Georgia State University Law Review

Volume 11
Issue 1 *October 1994*

Article 28

9-1-1994

INSURANCE Domestic Stock and Mutual Insurers: Provide for the Conversion of a Mutual Insurer to a Stock Insurer; Authorize Domestic Stock Insurers to Issue Preferred Stock

Jonathan M. Adelman

Follow this and additional works at: http://digitalarchive.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Adelman, Jonathan M. (1994) "INSURANCE Domestic Stock and Mutual Insurers: Provide for the Conversion of a Mutual Insurer to a Stock Insurer; Authorize Domestic Stock Insurers to Issue Preferred Stock," *Georgia State University Law Review*: Vol. 11: Iss. 1, Article 28.
Available at: http://digitalarchive.gsu.edu/gsulr/vol11/iss1/28

This Peach Sheet is brought to you for free and open access by the College of Law Publications at Digital Archive @ GSU. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of Digital Archive @ GSU. For more information, please contact digitalarchive@gsu.edu.

INSURANCE

Domestic Stock and Mutual Insurers: Provide for the Conversion of a Mutual Insurer to a Stock Insurer; Authorize Domestic Stock Insurers to Issue Preferred Stock

CODE SECTIONS:	O.C.G.A. §§ 14-4-40, 33-14-7 (amended), -45 (new), -76 (amended)
BILL NUMBERS:	HB 1623, SB 694
ACT NUMBERS:	781, 977
SUMMARY:	Act 781 relaxes the requirements for a mutual stock insurer wishing or planning to convert to a domestic stock insurer. The Act decreases the percentage of approval required from policyholders for successful conversion. Further, the Act mandates giving policyholders a choice between participating in a conversion or receiving 100% of their equity in cash. Also, the Act allows a converted insurer's corporate existence to continue running without refiling a corporate charter. Act 977 authorizes domestic stock insurers to issue preferred stock.
EFFECTIVE DATES:	July 1, 1994, O.C.G.A. §§ 14-4-40, 33-14-45; March 25, 1994, §§ 33-14-7, -76.

History

In a mutual insurance company, the policyholders own equity in the company.[1] Thus, their premiums directly fund claims on the company's policies.[2] However, in a domestic stock insurance company, the stockholders, and not the policyholders, own the company.[3] Sometimes, in an effort to raise funds, mutual insurers have to convert to stock insurers.[4]

Mutual insurers have difficulty raising capital quickly.[5] As a result, they are vulnerable to insolvency if a catastrophic event occurs that causes many policyholders to file claims.[6] If a mutual insurance company encounters financial problems that deplete its surplus, the

1. 43 AM. JUR. 2D *Insurance* § 65 (1982).
2. *Id.*
3. *Id.* § 60.
4. Telephone Interview with Rep. Ronnie Culbreth, House District No. 132 (Apr. 4, 1994) [hereinafter Culbreth Interview]. Rep. Culbreth cosponsored HB 1623. *Id.*
5. *Id.*
6. *Id.*

Produced by The Berkeley Electronic Press, 1994
HeinOnline -- 11 Ga. St. U. L. Rev. 196 1994-1995

company has to recruit investors.[7] However, in the past, mutual insurers have had difficulty raising capital in a short period of time.[8] Act 781 eases the burden on mutual insurers attempting to convert to stock insurers.[9]

HB 1623

HB 1623 increases the capital surplus of insurance companies by making it easier for mutual insurers to convert to domestic stock insurers.[10] The Act allows the word "mutual" to be part of a corporation's name even if it is a domestic stock insurer.[11] Previous law allowed only a mutual insurance company to use the term "mutual" in its name.[12]

Under most circumstances, a mutual insurer must obtain the approval of its members in order to convert to a domestic stock insurer.[13] Under prior law, the insurer had to give members ten days notice before taking a policyholder vote on conversion.[14] Also, the insurer had to obtain approval of seventy-five percent of the members before the Insurance Commissioner (the Commissioner) would approve a conversion plan.[15] When the General Assembly originally approved these voting requirements, most members lived in the same geographic area.[16] However, since members now reside in different areas, the Act amends Code section 33-14-76(b)(2) to require the insurer to give members twenty days notice before taking a vote on conversion.[17] Also, the amended section decreases the percentage of voters needed to approve the plan from seventy-five percent to sixty percent.[18]

For the Commissioner to approve a conversion plan, the insurer must use a fair formula to determine the policyholder's equity in the insurer.[19] The portion of the Act which provides this method is almost identical to the former Code section and the original bill.[20] However, the House Insurance and Labor Committee substituted a new version of

---

7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. O.C.G.A. §§ 33-14-7, -76 (Supp. 1994).
12. 1960 Ga. Laws 289, § 1 (codified at O.C.G.A. § 33-14-7 (1992)).
13. O.C.G.A. § 33-14-76(b)(2) (Supp. 1994).
14. 1960 Ga. Laws 289, § 1 (codified at O.C.G.A. § 33-14-76(b)(2) (1992)).
15. *Id.*
16. Culbreth Interview, *supra* note 4.
17. *Id.*; O.C.G.A. § 33-14-76(b)(2) (Supp. 1994).
18. O.C.G.A. § 33-14-76(b)(2) (Supp. 1994).
19. *Id.* § 33-14-76(b)(4) (Supp. 1994).
20. *Compare id. with* HB 1623, as introduced, 1994 Ga. Gen. Assem. *and* 1994 Ga. Laws 300, § 2 (codified at O.C.G.A. § 33-14-76(b)(4) (1992)).

