

HB3784



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3784

by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

215 ILCS 5/59.1

Amends the Illinois Insurance Code in the provision concerning a mutual company's conversion to a stock company. Provides that the mutual company's meeting to vote upon the plan of conversion shall not be set for a date less than 30 days (rather than 60 days) after the date when the notice of the meeting is mailed by the mutual company. Makes a technical correction. Effective immediately.

LRB098 15215 RPM 50204 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 59.1 as follows:

6 (215 ILCS 5/59.1)

7 (Section scheduled to be repealed on January 1, 2017)

8 Sec. 59.1. Conversion to stock company.

9 (1) Definitions. For the purposes of this Section, the
10 following terms shall have the meanings indicated:

11 (a) "Eligible member" is a member as of the date the
12 mutual company's board of directors adopts a plan of
13 conversion. A person insured under a group policy is not an
14 eligible member, unless:

15 (i) the person is insured or covered under a group
16 life policy or group annuity contract under which funds
17 are accumulated and allocated to the respective
18 covered persons;

19 (ii) the person has the right to direct the
20 application of the funds so allocated;

21 (iii) the group policyholder makes no contribution
22 to the premiums or deposits for the policy or contract;

23 and

1 (iv) the mutual company has the names and addresses
2 of the persons covered under the group life policy or
3 group annuity contract.

4 A person whose policy is issued after the board of
5 directors adopts the plan but before the plan's effective
6 date is not an eligible member but shall have those rights
7 set forth in subsection (10) of this Section.

8 (b) "Converted stock company" is an Illinois domiciled
9 stock company that converted from an Illinois domiciled
10 mutual company under this Section.

11 (c) "Plan of conversion" or "plan" is a plan adopted by
12 an Illinois domestic mutual company's board of directors
13 under this Section to convert the mutual company into an
14 Illinois domiciled stock company.

15 (d) "Policy" includes an annuity contract.

16 (e) "Member" means a person who, on the records of the
17 mutual company and pursuant to its articles of
18 incorporation or bylaws, is deemed to be a holder of a
19 membership interest in the mutual company.

20 (2) Adoption of the plan of conversion by the board of
21 directors.

22 (a) A mutual company seeking to convert to a stock
23 company shall, by the affirmative vote of two-thirds of its
24 board of directors, adopt a plan of conversion consistent
25 with the requirements of subsection (6) of this Section.

26 (b) At any time before approval of a plan by the

1 Director, the mutual company by the affirmative vote of
2 two-thirds of its board of directors, may amend or withdraw
3 the plan.

4 (3) Approval of the plan of conversion by the Director of
5 Insurance.

6 (a) Required findings. After adoption by the mutual
7 company's board of directors, the plan shall be submitted
8 to the Director for review and approval. The Director shall
9 approve the plan upon finding that:

10 (i) the provisions of this Section have been
11 complied with;

12 (ii) the plan will not prejudice the interests of
13 the members; and

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

16 (b) Documents to be filed.

17 (i) Prior to the members' approval of the plan, a
18 mutual company seeking the Director's approval of a
19 plan shall file the following documents with the
20 Director for review and approval:

21 (A) the plan of conversion, including the
22 independent evaluation of pro forma market value
23 required by item (f) of subsection (6) of this
24 Section;

25 (B) the form of notice required by item (b) of
26 subsection (4) of this Section for eligible

1 members of the meeting to vote on the plan;

2 (C) any proxies to be solicited from eligible
3 members pursuant to subitem (ii) of item (c) of
4 subsection (4) of this Section;

5 (D) the form of notice required by item (a) of
6 subsection (10) of this Section for persons whose
7 policies are issued after adoption of the plan but
8 before its effective date; and

9 (E) the proposed articles of incorporation and
10 bylaws of the converted stock company.

