



November 19, 1999

**ENGROSSED  
SENATE BILL No. 33**

DIGEST OF SB 33 (Updated November 18, 1999 2:20 PM - DI 38)

**Citations Affected:** IC 27-9; IC 27-14.

**Synopsis:** Mutual insurance holding companies. Establishes a mechanism under which a mutual insurance company (MIC) may reorganize as a mutual insurance holding company (MIHC). Requires the MIC to submit a plan of reorganization for approval by the commissioner of the department of insurance. Requires a public hearing and notice to members of the MIC regarding the reorganization. Requires a two-thirds vote in favor of the reorganization by those members voting. Specifies rules for the operation of the MIHC, including limits on the issuance and ownership of stock associated with the MIHC.

**Effective:** Upon passage.

**Clark, Kenley, Alting, Howard,  
Borst, Breaux, Lewis, Long, Lubbers,  
Merritt, Miller, Mills**

(HOUSE SPONSORS — FRY, SMITH M, MANNWEILER, PORTER,  
ATTERHOLT, BEHNING, BOSMA, BUELL, CRAWFORD, DAY,  
DICKINSON, FRIZZELL, KLINKER, MAHERN, MURPHY, SCHOLER,  
SUMMERS, TORR, YOUNG M)

November 16, 1999, read first time and referred to Committee on Rules and Legislative Procedure.

November 16, 1999, reported favorably — Do Pass.

November 16, 1999, rules suspended.

November 17, 1999, read second time, ordered engrossed. Engrossed.

November 18, 1999, read third time, passed. Yeas 48, nays 0.

**HOUSE ACTION**

November 18, 1999, read first time and referred to Committee on Rules and Legislative Procedures.

November 18, 1999, amended, reported — Do Pass.

ES 33—LS 6343/DI 97



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November 19, 1999

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

## ENGROSSED SENATE BILL No. 33

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A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 27-9-1-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE UPON PASSAGE]: Sec. 1. Proceedings under this  
3 article apply to the following:  
4 (1) All insurers who are doing, or who have done, insurance  
5 business in Indiana, and against whom claims arising from that  
6 business may exist.  
7 (2) All insurers who purport to do insurance business in Indiana.  
8 (3) All insurers who have insureds resident in Indiana.  
9 (4) All other persons organized or in the process of organizing  
10 with the intent to do an insurance business in Indiana.  
11 (5) All nonprofit service plans, fraternal benefit societies, and  
12 beneficial societies.  
13 (6) All title insurance companies.  
14 (7) All health maintenance organizations under IC 27-13.  
15 (8) All multiple employer welfare arrangements under  
16 IC 27-1-34.  
17 (9) All limited service health maintenance organizations under

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1 IC 27-13-34.

2 **(10) All mutual insurance holding companies under IC 27-14.**

3 SECTION 2. IC 27-9-2-1 IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Whenever the  
5 commissioner has reasonable cause to believe, and determines, after a  
6 hearing held under IC 4-21.5-3, that any domestic insurer has  
7 committed or engaged in, or is about to commit or engage in, any act,  
8 practice, or transaction that would subject it to a delinquency  
9 proceeding under IC 27-9-3-1 or IC 27-9-3-6, the commissioner may  
10 make and serve upon the insurer and any other persons involved, any  
11 orders reasonably necessary to correct, eliminate, or remedy that  
12 conduct, condition, or ground.

13 (b) If the commissioner has reasonable cause to believe that any  
14 domestic insurer is in such condition as to render the continuance of its  
15 business hazardous to the public or to holders of its policies or  
16 certificates of insurance, or if that domestic insurer gives its consent,  
17 the commissioner shall upon his determination issue an order:

- 18 (1) notifying the insurer of his determination; and  
19 (2) providing the insurer with a written list of the commissioner's  
20 requirements to correct its business practices.

21 (c) If the commissioner makes a determination to supervise an  
22 insurer subject to an order under subsection (a) or (b), the  
23 commissioner shall notify the insurer that it is under the supervision of  
24 the commissioner. **If the insurer is a reorganized insurer under  
25 IC 27-14, the commissioner may also determine to supervise the  
26 mutual insurance holding company that is affiliated with the  
27 reorganized insurer, regardless of whether another basis exists for  
28 supervising the mutual insurance holding company. If the  
29 commissioner makes a determination to supervise a mutual  
30 insurance holding company, the commissioner shall notify the  
31 mutual insurance holding company that it is under the supervision  
32 of the commissioner.**

33 (d) During the period of supervision, the commissioner may appoint  
34 a supervisor to supervise the insurer. The order appointing a supervisor  
35 must direct the supervisor to enforce orders issued under subsection (a)  
36 or (b). The order may also provide that the insurer may not do any of  
37 the following things, during the period of supervision, without the prior  
38 approval of the commissioner or his supervisor:

- 39 (1) Dispose of, convey, or encumber any of its assets or its  
40 business in force.  
41 (2) Withdraw funds from any of its bank accounts.  
42 (3) Lend any of its funds.



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- 1 (4) Invest any of its funds.  
 2 (5) Transfer any of its property.  
 3 (6) Incur any debt, obligation, or liability.  
 4 (7) Merge or consolidate with another company.  
 5 (8) Enter into any new reinsurance contract or agreement.  
 6 (9) Restrict the writing of new business on the renewal of existing  
 7 business.

8 (e) Any insurer subject to an order under this section must comply  
 9 with the lawful requirements of the commissioner and, if placed under  
 10 supervision, has sixty (60) days from the date the supervision order is  
 11 served within which to comply with the requirements of the  
 12 commissioner. In the event of the insurer's failure to comply within  
 13 those time requirements, the commissioner may institute proceedings  
 14 under IC 27-9-3-1 or IC 27-9-3-6 to have a rehabilitator or liquidator  
 15 appointed, or extend the period of supervision.

16 (f) During the period of supervision, the insurer may request the  
 17 commissioner to review any action taken or proposed to be taken by the  
 18 supervisor, specifying the reason the action complained of is believed  
 19 not to be in the best interest of the insurer.

20 (g) If a person violates a supervision order issued under this section,  
 21 he is civilly liable up to ten thousand dollars (\$10,000).

22 (h) The commissioner may apply for and the Marion County circuit  
 23 court may grant, under IC 4-21.5-6, orders as are necessary and proper  
 24 to enforce a supervision order.

25 (i) In the event that a person subject to this article knowingly  
 26 violates any valid order of the commissioner issued under this section  
 27 and, as a result of that violation, the net worth of the insurer is reduced  
 28 or the insurer suffers loss it would not otherwise have suffered, that  
 29 person is personally liable to the insurer for the amount of that  
 30 reduction or loss. The commissioner or supervisor is authorized to  
 31 bring an action on behalf of the insurer in the Marion County circuit  
 32 court to recover the amount of the reduction or loss together with any  
 33 costs.

34 SECTION 3. IC 27-9-3-1 IS AMENDED TO READ AS FOLLOWS  
 35 [EFFECTIVE UPON PASSAGE]: Sec. 1. The commissioner may apply  
 36 by petition to the Marion County circuit court for an order authorizing  
 37 him to rehabilitate a domestic insurer or an alien insurer domiciled in  
 38 Indiana on any one (1) of the following grounds:

- 39 (1) The insurer is in a condition that the further transaction of  
 40 business would be hazardous, financially, to its policyholders,  
 41 creditors, or the public.  
 42 (2) There is reasonable cause to believe that there has been

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1           embezzlement from the insurer, wrongful sequestration or  
2           diversion of the insurer's assets, forgery or fraud affecting the  
3           insurer, or other illegal conduct in, by, or with respect to the  
4           insurer that if established would endanger assets in an amount  
5           threatening the solvency of the insurer.

6           (3) The insurer has failed to remove any person who in fact has  
7           executive authority in the insurer, whether an officer, manager,  
8           general agent, employee, or other person, if the person has been  
9           found after notice and hearing by the commissioner under  
10          IC 4-21.5-3 to be dishonest or untrustworthy in a way affecting  
11          the insurer's business.

12          (4) Control of the insurer, whether by stock ownership or  
13          otherwise, and whether direct or indirect, is in a person found  
14          after notice and hearing under IC 4-21.5-3 to be untrustworthy.

15          (5) Any person who in fact has executive authority in the insurer,  
16          whether an officer, manager, general agent, director or trustee,  
17          employee, or other person, has refused to be examined under oath  
18          by the commissioner concerning its affairs, whether in Indiana or  
19          elsewhere, and after reasonable notice of the fact the insurer has  
20          failed promptly and effectively to terminate the employment and  
21          status of the person and all his influence on management.

22          (6) After demand by the commissioner under this article or  
23          IC 27-1-3, the insurer has failed to promptly make available for  
24          examination any of its own property, books, accounts, documents,  
25          or other records, or those of any subsidiary or related company  
26          within the control of the insurer, or those of any person having  
27          executive authority in the insurer so far as they concern the  
28          insurer.

29          (7) Without first obtaining the written consent of the  
30          commissioner, the insurer has transferred, or attempted to  
31          transfer, in a manner contrary to IC 27-1-23 or IC 27-6,  
32          substantially all of its entire property or business, or has entered  
33          into any transaction the effect of which is to merge, consolidate,  
34          or reinsure substantially its entire property or business in or with  
35          the property or business of any other person.

36          (8) The insurer or its property has been or is the subject of an  
37          application for the appointment of a receiver, trustee, custodian,  
38          conservator, or sequestrator or similar fiduciary of the insurer or  
39          its property otherwise than as authorized under this title, and the  
40          appointment has been made or is imminent, and the appointment  
41          might:

42                (A) remove the insurer from the jurisdiction of the Indiana

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- 1 courts; or  
 2 (B) prejudice orderly delinquency proceedings under this  
 3 article.  
 4 (9) Within the previous four (4) years the insurer has willfully  
 5 violated its charter or articles of incorporation, its bylaws, this  
 6 title, or any valid order of the commissioner under IC 27-9-2-1.  
 7 (10) The insurer has failed to pay within sixty (60) days after the  
 8 due date any obligation to any state or any political subdivision of  
 9 any state or any judgment entered in any state, if the court in  
 10 which the judgment was entered had jurisdiction over the subject  
 11 matter. However, nonpayment shall not be a ground until sixty  
 12 (60) days after any good faith effort by the insurer to contest the  
 13 obligation has been terminated, whether it is before the  
 14 commissioner or in the courts, or the insurer has systematically  
 15 attempted to compromise or renegotiate previously agreed  
 16 settlements with its creditors on the ground that it is financially  
 17 unable to pay its obligations in full.  
 18 (11) The insurer has failed to file its annual report or other  
 19 financial report required by law and, after written demand by the  
 20 commissioner, has failed to immediately give an adequate  
 21 explanation.  
 22 (12) The board of directors or the holders of a majority of the  
 23 shares entitled to vote, or a majority of those individuals entitled  
 24 to the control of those entities, request or consent to rehabilitation  
 25 under this article.  
 26 **(13) The insurer is a mutual insurance holding company**  
 27 **under IC 27-14 and a reorganized insurance company that is**  
 28 **affiliated with the mutual insurance holding company and is**  
 29 **or has been the subject of a petition for an order authorizing**  
 30 **the commissioner to rehabilitate the reorganized insurance**  
 31 **company under this section or to liquidate the reorganized**  
 32 **insurance company under section 6 of this chapter, regardless**  
 33 **of whether another basis exists for petitioning for**  
 34 **rehabilitation of the mutual insurance holding company.**  
 35 SECTION 4. IC 27-14 IS ADDED TO THE INDIANA CODE AS  
 36 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON  
 37 PASSAGE]:  
 38 **ARTICLE 14. MUTUAL INSURANCE HOLDING COMPANY**  
 39 **LAW**  
 40 **Chapter 1. General Provisions and Definitions**  
 41 **Sec. 1. This article may be referred to as the Indiana mutual**  
 42 **insurance holding company law.**

