

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1313

Introduced by

Representatives Keiser, Kasper, Klemin

1 A BILL for an Act to create and enact chapter 26.1-12.2 of the North Dakota Century Code,
2 relating to conversion of a mutual property and casualty insurance company to a stock
3 insurance company; to amend and reenact section 26.1-12.1-10 and subdivision b of
4 subsection 12 of section 26.1-17-33.1 of the North Dakota Century Code, relating to references
5 to demutualization of domestic mutual insurance companies; and to repeal section 26.1-12-32
6 of the North Dakota Century Code, relating to demutualization of domestic mutual insurance
7 companies.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 26.1-12.1-10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **26.1-12.1-10. Applicability of certain provisions.**

12 A mutual insurance holding company is deemed to be an insurer subject to
13 chapter 26.1-06.1 and is automatically a mandatory party to any proceeding under that chapter
14 involving an insurance company that, as a result of a reorganization according to
15 section 26.1-12.1-02 or 26.1-12.1-03, is a subsidiary of the mutual insurance holding company.
16 In any proceeding under chapter 26.1-06.1 involving the reorganized insurance company, the
17 assets of the mutual insurance holding company are considered to be the assets of the estate
18 of the reorganized insurance company for purposes of satisfying the claims of the reorganized
19 insurance company's policyholders. A mutual insurance holding company may not dissolve or
20 liquidate without the approval of the commissioner or as ordered by the district court according
21 to chapter 26.1-06.1. ~~Section 26.1-12-32~~ Chapter 26.1-12.2 is not applicable to a reorganization
22 or merger accomplished under this chapter.

23 **SECTION 2. AMENDMENT.** Subdivision b of subsection 12 of section 26.1-17-33.1 of the
24 North Dakota Century Code is amended and reenacted as follows:

- 1 b. The restructured company must be treated as a mutual insurance company
2 subject to the provisions of chapter 26.1-12, except for sections 26.1-12-01,
3 26.1-12-02, 26.1-12-03, 26.1-12-05, 26.1-12-06, 26.1-12-07, 26.1-12-08,
4 26.1-12-09, 26.1-12-10, 26.1-12-14, 26.1-12-16, 26.1-12-18, 26.1-12-19,
5 26.1-12-23, 26.1-12-24, 26.1-12-25, 26.1-12-26, 26.1-12-29, and 26.1-12-30, ~~and~~
6 ~~26.1-12-32.~~

7 **SECTION 3.** Chapter 26.1-12.2 of the North Dakota Century Code is created and enacted
8 as follows:

9 **26.1-12.2-01. Definitions.**

10 As used in this chapter:

- 11 1. "Capital stock" means common or preferred stock or any hybrid security or other
12 equity security issued by a converted stock company or other company or entity
13 pursuant to the exercise of subscription rights granted pursuant to the provisions of
14 subdivision c of subsection 1 of section 26.1-12.2-03.
- 15 2. "Converted stock company" means a mutual company or mutual holding company that
16 has converted to a stock company under this chapter.
- 17 3. "Converting mutual company" means a mutual company or mutual holding company
18 that has adopted a plan of conversion under this chapter.
- 19 4. "Eligible member" means a member of a converting mutual company whose policy is
20 in force on the date the governing body of the converting mutual company adopts a
21 plan of conversion or such earlier date as the converting mutual company may
22 establish with the consent of the commissioner. A person insured under a group policy
23 is not an eligible member. A person whose policy becomes effective after the
24 governing body adopts the plan of conversion but before the effective date of the plan
25 of conversion is not an eligible member but has those rights established under section
26 26.1-12.2-09.
- 27 5. "Issued minority shares" means the number of shares issued by a subsidiary
28 insurance company or subsidiary holding company of a mutual holding company in all
29 minority stock offerings.
- 30 6. "Minority stock offering" means an offering of capital stock by a subsidiary insurance
31 company or subsidiary holding company controlled by a mutual holding company in

1 which less than fifty percent of the voting stock of the subsidiary insurance company or
2 subsidiary holding company is offered and sold under this chapter or chapter
3 26.1-12.1.

4 7. "Mutual company" means a mutual property and casualty insurance company
5 domiciled in this state.

