

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~~forty-five days, the stock of the converted stock
23 company, its proposed subsidiary holding company, or an unaffiliated stock insurance
24 company or other corporation or entity that will acquire the stock of the converted
25 stock company ~~through 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 majoritytwo-thirds of its governing body, a plan of conversion consistent
2 with the requirements of sections 26.1-12.2-03 and 26.1-12.2-04, or of section
3 26.1-12.2-05. At any time before approval of a plan of conversion by the
4 commissioner, the converting mutual company, by the affirmative vote of not less than
5 a majoritytwo-thirds of its governing 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. The application
24 fee is in addition to other direct costs incurred by the commissioner in reviewing
25 the proposed plan of conversion. For good cause shown, the commissioner may
26 waive the application fee in whole or in part, or permit a portion of the application
27 fee to be deferred until completion of the conversion.

28 g. Such other information as the commissioner may request.

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

1 members to provide the commissioner and the converting mutual company with
2 comments on the plan of conversion within thirty days of the date of such notice, and
3 the procedure of providing such comments.

4 ~~4. Immediately, the commissioner shall give written notice to the converting mutual~~
5 ~~company of any decision and, in the event of disapproval, a statement in detail of the~~
6 ~~reasons for the decision.~~ The commissioner shall approve the plan if the commissioner
7 finds:

8 a. The plan complies with this chapter;

9 b. The plan is fair and equitable to the converting mutual company, the members of
10 the converting mutual company, and the eligible members of the converting
11 mutual company;

12 c. The plan's method of allocating subscription rights is fair and equitable;~~and~~

13 ~~e.d.~~ The plan will not otherwise prejudice the interests of the members.; and

14 e. The converted stock company will have the amount of capital and surplus
15 deemed by the commissioner to be reasonable for its future solvency.

16 5. At the expense of the converting mutual company, the commissioner may retain any
17 qualified expert not otherwise a part of the commissioner's staff, including counsel and
18 financial advisors, to assist in reviewing the plan of conversion and the independent
19 valuation required under subsection 4 of section 26.1-12.2-03.

20 6. The commissioner may~~shall~~ order a hearing on whether the terms of the plan of
21 conversion comply with this chapter after giving written notice by mail or publication to
22 the converting mutual company and other interested persons, all of whom have the
23 right to appear at the hearing.

24 7. The commissioner shall give written notice of any decision to the converting mutual
25 company and, in the event of disapproval, a detailed statement of the reasons for the
26 decision.

27 8. All voting members must be sent notice of the members' meeting to vote on the plan
28 of conversion no later than forty-five days before the meeting. The notice must ~~briefly~~
29 ~~but fairly~~ describe the proposed plan of conversion, must inform the member how the
30 proposed plan of conversion will affect the member's membership rights, must inform
31 the voting member of the voting member's right to vote upon the plan of conversion.

1 and must be sent to each voting member's last-known address, as shown on the
2 records of the converting mutual company. ~~The notice must provide instructions on~~
3 ~~how the member can obtain, either by mail or electronically, a full copy of the proposed~~
4 ~~plan of conversion.~~ If the meeting to vote upon the plan of conversion is held during
5 the annual meeting of policyholders, only a combined notice of meeting is required.

6 ~~8-9.~~ The plan of conversion must be voted upon by voting members and must be adopted
7 upon receiving the affirmative vote of at least ~~a majority~~two-thirds of the votes cast by
8 voting members at the meeting. Voting members entitled to vote upon the proposed
9 plan of conversion may vote in person or by proxy. The number of votes each voting
10 member may cast must be determined by the bylaws of the converting mutual
11 company. If the bylaws are silent, each voting member may cast one vote.

12 ~~9-10.~~ The certificate of incorporation of the converted stock company must be considered at
13 the meeting of the voting members called for the purpose of adopting the plan of
14 conversion and must require for adoption the affirmative vote of at least ~~a~~
15 ~~majority~~two-thirds of the votes cast by voting members.

16 ~~10-11.~~ Within thirty days after the voting members have approved the plan of conversion in
17 accordance with the requirements of this section, the converted stock company shall
18 file with the commissioner:

- 19 a. The minutes of the meeting of the voting members at which the plan of
20 conversion was approved, ~~which must include the record of total votes cast in~~
21 ~~favor of the plan;~~ and
22 b. The certificate of incorporation and bylaws of the converted stock company.