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1           **Sec. 2. (a) The requirements of this section constitute the**  
 2 **"members' surplus protection principle" for purposes of this**  
 3 **article.**

4           **(b) The MIHC must at all times have the voting power and**  
 5 **economic interests required by IC 27-14-5-1.**

6           **(c) The aggregate value of the members' interests in an MIHC**  
 7 **shall be protected from dilution as a result of sales of stock of a**  
 8 **reorganized insurer or stock holding company to persons other**  
 9 **than the MIHC through compliance with the requirements of**  
 10 **IC 27-14-5-6, IC 27-14-5-7, IC 27-14-5-8, and IC 27-14-6-5.**

11           **(d) Dividends paid on participating policies shall be protected**  
 12 **as provided by IC 27-14-3-11.**

13           **(e) An MIHC, stock holding company, and reorganized insurer**  
 14 **must have outside directors as required by IC 27-14-3-5.**

15           **(f) The officers and directors of the MIHC and any subsidiary**  
 16 **of the MIHC are subject to the restrictions on stock ownership set**  
 17 **forth in IC 27-14-5-2, IC 27-14-5-3, and IC 27-14-5-9.**

18           **(g) Dividends paid on the equity securities of a stock holding**  
 19 **company or reorganized insurer may be paid only in accordance**  
 20 **with IC 27-14-3-11.**

21           **(h) Compensation payable to directors and executive officers of**  
 22 **an MIHC, stock holding company, or reorganized insurer may be**  
 23 **paid only in accordance with IC 27-14-3-12.**

24           **(i) Operations outside the ordinary course of the insurance**  
 25 **business may be conducted only as provided in IC 27-14-3-13.**

26           **Sec. 3. The definitions set forth in this chapter apply throughout**  
 27 **this article.**

28           **Sec. 4. (a) Subject to subsection (b), "acting in concert" means:**

29           **(1) a knowing participation in a joint activity whether or not**  
 30 **under an express agreement;**

31           **(2) interdependent conscious parallel action toward a common**  
 32 **goal under an express agreement or otherwise; or**

33           **(3) a combination or pooling of voting interests or other**  
 34 **interests in the securities of any person for a common purpose**  
 35 **under any contract, understanding, relationship, agreement,**  
 36 **or other arrangement, written or otherwise.**

37           **(b) An employee benefit plan is acting in concert with:**

38           **(1) its trustee; or**

39           **(2) a person who serves in a capacity similar to a trustee;**  
 40 **solely for the purpose of determining whether capital stock held by**  
 41 **the trustee or the person in a similar capacity and capital stock**  
 42 **held by the plan will be aggregated.**



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1           **Sec. 5. "Adoption date"** means, with respect to a plan, the date  
 2 on which the board of directors approves a plan of reorganization  
 3 or a plan to issue stock.

4           **Sec. 6. "Affiliate"** means a person who, directly or indirectly:

- 5           (1) controls;
- 6           (2) is controlled by; or
- 7           (3) is under common control with;

8 another person.

9           **Sec. 7. "Applicant"** means, with respect to a plan, a person that  
 10 has submitted a plan to the commissioner under this article.

11           **Sec. 8. (a)** Subject to subsection (b), "associate" means any of  
 12 the following:

13           (1) With respect to a particular person, corporation, business  
 14 entity, or other organization (other than the applicant or an  
 15 affiliate of the applicant) for which the person is:

- 16           (A) an officer;
- 17           (B) a partner; or
- 18           (C) directly or indirectly the beneficial owner of at least  
 19 ten percent (10%) of any class of equity securities.

20           (2) With respect to an individual who is a director or an  
 21 officer of the applicant or of any of the applicant's affiliates,  
 22 a:

- 23           (A) spouse; or
- 24           (B) member of the immediate family sharing the same  
 25 household.

26           (3) With respect to a particular person, a trust or other estate  
 27 in which the person has a substantial beneficial interest or for  
 28 which the person serves as trustee or in a similar fiduciary  
 29 capacity.

30           **(b)** The term does not apply to a person that:

- 31           (1) has a beneficial interest in; or
- 32           (2) serves as a trustee or in a similar fiduciary capacity for;

33 an employee benefit plan.

34           **Sec. 9. "Board"** means:

- 35           (1) the board of directors of an MIHC, an MIC, a stock  
 36 holding company, or a reorganized insurer; or
- 37           (2) another board or committee that is responsible under the  
 38 articles or bylaws of the company for decisions involving the  
 39 structure or management of an MIHC, MIC, stock holding  
 40 company, or reorganized insurer.

41           **Sec. 10. "Commissioner"** refers to the insurance commissioner  
 42 appointed under IC 27-1-1-2.

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**Sec. 11. "Company" means any of the following:**

- (1) An MIC.**
- (2) An MIHC.**
- (3) A stock holding company.**
- (4) A reorganized insurer.**

**Sec. 12. "Disinterested director" means a director of an MIHC who does not hold, directly or indirectly, a material ownership interest in any subsidiary.**

**Sec. 13. "Effective date" means, with respect to a plan, the date on which the plan becomes effective under this article.**

**Sec. 14. "Eligible member" means, with respect to a plan, a person who is a member of an MIC or MIHC, as applicable, on the adoption date of a plan and:**

- (1) solely for purposes of receipt of notice of and voting at a meeting of members on a plan of reorganization, continues to be a member of the MIC on the record date for the meeting of members; or**
- (2) solely for purposes of eligibility to receive stock subscription rights under a plan to issue stock, continues to be a member of the MIC or MIHC, as applicable, on the date the commissioner approves the plan to issue stock.**

**Sec. 15. "Employee benefit plan" means an employee benefit plan established by an MIHC or by one (1) or more of the subsidiaries of an MIHC for the sole benefit of its:**

- (1) employees; or**
- (2) sales agents.**

**Sec. 16. "Financial services businesses" includes investment banking, commercial banking, industrial banking, savings and loan associations, credit unions, trust companies, other lending and loan brokerage services, services related to the extension of credit (including but not limited to real estate and personal property appraisal; arranging equity financing; check-guaranty services; collection agency services; asset management, servicing, and collection activities; real estate settlement services; and lease financing transactions), securities broker-dealer and trading services, private placement services, acting as a futures commission merchant, securities underwriting, transactions in bullion, precious metals, and foreign currency, investment advisory services, financial planning services, third party administration of insurance policy claims and accounts receivable, the advance or loan of funds using accounts receivable as collateral, organization and operation of investment companies and mutual funds, employee benefit**

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1 planning and consultation services, actuarial services, issuance of  
 2 money orders, savings bonds, and traveler's checks, and other  
 3 operations and services either closely related to or a proper  
 4 incident to the foregoing.

5 Sec. 17. "Immediate family" means any child, stepchild,  
 6 grandchild, parent, stepparent, grandparent, sibling,  
 7 mother-in-law, father-in-law, son-in-law, daughter-in-law,  
 8 brother-in-law or sister-in-law, and includes adoptive  
 9 relationships.

10 Sec. 18. "Internal Revenue Code" refers to the Internal Revenue  
 11 Code of 1986, as amended.

12 Sec. 19. "Material ownership interest" means an ownership  
 13 interest equal to more than one-half of one percent (0.5%) of the  
 14 voting securities of the issuer, or a larger percentage as the  
 15 commissioner may approve.

16 Sec. 20. "Member" means a person that, according to the:  
 17 (1) records; and  
 18 (2) articles of incorporation and bylaws;  
 19 of an MIC or MIHC, as applicable, is a member of the MIC or  
 20 MIHC, as applicable.

21 Sec. 21. "Member's interest" means:

- 22 (1) the voting rights of a member provided by law and by the  
 23 MIC's or MIHC's articles of incorporation and bylaws; and  
 24 (2) the right to receive cash, stock, or other consideration in  
 25 the event of a conversion to a stock company under IC 27-1  
 26 through IC 27-13 or a dissolution under IC 27-1-10, as  
 27 provided by those laws and by the MIC's or MIHC's articles  
 28 of incorporation or bylaws.

29 Sec. 22. "MIC" refers to a mutual insurance company.

30 Sec. 23. "MIHC" refers to a mutual insurance holding company.

31 Sec. 24. "Mutual insurance company" or "MIC" means a  
 32 mutual insurer that is:

- 33 (1) submitting; or  
 34 (2) subject to;

35 a plan of reorganization or plan to issue stock under this article.

36 Sec. 25. "Mutual insurance holding company" or "MIHC"  
 37 means a mutual insurance holding company established under  
 38 IC 27-14-2.

39 Sec. 26. "Net income" means an amount equal to the  
 40 consolidated net income of the company for which the  
 41 determination is being made, determined in accordance with  
 42 generally accepted accounting principles on a basis consistent with

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1 prior periods, less net realized investment gains (reduced by capital  
 2 gains tax, if any) on the sale of investments (including real estate)  
 3 that were held as of the effective date of the plan of reorganization  
 4 by a former MIC. For purposes of this section, "net realized  
 5 investment gains" means an amount equal to realized investment  
 6 gains less realized investment losses (reduced by capital gains tax,  
 7 if any) for the same accounting period for all investments  
 8 (including real estate) held as of the effective date of the plan of  
 9 reorganization as determined in accordance with generally  
 10 accepted accounting principles on a basis consistent with prior  
 11 periods. The cumulative total of net realized investment gains after  
 12 the effective date of the plan of reorganization that are applied to  
 13 reduce one (1) or more years of net income for the purposes of this  
 14 section and IC 27-14-3-11(e) shall not exceed the net unrealized  
 15 investment gains as of the effective date of the plan of  
 16 reorganization. For purposes of this section, "net unrealized  
 17 investment gains" mean unrealized investment gains less  
 18 unrealized investment losses (as adjusted for deferred income  
 19 taxes) as of the effective date of the plan of reorganization.

20 **Sec. 27. "Ordinary course of the insurance business" includes**  
 21 **but is not limited to the following actions and activities of the**  
 22 **MIHC and its subsidiaries:**

- 23 (1) Operations, practices, and procedures of the company in  
 24 effect prior to the effective date of the plan of reorganization.
- 25 (2) Operations, practices, and procedures that are consistent  
 26 with industry practices and standards used or in effect at any  
 27 relevant time.
- 28 (3) The payment of obligations due under any surplus note  
 29 issued by the company with the approval of the commissioner.
- 30 (4) Expanding the business of any company into other  
 31 insurance, insurance-related, and financial services  
 32 businesses.

33 **Any expansion in the ordinary course of the insurance business**  
 34 **may be accomplished through acquisition, merger, consolidation,**  
 35 **strategic alliance, joint venture, or other business combination.**

36 **Sec. 28. (a) "Outside director" means an individual who:**

- 37 (1) is a member of a board of:
  - 38 (A) an MIHC;
  - 39 (B) a stock holding company; or
  - 40 (C) a reorganized insurer;
- 41 (2) is not and has not been within the last three (3) years an  
 42 officer of, an employee of, or a consultant to the entity or any



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1 affiliate of the entity referred to in subdivision (1), of whose  
 2 board the individual is a member;  
 3 (3) with respect to a director of an MIHC that does not,  
 4 directly or indirectly, own all of the stock of each of its  
 5 reorganized insurers, is not and has not been within the last  
 6 three (3) years a director of a stock holding company or a  
 7 reorganized insurer that is affiliated with the MIHC; and  
 8 (4) is not a spouse of or a member of the immediate family  
 9 who shares the same household with an officer of, an  
 10 employee of, or a consultant to the entity or any affiliate of the  
 11 entity referred to in subdivision (1), of whose board the  
 12 individual is a member.