11 Once filed, these documents shall be approved or
12 disapproved by the Director within a reasonable time.

13 (ii) After the members have approved the plan, the
14 converted stock company shall file the following
15 documents with the Director:

16 (A) the minutes of the meeting of the members
17 at which the plan was voted upon; and

18 (B) the revised articles of incorporation and
19 bylaws of the converted stock company.

20 (c) Consultant. The Director may retain, at the mutual
21 company's expense, any qualified expert not otherwise a
22 part of the Director's staff to assist in reviewing the
23 plan and the independent evaluation of the pro forma market
24 value which is required by item (f) of subsection (6) of
25 this Section.

26 (4) Approval of the plan by the members.

1 (a) Members entitled to notice of and to vote on the
2 plan. All eligible members shall be given notice of and an
3 opportunity to vote upon the plan.

4 (b) Notice required. All eligible members shall be
5 given notice of the members' meeting to vote upon the plan.
6 A copy of the plan or a summary of the plan shall accompany
7 the notice. The notice shall be mailed to each member's
8 last known address, as shown on the mutual company's
9 records, within 45 days of the Director's approval of the
10 plan. The meeting to vote upon the plan shall not be set
11 for a date less than 30 ~~60~~ days after the date when the
12 notice of the meeting is mailed by the mutual company. If
13 the meeting to vote upon the plan is held coincident with
14 the mutual company's annual meeting of policyholders, only
15 one combined notice of meeting is required.

16 (c) Vote required for approval.

17 (i) After approval by the Director, the plan shall
18 be adopted upon receiving the affirmative vote of at
19 least two-thirds of the votes cast by eligible members.

20 (ii) Members entitled to vote upon the proposed
21 plan may vote in person or by proxy. Any proxies to be
22 solicited from eligible members shall be filed with and
23 approved by the Director.

24 (iii) The number of votes each eligible member may
25 cast shall be determined by the mutual company's
26 bylaws. If the bylaws are silent, each eligible member

1 may cast one vote.

2 (5) Adoption of revised articles of incorporation.
3 Adoption of the revised articles of incorporation of the
4 converted stock company is necessary to implement the plan and
5 shall be governed by the applicable provisions of Section 57 of
6 this Code. For a Class 1 mutual company, the members may adopt
7 the revised articles of incorporation at the same meeting at
8 which the members approve the plan. For a Class 2 or 3 mutual
9 company, the revised articles of incorporation may be adopted
10 solely by the board of directors or trustees, as provided in
11 Section 57 of this Code.

12 (5.5) Prior to the completion of a plan of conversion filed
13 by a mutual company with the Director, no person shall
14 knowingly acquire, make any offer, or make any announcement of
15 an offer for any security issued or to be issued by the
16 converting mutual company in connection with its plan of
17 conversion or for any security issued or to be issued by any
18 other company authorized in item(c)(i) of subsection (6) of
19 this Section and organized for purposes of effecting the
20 conversion, except in compliance with the maximum purchase
21 limitations imposed by item (i) of subsection (6) of this
22 Section or the terms of the plan of conversion as approved by
23 the Director.

24 (6) Required provisions in a plan of conversion. The
25 following provisions shall be included in the plan:

26 (a) Reasons for conversion. The plan shall set forth

1 the reasons for the proposed conversion.

2 (b) Effect of conversion on existing policies.

3 (i) The plan shall provide that all policies in
4 force on the effective date of conversion shall
5 continue to remain in force under the terms of those
6 policies, except that any voting rights of the
7 policyholders provided for under the policies or under
8 this Code and any contingent liability policy
9 provisions of the type described in Section 55 of this
10 Code shall be extinguished on the effective date of the
11 conversion.

12 (ii) The plan shall further provide that holders of
13 participating policies in effect on the date of
14 conversion shall continue to have the right to receive
15 dividends as provided in the participating policies,
16 if any.

17 (iii) Except for a mutual company's participating
18 life policies, guaranteed renewable accident and
19 health policies, and non-cancelable accident and
20 health policies, the converted stock company may issue
21 the insured a nonparticipating policy as a substitute
22 for the participating policy upon the renewal date of a
23 participating policy.

