

By: Wentworth

S.B. No. 1056

A BILL TO BE ENTITLED

AN ACT

relating to conversion of a reciprocal or interinsurance exchange to a stock company through creation of a mutual holding company.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 6, Insurance Code, is amended by adding Chapter 829 to read as follows:

CHAPTER 829. CONVERSION OF RECIPROCAL OR INTERINSURANCE EXCHANGE TO STOCK COMPANY THROUGH CREATION OF A MUTUAL HOLDING COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 829.001. DEFINITIONS. In this chapter:

(1) "Attorney in fact" has the meaning assigned by Section 942.001.

(2) "Board of directors" means, as to an exchange, the board of directors, board of trustees, subscriber advisory committee, or other governing body appointed or elected by the subscribers of an exchange.

(3) "Conversion plan" means a plan adopted under this chapter to convert an exchange to a stock insurance company and form a mutual holding company to hold, directly or indirectly, shares of the resulting company.

(4) "Converting exchange" means an exchange that is converting to a stock insurance company under this chapter.

(5) "Eligible member" means a member of a converting exchange whose policy is in force on the date that the converting

1 exchange's board of directors adopts a conversion plan.

2 (6) "Effective date" means the effective date of a
3 conversion plan in accordance with Section 829.108.

4 (7) "Exchange" has the meaning assigned by Section
5 942.001.

6 (8) "Intermediate holding company" means a holding
7 company organized under the laws of this or another state that:

8 (A) is a subsidiary of a mutual holding company
9 formed to reorganize an exchange; and

10 (B) directly or through a subsidiary
11 intermediate holding company, owns at least a majority of the
12 voting shares of the capital stock of the resulting company.

13 (9) "Member" means, as to an exchange, a subscriber of
14 an exchange.

15 (10) "Mutual holding company" means a holding company
16 based on a mutual plan and formed in connection with the conversion
17 of an exchange to a stock insurance company under this chapter.

18 (11) "Participating policy" means a policy issued by
19 an exchange that grants the policyholder the right to receive
20 policy dividends if declared by the exchange.

21 (12) "Resulting company" means a stock insurance
22 company resulting from the conversion of an exchange under this
23 chapter.

24 (13) "Subscriber" has the meaning assigned by Section
25 942.001.

26 Sec. 829.002. AUTHORITY TO CONVERT THROUGH CREATION OF A
27 MUTUAL HOLDING COMPANY. (a) An exchange may reorganize by

1 converting to a stock insurance company and forming a mutual
2 holding company to hold, directly or indirectly, shares of the
3 resulting company or intermediate holding company in accordance
4 with this chapter.

5 (b) A converting exchange may not engage in the business of
6 insurance as a stock insurance company until it complies with the
7 requirements of this chapter.

8 Sec. 829.003. RIGHTS AND PRIVILEGES OF RESULTING COMPANY;
9 LAWS APPLICABLE. Except as provided by this chapter, the resulting
10 company:

11 (1) may exercise only the rights and privileges of a
12 stock insurance company; and

13 (2) is subject to:

14 (A) all of the requirements and rules imposed on
15 stock insurance companies organized under this code; and

16 (B) the laws of this state relating to the
17 regulation or supervision of insurance companies.

18 Sec. 829.004. MUTUAL HOLDING COMPANY; LAWS APPLICABLE. (a)
19 Except as provided by this chapter, a mutual holding company is
20 considered an insurer subject to this chapter and Chapter 883.

21 (b) The commissioner has jurisdiction over a mutual holding
22 company organized under this chapter to ensure that member
23 interests are protected.

24 (c) The mutual holding company is automatically a party to a
25 delinquency proceeding under Subtitle C, Title 4, involving an
26 insurance company that, as a result of a reorganization under this
27 chapter, is a direct or indirect subsidiary of the mutual holding

1 company. In any proceeding described by this subsection involving
2 the resulting company, the assets of the mutual holding company are
3 considered assets of the resulting company for purposes of
4 satisfying the claims of the resulting company's policyholders.