23 **26.1-12.2-03. Required provisions of plan of conversion.**

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

25 a. The reasons for proposed conversion.

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

- 27 (1) A provision that all policies in force on the effective date of conversion
28 continue to remain in force under the terms of the policies, except that the
29 following rights, to the extent the rights existed in the converting mutual
30 company, must be extinguished on the effective date of the conversion:

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

- 1 (b) Except as provided under paragraph 2, any right to share in the
2 surplus of the converting mutual company, unless such right is
3 expressly provided for under the provisions of the existing policy.
- 4 (c) Any assessment provisions provided for under certain types of
5 policies.
- 6 (2) A provision that holders of participating policies in effect on the date of
7 conversion continue to have a right to receive dividends as provided in the
8 participating policies, if any.
- 9 c. The grant of subscription rights to eligible members.
- 10 (1) For purposes of any plan, the transfer of subscription rights from any of the
11 following may not be deemed an unpermitted transfer for purposes of this
12 chapter:
- 13 (a) An individual to such individual and the individual's spouse or children
14 or to a trust or other estate or wealth planning entity established for
15 the benefit of such individual or the individual's spouse or children;
- 16 (b) An individual to such individual's individual or joint individual
17 retirement account or other tax-qualified retirement plan;
- 18 (c) An entity to the shareholders, partners, or members of such entity; or
19 (d) The holder of such rights back to the converting mutual company, its
20 proposed subsidiary holding company, or an unaffiliated corporation or
21 entity that will purchase ~~all~~ the stock of the converted stock company
22 as provided in item 3 of subparagraph a of paragraph 2 of subdivision
23 c of subsection 1.
- 24 (2) The grant of subscription rights to eligible members must include:
- 25 (a) A provision that each eligible member is to receive, without payment,
26 nontransferable subscription rights to purchase the capital stock of the
27 converted stock company and that, in the aggregate, all eligible
28 members have the right, before the right of any other party, to
29 purchase one hundred percent of the capital stock of the converted
30 stock company, exclusive of any shares of capital stock required to be
31 sold or distributed to the holders of surplus notes, if any, and any

1 capital stock purchased by the company's tax-qualified employee
2 stock benefit plan which is in excess of the ~~total price~~pro-forma
3 market value of the capital stock established under subsection 4, as
4 permitted by subsection 3 of section 26.1-12.2-04. As an alternative to
5 subscription rights in the converting mutual company, the plan of
6 conversion may provide each eligible member is to receive, without
7 payment, nontransferable subscription rights to purchase a portion of
8 the capital stock of one of the following:

- 9 [1] A corporation or entity organized for the purpose of becoming a
10 holding company for the converted stock company;
11 [2] A stock insurance company owned by the mutual company into
12 which the mutual company will be merged; or
13 [3] An unaffiliated stock insurer or other corporation or entity that will
14 purchase ~~all~~ the stock of the converted stock company.

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

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

- 1 3. The plan must provide any shares of capital stock not subscribed to by eligible
2 members exercising subscription rights received under subdivision c of subsection 1
3 or any other individuals or entities granted subscription rights pursuant to section
4 26.1-12.2-04 must be sold:
- 5 a. In a public offering; however, if the number of shares of capital stock not
6 subscribed by eligible members is so small in number or other factors exist that
7 do not warrant the time or expense of a public offering, the plan of conversion
8 may provide for sale of the unsubscribed shares through a private placement or
9 other alternative method approved by the commissioner which is fair and
10 equitable to eligible members; or
- 11 b. To a standby investor or to another corporation or entity that is participating in the
12 plan of conversion, as provided in paragraph 2 of subdivision c of subsection 1.
- 13 4. The plan must provide for the preparation of a valuation by a qualified independent
14 expert which establishes the dollar amountvalue of the capital stock for which
15 subscription rights must be granted pursuant to subdivision c of subsection 1 which
16 must be equal to the estimated pro forma market value of the converted stock
17 company. The qualified independent expert may, to the extent feasible, determine the
18 pro forma market value by reference to a peer group of stock companies and the
19 application of generally accepted valuation techniques; state the pro forma market
20 value of the converted stock company as a range of value; and establish the value as
21 the value estimated to be necessary to attract full subscription for the shares.
- 22 5. The dollar value of a subscription right based upon the application of the
23 Black-Scholes option pricing model or another generally accepted option pricing
24 model. In connection with the determination of stock price volatility or other valuation
25 inputs used in option pricing models, the qualified independent expert may assume
26 that the attributes of the converted stock company will be substantially similar to the
27 attributes of the stock of the peer companies used to determine the estimated
28 pro-forma market value of the converted stock company. The term of a subscription
29 right is a minimum of ninety days for the sole purpose of determining the value of a
30 subscription right.