13 (b) For purposes of this section, a consultant is an individual  
 14 who directly derives more than thirty-three percent (33%) of the  
 15 consultant's income in any calendar year from the MIHC or an  
 16 affiliate of the MIHC or an associate of a person who derives more  
 17 than thirty-three percent (33%) of its income in any calendar year  
 18 from the MIHC or any affiliate of the MIHC.

19 **Sec. 29. "Participating policy" means a policy providing for the**  
 20 **distribution of policy dividends.**

21 **Sec. 30. "Person" means any of the following:**

- 22 (1) An individual.
- 23 (2) A group of individuals acting in concert.
- 24 (3) A trust.
- 25 (4) An association.
- 26 (5) A partnership.
- 27 (6) A limited liability company.
- 28 (7) A corporation.

29 **Sec. 31. "Plan" means a plan:**

- 30 (1) of reorganization; or
- 31 (2) to issue stock.

32 **Sec. 32. "Plan of reorganization" means a plan adopted under**  
 33 **IC 27-14-2.**

34 **Sec. 33. "Plan to issue stock" means a plan to issue shares of a**  
 35 **stock holding company or a reorganized insurer adopted under**  
 36 **IC 27-14-4.**

37 **Sec. 34. "Policy" means a contract providing one (1) or more of**  
 38 **the kinds of insurance described in IC 27-1-5-1.**

39 **Sec. 35. "Reorganized insurer" means an entity:**

- 40 (1) that is a domestic stock insurance company that is owned
- 41 entirely or in part by an MIHC or a stock holding company;
- 42 and



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- 1           (2) the policyholders of which may be or are entitled to
- 2           become members of the MIHC.
- 3           **Sec. 36. "Stock holding company" means an entity other than a**
- 4           **reorganized insurer and its subsidiaries that:**
- 5           (1) is owned entirely or in part, directly or indirectly, by an
- 6           MIHC; and
- 7           (2) directly or indirectly owns all or part of the capital stock
- 8           of a reorganized insurer.
- 9           **Sec. 37. "Subsidiary" means, with respect to a particular**
- 10          **person, an affiliate of the person that is controlled by the person,**
- 11          **either:**
- 12          (1) directly; or
- 13          (2) indirectly through one (1) or more intermediaries.
- 14          **Sec. 38. "Voting capital stock" means capital stock whose holder**
- 15          **has the right to vote in the election of directors.**
- 16          **Chapter 2. Mutual Insurance Company Reorganization**
- 17          **Sec. 1. (a) A mutual insurance company (MIC) may reorganize**
- 18          **under this chapter as a mutual insurance holding company**
- 19          **(MIHC) with one (1) or more subsidiaries after the following have**
- 20          **occurred:**
- 21          (1) The favorable vote of its board of directors to reorganize.
- 22          (2) The filing of an application with the commissioner.
- 23          (3) A notice of a public hearing made to its members and the
- 24          public.
- 25          (4) At least one (1) public hearing conducted by the
- 26          commissioner.
- 27          (5) The approval of the plan by the commissioner.
- 28          (6) A favorable vote of the eligible members of the MIC.
- 29          (7) The issuance of an order of completion by the
- 30          commissioner.
- 31          **(b) The subsidiaries of an MIHC:**
- 32          (1) must include at least one (1) reorganized insurer;
- 33          (2) may include one (1) or more stock holding companies; and
- 34          (3) may include one (1) or more stock insurance companies,
- 35          the policyholders of which are not and do not become
- 36          members of the MIHC.
- 37          **Sec. 2. The reorganization of an MIC or two (2) or more MICs**
- 38          **into an MIHC structure under this chapter may be accomplished**
- 39          **by any means approved by the commissioner, including the**
- 40          **following:**
- 41          (1) The establishment of at least one (1) company.
- 42          (2) The amendment or restatement of the articles and bylaws

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- 1 of any company.
- 2 (3) The transfer or acquisition of any or all of the assets and
- 3 liabilities or of the stock of any company.
- 4 (4) The merger or consolidation of two (2) or more MICs.
- 5 (5) The merger or consolidation of two (2) or more stock
- 6 holding companies as part of the merger of two (2) or more
- 7 MIHCs.
- 8 (6) The merger or consolidation of two (2) or more stock
- 9 insurance companies.
- 10 (7) The merger of an MIC's membership interests into any
- 11 existing MIHC, with the continued corporate existence of the
- 12 reorganized MIC as a reorganized insurer.
- 13 **Sec. 3. (a) A plan of reorganization must be adopted by the**
- 14 **board of directors of the MIC.**
- 15 **(b) For a plan of reorganization to be adopted by the board of**
- 16 **directors of an MIC, at least seventy-five percent (75%) of the**
- 17 **members of the board of directors must vote in favor of the**
- 18 **adoption.**
- 19 **Sec. 4. Within ninety (90) days after the adoption of a plan of**
- 20 **reorganization and before a vote on the plan by the members, the**
- 21 **company adopting the plan must file with the commissioner an**
- 22 **application containing the following:**
- 23 **(1) A plan of reorganization.**
- 24 **(2) The form of the notices to be sent to members under**
- 25 **sections 8 and 12(b) of this chapter.**
- 26 **(3) A copy of the:**
- 27 **(A) proposed articles of incorporation; and**
- 28 **(B) bylaws;**
- 29 **of each company to be formed under the plan, including the**
- 30 **reorganized insurer in compliance with the requirements of**
- 31 **IC 27-1-6.**
- 32 **(4) If it is necessary to amend the current articles of**
- 33 **incorporation or bylaws of any company that is affected by**
- 34 **the plan, a copy of:**
- 35 **(A) the proposed articles of amendment or amended and**
- 36 **restated articles of incorporation; and**
- 37 **(B) amended or restated bylaws;**
- 38 **of the company, which in the case of each domestic insurance**
- 39 **company must comply with the requirements of IC 27-1-8.**
- 40 **(5) With respect to participating policies and contracts of the**
- 41 **reorganized insurer, a description of:**
- 42 **(A) the current dividend practices of the MIC; and**

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(B) the dividend practices to be followed by the reorganized insurer following the effective date of reorganization.

**Sec. 5. A plan of reorganization filed with the commissioner under this chapter must meet the following requirements:**

- (1) It must describe all significant terms of the proposed reorganization.
- (2) It must describe in a narrative form any plan to issue stock that may be proposed in connection with the plan of reorganization.
- (3) It must:
  - (A) describe the reasons for and purposes of the proposed reorganization;
  - (B) describe the manner in which the reorganization is expected to benefit and serve the best interests of the members; and
  - (C) include an analysis of the risks and benefits to the MIC and its members of the proposed reorganization, and compare those risks and benefits with the risks and benefits of reasonable alternatives (including demutualization of the MIC) to the reorganization.
- (4) It must provide that:
  - (A) a member's interest in the MIC becomes a member's interest in the MIHC;
  - (B) the members' surplus protection principle will govern the actions of the MIHC and its subsidiaries;
  - (C) a member's interest in the MIHC may not be transferred, assigned, pledged, or alienated in any manner except in connection with a transfer, assignment, pledge, or alienation of the policy from which the member's interest is derived; and
  - (D) any member's interest in an MIHC will automatically terminate upon the lapse or other termination of the policy from which the member's interest is derived.
- (5) It must describe how the plan of reorganization is to be effected, including a description of a contemplated transfer, acquisition, or assumption of assets, rights, franchises, interests, debts, liabilities, or other obligations of the applicant and any other company affected by the plan or reorganization.
- (6) It must describe the:
  - (A) establishment of companies;

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- 1           **(B) amendment or restatement of the articles of**
- 2           **incorporation and bylaws of a company; and**
- 3           **(C) merger of companies;**
- 4           **that will take place under the plan of reorganization.**
- 5           **(7) It must provide a list of:**
- 6           **(A) all individuals who are or have been selected to become**
- 7           **directors or officers of the MIHC or any company that is**
- 8           **a subsidiary of the MIHC; and**
- 9           **(B) other individuals who perform or will perform duties**
- 10           **customarily performed by a director or officer.**
- 11           **(8) The list prepared under subdivision (7) must include, for**
- 12           **each individual on the list:**
- 13           **(A) the individual's principal occupation;**
- 14           **(B) all offices and positions the individual has held in the**
- 15           **preceding five (5) years;**
- 16           **(C) any crime of which the individual has been convicted**
- 17           **(other than traffic violations) in the preceding ten (10)**
- 18           **years;**
- 19           **(D) information concerning any personal bankruptcy of**
- 20           **the individual or the individual's spouse during the**
- 21           **previous seven (7) years;**
- 22           **(E) information concerning the bankruptcy of any**
- 23           **corporation of which the individual was an officer or**
- 24           **director during the previous seven (7) years;**
- 25           **(F) information concerning any state or federal securities**
- 26           **law allegations against the individual that within the**
- 27           **previous ten (10) years resulted in a:**
- 28           **(i) determination that the individual violated the state or**
- 29           **federal securities law;**
- 30           **(ii) plea of nolo contendere; or**
- 31           **(iii) consent decree;**
- 32           **(G) information concerning the revocation during the**
- 33           **previous ten (10) years of any state or federal license issued**
- 34           **to the individual; and**
- 35           **(H) information as to whether the individual was refused**
- 36           **a performance or other bond during the previous ten (10)**
- 37           **years.**
- 38           **(9) It must provide that any policy of any reorganized insurer**
- 39           **that goes into force after the effective date of the**
- 40           **reorganization, will provide that:**
- 41           **(A) the owner of the policy; or**
- 42           **(B) another person or persons specified in the:**

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(i) policy; or  
(ii) MIHC's articles of incorporation or bylaws;  
becomes a member of the MIHC. However, a plan of reorganization may provide that any person who becomes an owner of a policy or who would otherwise become a member under a policy issued during a particular period of not more than three (3) years immediately after the effective date of the plan of reorganization will not become a member until after the expiration of that period.

(10) It must provide that, with regard to a policy of the MIC in force on the effective date of the plan of reorganization:

- (A) the policy continues to remain in force under the policy's terms as the policy of a reorganized insurer;
- (B) the holder of a participating policy continues to have the right to receive policy dividends as provided for in the policy; and
- (C) the policyholder's right to benefits, values, guarantees, and other contractual obligations of the MIC continues after the effective date of the plan of reorganization as obligations of the reorganized insurer.

(11) It must describe the nature and content of the report and financial statement to be sent annually to each member following the reorganization.

(12) It must provide that, in the event of proceedings under IC 27-9 involving a reorganized insurer, the assets of the MIHC that is affiliated with the reorganized insurer are available to satisfy the policyholder obligations of the reorganized insurer.

(13) It must provide that the name of the reorganized insurer does not include the term "mutual", except as approved by the commissioner as not being misleading to the policyholders or the public.

(14) It must provide any additional information that the commissioner may request.

**Sec. 6. (a) A plan of reorganization that is adopted by the board of directors of the applicant may be:**

- (1) amended by the board of directors of the applicant:
  - (A) in response to the comments or recommendations of the commissioner, or any other state or federal agency or entity, before any solicitation of proxies from the members to vote on the plan of reorganization; and
  - (B) otherwise, with the consent of the commissioner; or

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1 (2) terminated by the board of directors of the applicant:

2 (A) before notice is sent to the members under section 8 of  
3 this chapter; or

4 (B) with the consent of the commissioner.

