

AN ACT

To amend section 3901.043; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3913.31 (3913.40); and to enact new section 3913.31 and sections 3913.25, 3913.26, 3913.27, 3913.28, 3913.29, 3913.30, 3913.32, 3913.33, 3913.34, 3913.35, 3913.36, 3913.37, and 3913.38 of the Revised Code to permit a mutual insurance company to raise capital by reorganizing as a stock insurance company that is a majority-owned subsidiary of a mutual insurance holding company.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 3901.043 be amended, section 3913.31 (3913.40) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 3913.31 and sections 3913.25, 3913.26, 3913.27, 3913.28, 3913.29, 3913.30, 3913.32, 3913.33, 3913.34, 3913.35, 3913.36, 3913.37, and 3913.38 of the Revised Code be enacted to read as follows:

Sec. 3901.043. The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code to establish reasonable fees for any service or transaction performed by the department of insurance pursuant to section 1738.04, 1742.03, 3901.321, 3901.341, 3907.09, 3907.10, 3907.11, 3907.12, 3911.011, ~~3913.34~~ 3913.40, 3915.14, 3917.06, 3918.07, 3923.02, 3935.04, 3937.03, 3953.28, 3957.12, or 3957.13 of the Revised Code or any provision in sections 3913.01 to 3913.23 or in Chapter 3905. of the Revised Code, if no fee is otherwise provided under Title XVII or XXXIX of the Revised Code for such service or transaction. Any fee collected pursuant to those rules shall be paid into the state treasury to the credit of the department of insurance operating fund.

Sec. 3913.25. As used in sections 3913.25 to 3913.38 of the Revised Code:

(A) "Intermediate holding company" means a stock corporation that owns all of the shares of voting stock of one or more reorganized stock companies after a reorganization under sections 3913.25 to 3913.38 of the Revised Code. "Intermediate holding company" also means a stock corporation that is the parent or subsidiary of another intermediate holding company.

(B) "Mutual insurance company" means a domestic or foreign mutual life insurance company or a domestic or foreign mutual insurance company other than a mutual life insurance company.

(C) "Mutual insurance holding company" means a domestic mutual insurance holding company incorporated pursuant to a reorganization plan adopted under sections 3913.26 to 3913.28 of the Revised Code, which company is the parent company of a reorganized stock company or of an intermediate holding company.

(D) "Policyholder" has the same meaning as in section 3913.10 of the Revised Code when used with respect to a life insurance company, and has the same meaning as in section 3913.20 of the Revised Code when used with respect to an insurance company other than a life insurance company.

(E) "Reorganization plan" means a reorganization plan adopted by a mutual insurance company's board of directors in accordance with section 3913.26 of the Revised Code.

(F) "Reorganized stock company" means the domestic or foreign stock insurance company resulting from a domestic or foreign mutual insurance company's reorganization under sections 3913.25 to 3913.38 of the Revised Code.

(G) "Voting stock" means securities of any class or any ownership interest having voting power for the election of directors, trustees, or management of a person, other than securities having voting power only as a result of the occurrence of a contingency.

Sec. 3913.26. (A) A mutual insurance company, by itself or together with one or more other mutual insurance companies acting pursuant to a joint reorganization plan, may reorganize in accordance with the requirements of sections 3913.25 to 3913.38 of the Revised Code.

(B)(1) A mutual insurance company may adopt a reorganization plan that is consistent with the requirements of sections 3913.25 to 3913.38 of the Revised Code. Such a reorganization plan may only be adopted by the affirmative vote of not less than two-thirds of the mutual insurance company's board of directors.

(2) At any time prior to the mailing to policyholders of the notice pursuant to division (B) of section 3913.27 of the Revised Code, which

ce includes a summary of the reorganization plan, a mutual insurance company's board of directors may amend the reorganization plan by the affirmative vote of not less than two-thirds of the board of directors. At any time before a reorganization plan has received the approval of the superintendent of insurance under section 3913.28 of the Revised Code, a mutual insurance company's board of directors may withdraw the reorganization plan by the affirmative vote of not less than two-thirds of the board of directors.