24 (c) Subscription rights to eligible members.

25 (i) The plan shall provide that each eligible
26 member is to receive, without payment, nontransferable

1 subscription rights to purchase a portion of the
2 capital stock of the converted stock company. As an
3 alternative to subscription rights in the converted
4 stock company, the plan may provide that each eligible
5 member is to receive, without payment, nontransferable
6 subscription rights to purchase a portion of the
7 capital stock of: (A) a corporation organized and owned
8 by the mutual company for the purpose of acquiring or
9 holding all the stock of the converted stock company;
10 or (B) a stock insurance company owned by the mutual
11 company into which the mutual company will be merged.

12 (ii) The subscription rights shall be allocated in
13 whole shares among the eligible members using a fair
14 and equitable formula. This formula may but need not
15 take into account how the different classes of policies
16 of the eligible members contributed to the surplus of
17 the mutual company.

18 (d) Oversubscription. The plan shall provide a fair and
19 equitable means for the allocation of shares of capital
20 stock in the event of an oversubscription to shares by
21 eligible members exercising subscription rights received
22 pursuant to item (c) of subsection (6) of this Section.

23 (e) Undersubscription. The plan shall provide that any
24 shares of capital stock not subscribed to by eligible
25 members exercising subscription rights received under item
26 (c) of subsection (6) of this Section shall be sold in a

1 public offering through an underwriter. If the number of
2 shares of capital stock not subscribed by eligible members
3 is so small or the additional time or expense required for
4 a public offering of those shares would be otherwise
5 unwarranted under the circumstances, the plan of
6 conversion may provide for the purchase of the unsubscribed
7 shares by a private placement or other alternative method
8 approved by the Director that is fair and equitable to the
9 eligible members.

10 (f) Total price of stock. The plan shall set the total
11 price of the capital stock equal to the estimated pro forma
12 market value of the converted stock company based upon an
13 independent evaluation by a qualified person. The pro forma
14 market value may be the value that is estimated to be
15 necessary to attract full subscription for the shares as
16 indicated by the independent evaluation.

17 (g) Purchase price of each share. The plan shall set
18 the purchase price of each share of capital stock equal to
19 any reasonable amount that will not inhibit the purchase of
20 shares by members. The purchase price of each share shall
21 be uniform for all purchasers except the price may be
22 modified by the Director by reason of his consideration of
23 a plan for the purchase of unsubscribed stock pursuant to
24 item (e) of subsection (6) of this Section.

25 (h) Closed block of business for participating life
26 policies of a Class 1 mutual company.

1 (i) The plan shall provide that a Class 1 mutual
2 company's participating life policies in force on the
3 effective date of the conversion shall be operated by
4 the converted stock company for dividend purposes as a
5 closed block of participating business except that any
6 or all classes of group participating policies may be
7 excluded from the closed block.

8 (ii) The plan shall establish one or more
9 segregated accounts for the benefit of the closed block
10 of business and shall allocate to those segregated
11 accounts enough assets of the mutual company so that
12 the assets together with the revenue from the closed
13 block of business are sufficient to support the closed
14 block including, but not limited to, the payment of
15 claims, expenses, taxes, and any dividends that are
16 provided for under the terms of the participating
17 policies with appropriate adjustments in the dividends
18 for experience changes. The plan shall be accompanied
19 by an opinion of a qualified actuary or an appointed
20 actuary who meets the standards set forth in the
21 insurance laws or regulations for the submission of
22 actuarial opinions as to the adequacy of reserves or
23 assets. The opinion shall relate to the adequacy of the
24 assets allocated to the segregated accounts in support
25 of the closed block of business. The actuarial opinion
26 shall be based on methods of analysis deemed

1 appropriate for those purposes by the Actuarial
2 Standards Board.