1 6. The plan must provide that each eligible member has the right to require the mutual
2 company to redeem such subscription rights, in lieu of exercising the subscription
3 rights allocated to each eligible member, at a price equal to the number of subscription
4 rights allocated to each eligible member multiplied by the dollar value of the
5 subscription right as determined by the qualified independent expert pursuant to
6 subsection 4. The obligation of the mutual company to redeem subscription rights
7 arises only upon the effective date of the plan. The redemption price payable to each
8 eligible member must be paid to the member within thirty days of the effective date of
9 the plan. Alternatively, the converted stock company may offer each eligible member
10 the option of receiving the redemption amount in cash or having the redemption
11 amount credited against future premium payments. An eligible member that does not
12 exercise the member's subscription rights, and which also fails to affirmatively request
13 redemption of the member's subscription rights before the expiration of the
14 subscription offering, nevertheless is deemed to have requested redemption of the
15 member's subscription rights and shall receive the redemption amount in cash in the
16 manner otherwise provided in this subsection.

17 7. The plan must set the purchase price per share of capital stock equal to any
18 reasonable amount. However, the minimum subscription amount required of any
19 eligible member may not exceed five hundred dollars, but the plan may provide that
20 the minimum number of shares any person may purchase pursuant to the plan is
21 twenty-five shares. The purchase price per share at which capital stock is offered to
22 persons that are not eligible members may be greater than but not less than the
23 purchase price per share at which capital stock is offered to eligible members.

24 ~~6-8.~~ The plan must provide that any person or group of persons acting in concert may not
25 acquire, in the public offering or pursuant to the exercise of subscription rights, more
26 than five percent of the capital stock of the converted stock company or the stock of
27 another corporation that is participating in the plan of conversion, as provided in item 3
28 of subparagraph a of paragraph 2 of subdivision c of subsection 1, except with the
29 approval of the commissioner. This limitation does not apply to any entity that is to
30 purchase one hundred percent of the capital stock of the converted stock company as
31 part of the plan of conversion approved by the commissioner or to any person that

1 acts as a standby investor for the capital stock of the converted stock company for an
2 amount equal to ten percent or more of the capital stock of the converted stock
3 company, if in each case such purchase is approved by the commissioner in
4 accordance with the provisions of North Dakota law following the filing of an
5 acquisition of control statement under section 26.1-10-03.

6 7.9. The plan must provide that a director or officer or person acting in concert with a
7 director or officer of the mutual company may not acquire any capital stock of the
8 converted stock company or the stock of another corporation that is participating in the
9 plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of
10 subdivision c of subsection 1, for three years after the effective date of the plan of
11 conversion, except through a broker-dealer, without the permission of the
12 commissioner. This provision does not prohibit the directors and officers from:
13 a. Making block purchases of one percent or more of the outstanding common
14 stock other than through a broker-dealer if approved in writing by the insurance
15 department;
16 b. Exercising subscription rights received under the plan; or
17 c. Participating in a stock benefit plan permitted by subsection 3 of section
18 26.1-12.2-04 or approved by shareholders pursuant to subsection 2 of section
19 26.1-12.2-11.

20 8.10. The plan must provide that a director or officer may not sell stock purchased pursuant
21 to this section or subsection 1 of section 26.1-12.2-04 within one year after the
22 effective date of the conversion, except that nothing contained in this section may be
23 deemed to restrict a transfer of stock by such director or officer if the stock is the stock
24 of an unaffiliated corporation that is participating in the plan of conversion as provided
25 in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 and has a
26 class of stock registered under the federal Securities Exchange Act of 1934 [15 U.S.C.
27 78a et seq.], or if the transfer is to the spouse or minor children of such director or
28 officer, or to a trust or other estate or wealth planning entity established for the benefit
29 of such director or officer, or the spouse or minor children of such director or officer.

30 9.11. The plan of conversion must provide the rights, if any, of a holder of a surplus note to
31 participate in the conversion are governed by the terms of the surplus note.