(C) A reorganization plan shall provide for the incorporation of a mutual insurance holding company, and shall provide for the continuation of the corporate existence of the mutual insurance company as a stock insurance company.

(D) A reorganization plan shall provide that all of the initial shares of voting stock of a reorganized stock company shall be issued to its parent mutual insurance holding company or to an intermediate holding company. Nothing in sections 3913.25 to 3913.38 of the Revised Code, however, shall be construed as limiting or restricting the authority of a reorganized stock company or of an intermediate holding company to issue securities other than voting stock.

(E)(1) A reorganization plan shall provide that the membership interests of the policyholders of a mutual insurance company shall become membership interests in the mutual insurance holding company, and that concurrently the policyholders' membership interests in the mutual insurance company shall be extinguished.

(2) A reorganization plan shall provide that the policyholders of the reorganized stock company shall become members of the mutual insurance holding company in accordance with the articles of incorporation and the code of regulations of the mutual insurance holding company.

(E) A reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the voting stock of the reorganized stock company. Alternatively, a reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the voting stock of an intermediate holding company, which intermediate holding company shall at all times own all of the voting stock of the reorganized stock company. The shares of voting stock required to be owned by the mutual insurance holding company, and by the intermediate holding company, if any, shall not be pledged, hypothecated, or in any way encumbered with regard to any obligation, guaranty, or commitment undertaken by or on behalf of the mutual insurance holding company, or the intermediate holding company, if any.

(G) The board of directors of a mutual insurance company shall file all of the following with the superintendent within ninety days after adopting a reorganization plan:

- (1) The reorganization plan;
- (2) The forms of notices to be provided to policyholders under division (B) of section 3913.27 of the Revised Code;
- (3) The form of proxy, if any, to be solicited from policyholders;
- (4) The proposed articles of incorporation and code of regulations for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company. The articles of incorporation and code of regulations shall be signed by the chairperson of the board, the president or vice-president, and by the secretary or an assistant secretary, of the mutual insurance company.
- (5) Such other documents or information as the superintendent may require.

(H) Nothing in sections 3913.25 to 3913.38 of the Revised Code shall limit or restrict an intermediate holding company's authority under section 1701.13 of the Revised Code to form or acquire the control of other corporations, whether domestic or foreign, profit or nonprofit.

Sec. 3913.27. (A) A reorganization plan adopted by a mutual insurance company's board of directors pursuant to section 3913.26 of the Revised Code shall be voted upon by a mutual insurance company's policyholders at a policyholders' meeting. A policyholder is entitled to cast only one vote, in person or by proxy, on the reorganization plan regardless of the number of policies or contracts that the policyholder may own or hold. Only proxies specifically related to the reorganization plan shall be used in determining whether the reorganization plan is approved pursuant to division (C) of this section.

(B) All policyholders shall be given notice of the policyholders' meeting to vote upon the reorganization plan at least thirty days prior to the date fixed for the policyholders' meeting. Notice of the time and place of such meeting shall be sent by mail to each policyholder at the policyholder's post office address as it appears on the books and records of the company. THE NOTICE SHALL INCLUDE A SUMMARY OF THE REORGANIZATION PLAN ADOPTED BY THE BOARD OF DIRECTORS, including an analysis of the material financial aspects and potential for dilution of policyholders' interests in the mutual insurance company under the reorganization plan, A UNIFORM BALLOT FOR VOTING ON THE QUESTION OF THE REORGANIZATION PLAN, AND A STATEMENT INFORMING THE POLICYHOLDERS THAT

THE SUPERINTENDENT OF INSURANCE MAY FIX A TIME AND PLACE FOR A PUBLIC HEARING ON THE REORGANIZATION PLAN, TO BE HELD WITHIN THIRTY DAYS AFTER THE SUPERINTENDENT'S RECEIPT OF WRITTEN NOTICE FROM THE BOARD OF DIRECTORS OF THE POLICYHOLDERS' APPROVAL OF THE REORGANIZATION PLAN.

