

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/15/01

A Bill

Act 1726 of 2001
HOUSE BILL 2439

5 By: Representative Glover
6
7

For An Act To Be Entitled

9 AN ACT TO ADOPT A MUTUAL HOLDING COMPANY ACT; AND
10 FOR OTHER PURPOSES.

Subtitle

11
12 AN ACT TO ADOPT A MUTUAL HOLDING
13 COMPANY ACT.
14
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 23, Chapter 69 is amended to add an
20 additional subchapter to read as follows:
21

22 23-69-301. Act Title.

23 This act shall be known and may be cited as the Mutual Insurance
24 Holding Company Act.
25

26 23-69-302. Purpose.

27 The General Assembly finds and declares that it is in the public
28 interest that a domestic mutual insurer be permitted to reorganize in a
29 manner that preserves attributes of its mutuality while facilitating capital
30 raising abilities and corporate affiliations on terms and conditions that are
31 fair and equitable to the mutual insurer's policyholders. The General
32 Assembly further finds that because policyholders of a mutual insurer have
33 membership interests in the mutual insurer, the commissioner should have
34 broad authority in reviewing a reorganization and the procedures and criteria
35 to be applied by the commissioner should be flexible within the parameters of
36 the Mutual Insurance Holding Company Act. The act shall be liberally

1 construed to effect the legislative intent set forth in this section and
2 shall not be interpreted to limit the powers granted to the commissioner by
3 other laws.

4
5 23-69-303. Definitions.

6 For purposes of the Mutual Insurance Holding Company Act:

7 (a) "Commissioner" means the Commissioner of Insurance;

8 (b) "Intermediate stock holding company" means a holding company of
9 which at least a majority of the voting securities are owned by a mutual
10 insurance holding company and which directly owns all the voting securities
11 of a reorganized stock insurer;

12 (c) "Mutual insurance holding company" means a holding company based
13 on a mutual plan which at all times owns a majority of the voting securities
14 of a single intermediate stock holding company or, if no such intermediate
15 stock holding company exists, which owns a majority of the voting securities
16 of a reorganized stock insurer;

17 (d) "Reorganized stock insurer" means a stock insurer subsidiary which
18 results from a reorganization of a domestic mutual insurer under subsection
19 (1) or (2) of § 23-69-304 and in compliance with the act; and

20 (e) "Voting securities" means securities of any class or any ownership
21 interest having voting power for the election of directors, trustees, or
22 management, other than securities having voting power only because of the
23 occurrence of a contingency.

24
25 23-69-304. Formation of mutual insurance holding company.

26 (a) A domestic mutual insurer, upon approval of the commissioner, may
27 reorganize:

28 (1) by forming a mutual insurance holding company;

29 (2) by merging its policyholders' membership interests into the
30 mutual insurance holding company; and

31 (3) by continuing the mutual insurer's corporate existence as a
32 stock insurer subsidiary of the mutual insurance holding company.

33 (b) A domestic mutual insurer, upon the approval of the commissioner,
34 may reorganize by merging its policyholders' membership interests into an
35 existing mutual insurance holding company formed under subsection (1) of this
36 section and by continuing the mutual insurer's corporate existence as a stock

1 insurer subsidiary of the mutual insurance holding company.

2 (c) All of the initial shares of the capital stock of a reorganized
3 stock insurer which has reorganized as described in subsection (1) or (2) of
4 this section shall be issued to the mutual insurance holding company or to a
5 single intermediate stock holding company.

6 (d) Policyholders of a domestic mutual insurer which has reorganized
7 as described in subsection (1) or (2) of this section shall be members of the
8 mutual insurance holding company and their voting rights shall be determined
9 in accordance with the articles of incorporation and bylaws of the mutual
10 insurance holding company. The mutual insurance holding company shall
11 provide its members with the same membership rights as were provided to
12 policyholders of the mutual insurer immediately prior to reorganization. The
13 reorganization shall not reduce, limit, or affect the number or identity of
14 the policyholders who may become members of the mutual insurance holding
15 company or secure for individuals comprising management any unfair advantage
16 through or connected with the reorganization.

17 (e)(1) A mutual insurance holding company or an intermediate stock
18 holding company formed under the Mutual Insurance Holding Company Act shall
19 not be authorized to transact the business of insurance.

20 (2) A mutual insurance holding company formed under the act
21 shall not issue stock.

22 (3) The commissioner shall have jurisdiction over a mutual
23 insurance holding company and an intermediate stock holding company to ensure
24 that policyholder's interests are protected.

