

INSURANCE (40 PA.C.S.) - OMNIBUS AMENDMENTS

Act of May. 13, 2015, P.L. 3, No. 2

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HB 159

AN ACT

Amending Title 40 (Insurance) of the Pennsylvania Consolidated Statutes, providing for medical professional liability reciprocal exchange-to-stock conversion and for adoption of plan of conversion; imposing duties on Insurance Commissioner; providing for contents of plan of conversion, for optional provisions of plan of conversion, for alternative plan of conversion, for effective date of plan, for rights of subscribers whose policies are issued after adoption of plan and before effective date, for corporate existence, for conflict of interest, for failure to give notice, for limitation on actions, for reciprocal insurer insolvent or in hazardous financial condition, for rules and regulations, for laws applicable to stock company, for licensing of stock company and commencement of business as an insurance company, for amendment of policies and for prohibition on acquisitions of control.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 40 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 35

MEDICAL PROFESSIONAL LIABILITY

RECIPROCAL EXCHANGE-TO-STOCK CONVERSION

Sec.

3501. Definitions.

3502. Adoption of plan of conversion.

3503. Contents of plan of conversion.

3504. Optional provisions of plan of conversion.

3505. Alternative plan of conversion.

3506. Effective date of plan.

3507. Rights of subscribers whose policies are issued after adoption of plan and before effective date.

3508. Corporate existence.

3509. Conflict of interest.

3510. Failure to give notice.

3511. Limitation on actions.

3512. Reciprocal insurer insolvent or in hazardous financial condition.

3513. Rules and regulations.

3514. Laws applicable to stock company.

3515. Licensing of stock company and commencement of business as an insurance company.

3516. Amendment of policies.

3517. Prohibition on acquisition of control.

§ 3501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Attorney." The person that manages and acts as the attorney-in-fact for the reciprocal insurer.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Eligible subscriber." A subscriber of a reciprocal insurer whose policy is in force on at least one of the following dates:

(1) the date the reciprocal insurer or its attorney adopts a plan of conversion; or

(2) if a different date, on the record date for establishing subscribers eligible to vote on the plan of conversion.

"Participating policy." A policy that grants a holder the right to receive dividends if, as and when declared by the reciprocal insurer.

"Person." An individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a similar entity or a combination of the foregoing acting in concert.

"Plan of conversion" or "plan." A plan adopted under this chapter to convert the reciprocal insurer into a stock company by the subscribers' advisory committee or an equivalent governing body of the reciprocal insurer or, in the absence of a governing body, by the board of directors or governing body of the attorney for the reciprocal insurer.

"Policy." An insurance policy issued by the reciprocal insurer.

"Reciprocal insurer." A Pennsylvania-domiciled reciprocal and inter-insurance exchange, as established in Article X of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, that is authorized to write medical professional liability insurance and at least 50% of its direct written premium in the calendar year preceding adoption of the plan of conversion consisted of medical professional liability insurance.

"Stock company." An insurance company that:

(1) meets the requirements for admission to do business as a domestic Pennsylvania insurer;

(2) is formed at the direction of the reciprocal insurer or attorney; and

(3) shall be the successor of the reciprocal insurer by the merger of the reciprocal insurer with and into the stock company or by another means approved by the commissioner.

§ 3502. Adoption of plan of conversion.

(a) Plan of conversion.--The following shall apply:

(1) A plan of conversion may not become effective unless the reciprocal insurer seeking to convert to a stock company has adopted:

(i) by the affirmative vote of not less than two-thirds of the subscribers' advisory committee or an equivalent governing body of the reciprocal insurer; or

(ii) in the absence of a governing body, by the board of directors or governing body of the attorney for the reciprocal insurer,

a plan of conversion consistent with the requirements of sections 3503 (relating to contents of plan of conversion) and 3504 (relating to optional provisions of plan of conversion).

(2) Before approval of a plan by the commissioner, the reciprocal insurer may amend or withdraw the plan under paragraph (1) by the affirmative vote of not less than two-thirds of:

(i) its subscribers' advisory committee or an equivalent governing body of the reciprocal insurer; or
(ii) in the absence of a governing body, by the board of directors or governing body of the attorney for the reciprocal insurer.

(b) Eligible subscriber.--A person insured under a group policy that is otherwise an eligible subscriber also shall be an eligible subscriber. A person whose policy becomes effective after the adoption of the plan or the voting record date, if a later date, but before the plan's effective date is not an eligible subscriber but shall have the rights established under section 3507 (relating to rights of subscribers whose policies are issued after adoption of plan and before effective date).