5 (b) For a plan of reorganization to be:

6 (1) amended; or

7 (2) terminated;

8 by the board of directors of an MIC, at least seventy-five percent  
9 (75%) of the members of the board of directors must vote in favor  
10 of the amendment or termination.

11 Sec. 7. (a) The commissioner shall, as soon as practicable after  
12 a plan of reorganization is filed with the commissioner but not  
13 more than ninety (90) days (or a longer period after the plan is  
14 filed as the commissioner determines for good cause), conduct a  
15 public hearing under IC 4-22-2-26 to afford interested persons an  
16 opportunity to present information, views, arguments, or  
17 comments about the plan.

18 (b) At least thirty (30) days before a hearing held under this  
19 section, the commissioner shall publish notice of the hearing in a  
20 newspaper of general circulation in:

21 (1) the city of Indianapolis;

22 (2) the city in which the principal office of the applicant is  
23 located; and

24 (3) other cities or towns that the commissioner considers  
25 appropriate.

26 The commissioner may provide written notice of the hearing by  
27 other means and to other persons that the commissioner considers  
28 appropriate.

29 (c) The notice provided under this section must:

30 (1) refer to the applicable statutory provisions;

31 (2) state the date, time, and location of the hearing; and

32 (3) include a brief statement of the subject of the hearing.

33 (d) At the discretion of the commissioner or the commissioner's  
34 appointee, testimony may be taken under oath or by affirmation at  
35 a public hearing under this article.

36 Sec. 8. The applicant shall, at least thirty (30) days before the  
37 public hearing required under this chapter, mail notice of the  
38 public hearing to the last known address of each member and  
39 policyholder of the MIC as shown on the books of the MIC. The  
40 notice must achieve a minimum score of forty (40) on the Flesch  
41 reading ease test or an equivalent score on a comparable test  
42 approved by the commissioner. The notice must include the

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following:

- (1) Reference to the applicable statutory provisions.
- (2) A statement of the date, time, and location of the hearing.
- (3) A brief statement of the subject of the hearing, including specific notice to the member that the member's interest in the MIC will be affected by the reorganization.

Sec. 9. The commissioner may not approve a plan of reorganization submitted under this article unless the applicant has shown, by a preponderance of the evidence, that the plan of reorganization:

- (1) complies with the law;
- (2) includes the disclosures and notices required under this article;
- (3) is fair, reasonable, and equitable to the members and policyholders of the MIC; and
- (4) complies with the members' surplus protection principle.

Sec. 10. (a) Not more than one hundred eighty (180) days after the filing of the application and submission of all other information requested by the commissioner relative to the plan, or a longer period if extended by the commissioner for good cause, the commissioner shall approve or disapprove the plan of reorganization. The commissioner's approval of the plan must be conditioned upon:

- (1) the approval of the plan by the eligible members under this chapter; and
- (2) the requirements of sections 16 and 17 of this chapter.

(b) The commissioner shall fully consider any comments received at the public hearing under IC 4-22-2-27 before issuing an order under subsection (a).

Sec. 11. The commissioner shall notify the applicant upon reaching a decision on a plan of reorganization.

Sec. 12. (a) A plan of reorganization of an MIC must be submitted for approval by the eligible members of the MIC after approval of the application by the commissioner under section 10 of this chapter. A vote by the eligible members to approve the plan must be made at a special or annual meeting held under IC 27-1-7-7 and this chapter.

(b) The eligible members must be sent notice of the meeting at which a plan of reorganization will be submitted for approval by eligible members. The notice must:

- (1) be mailed at least thirty (30) days before the meeting;
- (2) refer to the applicable statutory provisions;

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- 1           **(3) state the date, time, and location of the meeting;**
- 2           **(4) include or be accompanied by a brief statement of the**
- 3           **subject of the meeting, including specific notice to the member**
- 4           **that the member's interest in the MIC will be affected by the**
- 5           **reorganization;**
- 6           **(5) include or be accompanied by a copy of the plan or a**
- 7           **summary of the plan; and**
- 8           **(6) describe the member's right to attend and participate in**
- 9           **the meeting.**

10           **(c) The notice sent under this section must achieve a minimum**  
 11           **score of forty (40) on the Flesch reading ease test or an equivalent**  
 12           **score on a comparable test approved by the commissioner.**

13           **Sec. 13. Notwithstanding IC 27-1-7-9, with respect to a vote**  
 14           **under section 12 of this chapter, an eligible member:**

- 15           **(1) may vote in person or by proxy if the proxy soliciting**
- 16           **material:**
  - 17           **(A) includes reference to the applicable statutory**
  - 18           **provisions;**
  - 19           **(B) states the date, time, and location of the meeting;**
  - 20           **(C) contains a brief statement of the subject of the meeting,**
  - 21           **including specific notice that the member's interest in the**
  - 22           **MIC will be affected by the reorganization;**
  - 23           **(D) was solicited and obtained from the member after the**
  - 24           **commissioner has approved the plan of reorganization**
  - 25           **under this article; and**
  - 26           **(E) was found to be sufficient in the reasonable**
  - 27           **determination of the commissioner for the eligible**
  - 28           **members to make an informed decision about the plan of**
  - 29           **reorganization; and**
- 30           **(2) is entitled to cast only one (1) vote on the proposed plan of**
- 31           **reorganization, regardless of the number of policies or the**
- 32           **amount of insurance that the member has with the MIC or**
- 33           **any affiliate of the MIC.**

34           **Sec. 14. For a plan of reorganization to be approved by the**  
 35           **members of an MIC:**

- 36           **(1) the plan of reorganization must be approved at a meeting**
- 37           **at which at least ten percent (10%) of the eligible members**
- 38           **are represented in person or by proxy; and**
- 39           **(2) at least two-thirds (2/3) of the eligible members voting in**
- 40           **person or by proxy must vote in favor of the plan.**

41           **Sec. 15. Not later than thirty (30) days after members have**  
 42           **approved a plan of reorganization at a special or annual meeting**

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1 of members under this chapter, an applicant must file with the  
2 commissioner the minutes of the meeting at which the plan of  
3 reorganization was approved.

4 Sec. 16. (a) Before the commissioner issues a permit for  
5 completion of organization under subsection (b):

6 (1) a public hearing must have been conducted under this  
7 chapter;

8 (2) the commissioner must have issued notice to the applicant  
9 that the commissioner has approved the plan of  
10 reorganization of the applicant under section 10 of this  
11 chapter; and

12 (3) the commissioner must have received the minutes of the  
13 meeting of the members at which the plan was approved  
14 reflecting that the plan of reorganization was on the agenda  
15 and the plan was approved.

16 (b) After the events referred to in subsection (a), the  
17 commissioner shall issue:

18 (1) a permit for completion of organization of the MIHC; and

19 (2) in the case of:

20 (A) a newly organized domestic insurance company, a  
21 permit for completion of organization as provided in  
22 IC 27-1-6-11; or

23 (B) amended articles of incorporation of a domestic  
24 insurance company, an amended certificate of authority as  
25 provided in IC 27-1-8-9.

26 Sec. 17. A plan of reorganization is effective when each  
27 reorganized insurer and MIHC affected by the plan has filed:

28 (1) its articles of incorporation or, if appropriate, its articles  
29 of amendment; and

30 (2) the certificate of authority and any amended certificate of  
31 authority issued to the company by the commissioner under  
32 this chapter;

33 in the office of the county recorder of the county in which the  
34 principal office of the company is located, or at any later date  
35 specified in the plan of reorganization.

36 Sec. 18. The organization of a domestic insurance company  
37 under a plan of reorganization under this article must be  
38 conducted under IC 27-1-6 concerning the formation of domestic  
39 insurance companies.

40 Sec. 19. The amendment of the articles of incorporation of a  
41 domestic insurance company under a plan of reorganization under  
42 this article must be conducted in compliance with IC 27-1-8.



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1           **Chapter 3. Mutual Insurance Holding Companies**

2           **Sec. 1. An MIHC organized under this article must meet the**  
3 **requirements of IC 27-14-2.**

4           **Sec. 2. The articles of incorporation of an MIHC must contain**  
5 **the following, or provisions at least substantially equivalent to the**  
6 **following:**

7           (1) The name of the MIHC, which must include the term  
8 "mutual" or the abbreviation "MIHC".

9           (2) A provision specifying that the MIHC does not have the  
10 power to engage in the business of issuing insurance policies  
11 or contracts.

12           (3) A provision specifying that the MIHC is not authorized to  
13 issue voting or any other capital stock.

14           (4) A provision setting forth the rights of members of the  
15 MIHC in the equity of the MIHC in the event of a conversion  
16 to a stock company under Indiana law or a dissolution under  
17 IC 27-1-10, including the rights of the members to the assets  
18 of the MIHC.

19           (5) A provision specifying that:

20           (A) a member of the MIHC is not, as a member, personally  
21 liable for the acts, debts, liabilities, or obligations of the  
22 MIHC; and

23           (B) no assessment may be imposed upon the members of  
24 the MIHC by any person, including:

25           (i) the board of directors, members, or creditors of the  
26 MIHC; and

27           (ii) any governmental office or official, including the  
28 commissioner;

29           because of any liability of any company or because of any  
30 act, debt, or liability of the MIHC.

31           **Sec. 3. Members of an MIHC have rights and obligations**  
32 **specified in:**

33           (1) this article; and

34           (2) the articles of incorporation and bylaws of the MIHC.

35           **Sec. 4. The MIHC may not make any direct payment of income,**  
36 **dividends, or other distribution of profits to a member of an MIHC**  
37 **with respect to any membership interest in the MIHC, other than**  
38 **as directed or approved by the commissioner.**

39           **Sec. 5. (a) At least a majority of the following must be made up**  
40 **of outside directors:**

41           (1) The board of directors of an MIHC.

42           (2) The board of directors of a stock holding company that is

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1 not a wholly-owned subsidiary of an MIHC.

2 (3) The board of directors of a reorganized insurer that is not  
3 a wholly-owned subsidiary of an MIHC.

4 (4) Any audit committee or executive committee of the board  
5 of directors of:

6 (A) an MIHC;

7 (B) a stock holding company that is not a wholly-owned  
8 subsidiary of an MIHC; or

9 (C) a reorganized insurer that is not a wholly-owned  
10 subsidiary of an MIHC.

11 (b) All of the directors who are members of any management  
12 compensation committee of the following entities must be outside  
13 directors:

14 (1) An MIHC.

15 (2) A stock holding company that is not a wholly-owned  
16 subsidiary of an MIHC.

17 (3) A reorganized insurer that is not a wholly-owned  
18 subsidiary of an MIHC.

19 (c) All of the directors who are members of any pricing  
20 committee of the following entities with responsibility for  
21 approving the price of stock sold in any offering under this article  
22 must be outside directors:

23 (1) A stock holding company.

24 (2) A reorganized insurer.

25 (d) The commissioner may determine, after furnishing the  
26 affected company and director with notice and opportunity to be  
27 heard, that an individual does not qualify as an outside director or  
28 otherwise should not be considered an outside director. Such an  
29 individual may continue to serve as a director, but from the date  
30 the commissioner notifies the affected company in writing of the  
31 determination and the basis for the determination, the individual  
32 may not be considered an outside director.

33 (e) A director's failure to qualify as or be considered an outside  
34 director does not affect the validity of any action taken by the  
35 company, the board of directors, or any committee of the board of  
36 directors.

37 (f) Concurrent with the initial public offering of any securities  
38 of a stock holding company or a reorganized insurer, the majority  
39 of the members of the board of directors of the MIHC must be  
40 disinterested directors.