6 8. "Mutual holding company" means:

7 a. A corporation resulting from a reorganization of a mutual company under chapter
8 26.1-12.1; or

9 b. A domestic corporation surviving or resulting from a merger or consolidation with
10 a corporation that resulted from a reorganization of a mutual insurer under the
11 laws of any other jurisdiction as provided by section 26.1-12.1-03.

12 9. "Participating policy" means a policy that grants a holder the right to receive dividends
13 if, as, and when declared by the mutual company.

14 10. "Plan of conversion" or "plan" means a plan adopted by the governing body of a
15 mutual company or mutual holding company to convert into a stock company or stock
16 insurance holding company in accordance with the requirements of this chapter.

17 11. "Policy" means an insurance policy.

18 12. "Standby investor" means any person that has agreed in writing to purchase all or a
19 portion of the capital stock to be sold in a conversion which is not subscribed by
20 eligible members.

21 13. "Subscription right" means the nontransferable right to purchase, for a period of not
22 less than twenty or more than thirty-five days, the stock of the converted stock
23 company, its proposed holding company, or an unaffiliated stock insurance company
24 or other corporation or entity that will acquire the converted stock company through
25 the purchase of all the stock of the converted stock company.

26 14. "Voting member" means a member who is an eligible member and is also a member of
27 the converting mutual company as of a date not more than ninety days before the date
28 of the meeting at which the plan of conversion must be voted upon by members.

29 **26.1-12.2-02. Adoption of plan of conversion.**

30 1. A plan of conversion does not become effective unless the converting mutual company
31 seeking to become a converted stock company adopted, by the affirmative vote of not

1 less than a majority of its governing body, a plan of conversion consistent with the
2 requirements of sections 26.1-12.2-03 and 26.1-12.2-04, or of section 26.1-12.2-05. At
3 any time before approval of a plan of conversion by the commissioner, the converting
4 mutual company, by the affirmative vote of not less than a majority of its governing
5 body, may amend or withdraw the plan.

6 2. Before the eligible members of a converting mutual company may vote on approval of
7 a plan of conversion, a converting mutual company whose governing body has
8 adopted a plan shall file all of the following documents with the commissioner within
9 ninety days after adoption of the plan of conversion together with the application fee:

- 10 a. The plan of conversion, including the independent evaluation required by
11 subsection 4 of section 26.1-12.2-03.
- 12 b. The form of notice and proxy required by subsection 7 of section 26.1-12.2-02.
- 13 c. The form of notice required by section 26.1-12.2-09 to persons whose policies
14 are issued after adoption of the plan of conversion but before the plan of
15 conversion's effective date.
- 16 d. The proposed certificate of incorporation and bylaws of the converted stock
17 company.
- 18 e. The acquisition of control statement, as required by section 26.1-10-03.
- 19 f. The application fee, equal to the greater of ten thousand dollars or an amount
20 equal to one-tenth of one percent of the estimated pro forma market value of the
21 converted stock company as determined in accordance with subsection 4 of
22 section 26.1-12.2-03. If such value is expressed as a range of values, the
23 application fee must be based upon the midpoint of the range. For good cause
24 shown, the commissioner may waive the application fee in whole or in part, or
25 permit a portion of the application fee to be deferred until completion of the
26 conversion.
- 27 g. Such other information as the commissioner may request.

28 3. Upon filing with the commissioner the documents required under subsection 2, the
29 converting mutual company shall send to eligible members a notice advising eligible
30 members of the adoption and filing of the plan of conversion, the ability of the eligible
31 members to provide the commissioner and the converting mutual company with

