

304.49-180 Conversion or merger of consortium captive insurer or industrial insurer group into reciprocal insurer -- Plan of conversion or merger -- Other conditions.

- (1) A consortium captive insurer or industrial insured group formed as a stock or mutual corporation or other legal or statutory entity may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.
- (2) Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.
- (3) In the case of a conversion authorized under subsection (1) of this section:
 - (a) The conversion shall be accomplished under any reasonable plan and procedure approved by the commissioner, but the commissioner shall not approve any plan of conversion unless the plan:
 1. Satisfies the provisions of subsection (2) of this section;
 2. Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the commissioner may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the commissioner may cancel the hearing;
 3. Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
 4. Is approved:
 - a. In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - b. In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (b) The commissioner shall approve the plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7);
 - (c) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the company's attorney-in-fact;
 - (d) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective; and
 - (e) Upon the effectiveness of the conversion, the corporate existence of the

converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.

- (4) A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:
- (a) The plan of merger shall satisfy the provisions of subsection (2) of this section;
 - (b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;
 - (c) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;
 - (d) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;
 - (e) The commissioner may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);
 - (f) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7). If the commissioner approves the articles of merger, the commissioner shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;
 - (g) Notwithstanding KRS 304.49-040, the commissioner may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and
 - (h) An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1616, effective July 15, 2010; and ch. 91, sec. 10, effective July 15, 2010. -- Amended 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 11, effective April 25, 2006. -- Created 2000 Ky. Acts ch. 434, sec. 18, effective July 14, 2000.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 91, which do not appear to be in conflict and have been codified together.