41 Sec. 6. (a) Except as provided in subsection (b), an MIHC:

42 (1) has and may exercise all the rights and privileges of

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1 insurance companies formed under this title; and

2 (2) is subject to all the requirements and regulations imposed  
3 upon insurance companies formed under this title.

4 (b) The exceptions referred to in subsection (a) are as follows:

5 (1) An MIHC does not have the right or privilege to write  
6 insurance (except through an insurance company subsidiary)  
7 and is not subject to any requirement or rule adopted under  
8 IC 4-22-2 relating to the writing of insurance.

9 (2) An MIHC is not subject to the deposit requirement in  
10 IC 27-1-6-15(d).

11 (3) An MIHC is not subject to any statute or rule adopted  
12 under IC 4-22-2 that is imposed upon insurance companies  
13 formed under this title to the extent that the statute or rule is  
14 in conflict with this article.

15 (4) An MIHC is not subject to the investment requirements  
16 under IC 27-1-12 or IC 27-1-13 that limit or restrict  
17 investments in subsidiaries.

18 (5) An MIHC is not subject to risk-based capital requirements  
19 under IC 27-1-36.

20 (6) An MIHC is not subject to a requirement under IC 27 if  
21 the commissioner determines by order or rule adopted by the  
22 commissioner under IC 4-22-2 that the requirement does not  
23 apply to the MIHC.

24 Sec. 7. (a) Not later than July 1 of each year, an MIHC shall file  
25 with the commissioner an annual statement containing the  
26 following information:

27 (1) Audited financial statements, including:

28 (A) an income statement;

29 (B) a balance sheet;

30 (C) a statement of cash flows; and

31 (D) footnotes.

32 (2) Complete information on the status of any condition  
33 imposed in connection with the approval of a plan of  
34 reorganization.

35 (3) An investment plan covering all assets of the MIHC.

36 (4) A statement that the MIHC and its affiliates have  
37 complied with section 8 of this chapter.

38 (5) A statement that describes any changes in the members'  
39 interests and the reason for any change in the members'  
40 interests.

41 (b) Not later than July 1 of the first, second, and third years  
42 after completion of a reorganization under IC 27-14-2, a

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1 reorganized insurer shall file with the commissioner:

2 (1) a certificate of an actuary stating that the methodology  
3 used by the reorganized insurer for any payment of  
4 policyholder dividends in the previous year complied with the  
5 methodology stated in the plan submitted under  
6 IC 27-14-2-4(5) or other methodology approved by the  
7 commissioner; and

8 (2) a certificate of an independent auditor of the reorganized  
9 insurer that the calculation of any participating policy  
10 dividends paid during the previous year complied with the  
11 methodology stated in the plan submitted under  
12 IC 27-14-2-4(5) and was accurate.

13 (c) If the certification of the actuary or auditor required in  
14 subsection (b) has not been filed or if the commissioner has other  
15 reasonable cause, the commissioner may employ at the expense of  
16 the reorganized insurer an independent actuary or auditor, or  
17 both, to issue the certifications required in subsection (b).

18 (d) The requirement to submit the certifications under  
19 subsection (b) may be extended by the commissioner beyond the  
20 third year after completion of a reorganization under IC 27-14-2:

21 (1) by order applicable to a particular recognized insurer if  
22 the commissioner determines that further certifications are  
23 necessary for the protection of the interests of the  
24 policyholders of the reorganized insurer; and

25 (2) by rule adopted under IC 4-22-2 if the commissioner  
26 determines that further certifications are necessary for the  
27 protection of the interests of the policyholders of all  
28 reorganized insurers or a particular class of reorganized  
29 insurers.

30 **Sec. 8. (a) For the purposes of IC 27-1-23:**

31 (1) an MIHC and its affiliates constitute an insurance holding  
32 company system; and

33 (2) an MIHC is considered to be an "insurer".

34 However, a separate filing or approval is not required under  
35 IC 27-1-23 for an acquisition or a reorganization that is included  
36 in a plan approved under this article.

37 (b) For the purpose of this section, a "material transaction"  
38 means:

39 (1) a transaction described in IC 27-1-23-4(b):

40 (A) between an MIHC and any affiliate; or

41 (B) between any affiliates of an MIHC if the transaction  
42 equals or exceeds the percentages of admitted assets or

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- 1 surplus set forth in IC 27-1-23-4(b) of any reorganized  
 2 insurer of the MIHC; or  
 3 (2) a transaction described in IC 27-1-23-4(b) between an  
 4 MIHC and any person as specified in a rule adopted by the  
 5 commissioner under IC 4-22-2 or an order issued by the  
 6 commissioner.
- 7 (c) An MIHC may not enter into a material transaction unless  
 8 the MIHC has notified the commissioner in writing of its intention  
 9 to enter into a material transaction at least thirty (30) days before  
 10 the transaction, or a shorter period as the commissioner may  
 11 permit, and the commissioner has not disapproved the transaction  
 12 within that period.
- 13 (d) In addition to the requirements of IC 27-1-23-4(a) and  
 14 IC 27-1-23-4(d), a material transaction must:
- 15 (1) be fair and reasonable to the members of the MIHC; and  
 16 (2) not violate the members' surplus protection principle.
- 17 (e) An MIHC and its affiliates may not enter into transactions  
 18 that are part of a plan or series of like transactions if the purpose  
 19 of those separate transactions is to circumvent any rules of the  
 20 commissioner prohibiting a material transaction or this section.
- 21 **Sec. 9.** The interest of a member in an MIHC does not constitute  
 22 a security under Indiana law.
- 23 **Sec. 10.** (a) After the effective date of a plan of reorganization,  
 24 the officers and directors of the MIHC:
- 25 (1) owe the same fiduciary responsibilities to members of the  
 26 MIHC as the officers and directors of the former MIC owed  
 27 to members of the former MIC; and  
 28 (2) are subject to potential liability to members of the MIHC  
 29 to the same extent as the officers and directors of the former  
 30 MIC were to members of the former MIC before the effective  
 31 date of the plan of reorganization.
- 32 (b) An action may be brought to recover for the violation of  
 33 fiduciary responsibilities under this article under IC 34-11-2-4, or,  
 34 in the case of fraud, under IC 34-11-2-7.
- 35 **Sec. 11.** (a) The reorganized insurer must obtain commissioner  
 36 approval of the dividend practices with respect to participating  
 37 policies and contracts in force as of the effective date of the  
 38 reorganization to be followed by the reorganized insurer as set  
 39 forth in IC 27-14-2-4(5) if the dividend practices of the reorganized  
 40 insurer will be different from the dividend practices of the MIC.
- 41 (b) The commissioner may require the establishment of a closed  
 42 block or other mechanism that the commissioner finds to be fair

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1 for the protection of MIC policyholder dividends.

2 (c) The dividend practices of the reorganized insurer, the  
3 requirement to establish a closed block or other mechanism, or the  
4 terms of the closed block, may be modified after approval under  
5 subsection (a) or subsequent to a reorganization under IC 27-14-2  
6 only with the prior approval of the commissioner on application of  
7 the reorganized insurer.

8 (d) Neither a stock holding company nor a reorganized insurer  
9 may pay dividends or make other distributions with respect to its  
10 stock to its shareholders if the reorganized insurer has failed to pay  
11 policyholder dividends in compliance with the dividend practices  
12 approved by the commissioner in accordance with this section.

13 (e) A reorganized insurer or stock holding company of the  
14 MIHC that has any shareholder other than the MIHC or a direct  
15 or indirect wholly owned subsidiary of the MIHC may not declare  
16 or pay any dividend or other distribution on its capital stock except  
17 to the extent of:

18 (1) one (1) or more years of net income attributable to the  
19 year of or years after the effective date of the plan of  
20 reorganization; and

21 (2) proceeds from the issuance of capital stock (which as of  
22 any date shall be that amount equal to the net proceeds  
23 received by the issuer less amounts previously paid out of the  
24 net proceeds to stockholders in the form of dividends or other  
25 distributions).

26 **Sec. 12. (a)** For purposes of this section, "executive officer" has  
27 the same meaning as the term is defined by the Securities and  
28 Exchange Commission in 17 CFR 240.3b-7.

29 (b) After the effective date of a reorganization under this article,  
30 the compensation of directors or executive officers of a company  
31 shall include only those amounts that satisfy any one (1) of the  
32 following criteria:

33 (1) Amounts that are payable with respect to services  
34 rendered before the effective date of the plan of  
35 reorganization.

36 (2) Amounts that would be deemed to be reasonable  
37 compensation by the Internal Revenue Service and therefore  
38 allowed as proper expense deductions for federal income tax  
39 purposes.

40 (3) Amounts that are disclosed to the policyholders in proxy  
41 solicitation materials or other written materials approved by  
42 the commissioner as part of the notice of the meeting of the



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1 members called to approve a plan of reorganization, are  
 2 approved by the commissioner in principle and concept as  
 3 part of the approval of the plan of reorganization, and are  
 4 approved by the commissioner as to specific amount prior to  
 5 payments after the effective date of the plan of reorganization.

6 (4) Amounts that the commissioner deems necessary to  
 7 preserve the safety and soundness of the stock insurance  
 8 company subsidiary by enabling it to engage and retain  
 9 capable employees.

10 (5) Amounts payable solely out of net income of the company  
 11 after the effective date of the plan of reorganization.

12 **Sec. 13. A company may invest and conduct operations in**  
 13 **businesses outside the ordinary course of the insurance business**  
 14 **only from funds separately raised and net income earned, after the**  
 15 **effective date of a plan of reorganization.**

16 **Chapter 4. Issuance of Capital Stock**

17 **Sec. 1. (a) This chapter applies only to the initial public offering**  
 18 **of voting capital stock by a reorganized insurer or stock holding**  
 19 **company.**

20 (b) A reorganized insurer or a stock holding company may issue  
 21 any type of stock permitted by the law under which it is organized.  
 22 However, a reorganized insurer and a stock holding company may  
 23 issue shares of stock to a person or entity other than:

- 24 (1) the MIHC of which it is a subsidiary; or  
 25 (2) a stock holding company or reorganized insurer that is a  
 26 direct or indirect subsidiary of the MIHC referred to in  
 27 subdivision (1);

28 only in compliance with this article.

29 **Sec. 2. A plan to issue stock under this chapter must be adopted:**

30 (1) in the case of a plan to issue stock that is concurrent with  
 31 the formation of the MIHC, by the board of directors of the  
 32 MIC; or

33 (2) in the case of a plan to issue shares of stock that is not  
 34 concurrent with the formation of the MIHC, by the board of  
 35 directors of the MIHC and reorganized insurer or stock  
 36 holding company proposing to issue the stock.

37 **Sec. 3. A board of directors that adopts a plan to issue stock**  
 38 **under this chapter may amend or withdraw that plan at any time**  
 39 **before the effective date. However, after the commissioner has**  
 40 **approved a plan to issue stock, the plan may not be amended unless**  
 41 **the commissioner approves the amendment.**

42 **Sec. 4. Within ninety (90) days after the adoption of a plan to**

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1 issue stock, the reorganized insurer or stock holding company  
 2 adopting the plan must file with the commissioner an application  
 3 that contains the following:

- 4 (1) A proposed plan to issue stock.  
 5 (2) A description of the reasons for and purpose of the  
 6 proposed plan and the manner in which the issuance will  
 7 benefit the members of the MIHC.  
 8 (3) If it is necessary to amend the current articles of  
 9 incorporation or bylaws of a company that is affected by the  
 10 plan, a copy of the proposed articles of amendment and  
 11 amended bylaws of the company, which in the case of each  
 12 domestic insurance company must comply with IC 27-1-8.  
 13 (4) A list of the officers and directors of a company that is  
 14 affected by the plan.  
 15 (5) A description of:  
 16 (A) the stock intended to be offered by the applicant;  
 17 (B) all shareholder rights applicable to the stock intended  
 18 to be offered by the applicant;  
 19 (C) the total number of shares authorized to be issued;  
 20 (D) the estimated number of shares the applicant intends  
 21 to offer; and  
 22 (E) the intended date or range of dates for the offering.  
 23 (6) A list of:  
 24 (A) the name of any underwriter, syndicate member, or  
 25 placement agent involved;  
 26 (B) if known by the applicant, the name of each person or  
 27 group of persons who will control five percent (5%) or  
 28 more of the total outstanding shares of the class of stock to  
 29 be offered; and  
 30 (C) if any of the persons listed under clause (A) or (B) is a  
 31 corporation or other business organization, the name of  
 32 each member of its board of directors or equivalent  
 33 management body.  
 34 (7) A description of all expenses expected to be incurred in  
 35 connection with the offering.  
 36 (8) Any other information requested by the commissioner.