(C) A reorganization plan shall be approved upon receiving the affirmative vote of at least a majority of the votes cast by policyholders.

(D)(1) If a reorganization plan is approved at the policyholders' meeting, the board of directors of a mutual insurance company shall provide the superintendent with written notice of that approval within ten days after the policyholders' meeting.

(2) The superintendent may, within ten days after receiving the notice from the board of directors, provide written notice to the mutual insurance company of the superintendent's intent to conduct one or more public hearings on the reorganization plan. At a minimum, the superintendent's notice to the mutual insurance company shall include a time and a place for the first public hearing, which shall be held within thirty days after the superintendent's receipt of the notice from the board of directors.

(3) Within ten days after the mutual insurance company's receipt of a notice from the superintendent of the superintendent's intent to conduct one or more public hearings on the reorganization plan, if such notice is provided, the mutual insurance company shall PROVIDE NOTICE OF THE TIME AND PLACE OF SUCH HEARING BY CAUSING THIS INFORMATION TO BE PUBLISHED ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER PUBLISHED AND OF THE LARGEST CIRCULATION IN THE COUNTIES OF CUYAHOGA, FRANKLIN, HAMILTON, AND LUCAS, IN THE COUNTY IN THIS STATE IN WHICH THE MUTUAL INSURANCE COMPANY HAS ITS PRINCIPAL OFFICE, AND IN THE NEWSPAPER OF THE LARGEST CIRCULATION IN THE STATE CAPITAL OF EACH STATE OF THE UNITED STATES IN WHICH THE COMPANY MAINTAINS AN OFFICE OR AGENCY FOR THE SOLICITATION OF INSURANCE.

(E) The proposed articles of incorporation and code of regulations for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company, as filed with the superintendent pursuant to division (G)(4) of section 3913.26 of the Revised Code, shall also be voted upon by the mutual insurance company's policyholders at the policyholders' meeting held pursuant to this section. The articles of incorporation and code of regulations shall be adopted upon

receiving the affirmative vote of at least a majority of the votes cast by policyholders.

(F) At all public hearings conducted by the superintendent pursuant to the superintendent's authority under division (D)(2) of this section, the SUPERINTENDENT MAY SUMMON AND COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS AND PAPERS. THE superintendent shall hear the testimony of persons claiming to be adversely affected by the reorganization plan, and of others wishing to comment on the reorganization plan. such persons may present a position and offer comments concerning the reorganization plan, INCLUDING A POSITION AND COMMENTS CONCERNING WHETHER THE REORGANIZATION PLAN IS FAIR AND EQUITABLE TO THE MUTUAL INSURANCE COMPANY'S POLICYHOLDERS AND WHETHER IT COMPLIES WITH SECTIONS 3913.25 TO 3913.38 OF THE REVISED CODE.

(G) A mutual insurance company's failure to provide a member or members with the notice required by this section shall not impair the validity of any action taken under sections 3913.25 to 3913.38 of the Revised Code, if the mutual insurance company has complied substantially and in good faith with all notice requirements. The determination as to such compliance shall be made by the Superintendent.

Sec. 3913.28. (A) A mutual insurance company shall not proceed with a reorganization plan approved by the mutual insurance company's policyholders under section 3913.27 of the Revised Code until the reorganization plan has been reviewed by, and has received the approval of, the superintendent of insurance, and the ARTICLES OF INCORPORATION FOR THE MUTUAL INSURANCE HOLDING COMPANY AND THE REORGANIZED STOCK COMPANY, AND, IF APPLICABLE, FOR AN INTERMEDIATE HOLDING COMPANY, HAVE BEEN EXAMINED AND APPROVED BY THE attorney general in accordance with this section.