5 (d) A mutual holding company that results from a
6 reorganization of an exchange must be organized under Sections
7 883.051, 883.052, 883.054, and 883.056. The articles of
8 incorporation of the mutual holding company, and any amendments to
9 those articles, are subject to approval of the commissioner in the
10 same manner as those of a mutual insurance company.

11 (e) The mutual holding company may not dissolve or liquidate
12 without the approval of the commissioner.

13 (f) A mutual holding company formed under a conversion plan
14 is not subject to:

15 (1) Article 2.11B, Texas Non-Profit Corporation Act
16 (Article 1396-2.11B, Vernon's Texas Civil Statutes);

17 (2) Section B, Article 2.23, Texas Non-Profit
18 Corporation Act (Section B, Article 1396-2.23, Vernon's Texas Civil
19 Statutes);

20 (3) Section C, Article 2.23A, Texas Non-Profit
21 Corporation Act (Section C, Article 1396-2.23A, Vernon's Texas
22 Civil Statutes); or

23 (4) Sections 22.158, 22.351, and 22.353(b), Business
24 Organizations Code.

25 Sec. 829.005. CONFLICT OF INTEREST. (a) Except as provided
26 by a conversion plan approved by the commissioner or by this
27 section, the following individuals may not receive a fee,

1 commission, stock distribution, stock subscription rights, or
2 other consideration, other than that individual's usual salary or
3 compensation for aiding, promoting, assisting, or participating in
4 a conversion under this chapter:

5 (1) a director, officer, agent, or employee of a
6 converting exchange or the exchange's attorney in fact; or

7 (2) the attorney in fact if the attorney in fact is an
8 individual.

9 (b) Subsection (a) does not apply to consideration received
10 in the individual's capacity as a member.

11 (c) This section does not prohibit the payment of reasonable
12 fees and compensation to an attorney, accountant, or actuary for
13 professional services performed by that person, without regard to
14 whether the person is also a director or officer of the converting
15 exchange or its attorney in fact.

16 Sec. 829.006. LIMITATION ON ACTIONS. (a) Except as
17 provided by Subsection (b), an action challenging the validity of
18 or arising out of acts taken or proposed to be taken regarding a
19 conversion plan under this chapter must be commenced not later than
20 the 30th day after the date the conversion plan is approved by the
21 commissioner.

22 (b) An action challenging the validity of or arising out of
23 acts taken or proposed to be taken regarding a conversion plan that
24 contemplates a public offering of debt or equity registered under
25 the federal Securities Act of 1933, or a similar law of a foreign
26 jurisdiction, must be commenced not later than the 60th day after
27 the date the conversion plan is approved by the commissioner.

1 [Sections 829.007-829.050 reserved for expansion]

2 SUBCHAPTER B. MUTUAL HOLDING COMPANY STRUCTURE

3 Sec. 829.051. CAPITAL STOCK HELD BY MUTUAL HOLDING COMPANY.

4 (a) In this section, "majority of the voting shares of the capital
5 stock" means shares of the capital stock of a company that carry the
6 right to cast a majority of the votes entitled to be cast by all of
7 the outstanding shares of the capital stock of the company on all
8 matters submitted to a vote of the shareholders of the company.

9 (b) All of the initial shares of the capital stock of the
10 resulting company shall be issued to the mutual holding company or
11 to an intermediate holding company.

12 (c) The mutual holding company shall at all times own a
13 majority of the voting shares of the capital stock of the resulting
14 company or of an intermediate holding company. The requirements of
15 this subsection may be satisfied by indirect ownership through one
16 or more intermediate holding companies in a corporate structure
17 approved by the commissioner.

18 (d) Except with the consent of the commissioner, the mutual
19 holding company or intermediate holding company may not convey,
20 transfer, assign, pledge, subject to a security interest or lien,
21 encumber, or otherwise hypothecate or alienate the majority of the
22 voting shares of the capital stock that is required to be owned
23 under Subsection (c).

24 (e) An act of the mutual holding company or intermediate
25 holding company that violates Subsection (d) is void in inverse
26 chronological order from the date of the conveyance or activity as
27 to the shares necessary to constitute a majority of the voting

1 shares of the capital stock.