37 **Sec. 5.** A plan to issue stock in a public offering (other than an  
 38 offering solely in connection with a consolidation, merger, share  
 39 exchange, or other business combination or an offering of stock  
 40 under a stock option or other employee benefit plan) must do the  
 41 following:

- 42 (1) Provide for each eligible member to receive, without

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1 payment, nontransferable subscription rights to purchase a  
2 portion of the stock of the applicant.

3 (2) Specify how subscription rights are to be allocated in  
4 whole shares of stock among the eligible members.

5 (3) Provide a fair and equitable means for allocating shares of  
6 stock in the event of an over-subscription to the shares by  
7 eligible members exercising subscription rights received  
8 under this chapter.

9 (4) Provide that any shares of stock not subscribed to by  
10 eligible members exercising subscription rights received  
11 under this chapter, or not subscribed to by an employee  
12 benefit plan or by directors, officers, and employees  
13 exercising subscription rights, will be sold:

14 (A) in a public offering through an underwriter;

15 (B) through private placement; or

16 (C) by any other method approved by the commissioner  
17 that is fair and equitable to members.

18 (5) Provide that the MIHC will adopt articles of incorporation  
19 or articles of amendment that include a provision prohibiting  
20 the MIHC from waiving any dividends from its subsidiaries  
21 except after approval of the waiver by the board of directors  
22 of the MIHC and by the commissioner.

23 (6) Establish a pricing committee within the board of  
24 directors of the entity making the offering of stock, consisting  
25 exclusively of outside directors.

26 (7) Require that the shares not be issued without the favorable  
27 written opinion of the independent financial advisor as  
28 required by IC 27-14-6-4.

29 **Sec. 6. Subject to the limitations of IC 27-14-5, a plan to issue  
30 stock may do the following:**

31 (1) Provide an allocation without payment of nontransferable  
32 subscription rights to purchase not more than ten percent  
33 (10%) of the total amount of outstanding stock to one (1) or  
34 more employee benefit plans that satisfy the requirements of  
35 Section 401(a), 403(b), 404(c), 408, 423, or 501(c)(9) of the  
36 Internal Revenue Code, limited to the extent that  
37 unsubscribed shares of stock remain after the members have  
38 exercised their subscription rights.

39 (2) Provide for:

40 (A) the establishment of; and

41 (B) the allocation of not more than four percent (4%) of  
42 the total amount of outstanding stock to;

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1 an employee benefit plan that provides benefits that are  
 2 subject to taxation under Section 83 of the Internal Revenue  
 3 Code or that complies with the requirements of Section 422 of  
 4 the Internal Revenue Code, for the purpose of granting stock  
 5 or stock options.

6 (3) Provide that the articles of incorporation of a subsidiary  
 7 of the MIHC may, subject to specified exceptions, prohibit a:

8 (A) person; or

9 (B) group of persons acting in concert;

10 acting directly or through associates, from acquiring more  
 11 than a specified percentage of any class of the issued and  
 12 outstanding shares of capital stock of the issuing subsidiary.

13 (4) Provide that the aggregate number of shares of  
 14 outstanding stock purchased by an eligible member that  
 15 exercises subscription rights may not exceed:

16 (A) a specified number of shares equal to at least one  
 17 percent (1%) of the total number of outstanding shares; or

18 (B) a specified percentage of not less than one percent  
 19 (1%) of the total number of outstanding shares.

20 (5) Provide that subscription rights need not be granted to an  
 21 eligible member who resides in a foreign country or other  
 22 jurisdiction for which the commissioner determines that all of  
 23 the following apply:

24 (A) A small number of eligible members reside in the  
 25 jurisdiction.

26 (B) The granting of subscription rights or the offer or sale  
 27 of stock to eligible members in the jurisdiction would  
 28 require the issuer or its officers or directors to:

29 (i) register, under the security laws of the jurisdiction, as  
 30 a broker, dealer, salesman, or agent; or

31 (ii) register, or otherwise qualify, the stock for sale in the  
 32 jurisdiction.

33 (C) The registration, qualification, or filing in the  
 34 judgment of the commissioner would be impracticable or  
 35 unduly burdensome for reasons of cost or otherwise.

36 (6) Provide that an eligible member that exercises  
 37 subscription rights must subscribe for at least a minimum  
 38 number of shares of stock or a minimum dollar amount of  
 39 stock unless the commissioner has determined that either  
 40 minimum is unreasonable based on the respective interests of  
 41 the issuer of stock and the eligible members.

42 Sec. 7. Notwithstanding any provision of this article, an MIHC

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1 or an affiliate of an MIHC may not use any form of a stock option  
 2 or other preference with respect to the sale or purchase of any  
 3 stock or other equity instrument of the MIHC or an affiliate of the  
 4 MIHC to compensate an officer or director of the MIHC or an  
 5 affiliate of the MIHC for services in connection with a plan to issue  
 6 stock.

7 **Sec. 8.** Neither a stock holding company nor a reorganized  
 8 insurer may pay dividends or make other distributions with  
 9 respect to its stock to its shareholders if the reorganized insurer  
 10 has failed to pay policyholder dividends under IC 27-14-3-11.

11 **Chapter 5. Restrictions on Capital and Other Stock**

12 **Sec. 1.** After the effective date of the plan of reorganization, the  
 13 MIHC must at all times have the direct or indirect:

14 (1) power to cast at least fifty-one percent (51%) of the votes  
 15 on all matters submitted to a vote of the holders of common  
 16 stock (or any other class of stock entitled to vote generally on  
 17 matters submitted to security holders for a vote, including the  
 18 election of directors) of each reorganized insurer and any  
 19 stock holding company of the MIHC; and

20 (2) ownership of shares of stock entitled to:

21 (A) receipt of at least fifty-one percent (51%) of all  
 22 dividends declared on common stock of each reorganized  
 23 insurer and any stock holding company of the MIHC; and

24 (B) receipt of at least fifty-one percent (51%) of the net  
 25 proceeds to common stockholders upon any dissolution of  
 26 each reorganized insurer and any stock holding company  
 27 of the MIHC.

28 **Sec. 2. (a)** As used in this section, "CPI adjustment" means the  
 29 percentage increase or decrease in the Consumer Price Index for  
 30 Urban Wage Earners and Clerical Workers published monthly by  
 31 the United States Bureau of Labor Statistics or any successor index  
 32 published by the United States, as of the end of each calendar year,  
 33 commencing January 1, 1999.

34 (b) The CPI adjustment referred to under subsection (c) shall be  
 35 made by the commissioner as of January 1, 2000, and each year  
 36 thereafter, based on the CPI adjustment for the preceding year.

37 (c) The aggregate number of shares of equity securities owned  
 38 by all of the directors and officers of the MIHC and its affiliates  
 39 and associates, excluding any shares acquired by or held for the  
 40 benefit of the officers and directors and their associates through an  
 41 employee benefit plan as permitted by IC 27-14-4-6(1) and section  
 42 5 of this chapter, may not exceed the following:



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1 (1) Fifteen percent (15%) of the total number of outstanding  
 2 shares of equity securities of each reorganized insurer and  
 3 any stock holding company if the total surplus of the MIHC  
 4 and all of its reorganized insurers is greater than one billion  
 5 five hundred million dollars (\$1,500,000,000), as adjusted  
 6 annually by the CPI.

7 (2) Twenty percent (20%) of the total number of outstanding  
 8 shares of equity securities of each reorganized insurer and  
 9 any stock holding company if the total surplus of the MIHC  
 10 and all of its reorganized insurers is greater than seven  
 11 hundred fifty million dollars (\$750,000,000), as adjusted  
 12 annually by the CPI, and less than or equal to one billion five  
 13 hundred million dollars (\$1,500,000,000), as adjusted annually  
 14 by the CPI.

15 (3) Twenty-five percent (25%) of the total number of  
 16 outstanding shares of equity securities of each reorganized  
 17 insurer and any stock holding company if the total surplus of  
 18 the MIHC and all of this reorganized insurers is greater than  
 19 two hundred fifty million dollars (\$250,000,000), as adjusted  
 20 annually by the CPI, and less than or equal to seven hundred  
 21 fifty million dollars (\$750,000,000), as adjusted annually by  
 22 the CPI.

23 (4) Thirty percent (30%) of the total number of outstanding  
 24 shares of equity securities of each reorganized insurer and all  
 25 of its reorganized insurers is less than or equal to two  
 26 hundred fifty million dollars (\$250,000,000), as adjusted  
 27 annually by the CPI.

28 **Sec. 3. The aggregate number of shares of equity securities**  
 29 **owned by:**

30 (1) a single director or officer of the MIHC or any subsidiary  
 31 of the MIHC;

32 (2) associates of the person referred to in subdivision (1); and

33 (3) persons acting in concert with the person referred to in  
 34 subdivision (1) or (2);

35 may not exceed five percent (5%) of the total number of  
 36 outstanding shares of equity securities of each reorganized insurer  
 37 and any stock holding company excluding any equity securities  
 38 acquired by or held for the benefit of the officers and directors and  
 39 their associates through employee benefit plans as permitted by  
 40 IC 27-14-4-6(1) and section 5 of this chapter, but including any  
 41 equity securities beneficially owned by officers and directors and  
 42 their associates under employee benefit plans as provided in



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1 IC 27-14-4-6(2).

2 Sec. 4. A director, officer, agent, or employee of the MIHC or its  
3 subsidiaries, or an associate of a director, an officer, an agent, or  
4 employee, may not receive a fee, commission, or other valuable  
5 consideration for aiding, promoting, or assisting in the issuance of  
6 stock under this section, except for:

- 7 (1) compensation as provided for in the plan and approved by  
8 the commissioner;  
9 (2) the person's usual, regular salary or compensation; or  
10 (3) reasonable fees and compensation paid to an individual  
11 who is an attorney, accountant, actuary, or financial adviser  
12 for services performed in the individual's independent  
13 practice, even if the individual is also a director, an officer, an  
14 agent, or an employee of the MIHC or its subsidiaries.

15 Sec. 5. The aggregate number of shares of stock that may be  
16 purchased or held by an employee benefit plan may not exceed ten  
17 percent (10%) of the total number of outstanding shares of a  
18 reorganized insurer or any stock holding company.

19 Sec. 6. A reorganized insurer or stock holding company may not  
20 issue stock to directors or officers, or both, except stock of a class  
21 that is publicly traded.

22 Sec. 7. A reorganized insurer or stock holding company may  
23 not:

- 24 (1) grant stock purchase options or warrants, or otherwise use  
25 securities to provide compensation to directors or officers, or  
26 both, at a price less than the fair market value of the security  
27 on the date of the grant; or  
28 (2) sell securities to directors or officers, or both, at a price  
29 less than the fair market value of the security (except under  
30 the exercise of authorized stock options consistent with  
31 subdivision (1) and section 8 of this chapter).