(B) The superintendent shall approve a reorganization plan if, upon review, the superintendent finds all of the following:

(1) The adoption, approval, and contents of the reorganization plan COMPLY with sections 3913.25 to 3913.38 of the Revised Code;

(2) The mutual insurance company has properly filed all documents, forms, and other information required by division (G) of section 3913.26 of the Revised Code;

(3) The reorganization plan is fair and equitable to the mutual insurance company's policyholders.

(C) The superintendent may retain qualified experts, at the mutual insurance company's expense, to assist in reviewing the reorganization plan.

(D) The superintendent shall approve or reject a reorganization plan not later than sixty days after the later of the approval of the reorganization plan by the mutual insurance company's policyholders or the completion of public hearings held in accordance with section 3913.27 of the Revised Code. The superintendent may extend this time period by an additional sixty days by providing written notice to the mutual insurance company.

(E) Upon deciding to approve or to REJECT a reorganization plan, the superintendent shall notify the mutual insurance company of the decision by regular mail. If the superintendent rejects a reorganization plan, the superintendent's notice shall detail the reasons for the rejection.

(F) A mutual insurance company shall file the following documents with the superintendent within thirty days after receiving notice from the superintendent of the superintendent's approval of a reorganization plan:

(1) The minutes of the policyholders' meeting at which the reorganization plan was approved;

(2) The articles of incorporation and code of regulations for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company, as adopted by the mutual insurance company's policyholders under section 3913.27 of the Revised Code.

(G)(1) A mutual insurance company shall submit the articles of incorporation for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company, as adopted by the mutual insurance company's policyholders under section 3913.27 of the Revised Code, to the attorney general for the attorney general's examination and approval. If, upon examination, the attorney general finds that the articles of incorporation are in accordance with applicable sections of the Revised Code, and not inconsistent with the constitution and laws of the united states and of this state, the attorney general shall approve of the articles of incorporation. the Attorney General shall notify the mutual insurance company of the approval by regular mail.

(2) Upon obtaining the approvals of the superintendent and the attorney general under this section, the mutual insurance company's board of directors shall file the following with the secretary of state:

(a) A certificate of reorganization, signed by the chairperson of the board, the president or a vice-president, and the secretary or an assistant secretary of the mutual insurance company. The articles of incorporation for the mutual insurance holding company and the reorganized stock company,

and, if applicable, for an intermediate holding company, as adopted by the mutual insurance company's policyholders under section 3913.27 of the Revised Code, shall accompany the certificate of reorganization.

(b) A statement, signed by the chairperson of the board, the president or a vice-president, and the secretary or an assistant secretary, of the mutual insurance company, of the manner of the adoption of the articles of incorporation for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company;

(c) Copies of the approvals obtained from the superintendent and attorney general under this section.

(H) A reorganization plan shall be effective upon the filing of all of the documents and statements required by division (G) of this section, or at such later date as the certificate of reorganization may provide.

(I) After a reorganization plan takes effect, the superintendent shall have jurisdiction over the mutual insurance holding company, and, if applicable, over an intermediate holding company, in order to ensure that the interests of the mutual insurance company's policyholders are protected.

Sec. 3913.29. (A) Proposed amendments to the articles of incorporation of a mutual insurance holding company may be adopted at any members' meeting. the board of directors of a mutual insurance holding company shall provide notice of any members' meeting conducting a vote on the adoption of an amendment to the articles of incorporation in a newspaper of general circulation published in the county where the company's principal place of business is located, at least thirty days prior to the members' meeting. Where the amendment is not inconsistent with the constitution and laws of this state and of the United States, the amendment may be adopted by the affirmative vote of at least three-fifths of the members present and voting at the meeting. After adopting an amendment, the board of directors shall submit the amendment to the attorney general for examination and approval.