25 (4) A mutual insurance holding company and an intermediate stock
26 holding company shall be treated as domestic insurers subject to the
27 conversion provisions of § 23-69-141 and Chapter 68, Title 23 of the Arkansas
28 Code regarding the rehabilitation and liquidation of insurance companies.

29 (5) The aggregate pledges and encumbrances of a mutual insurance
30 holding company's assets shall not affect more than forty-nine percent (49%)
31 of the mutual insurance holding company's stock in an intermediate stock
32 holding company or a reorganized stock insurer.

33 (6) At least fifty percent (50%) of the net worth of a mutual
34 insurance holding company, as determined by generally accepted accounting
35 practices, shall be invested in insurers.

36 (7) If any proceeding under Chapter 68, Title 23 of the Arkansas

1 Code regarding the rehabilitation and liquidation of insurance companies is
2 brought against a reorganized stock insurer, the mutual insurance holding
3 company and intermediate stock holding company shall become parties to the
4 proceedings. All of the assets of the mutual insurance holding company and
5 intermediate stock holding company are deemed assets of the estate of the
6 reorganized stock insurer to the extent necessary to satisfy claims against
7 the reorganized stock insurer.

8 (8) No distribution to members of a mutual insurance holding
9 company may occur without prior written approval of the commissioner and only
10 upon the commissioner's satisfaction that such distribution is fair and
11 equitable to policyholders as members of the mutual insurance holding
12 company.

13 (9) No solicitation for the sale of the stock of an intermediate
14 stock holding company or a reorganized stock insurer may be made without the
15 commissioner's prior written approval.

16 (10) A mutual insurance holding company or an intermediate stock
17 holding company shall not voluntarily dissolve without the approval of the
18 commissioner.

19
20 23-69-305. Filing of proposed reorganization plan.

21 A domestic mutual insurer shall file a proposed plan of reorganization
22 approved by a vote of not less than two-thirds (2/3) of the members of its
23 board of directors for review and approval with the commissioner. The
24 proposed plan of reorganization shall be accompanied by a nonrefundable fee
25 of one thousand dollars (\$1,000). A plan of reorganization shall include the
26 following at a minimum:

27 (a) An analysis of the benefits and risks attendant to the proposed
28 reorganization, including the rationale and comparative benefits and risks of
29 a demutualization;

30 (b) A statement of how the plan is fair and equitable to the
31 policyholders;

32 (c) Information sufficient to demonstrate that the financial condition
33 of the mutual insurer will not be diminished upon reorganization;

34 (d) Provisions to ensure immediate membership in the mutual insurance
35 holding company for all existing policyholders of the mutual insurer;

36 (e) Provisions for membership interests for future policyholders of

1 the reorganized stock insurer;

2 (f) Provisions to ensure that, in the event of proceedings for
3 rehabilitation or liquidation involving a stock insurer subsidiary of the
4 mutual insurance holding company, the assets of the mutual insurance holding
5 company will be available to satisfy the policyholder obligations of the
6 stock insurer subsidiary;

7 (g) Provisions for periodic distribution of accumulated mutual
8 insurance holding company earnings;

9 (h) Certified copies of the proposed articles of incorporation and
10 bylaws of the mutual insurance holding company, intermediate stock holding
11 company, and reorganized stock insurer or proposed amendments thereto as
12 necessary to effectuate reorganization;

13 (i) A certification that the plan of reorganization has been duly
14 adopted by a vote of not less than two-thirds (2/3) of the members of the
15 board of directors of the mutual insurer;

16 (j) A certification adopted by not less than two-thirds (2/3) of the
17 members of the board of directors of the mutual insurer that the plan of
18 reorganization is fair and equitable to the policyholders;

19 (k) The names, addresses, and occupational information of all
20 corporate officers and all members of the board of directors of the proposed
21 mutual insurance holding company in the case of a reorganization described in
22 subsection (1) of § 23-69-304;

23 (l) A description of the nature and content of the annual report and
24 financial statement to be sent by the mutual insurance holding company to
25 each member;

26 (m) A description of the number of members of the board of directors
27 of the mutual insurance holding company required to be policyholders;

28 (n) A description of any plans for the initial sale of stock of the
29 intermediate stock holding company or reorganized stock insurer;

30 (o) A form of the proposed notice to be mailed by the mutual insurer
31 to its policyholders as required in § 23-69-308;

32 (p) Any other information requested by the commissioner.

