

LEGISLATIVE BILL 296

Approved by the Governor March 13, 1973

Introduced by Stromer, 36

AN ACT relating to insurance; to provide for exchange of shares of domestic insurance companies as prescribed.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known as the Insurance Company Plan of Exchange Act.

Sec. 2. Any domestic stock insurance company may adopt a plan providing for the exchange of its outstanding shares for the consideration designated in this section to be paid or provided by a corporation which is to acquire such shares in the manner provided in this act.

The plan of exchange may provide that the acquiring corporation, as consideration for the stock of the domestic corporation, (1) transfer shares of its stock, (2) transfer other securities issued by it, (3) pay cash therefor, (4) pay or provide other consideration, or (5) pay or provide any combination of the foregoing types of consideration.

Acquiring corporation, as used in this act, shall mean any corporation incorporated under the laws of the State of Nebraska, any foreign or alien corporation domesticated or qualified to do business in Nebraska, or any foreign or alien insurance company authorized to do business in Nebraska.

Sec. 3. The board of directors of each corporation which is a party to a plan of exchange shall by resolution upon a vote of two-thirds of all of its directors approve a plan of exchange setting forth:

(1) The names of the companies proposing to adopt a plan of exchange, and the names of the states or countries under which each of the companies is incorporated or organized;

(2) The terms and conditions of the proposed plan of exchange, and the mode of carrying the same into effect;

(3) The manner and basis of exchanging the shares of stock of the acquired company or other consideration involved in the plan of exchange; and

(4) Such other provisions with respect to the plan of exchange as are deemed necessary or advisable.

Sec. 4. (1) Such plan of exchange shall then be submitted to the Director of Insurance for his approval after a hearing at which the stockholders of the company to be acquired shall have an opportunity to be heard upon at least ten days' notice to be given by the company to its stockholders of record at the time of mailing such notice. The director shall approve such plan within twenty days after such hearing unless he finds that the terms and conditions thereof for the issuance and exchange of securities or other consideration are unfair to the shareholders of the company to be acquired or if he finds that any of the conditions set forth in section 44-2108(1), Revised Statutes Supplement, 1972, exist.

(2) After having obtained the approval of the Director of Insurance, the plan of exchange shall be submitted to a vote at a meeting of the shareholders of the company to be acquired. Such meeting may be either an annual or a special meeting. Notice shall be given not less than twenty days before such meeting to each shareholder of record as of the time of mailing such notice. Such notice shall be deemed to be delivered when deposited in the United States mail with postage prepaid, addressed to the shareholder at his address as it appears on the records of the company. A copy or summary of the plan of exchange shall be included in or enclosed with such notice. Each outstanding share of such company shall be entitled to vote on the proposed plan, whether or not such share has voting rights under the provisions of the articles of incorporation of such company. The affirmative vote of two-thirds of all of the outstanding shares, in person or by proxy, shall be necessary for the approval of any such plan by such shareholders.

Sec. 5. Upon such approval of the plan by the shareholders, it shall be executed by the company acquired by its president or vice president and by its secretary or an assistant secretary and shall become effective without other action upon the filing thereof with the Director of Insurance along with a certification as to the number of shares outstanding entitled to vote and the number of shares voted for and against such plan respectively. At any time prior to the filing of the same with the director with such certification, the plan of exchange may be abandoned pursuant to the provisions therefor, if any, set forth in the plan.

Sec. 6. Any shareholder of the company acquired may elect to exercise a right of dissent by filing with the company, prior to or at the meeting of shareholders at which such proposed plan is submitted to a vote, written objections to such proposed plan. If such proposed plan be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten days after the date on which the vote was taken, make written demand on the company for payment of the fair value of such shareholder's shares, and, if such proposed plan is effected, such company shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed plan, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the proposed plan. If the proposed plan shall be abandoned or rescinded or the shareholder shall revoke the authority to effect such action, then the right of such shareholder to be paid the fair value of his shares shall cease.

Within twenty days after such plan is effected, the company so acquired shall give written notice thereof to each dissenting shareholder who has made demand as provided in this section, and shall make a written offer to each such shareholder to pay for his shares at a specified price deemed by such company to be the fair value thereof.

If within thirty days after the date on which such plan was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the company, payment therefor shall be made within ninety days after the date on which such plan was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty days the dissenting shareholder and the company do not agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction in the county in which the registered office of the company is situated asking for a finding and determination of the fair value of such shares, and shall be entitled to a judgment against the company for the amount of such fair value as of the day prior to the date on which such vote was taken approving such plan, together with interest thereon at

the rate of five per cent per year to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the company of the certificate or certificates representing such shares.

Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares. Unless the dissenting shareholder shall file such petition within the time limited by the provisions of this section, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the plan and shall be bound by the terms thereof.

Shares acquired by the company pursuant to payment of the agreed value therefor or payment of the judgment entered therefor, as provided in this section, shall stand canceled unless otherwise provided for in the plan of exchange.

Sec. 7. (1) Upon a plan of exchange becoming effective, the exchange provided for therein shall be considered to have been consummated and each shareholder of the stock insurance company acquired shall cease to be a shareholder of such company. The ownership of all shares of the issued and outstanding stock of such company shall vest in the acquiring corporation automatically without any physical transfer or deposit of certificates representing such shares. The acquiring corporation thereupon shall become the sole shareholder of such stock insurance company and have all of the rights, privileges, immunities and powers and, except as otherwise provided in this act, be subject to all the duties and liabilities to the extent provided by law of a shareholder of an insurance company organized under the laws of this state.

(2) Certificates representing shares of a domestic insurance company to be acquired prior to the plan of exchange becoming effective shall, after the plan of exchange becomes effective, represent (a) shares of the issued and outstanding capital stock or other securities issued by the acquiring corporation and (b) the right, if any, to receive cash or other consideration upon such terms as are specified in the plan of exchange. The plan of exchange may specify that all such certificates shall after the plan of exchange becomes effective represent only the right to receive shares of stock or other securities issued by the acquiring corporation, or cash or other consideration or any

combination thereof, upon such terms as are specified in the plan of exchange.

Sec. 8. The stock company acquired under a plan of exchange and the acquiring corporation shall be in all respects separate and distinct corporations, with neither corporation having any liability to the creditors or policyholders, if any, or shareholders of the other for any acts or omissions of the officers, directors, or shareholders of either or both of such corporations.