(B) If, upon examination, the attorney general finds that the amendments adopted at the members' meeting are in accordance with applicable sections of the Revised Code, and are not inconsistent with the constitution and laws of the United States and of this state, the attorney general shall approve of the amendment to the articles of incorporation.

(C) Upon receiving the approval of the attorney general, the amendment and a certificate of the attorney general's approval shall be filed in the office of the secretary of state, and shall thereupon be in effect. After recording the amendment, the secretary of state shall deposit a copy thereof with the superintendent of insurance.

Sec. 3913.30. (A) Upon a reorganization plan taking effect in

accordance with section 3913.28 of the Revised Code, the corporate existence of the mutual insurance company shall continue in the reorganized stock company. On the effective date of the reorganization, all of the assets, rights, franchises, and interests of the mutual insurance company in and to every species of property, whether real, personal, or mixed, and any accompanying choses in action, shall be vested in the reorganized stock company, without any deed or transfer, and the reorganized stock company shall assume all the obligations and liabilities of the mutual insurance company.

(B) Unless otherwise specified in a reorganization plan, those persons who are the directors and officers of a mutual insurance company on the effective date of the reorganization shall serve as the directors and officers of the reorganized stock company until new directors and officers are elected pursuant to the reorganized stock company's articles of incorporation and code of regulations.

Sec. 3913.31. All costs and expenses of the process of a reorganization under sections 3913.25 to 3913.38 of the Revised Code shall be paid for or reimbursed by the mutual insurance company, the reorganized stock company, or an intermediate holding company.

Sec. 3913.32. (A) A mutual insurance company may reorganize by merging its policyholders' membership interests into a domestic or foreign mutual insurance holding company and continuing the corporate existence of the mutual insurance company as a reorganized stock company. a mutual insurance company reorganizing under this section shall comply with all applicable provisions of sections 3913.25 to 3913.38 of the Revised Code, and all applicable laws of foreign jurisdictions, to effect the reorganization.

(B) A domestic or foreign mutual insurance holding company may reorganize by merging or consolidating its membership interests into another domestic or foreign mutual insurance holding company. A domestic or foreign mutual insurance holding company reorganizing under this division shall comply with all applicable provisions of sections 3913.25 to 3913.38 of the Revised Code, and all applicable laws of foreign jurisdictions, to effect the reorganization.

Sec. 3913.33. A membership interest in a mutual insurance holding company is not a security under the laws of this state. No member of a mutual insurance holding company may transfer membership in the mutual insurance holding company or any right arising from membership.

Sec. 3913.34. (A) Sections 3913.11 to 3913.13 and 3913.20 to 3913.23 of the Revised Code shall apply to a mutual insurance holding company as if the mutual insurance holding company were a domestic mutual insurance

company. The members of the mutual insurance holding company are deemed to be members of a domestic mutual insurance company for all purposes of such sections.

(B) A reorganization of a domestic mutual life insurance company subject to sections 3913.25 to 3913.38 of the Revised Code also is subject to sections 3907.09 to 3907.11 of the Revised Code, if applicable, but is not subject to sections 3901.32 to 3901.323 of the Revised Code.

(C) Notwithstanding division (B) of this section, for a period of five years following the effective date of a reorganization under sections 3913.25 to 3913.38 of the Revised Code, no person shall acquire control of a reorganized stock company without compliance with sections 3901.32 to 3901.323 of the Revised Code. For purposes of this division, "control" has the same meaning as in division (B) of section 3901.32 of the Revised Code, except that control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five per cent or more of the voting securities of any other person.

(D) An intermediate holding company or, if there is no such company, a reorganized stock company shall not issue shares of stock, in addition to the shares issued pursuant to the reorganization plan under which the company was formed, without the prior approval of the mutual insurance holding company as its majority shareholder. The prior approval of the mutual insurance holding company must be evidenced by a resolution of the board of directors of the mutual insurance holding company delivered to the board of directors of the intermediate holding company or the reorganized stock company prior to the issuance of the additional shares.