2 (f) The remaining minority portion of the voting shares of
3 capital stock of the resulting company, or of an intermediate
4 holding company, may not be assigned, transferred, or pledged to
5 any officer, director or employee of the converting exchange, or
6 persons acting in concert with such persons, without also offering
7 a similar opportunity to participate to all eligible members as
8 required by Section 829.053(g).

9 Sec. 829.052. LIMITATION ON ACQUISITION OF CAPITAL STOCK.

10 (a) The conversion plan must provide that a person or group of
11 persons acting in concert, other than the mutual holding company or
12 an intermediate holding company, may not acquire, in a public or
13 private offering or through an exercise of stock subscription
14 rights, more than 10 percent of the capital stock of the resulting
15 company unless the acquisition of the stock or stock subscription
16 rights is approved in advance by the commissioner.

17 (b) Subsection (a) does not apply to an entity that
18 purchases and retains at all times a majority of the voting shares
19 of the capital stock of the resulting company as part of the
20 conversion plan approved by the commissioner.

21 Sec. 829.053. DIRECTORS AND OFFICERS. (a) Except as
22 otherwise provided by this section, the conversion plan must
23 provide that a director or officer of the converting exchange, or a
24 person acting in concert with the director or officer, may not
25 acquire, without the permission of the commissioner, any shares of
26 the capital stock of the resulting company, or the shares of the
27 capital stock of another corporation that is participating in the

1 conversion plan, before the third anniversary of the effective date
2 of the conversion. This subsection does not prohibit the director
3 or officer from:

4 (1) acquiring capital stock through a broker-dealer;

5 (2) making purchases through the exercise of stock
6 subscription rights received under the conversion plan; or

7 (3) participating in a stock benefit plan permitted by
8 Section 829.054 or approved by the eligible members under Section
9 829.107.

10 (b) A conversion plan may provide that the directors and
11 officers of the converting exchange may receive, without payment,
12 nontransferable subscription rights to purchase shares of the
13 capital stock of the resulting company or the shares of the capital
14 stock of another corporation that is participating in the
15 conversion plan.

16 (c) The aggregate number of shares that may be purchased by
17 directors and officers under Subsection (b) may not exceed:

18 (1) 35 percent of the total number of shares to be
19 issued for the resulting company if the total assets of the
20 converting exchange are less than \$50 million;

21 (2) 25 percent of the total number of shares to be
22 issued for the resulting company if the total assets of the
23 converting exchange are more than \$500 million;

24 (3) five percent of the total number of shares to be
25 issued for the resulting company if the total assets of the
26 converting exchange are more than \$1 billion; or

27 (4) one percent of the total number of shares to be

1 issued for the resulting company if the total assets of the
2 converting exchange are more than \$10 billion.

3 (d) For a converting exchange with total assets between \$50
4 million and \$500 million, inclusive, the maximum percentage of the
5 total number of shares that may be purchased shall be interpolated
6 from amounts provided under Subsection (c).

7 (e) A conversion plan must provide that a director or
8 officer of the converting exchange may not sell stock purchased
9 under the conversion plan before the first anniversary of the
10 effective date of the conversion.

11 (f) Notwithstanding Subsection (e), a conversion plan may
12 provide for the purchase or redemption of stock in the event that a
13 director or officer no longer serves as a director or officer of, or
14 no longer is associated with, the resulting company during the
15 period described by Subsection (e).

16 (g) If, as part of the conversion, any director or officer
17 of the converting exchange, the mutual holding company, or an
18 intermediate holding company receives more than one percent of the
19 shares of the capital stock of the resulting company, or other
20 valuable consideration, which is paid from the surplus of the
21 converting exchange, each eligible member also is entitled to
22 receive an amount of the converting exchange's surplus on hand on
23 the effective date of the conversion computed in the same manner as
24 the amount received by the director or officer, or as otherwise
25 provided in the conversion plan approved by the commissioner.

26 Sec. 829.054. SUBSCRIPTION RIGHTS; TAX-QUALIFIED EMPLOYEE
27 BENEFIT PLAN. The conversion plan may allocate to a tax-qualified

1 employee benefit plan nontransferable subscription rights to
2 purchase not more than 10 percent of the capital stock of the
3 resulting company.