- 1 comments on the plan of conversion within thirty days of the date of such notice, and
2 the procedure of providing such comments.
- 3 4. Immediately, the commissioner shall give written notice to the converting mutual
4 company of any decision and, in the event of disapproval, a statement in detail of the
5 reasons for the decision. The commissioner shall approve the plan if the commissioner
6 finds:
- 7 a. The plan complies with this chapter;
8 b. The plan's method of allocating subscription rights is fair and equitable; and
9 c. The plan will not otherwise prejudice the interests of the members.
- 10 5. At the expense of the converting mutual company, the commissioner may retain any
11 qualified expert not otherwise a part of the commissioner's staff, including counsel and
12 financial advisors, to assist in reviewing the plan of conversion and the independent
13 valuation required under subsection 4 of section 26.1-12.2-03.
- 14 6. The commissioner may order a hearing on whether the terms of the plan of conversion
15 comply with this chapter after giving written notice by mail or publication to the
16 converting mutual company and other interested persons, all of whom have the right to
17 appear at the hearing.
- 18 7. All voting members must be sent notice of the members' meeting to vote on the plan
19 of conversion. The notice must briefly but fairly describe the proposed plan of
20 conversion, must inform the voting member of the voting member's right to vote upon
21 the plan of conversion, and must be sent to each voting member's last-known
22 address, as shown on the records of the converting mutual company. If the meeting to
23 vote upon the plan of conversion is held during the annual meeting of policyholders,
24 only a combined notice of meeting is required.
- 25 8. The plan of conversion must be voted upon by voting members and must be adopted
26 upon receiving the affirmative vote of at least a majority of the votes cast by voting
27 members at the meeting. Voting members entitled to vote upon the proposed plan of
28 conversion may vote in person or by proxy. The number of votes each voting member
29 may cast must be determined by the bylaws of the converting mutual company. If the
30 bylaws are silent, each voting member may cast one vote.

1 9. The certificate of incorporation of the converted stock company must be considered at
2 the meeting of the voting members called for the purpose of adopting the plan of
3 conversion and must require for adoption the affirmative vote of at least a majority of
4 the votes cast by voting members.

5 10. Within thirty days after the voting members have approved the plan of conversion in
6 accordance with the requirements of this section, the converted stock company shall
7 file with the commissioner:

8 a. The minutes of the meeting of the voting members at which the plan of
9 conversion was approved; and

10 b. The certificate of incorporation and bylaws of the converted stock company.

11 **26.1-12.2-03. Required provisions of plan of conversion.**

12 1. The following provisions must be included in the plan of conversion:

13 a. The reasons for proposed conversion.

14 b. The effect of conversion on existing policies, including all of the following:

15 (1) A provision that all policies in force on the effective date of conversion
16 continue to remain in force under the terms of the policies, except that the
17 following rights, to the extent the rights existed in the converting mutual
18 company, must be extinguished on the effective date of the conversion:

19 (a) Any voting rights of the policyholders provided under the policies.

20 (b) Except as provided under paragraph 2, any right to share in the
21 surplus of the converting mutual company, unless such right is
22 expressly provided for under the provisions of the existing policy.

23 (c) Any assessment provisions provided for under certain types of
24 policies.

25 (2) A provision that holders of participating policies in effect on the date of
26 conversion continue to have a right to receive dividends as provided in the
27 participating policies, if any.

28 c. The grant of subscription rights to eligible members.

29 (1) For purposes of any plan, the transfer of subscription rights from any of the
30 following may not be deemed an unpermitted transfer for purposes of this
31 chapter:

- 1 (a) An individual to such individual and the individual's spouse or children
2 or to a trust or other estate or wealth planning entity established for
3 the benefit of such individual or the individual's spouse or children;
4 (b) An individual to such individual's individual or joint individual
5 retirement account or other tax-qualified retirement plan;
6 (c) An entity to the shareholders, partners, or members of such entity; or
7 (d) The holder of such rights back to the converting mutual company, its
8 proposed holding company, or an unaffiliated corporation or entity that
9 will purchase all the stock of the converted stock company as
10 provided in item 3 of subparagraph a of paragraph 2 of subdivision c
11 of subsection 1.
- 12 (2) The grant of subscription rights to eligible members must include:
- 13 (a) A provision that each eligible member is to receive, without payment,
14 nontransferable subscription rights to purchase the capital stock of the
15 converted stock company and that, in the aggregate, all eligible
16 members have the right, before the right of any other party, to
17 purchase one hundred percent of the capital stock of the converted
18 stock company, exclusive of any shares of capital stock required to be
19 sold or distributed to the holders of surplus notes, if any, and any
20 capital stock purchased by the company's tax-qualified employee
21 stock benefit plan which is in excess of the total price of the capital
22 stock established under subsection 4, as permitted by subsection 3 of
23 section 26.1-12.2-04. As an alternative to subscription rights in the
24 converting mutual company, the plan of conversion may provide each
25 eligible member is to receive, without payment, nontransferable
26 subscription rights to purchase a portion of the capital stock of one of
27 the following:
- 28 [1] A corporation or entity organized for the purpose of becoming a
29 holding company for the converted stock company;
- 30 [2] A stock insurance company owned by the mutual company into
31 which the mutual company will be merged; or

1 [3] An unaffiliated stock insurer or other corporation or entity that will
2 purchase all the stock of the converted stock company.