(E) A mutual insurance holding company, and an intermediate holding company, if any, are deemed to be insurers subject to sections 3901.07, 3901.071, and 3901.48 of the Revised Code.

Sec. 3913.35. (A) A mutual insurance holding company, and, if applicable, its intermediate holding company, are deemed to be insurers subject to sections 3903.01 to 3903.76 of the Revised Code. A mutual insurance holding company and the intermediate holding company accordingly are deemed to be parties to any proceeding under sections 3903.01 to 3903.76 of the Revised Code involving an insurance company that is a subsidiary of the mutual insurance holding company or of the intermediate holding company as a result of a reorganization under sections 3913.25 to 3913.38 of the Revised Code.

(B) In any proceeding under sections 3903.01 to 3903.76 of the Revised Code involving a reorganized stock company, the assets of the mutual insurance holding company, and, if applicable, its intermediate holding

company, are deemed to be assets of the reorganized stock company for purposes of satisfying claims of the policyholders of the reorganized stock company.

(C) A mutual insurance holding company, and, if applicable, its intermediate holding company, shall not be dissolved or liquidated without compliance with the provisions of Chapter 3903. of the Revised Code. such companies are deemed to be domestic insurance companies for purposes of a dissolution or liquidation under Chapter 3903. of the Revised Code.

Sec. 3913.36. Any action challenging the validity of, or arising out of, actions taken or proposed to be taken in connection with a reorganization under sections 3913.25 to 3913.38 of the Revised Code shall be commenced no later than thirty days after the effective date of the reorganization.

Sec. 3913.37. The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of sections 3913.25 to 3913.38 of the Revised Code.

Sec. 3913.38. The attorney general may, under authority granted under common law and sections 109.23, 109.24, 109.34, and 109.35 of the Revised Code, review any transaction, as defined in section 109.34 of the Revised Code, involving nonprofit health care entities. Nothing in section 3901.043 or sections 3913.25 to 3913.37 of the Revised Code shall be construed to limit the independent authority of the attorney general to protect and preserve charitable assets and charitable trusts of such entities. In addition, nothing in this section shall be construed to limit or expand any other common law or statutory authority of the attorney general.

~~Sec. 3913.34~~ 3913.40. (A) Any insurer that is organized under the laws of another state and is admitted to transact the business of insurance in this state may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. Such a domestic insurer shall be issued like certificates and licenses to transact business in this state, is subject to the jurisdiction of this state, and shall be recognized as an insurer formed under the laws of this state as of the date of its original incorporation in its original domiciliary state. The superintendent of insurance shall approve any proposed transfer of domicile under this division unless ~~he~~ THE SUPERINTENDENT determines that the transfer is not in the interest of policyholders of this state.

(B) Any domestic insurer, upon the approval of the superintendent, may transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon such a transfer, the insurer shall cease to be a

domestic insurer, and shall be admitted to this state if qualified as a foreign insurer. The superintendent shall approve any proposed transfer of domicile under this division unless ~~he~~ THE SUPERINTENDENT determines that the transfer is not in the interest of policyholders of this state.

(C)(1) With respect to any insurer that is licensed to transact the business of insurance in this state and that transfers its domicile to this or any other state by merger, consolidation, or any other lawful method, both of the following apply:

(a) The certificate of authority, agents appointments and licenses, rates, and other items as allowed by the superintendent that are in existence at the time of the transfer shall continue in effect upon the transfer if the insurer remains qualified to transact the business of insurance in this state.

(b) All outstanding policies shall remain in effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the superintendent.

(2) Every transferring insurer as described in division (C)(1) of this section shall file new policy forms with the superintendent on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as are approved by, the superintendent. Every such insurer shall notify the superintendent of the details of the proposed transfer, and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the superintendent.

(D) The superintendent, in accordance with Chapter 119. of the Revised Code, may adopt rules to carry out the purposes of this section.

SECTION 2. That existing sections 3901.043 and 3913.31 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____