

History: *1967 c 395 art 2 s 37; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 2005 c 69 art 2 s 18; 2010 c 275 art 1 s 14*

66A.43 MAY ACQUIRE CAPITAL STOCK.

In pursuance of any plan such company shall have power, and shall be privileged, to acquire any shares of its capital stock by gift, bequest, or purchase. Until all of the shares of its outstanding capital stock are acquired, any shares so acquired shall be taken and held in trust for all the policyholders of such company, as hereinafter provided, and shall be assigned and transferred on the books of the company to three trustees, who shall be named in such plan and shall be approved by the commissioner. All shares held by such trustees shall be deemed admitted assets of such company at their par value. Such trustees, who may be directors of the company, shall vote all shares so acquired and held by them at all corporate meetings in accordance with the majority vote of policyholders voting on any question before the meeting. When all of the outstanding capital stock of any such corporation shall have been acquired, the entire capital stock of such corporation shall be retired and canceled and thereupon such corporation shall be and become a mutual life insurance company without capital stock. The plan of conversion formulated pursuant to section 66A.42 shall provide

for the method of filling vacancies among such trustees. Before undertaking any of the duties of appointment each trustee shall file with the company a verified acceptance of appointment and a declaration that the person will faithfully discharge the duties of trustee. All dividends and other sums received by such trustees on the shares of stock so acquired by them shall, after paying the necessary expenses of executing the trust, be immediately repaid to such company for the benefit of all who are or may become policyholders of such company and entitled to participate in the profits or savings thereof.

History: *1967 c 395 art 2 s 38; 1986 c 444; 2005 c 69 art 2 s 18*