

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2221
(Senator Mutch)
(Representative Berg)

AN ACT to create and enact three new sections to chapter 26.1-12.1 of the North Dakota Century Code, relating to foreign mutual insurance holding companies; and to amend and reenact sections 26.1-12.1-01 and 26.1-12.1-09 of the North Dakota Century Code, relating to definitions and approval of a reorganization by eligible members of a domestic mutual insurance company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-12.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-12.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of insurance.
2. "Domestic mutual insurance company" or "mutual insurance company" means a mutual insurance company incorporated under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of this title.
3. "Domestic mutual insurance holding company" or "mutual insurance holding company" means a company formed under section 26.1-12.1-02.
4. "Eligible member" means a policyholder whose policy is in force as of the record date or member as defined under the bylaws or articles of incorporation of the reorganizing insurer. Unless otherwise provided in the reorganization plan, a person insured under a certificate issued under a group policy is not an eligible member.
5. "Foreign mutual insurance company" means a mutual insurance company incorporated under the laws of another state.
6. "Foreign mutual insurance holding company" means a company formed under provisions of the laws of another state similar to those contained in this chapter.
3. 7. "Membership interest" means all interests of eligible members of the reorganizing insurer, including rights to vote and to participate in any distribution of surplus, whether or not incident to the company's liquidation. It does not include the contractual rights remaining with the reorganized insurance company.
4. ~~"Mutual insurance company" means a mutual insurance company incorporated under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of this title.~~
5. ~~"Mutual insurance holding company" means a company formed under section 26.1-12.1-02.~~
6. 8. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to this chapter.
7. 9. "Policy" means a policy or contract of insurance issued by a mutual insurance company, including an annuity contract.

- ~~8.~~ 10. "Record date" means the date the reorganizing insurer's board of directors adopts a plan of reorganization or some other date specified as the record date in the plan of reorganization and approved by the commissioner.
- ~~9.~~ 11. "Reorganization" means any plan or transaction described in section 26.1-12.1-02 or 26.1-12.1-03, or section 3 of this Act, or any change in the reorganized insurer's articles of incorporation or bylaws which is a material change to the plan of reorganization filed and approved by the commissioner affecting the ability of the reorganizing insurer to meet the standards described in section 26.1-12.1-06.
- ~~40.~~ 12. "Reorganized insurance company" means a mutual insurance company that has completed a reorganization to a stock company that is subject to this chapter. A domestic or foreign mutual insurance company that has completed a reorganization to a stock company may retain the word "mutual" in its name so long as it is clearly identified with its name that it is a stock insurance subsidiary of a domestic or foreign mutual insurance holding company.
- ~~44.~~ 13. "Reorganizing insurer" means a mutual insurance company, whether domestic or foreign, seeking to participate, or participating, in merger or other reorganization as defined in this chapter.

SECTION 2. AMENDMENT. Section 26.1-12.1-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-12.1-09. Approval by eligible members. The plan of reorganization must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members. Eligible members may vote in person or by proxy. The form of any proxy along with a copy or summary of the plan which accompanied the notice to eligible members must be filed with and approved by the commissioner. The number of votes each eligible member may cast must be determined by the ~~converting~~ reorganizing insurer's domestic mutual insurance company's bylaws. If the bylaws are silent, each eligible member may cast one vote. The plan must be approved as follows:

1. In the case of formation of a mutual insurance holding company under section 26.1-12.1-02, the reorganization plan must be approved by the affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing ~~insurer~~ domestic mutual insurance company; and
2. In the case of a merger under section 26.1-12.1-03, the reorganization plan must be approved by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing ~~insurer~~ domestic mutual insurance company and by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged, provided that the vote of the eligible members of the mutual insurance holding company may not be required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

SECTION 3. Three new sections to chapter 26.1-12.1 of the North Dakota Century Code are created and enacted as follows:

Foreign mutual insurance holding company - Reorganization. A domestic mutual insurance company may reorganize with a foreign mutual insurance holding company that is created or exists under the laws of another state by complying with chapter 26.1-12.1. The commissioner may waive any provision of chapter 26.1-12.1 if the commissioner determines the provision to be unnecessary for the protection of eligible members.

A plan of reorganization under this section must comply with the requirements and standards of section 26.1-12.1-06 and be approved by the eligible members of the domestic mutual insurance company as a reorganizing insurer in accordance with subsection 1 of section 26.1-12.1-09. A domestic mutual insurance company seeking to reorganize under this section may at the same time

redomesticate to another state by complying with section 26.1-05-07.3 and the applicable requirements of the state to which it seeks to transfer domicile.

Existing domestic mutual insurance holding company - Reorganization. An existing domestic mutual insurance holding company, with the prior approval of the commissioner pursuant to, and under the provisions of section 26.1-12.1-06, may:

1. Acquire direct or indirect ownership of a foreign mutual insurance company as a reorganizing insurer in compliance with the laws of its state of domicile; and
2. Grant membership interest and equity rights in the domestic mutual insurance holding company to eligible members of a foreign mutual insurance company as a reorganizing insurer that merges with a direct or indirect domestic or foreign subsidiary of the domestic mutual insurance holding company, or is otherwise acquired by the domestic mutual insurance holding company.

The commissioner shall consider the fairness of the terms and conditions of the transaction, whether the interests of the eligible members of the domestic mutual insurance holding company that is a party to the transaction are protected in accordance with this chapter. A plan of reorganization under this section must be approved by the eligible members of the domestic mutual insurance holding company in accordance with subsection 2 of section 26.1-12.1-09.

Concurrent reorganization - Domestic or foreign. The concurrent reorganization of a domestic mutual insurance company with one or more mutual insurance companies, whether domestic or foreign, into a single mutual insurance holding company structure, whether domestic or foreign, may be accomplished by a joint application and a joint plan of reorganization and may be approved by complying with the requirements and standards of section 26.1-12.1-06 by the commissioner following a hearing as provided for in this chapter. The commissioner may allow such other procedures to avoid unnecessary or duplicative costs and efforts in satisfying the requirements of this chapter and effectuating the reorganization.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2221.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 96 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State