32 Sec. 8. A reorganized insurer or stock holding company may not  
33 grant stock purchase options to directors or officers, or both, until  
34 at least six (6) months after public trading for the stock has begun.

35 Sec. 9. (a) For purposes of determining compliance with  
36 ownership restrictions in this chapter, a person to whom a stock  
37 purchase option or warrant has been granted under this chapter  
38 is not considered to own the underlying securities until the stock  
39 purchase option or warrant is exercised and the securities have  
40 been issued.

41 (b) An increase in a person's percentage ownership of securities  
42 does not constitute a violation of the securities ownership



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1 restrictions in this chapter if the increase in percentage ownership  
2 results solely from a decrease in the aggregate number of securities  
3 outstanding.

4 (c) An inadvertent ownership of securities that exceeds the  
5 securities ownership limitations in this chapter does not violate this  
6 chapter if:

7 (1) a sufficient number of securities are divested within thirty  
8 (30) days after the limitation was first known to be exceeded  
9 so that the limitation is no longer exceeded; and

10 (2) during the period when the limitation is known to have  
11 been exceeded, the owner of the securities:

12 (A) does not vote any securities in excess of the limitation;  
13 and

14 (B) does not accept a dividend in respect of any securities  
15 that exceed the limitations.

16 Chapter 6. Public Hearing, Commissioner Approval, and  
17 Effective Date of Plan to Issue Stock

18 Sec. 1. Not more than:

19 (1) sixty (60) days after the acceptance of an application filed  
20 with respect to a plan to issue stock under IC 27-14-4; or

21 (2) a longer period after the application is filed, as determined  
22 by the commissioner upon a showing of good cause;

23 the commissioner may conduct a public hearing under  
24 IC 4-22-2-26 to afford interested persons an opportunity to present  
25 information, views, arguments, or comments about the plan.

26 Sec. 2. (a) At least thirty (30) days before a hearing held under  
27 this chapter, the commissioner shall publish notice of the hearing  
28 in a newspaper of general circulation in:

29 (1) the city of Indianapolis;

30 (2) the city in which the principal office of the applicant is  
31 located; and

32 (3) another city or cities that the commissioner considers  
33 appropriate;

34 and may provide written notice of the hearing by other means and  
35 to other persons that the commissioner considers appropriate.

36 (b) The notice provided under this section must:

37 (1) refer to the applicable statutory provisions;

38 (2) state the date, time, and location of the hearing; and

39 (3) include a brief statement of the subject of the hearing.

40 Sec. 3. (a) On or before the later of:

41 (1) sixty (60) days after a public hearing held under this  
42 chapter; or

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1           (2) one hundred twenty (120) days after the commissioner  
2           accepts the application relating to the plan;  
3           or a longer period if extended by the commissioner for good cause,  
4           the commissioner shall issue an order to approve or disapprove the  
5           plan under IC 27-14-4 to issue stock.

6           (b) The commissioner shall fully consider any comments  
7           received at a public hearing under IC 4-22-2-27 before issuing an  
8           order under subsection (a).

9           Sec. 4. (a) The commissioner shall retain an independent  
10          financial adviser who shall, on behalf of members, review the  
11          offering price and issue a written opinion as to whether the  
12          offering price is fair from a financial point of view to the members  
13          as a group.

14          (b) The commissioner's approval of a plan under section 6 of  
15          this chapter is subject to the condition that a favorable opinion of  
16          the financial adviser is delivered to the commissioner before the  
17          stock is issued.

18          (c) The fees and expenses of the financial adviser shall be paid  
19          by the issuer of the stock.

20          Sec. 5. The commissioner shall approve a plan to issue stock  
21          submitted under IC 27-14-4 unless the commissioner makes at least  
22          one (1) of the following findings with respect to the plan:

23               (1) Disapproval of the plan is necessary to prevent practices  
24               that will cause financial impairment to the applicant or its  
25               subsidiaries.

26               (2) The financial or management resources of the applicant or  
27               its subsidiaries or affiliates warrant disapproval.

28               (3) The plan does not comply with this article.

29               (4) The proposed plan is unfair, unreasonable or inequitable  
30               to members or policyholders.

31               (5) The plan does not comply with the members' surplus  
32               protection principle.

33          Sec. 6. (a) The commissioner shall transmit to the applicant a  
34          copy of any order approving or disapproving a plan.

35          (b) If the commissioner disapproves a plan, the commissioner  
36          shall provide the applicant with a written statement detailing the  
37          reasons for the disapproval.

38          Sec. 7. The approval by the commissioner of a plan to issue  
39          stock expires one hundred eighty (180) days after the date of  
40          approval, except as otherwise provided by an order of the  
41          commissioner.

42          Sec. 8. The amendment of the articles of incorporation of a

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1 domestic insurance company under a plan under this article must  
 2 be conducted in compliance with IC 27-1-8, except as provided in  
 3 this chapter.

4 **Chapter 7. Miscellaneous Provisions**

5 **Sec. 1. (a)** This article, while independent of any other law, is  
 6 supplemental to IC 27-1-2 through IC 27-1-20.

7 (b) Except as provided in this article, all provisions of IC 27-1-2  
 8 through IC 27-1-20 are fully and completely applicable to this  
 9 article in the same manner as if the provisions of this article had  
 10 been an original part of IC 27-1-2 through IC 27-1-20. If any  
 11 conflict exists between this article and IC 27-1-2 through  
 12 IC 27-1-20, this article is controlling.

13 **Sec. 2. A civil action:**

- 14 (1) challenging the validity of; or  
 15 (2) arising out of;

16 action that is taken or proposed to be taken under this article must  
 17 commence not later than sixty (60) days after the approval by the  
 18 commissioner of the plan under which or in respect of which the  
 19 action is taken or proposed to be taken.

20 **Sec. 3.** The provisions of this article are severable in the manner  
 21 provided in IC 1-1-1-8(b).

22 **Sec. 4. (a)** A person who is aggrieved by an action of the  
 23 commissioner under this article may petition for judicial review of  
 24 the action under IC 4-21.5-5.

25 (b) A person who is aggrieved by a failure of the commissioner  
 26 to act or make a determination required by this article may bring  
 27 an action for mandate in the circuit court of Marion County to  
 28 compel the commissioner to act or make the determination.

29 **Sec. 5. (a)** Except as provided in this section, IC 5-14 applies to  
 30 all filings made under this article.

31 (b) Filings made under this article may include information that  
 32 might be damaging to an applicant or its affiliate if made available  
 33 to competitors. Subject to subsection (c), all information,  
 34 documents, and copies of the filings containing trade secrets of an  
 35 applicant or its affiliate are declared:

- 36 (1) confidential for the purposes of IC 5-14-3-4; and  
 37 (2) not subject to inspection and copying by the public under  
 38 person, except to insurance departments of other states which  
 39 agree to such confidential treatment;

40 without the written consent of the person to which they pertain.

41 (c) If the commissioner, after giving notice to the person seeking  
 42 such confidential treatment and any other person requesting

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1 disclosure, after giving them an opportunity to respond at a  
 2 departmental hearing in camera, and after giving due  
 3 consideration to any legitimate interest in preserving trade secrets,  
 4 determines that the members or policyholders have a compelling  
 5 interest that would be served by disclosure, then the commissioner,  
 6 after five (5) business days have elapsed from notification to the  
 7 applicant, may disclose all or any part thereof in a manner and  
 8 subject to the limitations as the commissioner determines  
 9 appropriate.

10 (d) If within the five (5) business days period referred to in  
 11 subsection (c), the applicant notifies the commissioner that the  
 12 applicant or other interested party has filed an action seeking a  
 13 protective order from a circuit or superior court to prevent or to  
 14 limit disclosure, the commissioner shall not disclose the  
 15 information, documents, or copies thereof during the pendency of  
 16 the action and any appeal or after any final court decision  
 17 prohibiting disclosure.

18 **Sec. 6. An MIHC and its subsidiaries and affiliates may not do**  
 19 **any of the following:**

20 (1) Lend funds to a person to finance the purchase of stock in  
 21 a stock offering by an MIHC or any of its subsidiaries other  
 22 than policyholder loans granted under the terms of an  
 23 insurance policy of a subsidiary.

24 (2) Pay commissions, special fees, or other special or  
 25 extraordinary compensation to officers, directors, interested  
 26 persons, or affiliates for arranging, promoting, aiding,  
 27 assisting, or participating in the structure or placement of a  
 28 stock offering by the MIHC or any of its subsidiaries, except  
 29 to the extent permitted under IC 27-14-4.

30 (3) Enter into an understanding or agreement transferring  
 31 legal or beneficial ownership of stock to another person in  
 32 avoidance of this article.

33 **Sec. 7. (a) Except as provided in subsection (b), a reorganized**  
 34 **insurer to which insurance policies, contracts, and other assets and**  
 35 **obligations are transferred in connection with a plan of**  
 36 **reorganization under this article has, with respect to the insurance**  
 37 **policies, contracts, and other assets and obligations, all rights,**  
 38 **liabilities, and authority of the MIC that is the subject of the plan**  
 39 **of reorganization.**

40 (b) An MIHC resulting from a plan of reorganization of a MIC  
 41 under this article, has all obligations and liabilities of the MIC for  
 42 any claim, asserted or otherwise, that existed at the effective date



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1 of the reorganization and that:

2 (1) seeks the imposition of a constructive or charitable trust  
3 on assets of the MIC for the benefit of policyholders,  
4 members, or other persons;

5 (2) seeks distribution or return of assets, or other form of  
6 compensation, from the MIC to policy holders or members;  
7 or

8 (3) otherwise arises out of, or relates to, the ownership  
9 interest of policyholders or members of the MIC, or to the  
10 value of their ownership interests, including any claim that  
11 challenges a statutory transaction engaged in by the MIC  
12 before the effective date of the reorganization.

13 **Sec. 8. If a proceeding is pending against an MIC that is the**  
14 **subject of a plan of reorganization under this article:**

15 (1) the proceeding may be continued after the effective date as  
16 if the reorganization had not occurred; or

17 (2) the reorganized insurer that is the successor to the MIC's  
18 business may be substituted in the proceeding for the MIC;  
19 except that the MIHC resulting from the plan of reorganization  
20 shall be substituted for the MIC and any subsidiaries of the MIC  
21 in all proceedings involving any claim described in section 7(b) of  
22 this chapter.

23 **Sec. 9. An MIHC may convert to a stock company under**  
24 **IC 27-1-8-13 as though the MIHC were an MIC.**

25 **Sec. 10. The commissioner shall, at the applicant's expense, hire**  
26 **attorneys, actuaries, accountants, investment bankers, and other**  
27 **experts as may be necessary to assist the commissioner in**  
28 **reviewing all matters under this article that are associated with a**  
29 **plan of reorganization or a plan to issue stock. The commissioner**  
30 **may at any time require an applicant to deposit an amount of**  
31 **money with the department of insurance in anticipation of**  
32 **expenses to be incurred by the commissioner under this article.**

33 **Sec. 11. The commissioner may adopt rules under IC 4-22-2 to**  
34 **carry out the purposes of this article.**

35 **Sec. 12. (a) A domestic MIC may reorganize with a foreign**  
36 **mutual holding company by complying with IC 27-14-2. The**  
37 **commissioner may waive any provision of IC 27-14-2 if the**  
38 **commissioner determines the provision to be unnecessary for the**  
39 **protection of policyholders and members.**

40 (b) A plan of reorganization under subsection (a) is effective  
41 when the reorganized domestic stock insurance company  
42 subsidiary has filed its articles of amendment and amended



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1 certificate of authority in the office of the county recorder of the  
2 county in which the principal office of the company is located or at  
3 a later date specified in the plan of reorganization.