1 ~~10.12.~~ The plan of conversion must provide that without the prior approval of the
2 commissioner, for a period of ~~three~~two years from the date of the completion of the
3 conversion, a converted stock company or any corporation participating in the plan of
4 conversion pursuant to item 1 of subparagraph a of paragraph 2 of subdivision c of
5 subsection 1 or item 2 of subparagraph a of paragraph 2 of subdivision c of
6 subsection 1, may not repurchase any of its capital stock from any person. However,
7 this restriction does not apply to a:

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

15 **26.1-12.2-04. Optional provisions of plan of conversion.**

16 ~~1. The plan of conversion may provide the directors, officers, and employees of the~~
17 ~~mutual company shall receive, without payment, nontransferable subscription rights to~~
18 ~~purchase capital stock of the converted stock company or the stock of another~~
19 ~~corporation that is participating in the plan of conversion, as provided in item 3 of~~
20 ~~subparagraph a of paragraph 2 of subdivision c of subsection 1 of section~~
21 ~~26.1-12.2-03. These subscription rights must be allocated among the directors,~~
22 ~~officers, and employees by a fair and equitable formula and are subordinate to the~~
23 ~~subscription rights of eligible members. This chapter does not require the~~
24 ~~subordination of subscription rights received by directors, officers, and employees in~~
25 ~~their capacity as eligible members.~~

26 ~~2. Unless otherwise approved by the commissioner, the aggregate total number of~~
27 ~~shares that may be purchased by directors and officers of the converting mutual~~
28 ~~company, both in their capacity as directors and officers and in their capacity as~~
29 ~~eligible members under item 3 of subparagraph a of paragraph 2 of subdivision c of~~
30 ~~subsection 1 of section 26.1-12.2-03, may not exceed thirty five percent of the total~~
31 ~~number of shares to be issued if total assets of the converting mutual company are~~

~~less than fifty million dollars or twenty-five percent of the total number of shares to be issued if total assets of the converting mutual company are more than five hundred million dollars. For converting companies with total assets between fifty million dollars and five hundred million dollars, the percentage of the total number of shares that may be purchased by directors and officers must be interpolated.~~

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

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

- a. Members of the converting mutual company which became members after the date fixed for establishing eligible members;

1 ~~_____ b. Brokers, agents, or other producers or their directors, officers, or employees that~~
2 ~~represent the mutual company or the insurance company subsidiary of the~~
3 ~~mutual holding company;~~

4 ~~e.b.~~ The shareholders of another corporation that is participating in the plan of
5 conversion, as provided in item 3 of subparagraph a of paragraph 2 of
6 subdivision c of subsection 1 of section 26.1-12.2-03; or

7 ~~d.c.~~ The shareholders of another corporation that is a party to an acquisition, merger,
8 consolidation, or other similar transaction with the converting mutual company.

9 **26.1-12.2-05. Alternative plan of conversion.**

10 The governing body of the converting mutual company may adopt a plan of conversion that
11 does not rely in whole or in part upon issuing nontransferable subscription rights to members to
12 purchase stock of the converting stock company if the commissioner finds the plan of
13 conversion does not prejudice the interests of the members, is fair and equitable, and is not
14 inconsistent with the purpose and intent of this chapter. Subject to a finding of the commissioner
15 that an alternative plan of conversion is fair and equitable and is not inconsistent with the
16 purpose and intent of this chapter, an alternative plan of conversion may:

- 17 1. Include the merger of a domestic mutual insurance company into a domestic or foreign
18 stock insurance company.
- 19 2. Provide for the issuance of transferable or redeemable subscription rights.
- 20 3. Provide for issuing stock, cash, policyholder credits, or other consideration, or any
21 combination of the foregoing, to policyholders instead of subscription rights.
- 22 4. Set forth another plan of conversion containing any other provisions approved by the
23 commissioner.

24 **26.1-12.2-06. Minority stock offering by a mutual holding company.**

25 A mutual holding company may make a minority stock offering in accordance with the
26 provisions of chapter 26.1-12.1 or this chapter. A minority stock offering pursuant to chapter
27 26.1-12.1 may not include the grant of subscription rights to policyholders. Except as otherwise
28 provided in section 26.1-12.2-05 concerning an alternative plan of conversion, a minority stock
29 offering pursuant to this chapter must include the grant of subscription rights to policyholders.