3 (iii) The amount of assets allocated to the
4 segregated accounts of the closed block shall be based
5 upon the mutual company's last annual statement that is
6 updated to the effective date of the conversion.

7 (iv) The converted stock company shall keep a
8 separate accounting for the closed block and shall make
9 and include in the annual statement to be filed with
10 the Director each year a separate statement showing the
11 gains, losses, and expenses properly attributable to
12 the closed block.

13 (v) Periodically, upon the Director's approval,
14 those assets allocated to the closed block as provided
15 in subitem (ii) of item (h) of subsection (6) of this
16 Section that are in excess of the amount of assets
17 necessary to support the remaining policies ~~policies~~ in
18 the closed block shall revert to the benefit of the
19 converted stock company.

20 (vi) The Director may waive the requirement for the
21 establishment of a closed block of business if the
22 Director deems it to be in the best interests of the
23 participating policyholders of the mutual insurer to
24 do so.

25 (i) Limitations on acquisition of control. The plan
26 shall provide that any one person or group of persons

1 acting in concert may not acquire, through public offering
2 or subscription rights, more than 5% of the capital stock
3 of the converted stock company for a period of 5 years from
4 the effective date of the plan except with the approval of
5 the Director. This limitation does not apply to any entity
6 that is to purchase 100% of the capital stock of the
7 converted company as part of the plan of conversion
8 approved by the Director or to a purchase of stock by a
9 tax-qualified employee benefit plan pursuant to
10 subscription grants granted to that plan as authorized
11 under item (b) of subsection (7) of this Section and to a
12 purchase of unsubscribed stock pursuant to item (e) of
13 subsection (6) of this Section.

14 (7) Optional provisions in a plan of conversion. The
15 following provisions may be included in the plan:

16 (a) Directors and officers subscription rights.

17 (i) The plan may provide that the directors and
18 officers of the mutual company shall receive, without
19 payment, nontransferable subscription rights to
20 purchase capital stock of the converted stock company
21 or the stock of another corporation that is
22 participating in the conversion plan as provided in
23 subitem (i) of item (c) of subsection (6) of this
24 Section. Those subscription rights shall be allocated
25 among the directors and officers by a fair and
26 equitable formula.

1 (ii) The total number of shares that may be
2 purchased under subitem (i) of item (a) of subsection
3 (7) of this Section may not exceed 35% of the total
4 number of shares to be issued in the case of a mutual
5 company with total assets of less than \$50 million or
6 25% of the total shares to be issued in the case of a
7 mutual company with total assets of more than \$500
8 million. For mutual companies with total assets
9 between \$50 million and \$500 million, the total number
10 of shares that may be purchased shall be interpolated.

11 (iii) Stock purchased by a director or officer
12 under subitem (i) of item (a) of subsection (7) of this
13 Section may not be sold within one year following the
14 effective date of the conversion.

15 (iv) The plan may also provide that a director or
16 officer or person acting in concert with a director or
17 officer of the mutual company may not acquire any
18 capital stock of the converted stock company for 3
19 years after the effective date of the plan, except
20 through a broker or dealer, without the permission of
21 the Director. That provision may not apply to prohibit
22 the directors and officers from purchasing stock
23 through subscription rights received in the plan under
24 subitem (i) of item (a) of subsection (7) of this
25 Section.

26 (b) Tax-qualified employee stock benefit plan. The

1 plan may allocate to a tax-qualified employee benefit plan
2 nontransferable subscription rights to purchase up to 10%
3 of the capital stock of the converted stock company or the
4 stock of another corporation that is participating in the
5 conversion plan as provided in subitem (i) of item (c) of
6 subsection (6) of this Section. That employee benefit plan
7 shall be entitled to exercise its subscription rights
8 regardless of the amount of shares purchased by other
9 persons.