HeinOnline -- 11 Ga. St. U. L. Rev. 197 1994-1995

this bill which subtracts the cost of conversion from policyholder equity.[21] The previous law did not account for these expenses in determining policyholder equity,[22] even though the cost of conversion is not a part of the policyholder's equity in the insurer.[23]

The Act amends Code section 33-14-76(b)(5) to restrict policyholders who may participate in the conversion to those who have paid their premiums.[24] Under the previous law, all persons who had been policyholders within three years of the proposed plan were permitted to participate in the purchase of stock in the new domestic stock insurer.[25]

The previous law prevented the insurer from selling shares of stock to participating policyholders at more than double its par value.[26] The amended Code limits the price of stock sold to participating policyholders to equal to or less than the amount offered to others.[27] This provision of the old section was deleted since the market will determine the appropriate selling price of the stock.[28]

The original bill, like the previous law, was only concerned with policyholders who participated in the conversion plan after voter approval.[29] However, the Senate Insurance and Labor Committee substitute added a provision to the bill which gives policyholders the option to recover their equity in cash if they choose not to participate in the stock conversion plan.[30]

Code section 33-14-76, as amended, allows a domestic insurer which has converted from a mutual insurer to continue its corporate existence, without refiling its corporate charter.[31] The previous law did not provide for this.[32] This addition makes it less expensive for a mutual insurer to convert by eliminating the $500 fee for corporate filing.[33]

Also, under the Act, a mutual insurer does not have to completely change its name.[34] Rather, a converted stock insurer may continue to

---

21. HB 1623 (HCS), 1994 Ga. Gen. Assem. This provision was incorporated into the final version of the bill. O.C.G.A. § 33-14-76(b)(4) (Supp. 1994).
22. 1960 Ga. Laws 289, § 1 (codified at O.C.G.A. § 33-14-76(b)(4) (1992)).
23. Culbreth Interview, *supra* note 4.
24. O.C.G.A. § 33-14-76(b)(5) (Supp. 1994).
25. 1960 Ga. Laws 289, § 1 (codified at O.C.G.A. § 33-14-76(b)(5) (1992)).
26. 1960 Ga. Laws 289, § 1 (codified at O.C.G.A. § 33-14-76(b)(7) (1992)).
27. O.C.G.A. § 33-14-76(b)(6)(A)(ii) (Supp. 1994).
28. Culbreth Interview, *supra* note 4.
29. HB 1623, as introduced, 1994 Ga. Gen. Assem.; *see* 1960 Ga. Laws 289, § 1 (codified at O.C.G.A. § 33-14-76(b)(5) (1992)).
30. HB 1623 (SCS), 1994 Ga. Gen. Assem. This provision was incorporated into the final version of the bill. O.C.G.A. § 33-14-76(b)(6)(A)(iii) (Supp. 1994).
31. O.C.G.A. § 33-14-76(c) (Supp. 1994)
32. *See* 1960 Ga. Laws 289, § 1, at 561 (codified at O.C.G.A. § 33-14-76 (1992)).
33. Culbreth Interview, *supra* note 4.
34. O.C.G.A. § 33-14-76(d) (Supp. 1994).

HeinOnline -- 11 Ga. St. U. L. Rev. 198 1994-1995

use the word "mutual" in its name so long as its name also indicates it is a domestic stock insurer.[35]

Finally, this Act allows the Commissioner to approve a conversion plan without policyholder approval.[36] In the past, if a catastrophic situation arose and a mutual insurer became insolvent, the company's license could be revoked.[37] For the purpose of securing the continued existence of some insurance companies, this Act gives the Commissioner the option to approve a plan which would enable an insolvent insurer to raise funds by selling stock.[38] However, for the Commissioner to consider approving a plan under this subsection, the insurer must submit a description of how it will become solvent after it completes the conversion.[39]

SB 694

As a housekeeping measure, the General Assembly passed SB 694 to provide for the issuance of preferred stock by domestic insurers.[40] This Act eliminates this constraint by amending Code section 14-4-40.[41] The amendment provides that insurance companies will be subject to the provisions of new Code section 33-14-45,[42] which allows domestic stock insurers to issue preferred and common stock.[43]

Jonathan M. Adelman

35. *Id.* An example of this would be: Acme Mutual Insurance, A Capitol Stock Insurer. Culbreth Interview, *supra* note 4.
36. O.C.G.A. § 33-14-76(e)(1) (Supp. 1994).
37. Culbreth Interview, *supra* note 4; *see* O.C.G.A. § 33-13-12 (1992).
38. Culbreth Interview, *supra* note 4.
39. O.C.G.A. § 33-14-76(e)(2) (Supp. 1994).
40. Telephone Interview with Joe Stanton, Senate Policy Analyst (Apr. 7, 1994).
41. O.C.G.A. § 14-4-40 (1994).
42. *Id.*
43. *Id.* § 33-14-45 (Supp. 1994).

HeinOnline -- 11 Ga. St. U. L. Rev. 199 1994-1995