3 (b) A provision that subscription rights must be
4 allocated in whole shares among the eligible members using a
5 fair and equitable formula. The formula need not allocate
6 subscription rights to eligible members on a pro rata basis based
7 on premium payments or contributions to surplus, but may take
8 into account how the different classes of policies of the eligible
9 members contributed to the surplus of the mutual company or
10 any other factors that may be fair or equitable. Allocation of
11 subscription rights on a per capita basis are entitled to a
12 presumption that such method is fair, subject to a rebuttal of
13 fairness by clear and convincing evidence. In accordance with
14 subsection 5 of section 26.1-12.2-02, the commissioner may
15 retain an independent consultant to assist in the determination
16 that the allocation of subscription rights is fair and equitable.

17 2. The plan must provide a fair and equitable means for allocating shares of capital stock
18 in the event of an oversubscription to shares by eligible members exercising
19 subscription rights received under subdivision c of subsection 1.

20 3. The plan must provide any shares of capital stock not subscribed to by eligible
21 members exercising subscription rights received under subdivision c of subsection 1
22 or any other individuals or entities granted subscription rights pursuant to section
23 26.1-12.2-04 must be sold:

24 a. In a public offering; however, if the number of shares of capital stock not
25 subscribed by eligible members is so small in number or other factors exist that
26 do not warrant the time or expense of a public offering, the plan of conversion
27 may provide for sale of the unsubscribed shares through a private placement or
28 other alternative method approved by the commissioner which is fair and
29 equitable to eligible members; or

30 b. To a standby investor or to another corporation or entity that is participating in the
31 plan of conversion, as provided in paragraph 2 of subdivision c of subsection 1.

- 1 4. The plan must provide for the preparation of a valuation by a qualified independent
2 expert which establishes the dollar amount of the capital stock for which subscription
3 rights must be granted pursuant to subdivision c of subsection 1 which must be equal
4 to the estimated pro forma market value of the converted stock company. The qualified
5 independent expert may, to the extent feasible, determine the pro forma market value
6 by reference to a peer group of stock companies and the application of generally
7 accepted valuation techniques; state the pro forma market value of the converted
8 stock company as a range of value; and establish the value as the value estimated to
9 be necessary to attract full subscription for the shares.
- 10 5. The plan must set the purchase price per share of capital stock equal to any
11 reasonable amount. However, the minimum subscription amount required of any
12 eligible member may not exceed five hundred dollars, but the plan may provide that
13 the minimum number of shares any person may purchase pursuant to the plan is
14 twenty-five shares. The purchase price per share at which capital stock is offered to
15 persons that are not eligible members may be greater than but not less than the
16 purchase price per share at which capital stock is offered to eligible members.
- 17 6. The plan must provide that any person or group of persons acting in concert may not
18 acquire, in the public offering or pursuant to the exercise of subscription rights, more
19 than five percent of the capital stock of the converted stock company or the stock of
20 another corporation that is participating in the plan of conversion, as provided in item 3
21 of subparagraph a of paragraph 2 of subdivision c of subsection 1, except with the
22 approval of the commissioner. This limitation does not apply to any entity that is to
23 purchase one hundred percent of the capital stock of the converted stock company as
24 part of the plan of conversion approved by the commissioner or to any person that
25 acts as a standby investor for the capital stock of the converted stock company for an
26 amount equal to ten percent or more of the capital stock of the converted stock
27 company, if in each case such purchase is approved by the commissioner in
28 accordance with the provisions of North Dakota law following the filing of an
29 acquisition of control statement under section 26.1-10-03.
- 30 7. The plan must provide that a director or officer or person acting in concert with a
31 director or officer of the mutual company may not acquire any capital stock of the