33
34 23-69-306. Hearings on proposed reorganization plan.

35 The commissioner shall conduct a public hearing regarding a proposed
36 plan of reorganization within one hundred twenty (120) days after the date

1 the completed proposed plan of reorganization is filed under § 23-69-305
2 unless extended by the commissioner for good cause. Any interested person
3 may appear or otherwise be heard at the public hearing. The commissioner may
4 in his or her discretion continue the public hearing for a reasonable period
5 of time not to exceed sixty (60) days. The mutual insurer shall give such
6 reasonable notice of the public hearing as the commissioner in his or her
7 discretion may require.

8
9 23-69-307. Approval of proposed reorganization plan.

10 (a) The commissioner shall issue an order approving or disapproving a
11 proposed plan of reorganization within thirty (30) days after the close of
12 the public hearing as required by § 23-69-306.

13 (b) The commissioner shall not approve a proposed plan of
14 reorganization unless he or she finds that:

15 (1) The plan of reorganization is fair and equitable to the
16 policyholders;

17 (2) The plan of reorganization does not deprive the
18 policyholders of their property rights or due process of law; and

19 (3) The reorganized stock insurer would meet the minimum
20 requirements to be issued a certificate of authority by the commissioner to
21 transact the business of insurance in this state, and the continued
22 operations of the reorganized stock insurer would not be hazardous to future
23 policyholders and the public.

24 (c) If the commissioner approves a plan of reorganization, the
25 commissioner shall also publish notification of the issuance of the order in
26 a legal newspaper in Pulaski County, Arkansas, and in the county of domicile
27 of the mutual insurer if different than Pulaski County.

28 (d) If the commissioner approves a plan of reorganization, the
29 approval shall expire if the reorganization is not completed within one
30 hundred eighty (180) days after the date of approval unless extended by the
31 commissioner for good cause, or within sixty (60) days if required by the
32 Gramm-Leach-Bliley Act for depository corporation transactions.

33 (e) If the commissioner disapproves a plan of reorganization, the
34 commissioner shall issue an order setting forth specific findings for the
35 disapproval.

36

1 23-69-308. Approval of reorganization plan by policyholders.

2 (a) Within forty-five (45) days after the date of the commissioner's
3 approval of a plan of reorganization under section (7) of this act, unless
4 extended by the commissioner for good cause, the mutual insurer shall hold a
5 meeting of its policyholders at a reasonable time and place to vote upon the
6 plan of reorganization. The mutual insurer shall give notice at least thirty
7 (30) days before the time fixed for the meeting, by first-class mail to the
8 last-known address of each policyholder, that the plan of reorganization will
9 be voted upon at a regular or special meeting of the policyholders. The
10 notice shall include a brief description of the plan of reorganization and a
11 statement that the commissioner has approved the plan of reorganization. The
12 notice to each policyholder shall also include a written proxy permitting the
13 policyholder to vote for or against the plan of reorganization. The entity
14 to which any group insurance policy is issued, and not any person covered
15 under the group insurance policy, shall be considered the policyholder for
16 purposes of voting. A plan of reorganization shall be approved only if not
17 less than two-thirds (2/3) of the policyholders voting in person or by proxy
18 at the meeting vote in favor of such plan of reorganization. Each
19 policyholder shall be entitled to only one (1) vote regardless of the number
20 of policies owned by the policyholder. The commissioner shall supervise and
21 direct the conduct of the vote on the plan of reorganization as necessary to
22 ensure that the vote is fair and consistent with the requirements of this
23 section.

24 (b) If a mutual insurer complies substantially and in good faith with
25 the notice requirements of this section, the mutual insurer's failure to give
26 any policyholder any required notice does not impair the validity of any
27 action taken under this section.

28 (c) If the meeting of policyholders to vote upon the plan of
29 reorganization is held coincident with the mutual insurer's annual meeting of
30 the policyholders, only one (1) combined notice of meeting is required.

31 (d) The form of any proxy shall be filed with and approved by the
32 commissioner.

33 (e) For purposes of voting, "policyholders" means the policyholders of
34 the mutual insurer on the day the plan of reorganization is initially
35 approved by the board of directors of the mutual insurer.

36

1 23-69-309. Issuance of certificate.

