

**CHAPTER 965**

**S.B. No. 1415**

An Act amending Subsection (c), Section 2, Article 11.01 and Article 11.20, Insurance Code, relating to conversions, consolidations, and mergers involving a mutual life insurance company.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subsection (c), Section 2, Article 11.01, Insurance Code, as amended, is amended to read as follows:

“(c) Any mutual life insurance company [~~heretofore~~] organized or operating under the provisions of Chapter 11 of this Code may convert into a stock legal reserve life insurance company subject to the following conditions:

“1. *The capital and surplus of such converted stock legal reserve life insurance company shall be not less than the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code, as amended, and if necessary in order to meet such minimum capital and surplus requirements, contributions of cash of the United States shall be made prior to the effective date of such conversion [There shall be contributed in cash of the United States the sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus, which contributed capital and surplus shall be in addition to all assets of such company at the date of conversion];*

“2. Such conversion shall only be made upon receiving the affirmative [~~on a~~] vote of at least two-thirds (2/3) of the votes cast in person or by proxy by the policy holders of such company at a meeting called for such purpose. Pursuant to such policy holder authorization, the Board of Directors and officers of such mutual legal reserve life insurance company shall amend its existing charter or articles of incorporation so as to comply with the requirements of Article 3.02 of this Code, as amended [~~; except as to the capital and surplus requirements thereof]; provided that nothing contained herein shall be deemed to prohibit such company from converting to a stock legal reserve life insurance company by merger or consolidation, by a total direct or assumption reinsurance agreement or by such other plan or procedure as may be approved by the policy holders and the Commissioner of Insurance;~~

“3. Upon [~~After~~] compliance with the provisions hereof and approval of the proposed conversion by the Commissioner [~~State Board~~] of Insurance, following public notice and hearing at which any policy holder shall have the right to appear and be heard, such mutual life insurance company shall be and become a legal reserve stock life insurance company [~~; except that such company so converted shall not: (1) insure any life for more than Five/Thousand (\$5,000.00) Dollars in event of death; nor (2) declare or pay any cash dividend unless and until the capital and surplus of such stock legal reserve life insurance company shall be increased to not less than the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code as amended];~~

“4. [~~Any such company so converted shall within ten years from the date of its conversion increase its capital and surplus to not less than the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code; or its certificate of authority to do business shall be revoked by the State Board of Insurance;~~

“[~~5.~~] From and after the date of such conversion such stock legal reserve life insurance company shall be governed by the provisions of Chapter 3 of this Code, as amended, except as otherwise herein provided.”

**SECTION 2.** Article 11.20, Insurance Code, as amended, is amended to read as follows:

“Article 11.20. Mergers and Consolidations

“Section 1. Any domestic or foreign [~~two or more~~] mutual life insurance company [~~companies~~] may merge with any mutual or stock legal reserve life insurance company [~~into one of such companies~~], domestic or foreign, or consolidate into either a new mutual or stock life insurance company, domestic or foreign, by compliance with the procedures provided in this Article.

“Section 2. When it shall be determined by a majority vote of the Board of Directors, respectively, of two or more of such [~~mutual~~] life insurance companies, at least one of which must be a mutual life insurance company, to either merge or consolidate, said Boards of Directors shall prepare a plan of merger or consolidation, as the case may be, and file such plan with the Commissioner of Insurance for approval. Such plan may contain provisions for future apportionment of then existing or prospective accumulations, or both, of divisible surplus, or any other equitable arrangement, whereby the equitable interests, if any, of affected policyholders of the mutual life insurance company may be adjusted.

“Section 3. As soon as practicable after such filing, the Commissioner of Insurance shall hold a hearing on the question of whether he should approve such plan. As soon as practicable after such hearing, said Commissioner shall approve such plan unless he finds that such plan:

“(1) is contrary to law, or

“(2) effectuation of such plan would not be in the best interest of the policyholders of any ~~[one or more domestic]~~ mutual life insurance company which is a party to such plan, or

“(3) effectuation of such plan would substantially reduce the security of or service to be rendered to policyholders, whether residents of this state or elsewhere, of any ~~[domestic]~~ mutual insurance company which is a party to such plan.

“In making such decision, the Commissioner of Insurance may consider all facts, elements, matters and financial conditions relating thereto, including but not limited to past, present and prospective operations and accumulations of said companies desiring to merge or consolidate.

“If the Commissioner of Insurance disapproves such plan, he shall within a reasonable time after such hearing specify in detail his reasons therefor and so notify all of the parties to such plan. If the Commissioner of Insurance approves such plan, he shall so notify all of the parties thereto, whereupon each board of directors of each ~~[domestic]~~ company party thereto shall proceed to submit such plan for adoption or rejection to its respective policyholders or shareholders, as the case may be, as hereinafter provided.