- 1 converted stock company or the stock of another corporation that is participating in the
2 plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of
3 subdivision c of subsection 1, for three years after the effective date of the plan of
4 conversion, except through a broker-dealer, without the permission of the
5 commissioner. This provision does not prohibit the directors and officers from:
- 6 a. Making block purchases of one percent or more of the outstanding common
7 stock other than through a broker-dealer if approved in writing by the insurance
8 department;
- 9 b. Exercising subscription rights received under the plan; or
- 10 c. Participating in a stock benefit plan permitted by subsection 3 of section
11 26.1-12.2-04 or approved by shareholders pursuant to subsection 2 of section
12 26.1-12.2-11.
- 13 8. The plan must provide that a director or officer may not sell stock purchased pursuant
14 to this section or subsection 1 of section 26.1-12.2-04 within one year after the
15 effective date of the conversion, except that nothing contained in this section may be
16 deemed to restrict a transfer of stock by such director or officer if the stock is the stock
17 of an unaffiliated corporation that is participating in the plan of conversion as provided
18 in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 and has a
19 class of stock registered under the federal Securities Exchange Act of 1934 [15 U.S.C.
20 78a et seq.], or if the transfer is to the spouse or minor children of such director or
21 officer, or to a trust or other estate or wealth planning entity established for the benefit
22 of such director or officer, or the spouse or minor children of such director or officer.
- 23 9. The plan of conversion must provide the rights, if any, of a holder of a surplus note to
24 participate in the conversion are governed by the terms of the surplus note.
- 25 10. The plan of conversion must provide that without the prior approval of the
26 commissioner, for a period of three years from the date of the completion of the
27 conversion, a converted stock company or any corporation participating in the plan of
28 conversion pursuant to item 1 of subparagraph a of paragraph 2 of subdivision c of
29 subsection 1 or item 2 of subparagraph a of paragraph 2 of subdivision c of
30 subsection 1, may not repurchase any of its capital stock from any person. However,
31 this restriction does not apply to a:

- 1 a. Repurchase on a pro rata basis pursuant to an offer made to all shareholders of
2 the converted stock company or any corporation participating in the plan of
3 conversion pursuant to, or item 1 of subparagraph a of paragraph 2 of
4 subdivision c of subsection 1, or item 2 of subparagraph a of paragraph 2 of
5 subdivision c of subsection 1; or
6 b. Purchase in the open market by a tax-qualified or nontax-qualified employee
7 stock benefit plan in an amount reasonable and appropriate to fund the plan.

8 **26.1-12.2-04. Optional provisions of plan of conversion.**

- 9 1. The plan of conversion may provide the directors, officers, and employees of the
10 mutual company shall receive, without payment, nontransferable subscription rights to
11 purchase capital stock of the converted stock company or the stock of another
12 corporation that is participating in the plan of conversion, as provided in item 3 of
13 subparagraph a of paragraph 2 of subdivision c of subsection 1 of section
14 26.1-12.2-03. These subscription rights must be allocated among the directors,
15 officers, and employees by a fair and equitable formula and are subordinate to the
16 subscription rights of eligible members. This chapter does not require the
17 subordination of subscription rights received by directors, officers, and employees in
18 their capacity as eligible members.
19 2. Unless otherwise approved by the commissioner, the aggregate total number of
20 shares that may be purchased by directors and officers of the converting mutual
21 company, both in their capacity as directors and officers and in their capacity as
22 eligible members under item 3 of subparagraph a of paragraph 2 of subdivision c of
23 subsection 1 of section 26.1-12.2-03, may not exceed thirty-five percent of the total
24 number of shares to be issued if total assets of the converting mutual company are
25 less than fifty million dollars or twenty-five percent of the total number of shares to be
26 issued if total assets of the converting mutual company are more than five hundred
27 million dollars. For converting companies with total assets between fifty million dollars
28 and five hundred million dollars, the percentage of the total number of shares that may
29 be purchased by directors and officers must be interpolated.
30 3. The plan of conversion may allocate to a tax-qualified employee benefit plan
31 nontransferable subscription rights to purchase up to ten percent of the capital stock of