2 The commissioner shall issue a certificate of authority to a
3 reorganized stock insurer when the mutual insurer files with the
4 commissioner:

5 (1) a certificate stating that all of the conditions set forth in the
6 plan of reorganization have been satisfied, so long as the board of directors
7 of the mutual insurer has not abandoned the plan of reorganization under
8 section (12) of this act; and

9 (2) a certificate from the mutual insurer setting forth the vote and
10 certifying that the plan of reorganization was approved by not less than two-
11 thirds (2/3) of the policyholders voting in person or by proxy on the plan of
12 reorganization. The reorganization shall be effective upon the issuance of a
13 certificate of authority by the commissioner. Upon issuance of the
14 certificate of authority, the insurer's articles of incorporation shall be
15 treated as amended in compliance with § 23-69-107.

16
17 23-69-310. Appeal of final order.

18 Any person affected by a final order issued under the Mutual Insurance
19 Holding Company Act shall have the right to appeal such order to the circuit
20 court of Pulaski County, Arkansas. The appeal shall be in accordance with
21 the Administrative Procedure Act, §§ 25-15-201 - 25-15-214.

22
23 23-69-311. Continuation of corporate existence.

24 Corporate existence of a mutual insurer reorganizing under the Mutual
25 Insurance Holding Company Act shall not terminate, but the reorganized stock
26 insurer shall be deemed to be a continuation of the mutual insurer and to
27 have been organized on the date the mutual insurer was originally organized.

28
29 23-69-312. Abandonment of reorganization plan.

30 A mutual insurer may, by not less than a two-thirds (2/3) vote of the
31 members of its board of directors and with the approval of the commissioner,
32 abandon a plan of reorganization at any time before the issuance of the
33 certificate of authority by the commissioner. Upon such abandonment, all
34 rights and obligations arising out of the plan of reorganization shall
35 terminate and the mutual insurer shall continue to conduct its business as a
36 domestic mutual insurer as though no plan of reorganization had ever been

1 adopted.

2

3 23-69-313. Mergers and Acquisitions.

4 (a) Subject to applicable requirements of this act and the Insurance
5 Holding Company Regulatory Act codified under Title 23, Chapter 63,
6 Subchapter 5, of the Arkansas Code, a mutual insurance holding company may:

7 (1) Merge or consolidate with, or acquire the assets of, a
8 mutual insurance holding company licensed under this act or any similar
9 entity organized under laws of any other state;

10 (2) Either alone or together with one (1) or more intermediate
11 stock holding companies, or other subsidiaries, directly or indirectly
12 acquire the stock of a stock insurance company or a mutual insurance company
13 that reorganizes under this act or the law of its state of organization;

14 (3) Together with one or more of its stock insurance company
15 subsidiaries, acquire the assets of a stock insurance company or a mutual
16 insurance company; or

17 (4) Acquire a stock insurance company through the merger of such
18 stock insurance company with a stock insurance company subsidiary of the
19 mutual insurance holding company.

20 (b) A merger or acquisition under this section is subject to the
21 applicable procedures prescribed by the laws applying to domestic insurance
22 companies, except as otherwise provided in this subsection. The commissioner
23 may retain, at the expense of the mutual insurance company, any attorneys,
24 actuaries, accountants, economists, and other experts not otherwise a part of
25 the commissioner's staff as may be reasonably necessary to assist the
26 commissioner in reviewing the proposed merger or acquisition.

27 (1) The plan and agreement for merger shall be submitted to and
28 approved by vote of two-thirds (2/3) of those members of any domestic mutual
29 insurance holding company involved in the merger who vote either in person or
30 by proxy thereon at a lawful meeting called for that purpose after reasonable
31 notice and in accordance with procedure approved by the commissioner.

32 (2) No such merger shall be effectuated unless in advance, the
33 plan and agreement have been filed with the commissioner and approved by him.
34 The commissioner shall give such approval unless he finds such plan or
35 agreement:

36 (A) Is inequitable to the policyholders of any domestic

1 insurer involved in the merger or the members of any domestic mutual
2 insurance holding company involved in the merger; or
3 (B) Would substantially reduce the security of and service
4 to be rendered to policyholders of a domestic insurer in this state.

5
6 23-69-314. Membership in a mutual insurance holding company.

7 A membership interest in a mutual insurance holding company does not
8 constitute a security under the laws of this state.

9
10 23-69-315. Annual statements.

11 A mutual insurance holding company shall file with the commissioner, by
12 March 1st of each year, an annual statement consisting of an income
13 statement, balance sheet, and cash flows prepared in accordance with
14 generally accepted accounting practices and a confidential statement
15 disclosing any intention to pledge, borrow against, alienate, hypothecate, or
16 in any way encumber the assets of the mutual insurance holding company. A
17 mutual insurance holding company shall also have an annual audit by an
18 independent certified public accountant in a form approved by the
19 commissioner and shall file such audit on or before June 1st of each year for
20 the year ending December 31st immediately preceding.