1 **26.1-12.2-07. Conversion of a mutual holding company.**

2 1. If a mutual holding company converts from a mutual to stock form, the conversion
3 must comply with the provisions of this chapter.

4 2. If a mutual holding company seeks to convert to stock form under this chapter and it
5 has previously completed one or more minority stock offerings in which policyholders
6 were granted subscription rights pursuant to this chapter, the valuation required by
7 subsection 4 of section 26.1-12.2-03 must take into account the existence of this
8 minority interest as provided in this section. The amount of capital stock required to be
9 offered by the mutual holding company or another corporation that is participating in
10 the plan of conversion as provided in item 3 of subparagraph a of paragraph 2 of
11 subdivision c of subsection 1 of section 26.1-12.2-03 may be expressed as a range of
12 value and must equal: the pro forma fair market value of the mutual holding company,
13 multiplied by one minus a quotient equal to the number of issued minority shares,
14 divided by the sum of the issued minority shares and the number of shares held by the
15 mutual holding company.

16 3. The plan of conversion of a mutual holding company must provide that any
17 outstanding issued minority shares must be exchanged for stock issued by the
18 converting mutual company or the stock of any corporation participating in the
19 conversion of the mutual holding company pursuant to subparagraph a of paragraph 2
20 of subdivision c of subsection 1 of section 26.1-12.2-03. The mutual holding company
21 shall demonstrate to the satisfaction of the commissioner that the basis for the
22 exchange is fair and reasonable. An exchange in which the holders of outstanding
23 issued minority shares retain approximately the same percentage ownership in the
24 resulting company as the quotient of the number of issued minority shares, divided by
25 the sum of issued minority shares and the number of shares held by the mutual
26 holding company, is presumed to be fair and reasonable.

27 4. If a mutual holding company seeking to convert under this chapter previously
28 completed one or more minority stock offerings, the conversion of the mutual holding
29 company to stock form may not be consummated unless a majority of the shares
30 issued and outstanding to persons other than the mutual holding company vote in

1 favor of the conversion. This vote requirement is in addition to the required
2 policyholder vote.

3 **26.1-12.2-08. Effective date of plan of conversion.**

4 A plan of conversion is effective when the commissioner has approved the plan of
5 conversion, the voting members have approved the plan of conversion and adopted the
6 certificate of incorporation of the converted stock company, and the certificate of incorporation is
7 filed in the office of the secretary of state of this state.

8 **26.1-12.2-09. Rights of members whose policies are issued after adoption of the plan**
9 **of conversion and before effective date.**

- 10 1. All members whose policies are issued after the proposed plan of conversion has
11 been adopted by the governing body and before the effective date of the plan of
12 conversion must be sent a written notice regarding the plan of conversion upon
13 issuance of such policy.
- 14 2. Except as provided in subsection 3, each member of a property or casualty insurance
15 company entitled to receive the notice provided for in subsection 1 must be advised of
16 the member's right of cancellation and to a pro rata refund of unearned premiums.
- 17 3. A member of a property or casualty insurance company who has made or filed a claim
18 under such member's insurance policy is not entitled to any right to receive any refund
19 under subsection 2. A person that has exercised the rights provided by subsection 2 is
20 not entitled to make or file any claim under such person's insurance policy.

21 **26.1-12.2-10. Corporate existence.**

- 22 1. On the effective date of the conversion, the corporate existence of the converting
23 mutual company continues in the converted stock company. On the effective date of
24 the conversion, all the assets, rights, franchises, and interests of the converting mutual
25 company in and to every species of property, real, personal, and mixed, and any
26 accompanying things in action, are vested in the converted stock company without any
27 deed or transfer and the converted stock company assumes all the obligations and
28 liabilities of the converting mutual company.
- 29 2. Unless otherwise specified in the plan of conversion, the individuals who are directors
30 and officers of the converting mutual company on the effective date of the conversion
31 shall serve as directors and officers of the converted stock company until new

1 directors and officers of the converted stock company are elected pursuant to the
2 certificate of incorporation and bylaws of the converted stock company.