1 the converting mutual company or the stock of another corporation that is participating
2 in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of
3 subdivision c of subsection 1 of section 26.1-12.2-03. A tax-qualified employee benefit
4 plan may exercise subscription rights granted under this subsection regardless of the
5 total number of shares purchased by eligible members. If eligible members purchase
6 shares sufficient to yield gross proceeds equal to the maximum of the valuation range
7 established by subsection 4 of section 26.1-12.2-03, then the tax-qualified employee
8 benefit plan may purchase additional shares of capital stock of the converting mutual
9 company or the stock of another corporation that is participating in the plan of
10 conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of
11 subsection 1 of section 26.1-12.2-03 in an amount sufficient to equal ten percent of the
12 total shares of capital stock of the converted stock company outstanding.

13 4. The plan may provide the other classes of subscribers approved by the commissioner
14 shall receive, without payment, nontransferable subscription rights to purchase capital
15 stock of the converting stock company or the stock of another corporation that is
16 participating in the plan of conversion, as provided in item 3 of subparagraph a of
17 paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 provided that
18 such subscription rights are subordinate to the subscription rights of eligible members.

19 Other classes of subscribers that may be approved by the commissioner include:

- 20 a. Members of the converting mutual company which became members after the
21 date fixed for establishing eligible members;
- 22 b. Brokers, agents, or other producers or their directors, officers, or employees that
23 represent the mutual company or the insurance company subsidiary of the
24 mutual holding company;
- 25 c. The shareholders of another corporation that is participating in the plan of
26 conversion, as provided in item 3 of subparagraph a of paragraph 2 of
27 subdivision c of subsection 1 of section 26.1-12.2-03; or
- 28 d. The shareholders of another corporation that is a party to an acquisition, merger,
29 consolidation, or other similar transaction with the converting mutual company.

1 **26.1-12.2-05. Alternative plan of conversion.**

2 The governing body of the converting mutual company may adopt a plan of conversion that
3 does not rely in whole or in part upon issuing nontransferable subscription rights to members to
4 purchase stock of the converting stock company if the commissioner finds the plan of
5 conversion does not prejudice the interests of the members, is fair and equitable, and is not
6 inconsistent with the purpose and intent of this chapter. Subject to a finding of the commissioner
7 that an alternative plan of conversion is fair and equitable and is not inconsistent with the
8 purpose and intent of this chapter, an alternative plan of conversion may:

- 9 1. Include the merger of a domestic mutual insurance company into a domestic or foreign
10 stock insurance company.
- 11 2. Provide for the issuance of transferable or redeemable subscription rights.
- 12 3. Provide for issuing stock, cash, policyholder credits, or other consideration, or any
13 combination of the foregoing, to policyholders instead of subscription rights.
- 14 4. Set forth another plan of conversion containing any other provisions approved by the
15 commissioner.

16 **26.1-12.2-06. Minority stock offering by a mutual holding company.**

17 A mutual holding company may make a minority stock offering in accordance with the
18 provisions of chapter 26.1-12.1 or this chapter. A minority stock offering pursuant to chapter
19 26.1-12.1 may not include the grant of subscription rights to policyholders. Except as otherwise
20 provided in section 26.1-12.2-05 concerning an alternative plan of conversion, a minority stock
21 offering pursuant to this chapter must include the grant of subscription rights to policyholders.

22 **26.1-12.2-07. Conversion of a mutual holding company.**

- 23 1. If a mutual holding company converts from a mutual to stock form, the conversion
24 must comply with the provisions of this chapter.
- 25 2. If a mutual holding company seeks to convert to stock form under this chapter and it
26 has previously completed one or more minority stock offerings in which policyholders
27 were granted subscription rights pursuant to this chapter, the valuation required by
28 subsection 4 of section 26.1-12.2-03 must take into account the existence of this
29 minority interest as provided in this section. The amount of capital stock required to be
30 offered by the mutual holding company or another corporation that is participating in
31 the plan of conversion as provided in item 3 of subparagraph a of paragraph 2 of

1 subdivision c of subsection 1 of section 26.1-12.2-03 may be expressed as a range of
2 value and must equal: the pro forma fair market value of the mutual holding company,
3 multiplied by one minus a quotient equal to the number of issued minority shares,
4 divided by the sum of the issued minority shares and the number of shares held by the
5 mutual holding company.