(c) Documents.--The following shall apply:

(1) Before a reciprocal insurer's eligible subscribers may vote on approval of a plan, the reciprocal insurer or the attorney shall file the following documents with the commissioner within 90 days after adoption of the plan:

(i) the plan of conversion, including the independent evaluation of pro forma market value required under section 3503(d).

(ii) the form of notice required under subsection (g);

(iii) the form of proxy to be solicited from eligible subscribers under subsection (h);

(iv) the form of notice required under section 3508 (relating to corporate existence) to persons whose policies are issued after adoption of the plan but before its effective date;

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

(vi) the acquisition of control statement, as required under section 1402 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921; and

(vii) other information as the commissioner may request.

(2) Upon filing of the documents required under this subsection with the commissioner, the reciprocal insurer shall send to eligible subscribers a notice advising eligible subscribers of:

(i) the adoption and filing of the plan;

(ii) the ability of subscribers to provide the commissioner and the reciprocal insurer with comments on the plan within 30 days of the date of the notice; and

(iii) the procedure for making comments.

(d) Notice and approval of plan.--The commissioner shall immediately give written notice to the reciprocal insurer of a decision and, in the event of disapproval, a statement in detail of the reasons for the decision. The commissioner shall approve the plan if the commissioner finds the following:

(1) the plan complies with this chapter;

(2) the plan will not prejudice the interests of the subscribers; and

(3) the plan's method of allocating subscription rights is fair and equitable.

(e) Experts.--At the reciprocal insurer's expense, the commissioner may retain a qualified expert not otherwise a part of the commissioner's staff to assist in reviewing the plan and the independent evaluation of the pro forma market value required under section 3503(d).

(f) Hearing.--The commissioner may order a hearing on whether the terms of the plan comply with this chapter after giving written notice to the reciprocal insurer and other interested persons, all of whom have the right to appear at the hearing.

(g) Notice of subscribers' meeting.--The following shall apply:

(1) Eligible subscribers shall be sent notice of the subscribers' meeting to vote upon the plan. The notice must:

- (i) briefly but fairly describe the proposed conversion plan;
- (ii) inform the subscriber of the subscriber's right to vote upon the plan; and
- (iii) be sent to each subscriber's last known address, as shown on the reciprocal insurer's records, at least 30 days before the time fixed for the meeting.

(2) If the reciprocal insurer holds an annual meeting of subscribers and the meeting to vote upon the plan is held at the annual meeting, only a combined notice of meeting is required.

(h) Voting.--The plan shall be voted upon by eligible subscribers and shall be deemed approved upon receiving the affirmative vote of at least two-thirds of the votes cast by eligible subscribers. Unless the governing documents of the reciprocal insurer establish a different date, the record date for determining subscribers eligible to vote on the plan shall be the date of adoption of the plan or other date set forth in the plan that shall be no less than 30 nor more than 90 days before the date of the meeting. Eligible subscribers entitled to vote upon the proposed plan may vote in person or by proxy. Unless the governing documents of the reciprocal insurer provide otherwise, an eligible subscriber may cast one vote.

(i) Approval of plan.--A merger of the reciprocal insurer with and into the stock company must be approved at the meeting of the subscribers called for the purpose of approving the plan of conversion and shall require for approval or ratification the affirmative vote of at least two-thirds of the votes cast by eligible subscribers.

(j) Documents to be filed following approval.--Within 30 days after the eligible subscribers approved the plan, the stock company shall file the following documents with the commissioner:

- (1) the minutes of the meeting of the eligible subscribers at which the plan was approved;
- (2) the articles of incorporation and bylaws of the stock company; and
- (3) articles of merger for the merger of the reciprocal insurer with and into the stock company. The plan shall be consummated upon the filing of the articles of merger.

§ 3503. Contents of plan of conversion.

(a) Contents.--The following provisions shall be included in a plan of conversion:

- (1) The reasons for proposed conversion.
- (2) The effect of conversion on existing policies, including a provision that the policies in force on the effective date of conversion continue to remain in force under the terms of the policies, except that the following rights, to the extent they existed in the reciprocal insurer, shall be extinguished on the effective date of the conversion:

- (i) The voting rights of the subscribers provided under the policies.

(ii) The right to share in the surplus of the reciprocal insurer provided for under the policies.

(iii) The assessment provisions provided for under the policies.