10 (8) Alternative plan of conversion. The board of directors
11 may adopt a plan of conversion that does not rely in whole or
12 in part upon the issuance to members of non-transferable
13 subscription rights to purchase stock of the converted stock
14 company if the Director finds that the plan does not prejudice
15 the interests of the members, is fair and equitable, and is
16 based upon an independent appraisal of the market value of the
17 mutual company by a qualified person and a fair and equitable
18 allocation of any consideration to be given eligible members.
19 The Director may retain, at the mutual company's expense, any
20 qualified expert not otherwise a part of the Director's staff
21 to assist in reviewing whether the plan may be approved by the
22 Director.

23 (9) Effective date of the plan. A plan shall become
24 effective when the Director has approved the plan, the members
25 have approved the plan, and the revised articles of
26 incorporation have been adopted.

1 (10) Rights of members whose policies are issued after
2 adoption of the plan and before its effective date.

3 (a) Notice. All members whose policies are issued after
4 the proposed plan has been adopted by the board of
5 directors and before the effective date of the plan shall
6 be given written notice of the plan of conversion. The
7 notice shall specify the member's right to rescind that
8 policy as provided in item (b) of subsection (10) of this
9 Section within 45 days after the effective date of the
10 plan. A copy of the plan or a summary of the plan shall
11 accompany the notice. The form of the notice shall be filed
12 with and approved by the Director.

13 (b) Option to rescind. Any member entitled to receive
14 the notice described in item (a) of subsection (10) of this
15 Section shall be entitled to rescind his or her policy and
16 receive a full refund of any amounts paid for the policy or
17 contract within 10 days after the receipt of the notice.

18 (11) Corporate existence.

19 (a) Upon the conversion of a mutual company to a
20 converted stock company according to the provisions of this
21 Section, the corporate existence of the mutual company
22 shall be continued in the converted stock company. All the
23 rights, franchises, and interests of the mutual company in
24 and to every type of property, real, personal, and mixed,
25 and things in action thereunto belonging, is deemed
26 transferred to and vested in the converted stock company

1 without any deed or transfer. Simultaneously, the
2 converted stock company is deemed to have assumed all the
3 obligations and liabilities of the mutual company.

4 (b) The directors and officers of the mutual company,
5 unless otherwise specified in the plan of conversion, shall
6 serve as directors and officers of the converted stock
7 company until new directors and officers of the converted
8 stock company are duly elected pursuant to the articles of
9 incorporation and bylaws of the converted stock company.

10 (12) Conflict of interest. No director, officer, agent, or
11 employee of the mutual company or any other person shall
12 receive any fee, commission, or other valuable consideration,
13 other than his or her usual regular salary and compensation,
14 for in any manner aiding, promoting, or assisting in the
15 conversion except as set forth in the plan approved by the
16 Director. This provision does not prohibit the payment of
17 reasonable fees and compensation to attorneys, accountants,
18 and actuaries for services performed in the independent
19 practice of their professions, even if the attorney,
20 accountant, or actuary is also a Director of the mutual
21 company.

22 (13) Costs and expenses. All the costs and expenses
23 connected with a plan of conversion shall be paid for or
24 reimbursed by the mutual company or the converted stock company
25 except where the plan provides either for a holding company to
26 acquire the stock of the converted stock company or for the

1 merger of the mutual company into a stock insurance company as
2 provided in subitem (i) of item (c) of subsection (6) of this
3 Section. In those cases, the acquiring holding company or the
4 stock insurance company shall pay for or reimburse all the
5 costs and expenses connected with the plan.

6 (14) Failure to give notice. If the mutual company complies
7 substantially and in good faith with the notice requirements of
8 this Section, the mutual company's failure to give any member
9 or members any required notice does not impair the validity of
10 any action taken under this Section.

11 (15) Limitation of actions. Any action challenging the
12 validity of or arising out of acts taken or proposed to be
13 taken under this Section shall be commenced within 30 days
14 after the effective date of the plan.

15 (Source: P.A. 90-381, eff. 8-14-97.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.