6 3. The plan of conversion of a mutual holding company must provide that any
7 outstanding issued minority shares must be exchanged for stock issued by the
8 converting mutual company or the stock of any corporation participating in the
9 conversion of the mutual holding company pursuant to subparagraph a of paragraph 2
10 of subdivision c of subsection 1 of section 26.1-12.2-03. The mutual holding company
11 shall demonstrate to the satisfaction of the commissioner that the basis for the
12 exchange is fair and reasonable. An exchange in which the holders of outstanding
13 issued minority shares retain approximately the same percentage ownership in the
14 resulting company as the quotient of the number of issued minority shares, divided by
15 the sum of issued minority shares and the number of shares held by the mutual
16 holding company, is presumed to be fair and reasonable.

17 4. If a mutual holding company seeking to convert under this chapter previously
18 completed one or more minority stock offerings, the conversion of the mutual holding
19 company to stock form may not be consummated unless a majority of the shares
20 issued and outstanding to persons other than the mutual holding company vote in
21 favor of the conversion. This vote requirement is in addition to the required
22 policyholder vote.

23 **26.1-12.2-08. Effective date of plan of conversion.**

24 A plan of conversion is effective when the commissioner has approved the plan of
25 conversion, the voting members have approved the plan of conversion and adopted the
26 certificate of incorporation of the converted stock company, and the certificate of incorporation is
27 filed in the office of the secretary of state of this state.

28 **26.1-12.2-09. Rights of members whose policies are issued after adoption of the plan**
29 **of conversion and before effective date.**

30 1. All members whose policies are issued after the proposed plan of conversion has
31 been adopted by the governing body and before the effective date of the plan of

1 conversion must be sent a written notice regarding the plan of conversion upon
2 issuance of such policy.

3 2. Except as provided in subsection 3, each member of a property or casualty insurance
4 company entitled to receive the notice provided for in subsection 1 must be advised of
5 the member's right of cancellation and to a pro rata refund of unearned premiums.

6 3. A member of a property or casualty insurance company who has made or filed a claim
7 under such member's insurance policy is not entitled to any right to receive any refund
8 under subsection 2. A person that has exercised the rights provided by subsection 2 is
9 not entitled to make or file any claim under such person's insurance policy.

10 **26.1-12.2-10. Corporate existence.**

11 1. On the effective date of the conversion, the corporate existence of the converting
12 mutual company continues in the converted stock company. On the effective date of
13 the conversion, all the assets, rights, franchises, and interests of the converting mutual
14 company in and to every species of property, real, personal, and mixed, and any
15 accompanying things in action, are vested in the converted stock company without any
16 deed or transfer and the converted stock company assumes all the obligations and
17 liabilities of the converting mutual company.

18 2. Unless otherwise specified in the plan of conversion, the individuals who are directors
19 and officers of the converting mutual company on the effective date of the conversion
20 shall serve as directors and officers of the converted stock company until new
21 directors and officers of the converted stock company are elected pursuant to the
22 certificate of incorporation and bylaws of the converted stock company.

23 **26.1-12.2-11. Conflict of interest.**

24 1. Except as provided for in a plan of conversion approved by the commissioner, a
25 director, officer, agent, or employee of the converting mutual company may not receive
26 any fee, commission, or other valuable consideration, other than such person's usual
27 regular salary or compensation, for aiding, promoting, or assisting in a conversion
28 under this chapter. This provision does not prohibit the payment of reasonable fees
29 and compensation to attorneys, accountants, financial advisors, and actuaries for
30 services performed in the independent practice of their professions, even if the

1 attorney, accountant, financial advisor, or actuary is also a director or officer of the
2 converting mutual company.

3 2. For a period of two years after the effective date of the conversion, a converted stock
4 company may not implement any nontax-qualified stock benefit plan unless the plan is
5 approved by a majority of votes cast at a duly convened meeting of shareholders held
6 not less than six months after the effective date of the conversion.