21
22 23-69-316. Power of commissioner to order production of documents.

23 The commissioner shall have the power to order production of any
24 records, books, or other information and papers in the possession of a mutual
25 insurance holding company or its affiliates as are reasonably necessary to
26 ascertain the financial condition of the reorganized stock insurer or to
27 determine compliance with this act.

28
29 23-69-317. Applicability of provisions.

30 Nothing contained in the Mutual Insurance Holding Company Act shall be
31 construed to prohibit demutualization of a mutual insurance holding company
32 under § 23-69-141.

33
34 23-69-318. Payment of compensation.

35 (a)(1) No director, officer, employee, or agent of the mutual insurer
36 and no other person shall receive any fee, commission, or other valuable

1 consideration whatsoever, other than his or her usual regular salary and
2 compensation, for in any manner aiding, promoting, or assisting in a plan of
3 reorganization except as set forth in the plan of reorganization approved by
4 the commissioner.

5 (2) Subdivision (1)(a) of this section shall not prohibit a
6 management-incentive compensation program which is contained in the plan of
7 reorganization and approved by the commissioner to be adopted upon
8 reorganization to the reorganized stock insurer or prohibit such a program to
9 be later adopted by the reorganized stock insurer.

10 (b) Subdivision (1)(a) of this section shall not be deemed to prohibit
11 the payment of reasonable fees and compensation to attorneys, accountants,
12 actuaries, and investment bankers for services performed in the independent
13 practice of their professions, even though any such person is also a member
14 of the board of directors of the mutual insurer.

15
16 23-69-319. Hiring of experts.

17 For purposes of determining whether a plan of reorganization meets the
18 requirements of the Mutual Insurance Holding Company Act or in connection
19 with any other matters relating to development of a plan of reorganization,
20 the commissioner may engage the services of experts. All reasonable costs
21 related to the review of a plan of reorganization or such other matters,
22 including those costs attributable to the use of experts, shall be paid by
23 the mutual insurer making the filing or initiating discussions with the
24 commissioner about such matters.

25
26 23-69-320. Disclosure of confidential information.

27 All information, documents, and copies obtained by or disclosed to the
28 commissioner or any other person in the course of preparing, filing, and
29 processing an application to reorganize under section (5) of this act, other
30 than information or documents distributed to policyholders in connection with
31 the meeting of policyholders under section (8) of this act, or filed or
32 submitted as evidence in connection with the public hearing under section (6)
33 of this act, shall be given confidential treatment, shall not be subject to
34 subpoena, and shall not be made public by the commissioner, the National
35 Association of Insurance Commissioners, or any other person, except to
36 insurance departments of other states, without the prior written consent of

1 the insurer to which it pertains unless the commissioner, after giving the
2 insurer and its affiliates who would be affected thereby notice and
3 opportunity to be heard, determines that the interests of policyholders,
4 shareholders, or the public will be served by the publication, in which event
5 he or she may publish all or any part in such manner as he or she may deem
6 appropriate.

7
8 23-69-321. Injunctive orders.

9 Whenever it appears to the commissioner that any person or any
10 director, officer, employee, or agent of the person has committed or is about
11 to commit a violation of the Mutual Insurance Holding Company Act or of any
12 rule, regulation, or order of the commissioner, the commissioner may apply to
13 the circuit court of Pulaski County, Arkansas for an order enjoining such
14 person, director, officer, employee, or agent from violating or continuing to
15 violate the act or any such rule, regulation, or order and for such other
16 equitable relief as the nature of the case and the interest of the insurer's
17 policyholders, creditors, and shareholders or the public may require.

18
19 23-69-322. Promulgation of rules and regulations.

20 The commissioner may adopt and promulgate rules and regulations and
21 issue orders to carry out the Mutual Insurance Holding Company Act.

22
23 23-69-323. This subchapter is intended to supplement the Arkansas
24 Insurance Code; further, this subchapter is not intended to and shall not be
25 construed to conflict with existing sections of the Insurance Code, including
26 but not limited to §§ 23-69-141, 23-70-123, 23-72-119, 23-73-117, 23-75-122,
27 or other applicable sections of the Insurance Code.

28 */s/ Glover*

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31 **APPROVED: 4/17/2001**