4 [Sections 829.055-829.100 reserved for expansion]

5 SUBCHAPTER C. PLAN ADOPTION AND APPROVAL

6 Sec. 829.101. PLAN ADOPTION. (a) To convert under this
7 chapter an exchange must adopt a conversion plan consistent with
8 this chapter by the affirmative vote of at least two-thirds of the
9 members of its board of directors or, if the exchange does not have
10 a board of directors, by approval of the attorney in fact. The
11 proposed articles of incorporation of the resulting company and the
12 mutual holding company must be exhibits to the conversion plan.

13 (b) For a conversion plan to take effect:

14 (1) the commissioner must approve the conversion plan;
15 and

16 (2) the eligible members must approve the conversion
17 plan and adopt the articles of incorporation of the resulting
18 company and the mutual holding company.

19 Sec. 829.102. AMENDMENTS; WITHDRAWAL OF PLAN. Before a
20 conversion plan takes effect, a converting exchange may amend or
21 withdraw the plan by the affirmative vote of at least two-thirds of
22 the members of its board of directors or, if the exchange does not
23 have a board of directors, by approval of the attorney in fact. The
24 written consent of the commissioner is required for any amendment
25 to a conversion plan adopted after the commissioner has approved
26 the plan under Section 829.106.

27 Sec. 829.103. FILING OF PLAN AND RELATED DOCUMENTS WITH

1 COMMISSIONER; COMMISSIONER'S POWERS AND DUTIES. (a) Not later
2 than the 90th day after the date on which a converting exchange's
3 board of directors adopts a conversion plan, the converting
4 exchange shall file with the commissioner:

5 (1) a copy of the conversion plan;

6 (2) the form of notices required by Section 829.104;

7 (3) the form of proxy to be solicited from eligible
8 members under Section 829.107(a);

9 (4) the form of notice required by Section 829.153 to
10 persons whose policies are issued after adoption of the conversion
11 plan but before the effective date of the conversion plan; and

12 (5) the proposed articles of incorporation of the
13 resulting company and the mutual holding company.

14 (b) The converting exchange shall promptly provide any
15 other information requested by the commissioner that the
16 commissioner considers necessary to consider the conversion plan.

17 Sec. 829.104. NOTICE TO ELIGIBLE MEMBERS; COMMENTS. (a)
18 The converting exchange shall give eligible members at least 30
19 days' written notice of the members' meeting to vote on the
20 conversion plan and advising of the members' right to comment on the
21 plan to the commissioner and the converting exchange, including a
22 description of the procedure to be used in making comments. Notice
23 to the members of the proposed vote on the conversion plan must
24 provide clear and conspicuous language apart from other meeting
25 materials and provide a disclosure statement of the distribution of
26 surplus or stock to directors and officers of the converting
27 exchange, if any.

1 (b) If the commissioner determines to hold a hearing on the
2 plan, the commissioner must approve the notice of hearing and
3 notify the converting exchange not later than the 45th day
4 following the first day on which all the documents required under
5 Section 829.103 are filed with the commissioner. The converting
6 exchange shall send to eligible members the commissioner's notice
7 of the hearing at least 30 days before the date set for the hearing.
8 The commissioner must approve the content and print layout of the
9 hearing notice before the converting exchange sends notice of the
10 hearing to eligible members. Notice of the hearing may be made
11 through publication in the Texas Register.

12 (c) The notices required by Subsections (a) and (b) may be
13 combined in a single mailing. The notice or notices must be sent to
14 the member's last known address, as shown on the converting
15 exchange's records. The notice of the members' meeting must:

- 16 (1) describe the proposed conversion plan; and
17 (2) inform the member of the member's right to vote on
18 the conversion plan.

19 (d) If the notice of the meeting to vote on the conversion
20 plan is combined with a notice of the converting exchange' annual
21 meeting of members, the notice of the proposed vote on the
22 conversion plan must be clear and conspicuous and set apart from
23 other meeting materials. A notice that is approved in advance by the
24 commissioner is deemed to be in full compliance with the
25 requirements of this subsection.

26 Sec. 829.105. SUBSTANTIAL COMPLIANCE WITH NOTICE
27 REQUIREMENTS. If the converting exchange in good faith

1 substantially complies with the notice requirements of this
2 chapter, the converting exchange's failure to send a member the
3 required notice does not impair the validity of an action taken
4 under this chapter.