7 3. All the costs and expenses connected with a plan of conversion must be paid for or
8 reimbursed by the converting mutual company or the converted stock company.
9 However, if the plan of conversion provides for participation by another entity in the
10 plan pursuant to subparagraph a of paragraph 2 of subdivision c of subsection 1 of
11 section 26.1-12.2-03, such entity may pay for or reimburse all or a portion of the costs
12 and expenses connected with the plan of conversion.

13 **26.1-12.2-12. Failure to give notice.**

14 If the converting mutual company complies substantially and in good faith with the notice
15 requirements of this chapter, the failure of the converting mutual company to send a member
16 the required notice does not impair the validity of any action taken under this chapter.

17 **26.1-12.2-13. Limitation on actions.**

18 Any action challenging the validity of or arising out of acts taken or proposed to be taken
19 under this chapter must be commenced on or before the later of:

- 20 1. Sixty days after the approval of the plan of conversion by the commissioner; or
21 2. Thirty days after notice of the meeting of voting members to approve the plan of
22 conversion is first mailed or delivered to voting members or posted on the website of
23 the converting mutual company.

24 **26.1-12.2-14. Converting mutual company insolvent or in hazardous financial**
25 **condition.**

26 1. If a converting mutual company seeking to convert under this chapter is insolvent or is
27 in hazardous financial condition according to information supplied in the mutual
28 company's most recent annual or quarterly statement filed with the insurance
29 department or as determined by a financial examination performed by the insurance
30 department, the requirements of this chapter, including notice to and policyholder
31 approval of the plan of conversion, may be waived at the discretion of the

- 1 commissioner. If a waiver under this section is ordered by the commissioner, the
2 converting mutual company shall specify in the mutual company's plan of conversion:
3 a. The method and basis for the issuance of the converted stock company's shares
4 of its capital stock to an independent party in connection with an investment by
5 the independent party in an amount sufficient to restore the converted stock
6 company to a sound financial condition.
7 b. That the conversion must be accomplished without granting subscription rights or
8 other consideration to policyholders.
9 2. This section does not alter or limit the authority of the commissioner under any other
10 provisions of law, including receivership and liquidation provisions applicable to
11 insurance companies.

12 **26.1-12.2-15. Rules.**

13 The commissioner may adopt rules to administer and enforce this chapter.

14 **26.1-12.2-16. Laws applicable to converted stock company.**

- 15 1. A converting mutual company is not permitted to convert under this chapter if, as a
16 direct result of the conversion, any person or any affiliate thereof acquires control of
17 the converted stock company, unless that person and such person's affiliates comply
18 with the provisions of North Dakota law regarding the acquisition of control of an
19 insurance company.
20 2. Except as otherwise specified in this chapter, a converted stock company has and
21 may exercise all the rights and privileges and is subject to all of the requirements and
22 regulations imposed on stock insurance companies under the laws of North Dakota
23 relating to the regulation and supervision of insurance companies, but the converting
24 stock company may not exercise rights or privileges that other stock insurance
25 companies may not exercise.

26 **26.1-12.2-17. Commencement of business as a stock insurance company.**

27 A converting mutual company may not engage in the business of insurance as a stock
28 company until the converting stock company complies with all provisions of this chapter.

29 **26.1-12.2-18. Amendment of policies.**

30 A mutual company, by endorsement or rider approved by the commissioner and sent to the
31 policyholder, may simultaneously with or at any time after the effective date of the conversion

1 amend any outstanding insurance policy for the purpose of extinguishing the membership rights
2 of such policyholder.

3 **26.1-12.2-19. Prohibition on acquisitions of control.**

4 Except as otherwise specifically provided in section 26.1-12.2-03, from the date a plan of
5 conversion is adopted by the governing body of a converting mutual company until three years
6 after the effective date of the plan of conversion, a person may not directly or indirectly offer to
7 acquire, make any announcement to acquire, or acquire in any manner, including making a
8 filing with the insurance department for such acquisition under a statute or regulation of this
9 state, the beneficial ownership of ten percent or more of a class of a voting security of the
10 converted stock company or of a person that controls the voting securities of the converted
11 stock company, unless the converted stock company or a person that controls the voting
12 securities of the converted stock company consents to such acquisition and such acquisition is
13 otherwise approved by the commissioner.

14 **SECTION 4. REPEAL.** Section 26.1-12-32 of the North Dakota Century Code is repealed.