“Section 4. As soon as practicable after receipt of notice of approval of a plan of merger or consolidation to which a company is a party, each *mutual life insurance company which is a [domestic] party thereto shall cause such plan to be submitted to a vote of its policyholders at a meeting thereof, which meeting may be either an annual or a special meeting. Written or printed notice shall be given to each policyholder, addressed to his last known address, in accordance with the applicable bylaws, but not less than fifteen (15) days before such meeting. And each such notice shall specifically state that at least one of the purposes of such meeting is to vote upon such plan, a copy of which shall accompany such notice. At each such meeting of policyholders of a domestic mutual life insurance company which is a party to such plan, each policyholder shall [-] (i) be entitled to a number of votes determined as provided in Article 11.04 of this Chapter of this Code, and (ii) may vote in person, by proxy to whomever the policyholder may designate in writing, or by mailed ballot. The plan of merger or consolidation shall be considered approved by the policyholders of such company upon receiving the affirmative vote of at least two-thirds (2/3) of the votes cast at such meeting on such question.*

“Section 5. (a) Upon the required approval of such plan (i) by the policyholders of each domestic *mutual life insurance company which is a party to such plan [and], (ii) by the shareholders of each domestic stock life insurance company which is a party to such plan in like mode and manner as is required under Section 2 of Article 21.25 of this Code, and (iii) if one or more foreign life insurance companies is a party thereto, upon the approval thereof by its policyholders or shareholders, as the case may be, in compliance with such foreign law or laws as may be applicable thereto, the president or a vice-president and the secretary or an assistant secretary of each company which is a party to such plan shall execute and file with the Commissioner of Insurance an affidavit that such plan has been approved as herein required.*

“(b) If the Commissioner of Insurance finds that such affidavit conforms to law, he shall endorse thereon the word ‘Filed,’ and the date of filing thereof; and

“(1) if the plan be a plan of merger, the Commissioner shall then execute and deliver a Certificate of Merger to the surviving company or its representative; or

“(2) if the plan be a plan of consolidation, the Commissioner shall execute and deliver a Certificate of Consolidation to the new company when such new company shall be issued a charter and license upon submission of proper articles of incorporation to the Commissioner of Insurance, and upon his approval ~~[together with approval of the Attorney General]~~ in accordance with the procedure ~~[now]~~ required for the issuance of a new charter, and proof that the new company has surplus *as regards policyholders* of not less than the surplus *as regards policyholders* of the mutual life insurance company involved in such *merger or consolidation* having the largest surplus.

“Section 6. Upon the issuance by the Commissioner of a Certificate of Merger or Consolidation, as the case may be, the merger or consolidation referred to in such certificate shall thereupon be deemed effective unless some subsequent date be specifically stated as the effective date thereof in the plan therefor.

“Section 7. As of the time that such merger or consolidation is deemed effective:

“(1) All policies of insurance outstanding against any company so merged or consolidated shall be deemed to be assumed by the new or surviving ~~[mutual]~~ life insurance company on the same terms and under the same conditions as if such policies had continued in force against the original issuer thereof and the new or surviving company shall carry out the terms of such policies and be entitled to all the rights and privileges thereof and the reserves and surplus accumulating on such policy prior to such merger or consolidation, *with the exception that policies in a mutual life insurance company shall not be entitled to any voting privileges or rights in a new or surviving stock life insurance company, if that is the circumstance.*

"(2) All the rights, franchises and interests of the companies so merged or consolidated, in and to every species of property, real, personal and mixed, and the things in action thereunto belonging, shall be deemed as transferred to and vested in the surviving or new [mutual] life insurance company, without any other deed or transfer, [s] and simultaneously therewith the surviving or new [mutual] life insurance company shall be deemed to have assumed all of the liabilities of the merged or consolidated companies;

"(3) All investments of each [mutual] life insurance company which was a party to such merger or consolidation that were authorized when made by the laws of the state in which such [mutual] life insurance company was organized, as proper securities or assets, including real property, for investment of the funds of such [any mutual] life insurance company and which investments are taken over by the surviving or new company by virtue of such merger or consolidation under the provisions of this Article [Act], shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or surviving company, provided such investments are approved by the Commissioner of Insurance in this state, and the same are taken over on terms satisfactory to said Commissioner; provided, however, that in the event the new or surviving company acquires by virtue of such merger or consolidation real estate or property beyond or in excess of that permitted by the applicable Articles pertaining to owning or holding real estate, such company shall sell or dispose of all such excess real estate within the time specified in such applicable Articles unless it shall procure a certificate from said Commissioner that the interest of such company will materially suffer from the forced sale or disposition thereof, in which event the time for the sale or disposition thereof may be extended to such time as the Commissioner of Insurance shall direct in such certificate. Provided further, that this Section will not preclude the designation and use of such acquired excess real estate as branch offices in accordance with the applicable provisions of this Code.

"(4) *In those cases where the surviving or new company following a merger or consolidation is a mutual life insurance company, the [The] divisible surplus of each domestic mutual life insurance company which is a party to such merger or consolidation which was available for apportionment to policyholders in accordance with the provisions of Article 11.12 of this Chapter of this Code immediately prior to the effectiveness of such merger or consolidation shall continue to be available to the policyholders of the surviving or new mutual life insurance company in accordance with the provisions of such Article.*

"Section 8. Nothing herein shall be construed as affecting, modifying, amending, or repealing in any manner the Anti-Trust Statutes of this state.

"Section 9. *The provisions of this Article shall only apply to mergers and consolidations in which at least one of the parties thereto is a mutual life insurance company. Mergers and consolidations between two or more stock insurance corporations in which no mutual life insurance company is a party thereto shall be governed by Article 21.25 of this Code.*"

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 8, 1985, by a viva-voce vote; and that the Senate concurred in House amendment on May 27, 1985, by a viva-voce vote; passed the House, with amendment, on May 21, 1985, by a non-record vote.

Filed: June 16, 1985, without signature.

Effective: August 26, 1985