

HOUSE No. 4969

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 8, 1995.

The committee on Insurance, to whom were referred the petition (accompanied by bill, House, No. 3366) of the Associated Industries of Massachusetts, Daniel E. Bosley, Joan M. Menard, Thomas P. Kennedy and Peter J. Larkin relative to the conversions of domestic exchanges to domestic mutual insurance companies, and the petition (accompanied by bill, House, No. 3367) of the Associated Industries of Massachusetts, Daniel E. Bosley, Joan M. Menard, Thomas P. Kennedy and Peter J. Larkin relative to domestic stock insurance companies, reports recommending that the accompanying bill (House, No. 4969) ought to pass.

For the committee,

JOHN E. McDONOUGH.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT RELATIVE TO DOMESTIC MUTUAL INSURANCE COMPANY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 175 of the General Laws as appearing in
2 the 1992 Official Edition is hereby amended by inserting after sec-
3 tion 94M the following section:—

4 Section 94N. Upon compliance with the requirements and com-
5 pletion of the proceedings prescribed by this section, a domestic
6 exchange may convert into a domestic mutual insurance company or
7 may merge with a domestic mutual insurance company and the con-
8 sideration to be provided on such merger may be interests in the
9 resulting or surviving corporation or any other corporation, cash, or
10 other consideration. Any such merger shall be authorized under this
11 section and approved as provided under paragraph (2) and not pur-
12 suant to section nineteen A.

13 Such conversion shall be accomplished pursuant the a plan which
14 complies with the following:—

15 (1) Such plan shall be filed with the commissioner and shall be
16 approved by him as conforming to the requirements of this section
17 and as fair, reasonable and not prejudicial to the subscribers of such
18 exchange or to the insuring public, after a hearing thereon for which
19 notice was given to the exchange and its attorney-in-fact, advisors,
20 employees and subscribers, all of whom shall have the right to
21 appear and be heard at the hearing.

22 (2) Such plan shall be approved by vote of not less than two-
23 thirds of the votes of the exchange's subscribers voting thereon in
24 person, by proxy or by mail at a meeting of subscribers called for
25 that purpose pursuant to such reasonable notice and procedure as
26 may be approved by the commissioner. Upon such approval, the
27 conversion shall be effective as of the date specified in the plan. On
28 and after such date, all the rights, franchises and interests of the
29 exchange in and to every species of property shall be vested in the
30 converted insurer without any deed or transfer and the converted

31 insurer shall succeed to all the obligations and liabilities of the
32 exchange.

33 (3) In exchange for all membership interests in the exchange,
34 such plan shall give each eligible subscriber appropriate considera-
35 tion. Said consideration shall be determinable under a fair and rea-
36 sonable formula approved by the commissioner, and shall be based
37 upon the exchange's entire surplus as shown by the exchange's
38 financial statement most recently filed with the commissioner, and
39 shall be based upon the exchange's entire surplus as shown by the
40 exchange's financial statement most recently filed with the commis-
41 sioner pursuant to section ninety-four I, including all voluntary
42 reserves but excluding contingently repayable funds and outstanding
43 guaranty capitals shares at the redemption value thereof, and without
44 taking into account the value of nonadmitted assets or insurance
45 business in force.

46 (4) Such plan shall give each eligible subscriber a preemptive
47 right to acquire his proportionate part of all of the proposed interests
48 in the mutual insurer within a designated reasonable period; and to
49 apply upon the purchase thereof the amount of his consideration, as
50 determined under paragraph (3), except that the plan may provide
51 that a subscriber may not purchase or receive interests pursuant to
52 this section if he has an aggregate subscription price of two thousand
53 dollars or less and that such preemptive right will not apply to sub-
54 scribers who reside in jurisdictions in which the issuance of mutual
55 insurance company interests is impossible, would involve unreason-
56 able delay or would require the exchange to incur unreasonable
57 costs; provided, however, that any such subscriber shall receive his
58 consideration in cash. Notwithstanding the above, the commissioner
59 retains the full authority to disapprove such plan in accordance with
60 the provisions of paragraph (1).

61 (5) The subscriber eligible to participate in the distribution of
62 consideration and to purchase interests in the converted insurer shall
63 be the person whose name appears on the conversion date on the
64 exchange's records as a member with a right to vote and who, on
65 both the December thirty-first immediately preceding the conversion
66 date and the date the exchange's advisory committee first votes to
67 convert to mutual form, owned a policy in full force for its full basic
68 benefits with no unpaid premium or consideration at the expiration
69 of any applicable grace period, or which is being continued under a

70 nonforfeiture benefit and continues to be eligible for participation in
71 the exchange's annual distribution of divisible surplus.

72 (6) Interests in the converted insurer are to be offered to sub-
73 scribers at a price not greater than to be thereafter offered under the
74 plan to others.

75 (7) Such plan shall provide for payment to each subscriber of
76 consideration which may consist of cash, securities, a certificate of
77 contribution, additional insurance or annuity benefits, increase divi-
78 dends or other consideration or any combination of such forms of
79 consideration.

80 (8) Such plan, when completed, shall provide for the converted
81 insurer's surplus to be in an amount not less than the minimum com-
82 bined capital and surplus required of a new domestic mutual insurer
83 upon initial authorization to transact like kinds of insurance.

84 (9) The commissioner shall find that the exchange's management
85 has not, through reduction in volume of new business written, or
86 cancellation or through any other means sought; to reduce, limit or
87 affect the number or identity of the exchangers subscribers to be
88 entitled to participate in such plan or to otherwise secure for the indi-
89 viduals comprising management any unfair advantage through such
90 plan.

91 The conversion plan may also include provisions restricting the
92 ability of any person or persons acting in concert from directly or
93 indirectly offering to acquire or acquiring the beneficial ownership
94 of ten percent or more of any class of interests in the converted
95 insurer.

96 No director, officer, agent or employee of the exchange, or any
97 other person, shall receive any fee, commission or other valuable
98 consideration whatsoever, other than their usual regular salaries and
99 compensation, for in any manner aiding, promoting or assisting in
100 such conversion, except as set forth in the plan approved by the
101 commissioner. This provision shall not be deemed to prohibit the
102 payment of reasonable fees and compensation to attorneys at law,
103 accountants and actuaries for services performed in the independent
104 practice of their professions, even though also members of the
105 exchange's advisory committee.

106 With respect to the conversion of a reciprocal insurance exchange
107 created on or after January 1, 1995, in applying the provisions of
108 section 85A to the post conversion mutual insurance company, (a) if

109 prior to the conversion the reciprocal insurance exchange was autho-
110 rized by the commissioner of insurance to exchange non-assessable
111 contracts of insurance, then the mutual insurance company shall be
112 eligible to issue non-assessable insurance policies, notwithstanding
113 the requirement of section 85A that the company and its predecessor
114 or predecessors shall have been actively engaged in the insurance
115 business in one or more states in the United States continuously for
116 ten or more years, and (b) the mutual insurance company shall be
117 credited with active engagement in the insurance business for the
118 number of years of such active engagement by the reciprocal
119 insurance exchange prior to the conversion. With respect to the
120 conversion of a reciprocal insurance exchange created before
121 January 1, 1995, if prior to the conversion the reciprocal insurance
122 exchange has been actively engaged in the insurance business in one
123 or more states in the United States for at least five years then the
124 mutual insurance company shall be eligible immediately after the
125 conversion date to issue non-assessable insurance policies, notwith-
126 standing the requirement of section 85A that the company and its
127 predecessor or predecessors shall have been actively engaged in the
128 insurance business in one or more states in the United States
129 continuously for ten or more years.