4 (c) A domestic MIC seeking to reorganize under subsection (a)  
5 may at the same time redomesticate to another state by complying  
6 with IC 27-1-6.5 and the applicable requirements of the state to  
7 which it seeks to transfer domicile.

8 **Sec. 13. (a) An existing MIHC may, with the prior approval of  
9 the commissioner:**

10 (1) acquire direct or indirect ownership of a converting  
11 foreign MIC that becomes a stock insurer in compliance with  
12 the laws of its state of domicile; and

13 (2) grant membership interests and equity rights to the  
14 members or policyholders of a foreign mutual insurer that  
15 merges with a direct or indirect domestic or foreign  
16 subsidiary of the MIHC or is otherwise acquired by the  
17 MIHC.

18 (b) The commissioner shall consider the fairness of the terms  
19 and conditions of the transaction, whether the interests of the  
20 members of each MIHC that is a party to the transaction are  
21 protected, and whether the proposed transaction is in the public  
22 interest when determining whether to approve a transaction under  
23 subsection (a).

24 **Sec. 14. The concurrent reorganization of two (2) or more MICs  
25 into a single MIHC structure under IC 27-14-2 may be  
26 accomplished by a joint application and a joint plan of  
27 reorganization and may be approved by the commissioner  
28 following a combined hearing. The commissioner may allow such  
29 other procedures as may be necessary or desirable to avoid  
30 unnecessary or duplicative costs and efforts in satisfying the  
31 requirements of this article and in effectuating the reorganization.**

32 **Sec. 15. An MIHC may reorganize with a foreign mutual  
33 insurance holding company, subject to the approval of the  
34 commissioner, under IC 27-1-23. If the MIHC is not the surviving  
35 entity in any reorganization transaction, then the commissioner  
36 must consider the effect of the transaction on the protections  
37 afforded policyholders under the members' surplus protection  
38 principle in determining whether the transaction is in the best  
39 interests of the policyholders. If the commissioner waives any or all  
40 of the provisions of the members' surplus protection principle in  
41 approving a transaction, then the commissioner must explain the  
42 basis for waiving the provisions in writing in the order approving**

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1     **the transaction.**  
2     **SECTION 5. [EFFECTIVE UPON PASSAGE] (a) IC 27-14, as**  
3     **added by this act, is intended to enable mutual insurance**  
4     **companies to seek additional capital more effectively to:**  
5         **(1) enhance their financial strength and flexibility;**  
6         **(2) support long term growth internally and through mergers**  
7         **and acquisitions; and**  
8         **(3) expand and enhance the domestic insurance companies of**  
9         **this state.**  
10     **(b) IC 27-14, as added by this act, provides an alternative**  
11     **organizational structure to help strengthen the Indiana mutual**  
12     **insurance industry by permitting mutual insurance companies to:**  
13         **(1) reorganize into a mutual insurance holding company**  
14         **structure; and**  
15         **(2) raise capital through the sale of capital stock.**  
16     **SECTION 6. An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Alting be added as coauthor of Senate Bill 33.

CLARK

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 33, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 33 as introduced.)

GARTON, Chairperson

Committee Vote: Yeas 7, Nays 1.

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SENATE MOTION

Mr. President: I move that Senator Kenley be added as second author and Senator Howard be added as coauthor of Senate Bill 33.

CLARK

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SENATE MOTION

Mr. President: I move that Senators Borst, Breaux, Lewis, Long, Lubbers, Merritt, Miller and Mills be added as coauthors of Senate Bill 33.

CLARK

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures, to which was referred Senate Bill 33, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 2, after ""members"" insert **"surplus"**.

Page 6, between lines 16 and 17, begin a new paragraph and insert:

**"(g) Dividends paid on the equity securities of a stock holding company or reorganized insurer may be paid only in accordance with IC 27-14-3-11.**

**(h) Compensation payable to directors and executive officers of an MIHC, stock holding company, or reorganized insurer may be paid only in accordance with IC 27-14-3-12.**

**(i) Operations outside the ordinary course of the insurance business may be conducted only as provided in IC 27-14-3-13."**

Page 7, between lines 38 and 39, begin a new paragraph and insert:

**"Sec. 12. "Disinterested director" means a director of an MIHC who does not hold, directly or indirectly, a material ownership interest in any subsidiary."**

Page 7, line 39, delete "12" and insert **"13"**.

Page 7, line 41, delete "13" and insert **"14"**.

Page 8, line 10, delete "14" and insert **"15"**.

Page 8, between lines 14 and 15, begin a new paragraph and insert:

**"Sec. 16. "Financial services businesses" includes investment banking, commercial banking, industrial banking, savings and loan associations, credit unions, trust companies, other lending and loan brokerage services, services related to the extension of credit (including but not limited to real estate and personal property appraisal; arranging equity financing; check-guaranty services; collection agency services; asset management, servicing, and collection activities; real estate settlement services; and lease financing transactions), securities broker-dealer and trading services, private placement services, acting as a futures commission merchant, securities underwriting, transactions in bullion, precious metals, and foreign currency, investment advisory services, financial planning services, third party administration of insurance policy claims and accounts receivable, the advance or loan of funds using accounts receivable as collateral, organization and operation of investment companies and mutual funds, employee benefit planning and consultation services, actuarial services, issuance of money orders, savings bonds, and traveler's checks, and other operations and services either closely related to or a proper**



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incident to the foregoing."

Page 8, line 15, delete "15" and insert "17".

Page 8, line 20, delete "16" and insert "18".

Page 8, between lines 21 and 22, begin a new paragraph and insert:

**"Sec. 19. "Material ownership interest" means an ownership interest equal to more than one-half of one percent (0.5%) of the voting securities of the issuer, or a larger percentage as the commissioner may approve."**

Page 8, line 22, delete "17" and insert "20".

Page 8, line 27, delete "18" and insert "21".

Page 8, line 27, after "means" insert ":".

Page 8, line 35, delete "19" and insert "22".

Page 8, line 36, delete "20" and insert "23".

Page 8, line 37, delete "21" and insert "24".

Page 8, line 42, delete "22" and insert "25".

Page 9, between lines 2 and 3, begin a new paragraph and insert:

**"Sec. 26. "Net income" means an amount equal to the consolidated net income of the company for which the determination is being made, determined in accordance with generally accepted accounting principles on a basis consistent with prior periods, less net realized investment gains (reduced by capital gains tax, if any) on the sale of investments (including real estate) that were held as of the effective date of the plan of reorganization by a former MIC. For purposes of this section, "net realized investment gains" means an amount equal to realized investment gains less realized investment losses (reduced by capital gains tax, if any) for the same accounting period for all investments (including real estate) held as of the effective date of the plan of reorganization as determined in accordance with generally accepted accounting principles on a basis consistent with prior periods. The cumulative total of net realized investment gains after the effective date of the plan of reorganization that are applied to reduce one (1) or more years of net income for the purposes of this section and IC 27-14-3-11(e) shall not exceed the net unrealized investment gains as of the effective date of the plan of reorganization. For purposes of this section, "net unrealized investment gains" mean unrealized investment gains less unrealized investment losses (as adjusted for deferred income taxes) as of the effective date of the plan of reorganization.**

**Sec. 27. "Ordinary course of the insurance business" includes but is not limited to the following actions and activities of the MIHC and its subsidiaries:**



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(1) Operations, practices, and procedures of the company in effect prior to the effective date of the plan of reorganization.

(2) Operations, practices, and procedures that are consistent with industry practices and standards used or in effect at any relevant time.

(3) The payment of obligations due under any surplus note issued by the company with the approval of the commissioner.

(4) Expanding the business of any company into other insurance, insurance-related, and financial services businesses.

Any expansion in the ordinary course of the insurance business may be accomplished through acquisition, merger, consolidation, strategic alliance, joint venture, or other business combination."

Page 9, line 3, delete "23" and insert "28".

Page 9, line 28, delete "24" and insert "29".

Page 9, line 30, delete "25" and insert "30".

Page 9, line 38, delete "26" and insert "31".

Page 9, line 41, delete "27" and insert "32".

Page 10, line 1, delete "28" and insert "33".

Page 10, line 4, delete "29" and insert "34".

Page 10, line 6, delete "30" and insert "35".

Page 10, line 12, delete "31" and insert "36".

Page 10, line 18, delete "32" and insert "37".

Page 10, line 23, delete "33" and insert "38".

Page 12, line 34, after "members" insert "surplus".

Page 16, line 25, after "members" insert "surplus".

Page 21, between lines 3 and 4, begin a new paragraph and insert:  
**"(f) Concurrent with the initial public offering of any securities of a stock holding company or a reorganized insurer, the majority of the members of the board of directors of the MIHC must be disinterested directors."**

Page 23, line 21, after "members" insert "surplus".

Page 24, between lines 17 and 18, begin a new paragraph and insert:

**"(e) A reorganized insurer or stock holding company of the MIHC that has any shareholder other than the MIHC or a direct or indirect wholly owned subsidiary of the MIHC may not declare or pay any dividend or other distribution on its capital stock except to the extent of:**

(1) one (1) or more years of net income attributable to the year of or years after the effective date of the plan of reorganization; and

(2) proceeds from the issuance of capital stock (which as of

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any date shall be that amount equal to the net proceeds received by the issuer less amounts previously paid out of the net proceeds to stockholders in the form of dividends or other distributions).

**Sec. 12. (a)** For purposes of this section, "executive officer" has the same meaning as the term is defined by the Securities and Exchange Commission in 17 CFR 240.3b-7.

**(b)** After the effective date of a reorganization under this article, the compensation of directors or executive officers of a company shall include only those amounts that satisfy any one (1) of the following criteria:

**(1)** Amounts that are payable with respect to services rendered before the effective date of the plan of reorganization.

**(2)** Amounts that would be deemed to be reasonable compensation by the Internal Revenue Service and therefore allowed as proper expense deductions for federal income tax purposes.

**(3)** Amounts that are disclosed to the policyholders in proxy solicitation materials or other written materials approved by the commissioner as part of the notice of the meeting of the members called to approve a plan of reorganization, are approved by the commissioner in principle and concept as part of the approval of the plan of reorganization, and are approved by the commissioner as to specific amount prior to payments after the effective date of the plan of reorganization.

**(4)** Amounts that the commissioner deems necessary to preserve the safety and soundness of the stock insurance company subsidiary by enabling it to engage and retain capable employees.

**(5)** Amounts payable solely out of net income of the company after the effective date of the plan of reorganization.

**Sec. 13.** A company may invest and conduct operations in businesses outside the ordinary course of the insurance business only from funds separately raised and net income earned, after the effective date of a plan of reorganization."

Page 32, line 33, after "members" insert "surplus".

Page 36, between lines 33 and 34, begin a new paragraph and insert:

**"Sec. 15.** An MIHC may reorganize with a foreign mutual insurance holding company, subject to the approval of the commissioner, under IC 27-1-23. If the MIHC is not the surviving entity in any reorganization transaction, then the commissioner

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**must consider the effect of the transaction on the protections afforded policyholders under the members' surplus protection principle in determining whether the transaction is in the best interests of the policyholders. If the commissioner waives any or all of the provisions of the members' surplus protection principle in approving a transaction, then the commissioner must explain the basis for waiving the provisions in writing in the order approving the transaction."**

and when so amended that said bill do pass.

(Reference is to SB 33 as printed November 16, 1999.)

MOSES, Chair

Committee Vote: yeas 9, nays 0.

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