3 **26.1-12.2-11. Conflict of interest.**

- 4 1. ~~Except as provided for in a plan of conversion approved by the commissioner, a~~A
5 director, officer, agent, or employee of the converting mutual company may not receive
6 any fee, commission, or other valuable consideration, other than such person's usual
7 regular salary or compensation, for aiding, promoting, or assisting in a conversion
8 under this chapter. This provision does not prohibit the payment of reasonable fees
9 and compensation to attorneys, accountants, financial advisors, and actuaries for
10 services performed in the independent practice of their professions, even if the
11 attorney, accountant, financial advisor, or actuary is also a director or officer of the
12 converting mutual company.
- 13 2. For a period of two years after the effective date of the conversion, a converted stock
14 company may not implement any nontax-qualified stock benefit plan unless the plan is
15 approved by a majority of votes cast at a duly convened meeting of shareholders held
16 not less than six months after the effective date of the conversion.
- 17 3. All the costs and expenses connected with a plan of conversion must be paid for or
18 reimbursed by the converting mutual company or the converted stock company.
19 However, if the plan of conversion provides for participation by another entity in the
20 plan pursuant to subparagraph a of paragraph 2 of subdivision c of subsection 1 of
21 section 26.1-12.2-03, such entity may pay for or reimburse all or a portion of the costs
22 and expenses connected with the plan of conversion.

23 **26.1-12.2-12. Failure to give notice.**

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

27 **26.1-12.2-13. Limitation on actions.**

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

- 30 1. Sixty days after the approval of the plan of conversion by the commissioner; or

1 2. Thirty days after notice of the meeting of voting members to approve the plan of
2 conversion is first mailed or delivered to voting members or posted on the website of
3 the converting mutual company.

4 **26.1-12.2-14. Converting mutual company insolvent or in hazardous financial**
5 **condition.**

6 1. If a converting mutual company seeking to convert under this chapter is insolvent or is
7 in hazardous financial condition according to information supplied in the mutual
8 company's most recent annual or quarterly statement filed with the insurance
9 department or as determined by a financial examination performed by the insurance
10 department, the requirements of this chapter, including notice to and policyholder
11 approval of the plan of conversion, may be waived at the discretion of the
12 commissioner. If a waiver under this section is ordered by the commissioner, the
13 converting mutual company shall specify in the mutual company's plan of conversion:

14 a. The method and basis for the issuance of the converted stock company's shares
15 of its capital stock to an independent party in connection with an investment by
16 the independent party in an amount sufficient to restore the converted stock
17 company to a sound financial condition.

18 b. That the conversion must be accomplished without granting subscription rights or
19 other consideration to policyholders.

20 2. This section does not alter or limit the authority of the commissioner under any other
21 provisions of law, including receivership and liquidation provisions applicable to
22 insurance companies.

23 **26.1-12.2-15. Rules.**

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

25 **26.1-12.2-16. Laws applicable to converted stock company.**

26 1. A converting mutual company is not permitted to convert under this chapter if, as a
27 direct result of the conversion, any person or any affiliate thereof acquires control of
28 the converted stock company, unless that person and such person's affiliates comply
29 with the provisions of North Dakota law regarding the acquisition of control of an
30 insurance company.

1 2. Except as otherwise specified in this chapter, a converted stock company has and
2 may exercise all the rights and privileges and is subject to all of the requirements and
3 regulations imposed on stock insurance companies under the laws of North Dakota
4 relating to the regulation and supervision of insurance companies, but the converting
5 stock company may not exercise rights or privileges that other stock insurance
6 companies may not exercise.

7 **26.1-12.2-17. Commencement of business as a stock insurance company.**

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

10 **26.1-12.2-18. Amendment of policies.**

11 A mutual company, by endorsement or rider approved by the commissioner and sent to the
12 policyholder, may simultaneously with or at any time after the effective date of the conversion
13 amend any outstanding insurance policy for the purpose of extinguishing the membership rights
14 of such policyholder.

15 **26.1-12.2-19. Prohibition on acquisitions of control.**

16 Except as otherwise specifically provided in section 26.1-12.2-03, from the date a plan of
17 conversion is adopted by the governing body of a converting mutual company until three years
18 after the effective date of the plan of conversion, a person may not directly or indirectly offer to
19 acquire, make any announcement to acquire, or acquire in any manner, including making a
20 filing with the insurance department for such acquisition under a statute or regulation of this
21 state, the beneficial ownership of ten percent or more of a class of a voting security of the
22 converted stock company or of a person that controls the voting securities of the converted
23 stock company, unless the converted stock company or a person that controls the voting
24 securities of the converted stock company consents to such acquisition and such acquisition is
25 otherwise approved by the commissioner.

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