5 Sec. 829.106. APPROVAL OF PLAN BY COMMISSIONER. (a) The
6 commissioner shall approve a conversion plan if the commissioner
7 determines that:

8 (1) the plan complies with this chapter;

9 (2) the plan's method of allocating stock subscription
10 rights, stock transfers, or other value, if any, is fair and
11 equitable; and

12 (3) the resulting company would satisfy the
13 requirements applicable to a domestic stock insurance company for a
14 certificate of authority on the date of the determination.

15 (b) Except as otherwise provided by this section, the
16 commissioner shall approve or disapprove a conversion plan not
17 later than the 90th day after the first day on which all the
18 documents required under Section 829.103 are filed with the
19 commissioner.

20 (c) The commissioner may extend the time for decision by an
21 additional 30 days on written notice to the converting exchange.
22 Except as provided under Subsection (e) or (f), the commissioner
23 may not extend the time for decision beyond that 30-day period.

24 (d) The commissioner shall immediately give written notice
25 to the converting exchange of the commissioner's decision and, if
26 the commissioner disapproves the plan, a detailed statement of the
27 reasons for the disapproval.

1 (e) The commissioner may retain, at the converting
2 exchange's expense, a qualified expert who is not a member of the
3 commissioner's staff to assist the commissioner in reviewing
4 whether the conversion plan meets the requirements for approval by
5 the commissioner or the value of the distribution of surplus of the
6 resulting company to the officers and directors of the converting
7 exchange, if any. If the commissioner retains a qualified expert
8 under this subsection, the commissioner may extend the period for
9 decision by an additional 90 days beyond the initial 90-day period
10 specified in Subsection (b).

11 (f) If the conversion plan contemplates a public offering of
12 debt or equity registered under the federal Securities Act of 1933,
13 or a similar law of a foreign jurisdiction, the commissioner may
14 extend the period of time to approve the conversion plan by an
15 additional 180 days beyond the initial 90-day period specified in
16 Subsection (b).

17 (g) After giving written notice to the converting exchange,
18 the commissioner may hold a hearing on whether the conversion plan
19 complies with this chapter. The converting exchange has the right
20 to appear at the hearing. Other interested persons have the right
21 to attend the hearing and comment on the conversion plan. Notice of
22 the hearing may be made through publication in the Texas Register in
23 accordance with Section 829.104(b).

24 Sec. 829.107. APPROVAL OF PLAN BY ELIGIBLE MEMBERS. (a)
25 After notice that complies with this chapter, the converting
26 exchange may convene a meeting to consider the conversion plan, and
27 any eligible member entitled to vote on the proposed conversion

1 plan may vote in person or by proxy at the meeting. Except as
2 otherwise provided in the bylaws of the converting exchange, each
3 eligible member may cast one vote.

4 (b) Adoption of the conversion plan requires the
5 affirmative vote of at least two-thirds of the votes cast by
6 eligible members.

7 Sec. 829.108. FILING OF MINUTES, ARTICLES OF INCORPORATION,
8 AND BYLAWS; EFFECTIVE DATE OF CONVERSION. (a) The converting
9 exchange shall file with the commissioner:

10 (1) the minutes of the meeting at which the plan was
11 approved; and

12 (2) the articles of incorporation and bylaws of the
13 resulting company and the mutual holding company.

14 (b) The converting exchange shall make the filing required
15 by Subsection (a) not later than the 30th day after the later of:

16 (1) the date on which the eligible members approve the
17 conversion plan; or

18 (2) the date on which the commissioner approves the
19 conversion plan.

20 (c) The conversion plan approved by the commissioner takes
21 effect on the date specified in the articles of incorporation of the
22 resulting company and the mutual holding company.