(3) The grant of subscription rights to eligible subscribers, including all of the following:

(i) A provision that each eligible subscriber is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of the stock company and that, in the aggregate, the eligible subscribers may, prior to the right of any other party, purchase 100% of the capital stock of the stock company, exclusive of the shares of capital stock required to be sold or distributed to the holders of surplus notes or the shares of capital stock required to be sold or distributed to subscribers under the reciprocal insurer's constituent documents.

(ii) As an alternative to subscription rights in the stock company, the plan may provide that each eligible subscriber is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

(A) the attorney or a holding company that will act as the holding company for the stock company and, in either case, will hold the stock of the stock company; or

(B) an insurance company or other corporation that will purchase all the stock of or otherwise acquire the stock company.

(iii) A provision that the subscription rights shall be allocated in whole shares among the eligible subscribers using a fair and equitable formula. This formula may, but need not, take into account how the different classes of policies of the eligible subscribers contributed to the surplus of the reciprocal insurer or any other factors that may be fair or equitable.

(b) Oversubscription.--The plan shall provide a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by eligible subscribers exercising subscription rights received under subsection (a) (3).

(c) Shares not subscribed.--The plan shall provide that a share of capital stock not subscribed to by an eligible subscriber exercising subscription rights received under subsection (a) (3) shall be sold in a public offering through an underwriter or in another transaction approved by the commissioner. If the number of shares of capital stock not subscribed by eligible subscribers is so small in number or other factors exist that do not warrant the time or expense of a public offering, the plan of conversion may provide for sale of the unsubscribed shares through a private placement or other alternative method approved by the commissioner that is fair and equitable to eligible subscribers.

(d) Market value of capital stock.--The following shall apply:

(1) The plan shall set the price of the capital stock equal to the estimated pro forma market value of the stock company as successor to the reciprocal insurer based upon an independent evaluation by a qualified expert.

(2) The pro forma market value may be the value that is estimated to be necessary to attract full subscription for the shares, as indicated by the independent evaluation and may be stated as a range of pro forma market value.

(3) If the attorney is a party to the conversion either as the entity that grants subscription rights to subscribers or the attorney is simultaneously acquired by the stock company in connection with the conversion, the incremental value of the attorney shall be included in the estimate of pro forma market value of the stock company as successor to the reciprocal insurer.

(4) The qualified expert shall consider the effect on the pro forma market value of a right of subscribers to a return of capital contained in the subscriber agreement or other operative document of the reciprocal insurer.

(e) Purchase price of capital stock and minimum subscription amount.--The plan shall set the purchase price per share of capital stock equal to a reasonable amount. The minimum subscription amount required of an eligible subscriber, however, cannot exceed \$500, but the plan may provide that the minimum number of shares a person may purchase under the plan is 25 shares.

(f) Limitation on amount of capital stock purchase.--The plan shall provide that a person or group of persons acting in concert may not acquire, in the public offering or under the exercise of subscription rights, more than 5% of the capital stock of the stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (a) (3) (i), except with the approval of the commissioner. The limitation does not apply to an entity that is to purchase 100% of the capital stock of the converted company as part of the plan of conversion approved by the commissioner.

(g) Limitation on directors and officers.--The plan shall provide that a director or officer or person acting in concert with a director or officer of the reciprocal insurer or the attorney may not acquire capital stock of the stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (a) (3) (i), for three years after the effective date of the plan, except through a broker-dealer, without the permission of the commissioner. This subsection does not prohibit the directors and officers from making a block purchase of 1% or more of the outstanding common stock:

(1) other than through a broker-dealer if approved in writing by the department;

(2) through the exercise of subscription rights received under the plan; or

(3) from participation in a stock benefit plan approved by shareholders under section 3509(b) (relating to conflict of interest).

(h) Sale of stock by directors and officers.--The plan shall provide that a director or officer may not sell stock purchased under this section or section 3504(a) (relating to optional provisions of plan of conversion) within one year after the effective date of the conversion.

(i) Holders of surplus notes.--The plan shall provide that the rights of a holder of a surplus note to participate in the conversion shall be governed by the terms of the surplus note and the rights of subscribers to a return of capital shall be governed by the subscriber agreement or other operative document of the reciprocal insurer.

(j) Repurchase of capital stock.--The plan shall provide that, without the prior approval of the commissioner, a stock company, or a corporation participating in the conversion plan under subsection (a) (3) (i), may not for a period of three years

from the date of the completion of the conversion repurchase any of its capital stock from a person. The restriction under this subsection shall not apply to either:

(1) a repurchase on a pro rata basis under an offer made to the shareholders of the stock company or a corporation participating in the conversion plan under subsection (a)(3)(i); or

(2) a purchase in the open market by a tax-qualified or nontax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

§ 3504. Optional provisions of plan of conversion.