23 [Sections 829.109-829.150 reserved for expansion]

24 SUBCHAPTER D. EFFECT OF PLAN; RIGHTS OF MEMBERS

25 Sec. 829.151. CORPORATE EXISTENCE. (a) On the effective
26 date:

27 (1) the legal existence of the converting exchange

1 continues in the resulting company;

2 (2) all assets, rights, franchises, and interests of
3 the converting exchange in and to property and any accompanying
4 thing in action are vested in the resulting company without a deed
5 or transfer;

6 (3) the resulting company assumes all the obligations
7 and liabilities of the converting exchange; and

8 (4) the power of attorney or other appropriate
9 authorization granting the attorney in fact the authority to act
10 for the subscribers of the converting exchange is terminated.

11 (b) Except as otherwise specified by the conversion plan:

12 (1) the directors and officers of the converting
13 exchange serving on the effective date serve as directors and
14 officers of the resulting company until new directors and officers
15 are elected under the articles of incorporation and bylaws of the
16 resulting company; and

17 (2) the directors of the converting exchange serving
18 on the effective date serve as directors of the mutual holding
19 company until new directors are elected under the articles of
20 incorporation and bylaws of the mutual holding company.

21 Sec. 829.152. MEMBERSHIP INTERESTS. (a) The membership
22 interests of the policyholders of the resulting company become
23 membership interests in the mutual holding company. Members of the
24 converting exchange become members of the mutual holding company in
25 accordance with the articles of incorporation and bylaws of the
26 mutual holding company.

27 (b) A membership interest in a mutual holding company does

1 not constitute a security as defined by Section 4, The Securities
2 Act (Article 581-4, Vernon's Texas Civil Statutes).

3 Sec. 829.153. RIGHTS OF MEMBERS WHOSE POLICIES ARE ISSUED
4 AFTER ADOPTION OF CONVERSION PLAN BUT BEFORE EFFECTIVE DATE. (a)
5 On issuance of a policy after a conversion plan has been adopted by
6 the board of directors but before the effective date of the
7 conversion plan, the converting exchange shall send to each member
8 to whom a policy is issued a written notice regarding the conversion
9 plan.

10 (b) Except as provided by Subsection (c), each member
11 insured under a property or casualty insurance policy is entitled
12 to notice under Subsection (a) and shall be advised in a clear and
13 conspicuous manner of the member's right to:

14 (1) cancel the policy; and

15 (2) receive a pro rata refund of unearned premiums.

16 (c) A member who has made or filed a claim under the
17 insurance policy is not entitled to a refund under Subsection (b).
18 A member who has exercised a right provided by Subsection (b) may
19 not make or file a claim under the insurance policy.

20 Sec. 829.154. EFFECT OF CONVERSION ON POLICIES; SUBSCRIBER
21 ACCOUNTS. (a) Each policy in effect on the effective date remains
22 in effect under the terms of that policy, except that the following
23 rights, to the extent they existed in the converting exchange in
24 favor of policyholders or members, are extinguished on the
25 effective date:

26 (1) any membership and voting rights;

27 (2) except as provided by Subsection (b) or in the

1 conversion plan approved by the commissioner, a right to share in
2 the surplus or profits of the converting exchange; and

3 (3) any assessment provisions.

4 (b) The holder of a participating policy in effect on the
5 effective date of the conversion continues to have a right to
6 receive dividends as provided by the participating policy.

7 (c) On the renewal date of a participating policy, the
8 resulting company may issue to the insured a nonparticipating
9 policy as a substitute for the participating policy.

10 (d) All the costs and expenses connected with a conversion
11 plan shall be paid or reimbursed by the converting exchange or the
12 resulting company.

13 (e) If a converting exchange maintains subscriber accounts
14 as surplus, the subscriber accounts shall continue as surplus in
15 the resulting company, unless otherwise provided in a conversion
16 plan approved by the commissioner. Subject to Subsection (f), the
17 balances of the subscriber accounts are payable to the members to
18 the extent and in the manner as is provided in the conversion plan.

19 (f) The board of directors of the resulting company may
20 reduce the balances of the subscriber accounts without payment to
21 members of the mutual holding company who were members of the
22 converting exchange if the board of directors of the resulting
23 company determines in the board's discretion that the amounts are
24 necessary to support the operations of the resulting company. The
25 board of directors of the resulting company may not, without the
26 approval of the commissioner, reduce the balance of a subscriber
27 account under this subsection before the third anniversary of the

1 effective date.

2 SECTION 2. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2007.