(a) Subscription rights.--The plan may provide that the directors and officers of the attorney and the reciprocal insurer shall receive, without payment, nontransferable subscription rights to purchase capital stock of the stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 3503(a)(3)(ii) (relating to contents of plan of conversion). The subscription rights shall be allocated among the directors and officers by a fair and equitable formula and shall be subordinate to the subscription rights of eligible subscribers. This chapter may not require the subordination of subscription rights received by directors and officers in their capacity as eligible subscribers.

(b) Maximum share purchase by directors and officers.--The aggregate total number of shares that may be purchased by directors and officers of the attorney and the reciprocal insurer in their capacity under subsection (a) and in their capacity as eligible subscribers under section 3503(a)(3) may not exceed 35% of the total number of shares to be issued if total assets of the reciprocal insurer are less than \$50,000,000 or 25% of the total number of shares to be issued if total assets of the reciprocal insurer are more than \$500,000,000. For reciprocal companies with total assets of or between \$50,000,000 and \$500,000,000, the percentage of the total number of shares that may be purchased shall be interpolated.

(c) Liquidation account.--The plan may provide for the creation of a liquidation account for the benefit of subscribers in the event of voluntary liquidation subsequent to conversion in an amount equal to the surplus of the reciprocal insurer, exclusive of the principal amount of a surplus note, on the last day of the quarter immediately preceding the date of adoption of the plan.

§ 3505. Alternative plan of conversion.

A plan of conversion may be adopted that does not rely in whole or in part upon issuing nontransferable subscription rights to subscribers to purchase stock of the stock company if the commissioner finds that the plan does not prejudice the interests of the subscribers, is fair and equitable and is not inconsistent with the purpose and intent of this chapter. An alternative plan may:

(1) Include the acquisition or merger of the stock company or a corporation participating in the conversion plan under section 3503(a)(3)(ii) (relating to contents of plan of conversion) by or into a domestic or foreign stock company.

(2) Provide for issuing stock, cash or other consideration to subscribers instead of subscription rights.

(3) Set forth another plan containing any other provisions approved by the commissioner.

§ 3506. Effective date of plan.

A plan is effective when the following have been completed:

- (1) The commissioner has approved the plan.
- (2) The eligible subscribers have approved the plan.
- (3) If the stock company becomes successor to the reciprocal insurer by merger, the eligible subscribers have approved the merger of the reciprocal insurer with and into the stock company and the articles of merger have been filed with the Secretary of the Commonwealth.

§ 3507. Rights of subscribers whose policies are issued after adoption of plan and before effective date.

(a) Notice.--A subscriber shall be sent a written notice regarding the plan upon issuance of a policy if the subscriber's policy is issued after the later of:

- (1) the date the proposed plan has been adopted; or
- (2) if different, the record date for establishing subscribers eligible to vote on the plan.

The notice shall be sent before the effective date of the plan.

(b) Cancellation and refund.--A subscriber entitled to receive the notice provided for in subsection (a) shall be advised of the subscriber's right of cancellation and to a pro rata refund of unearned premiums.

(c) Limitation on subscribers.--A subscriber who has made or filed a claim under the subscriber's insurance policy may not receive a refund under subsection (b). A person who has exercised the rights provided under subsection (b) may not make or file a claim under the subscriber's insurance policy.

§ 3508. Corporate existence.

On the effective date of the conversion, the corporate existence of the reciprocal insurer continues in the stock company. On the effective date of the conversion, the assets, rights, franchises and interests of the reciprocal insurer in and to every species of real, personal and mixed property and the accompanying things in action are vested in the stock company without a deed or other instrument of transfer and the stock company assumes the obligations and liabilities of the reciprocal insurer.

§ 3509. Conflict of interest.

(a) Compensation.--A director, officer, agent or employee of the attorney or reciprocal insurer may not receive a fee, commission or other valuable consideration, other than his usual regular salary or compensation, for aiding, promoting or assisting in a conversion under this chapter except as provided for in the plan approved by the commissioner. This subsection does not prohibit the payment of reasonable fees and compensation to counsel, accountants and actuaries for services performed in the independent practice of their professions, even if the counsel, accountant or actuary is also a director or officer of the attorney or the reciprocal insurer.

(b) Stock benefit plan.--For a period of two years after the effective date of the conversion, a stock company may not implement a non-tax-qualified stock benefit plan unless the plan is approved by a majority of votes eligible to be cast at a meeting of shareholders held not less than six months after the effective date of the conversion.

(c) Costs and expenses.--The costs and expenses connected with a plan of conversion shall be paid for or reimbursed by the reciprocal insurer or the stock company. If the plan provides for participation by another corporation or stock company in the plan under section 3503(a)(3)(ii) (relating to contents of plan of conversion), the corporation or stock company may pay for or reimburse all or a portion of the costs and expenses connected with the plan.

§ 3510. Failure to give notice.

If the reciprocal insurer complies substantially and in good faith with the notice requirements of this chapter, the reciprocal insurer's failure to send a subscriber the required notice does not impair the validity of an action taken under this chapter.

§ 3511. Limitation on actions.

An action challenging the validity of or arising out of acts taken or proposed to be taken under this chapter shall be commenced no later than 30 days after the later of the approval of the plan by the commissioner or the deemed approval of the plan by a vote of the eligible subscribers.

§ 3512. Reciprocal insurer insolvent or in hazardous financial condition.

(a) Waiver of requirements.--If a reciprocal insurer seeking to convert is insolvent or is in hazardous financial condition according to information supplied in its most recent annual or quarterly statement filed with the department or as determined by a financial examination performed by the department under Article IX of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, the requirements of this chapter, including notice to and policyholder approval of the plan of conversion, may be waived at the discretion of the commissioner if requested by the attorney or the reciprocal insurer. If a waiver under this section is ordered by the commissioner, the reciprocal insurer shall specify the following in its plan of conversion:

(1) The method and basis for the issuance of the stock company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the stock company, as successor to the reciprocal insurer, to a sound financial condition.

(2) That the conversion shall be accomplished without granting subscription rights or other consideration to the past, present or future subscribers.

(b) Authority of commissioner.--This section shall not alter or limit the authority of the commissioner under the provisions of law, including, but not limited to, Article V of The Insurance Department Act of 1921.

§ 3513. Rules and regulations.

The commissioner may promulgate rules and regulations to administer and enforce this chapter.

§ 3514. Laws applicable to stock company.

(a) Control of stock company.--A reciprocal insurer may not convert under this chapter if, as a direct result of the conversion, a person or the person's affiliates acquire control of the stock company, unless that person and the person's affiliates comply with the provisions of section 1402 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921. For purposes of this subsection, the term "control" shall have the meaning provided in section 1401 of The Insurance Company Law of 1921.

(b) Stock insurance company rules.--Except as otherwise specified in this chapter, a stock company resulting from the conversion of a reciprocal insurer under this chapter shall have and may exercise the rights and privileges and shall be subject to the requirements and regulations imposed upon stock insurance companies formed under this act and other laws of this Commonwealth relating to the regulation and supervision of insurance companies, but it may not exercise rights or privileges that other stock insurance companies may not exercise.

§ 3515. Licensing of stock company and commencement of business as an insurance company.

The commissioner may waive the minimum surplus requirement of a stock company in connection with the initial licensing of a stock company that will be the successor to a reciprocal insurer. The stock company may not engage in the business of insurance as a stock company until the completion of the merger with the reciprocal insurer and compliance with the provisions of this chapter.

§ 3516. Amendment of policies.

By endorsement or rider approved by the commissioner and sent to the policyholder, a reciprocal insurer may simultaneously with or after the adoption of a plan of conversion amend an outstanding insurance policy for the purpose of extinguishing a right of the holder of the policy to share in the surplus of the reciprocal insurer. This amendment shall be void if the plan of conversion is not submitted to the commissioner or, if submitted, is disapproved by the commissioner or, if approved by the commissioner, is not approved by the eligible subscribers on or before the first anniversary of its approval by the commissioner.

§ 3517. Prohibition on acquisitions of control.

Except as otherwise specifically provided in section 3503 (relating to contents of plan of conversion), from the date a plan of conversion is adopted until the effective date of the plan of conversion, a person may not directly or indirectly offer to acquire, make an announcement to acquire or acquire in any manner, including making a filing with the department for acquisition under a statute or regulation of this Commonwealth, the beneficial ownership of 10% or more of a class of a voting security of the attorney or the stock company that will be the successor of the reciprocal insurer or of a person that controls the voting securities of the attorney or the stock company that will be the successor of the reciprocal insurer.

Section 2. This act shall take effect in 60 days.

APPROVED--The 13th day of May, A.D. 2015.

TOM WOLF