

**FIRST ENGROSSMENT
with Senate Amendments
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.** Chapter 26.1-12.2 of the North Dakota Century Code is created and enacted
24 as follows:

1 **26.1-12.2-01. Definitions.**

2 As used in this chapter:

- 3 1. "Capital stock" means common or preferred stock or any hybrid security or other
4 equity security issued by a converted stock company or other company or entity
5 pursuant to the exercise of subscription rights granted pursuant to the provisions of
6 subdivision c of subsection 1 of section 26.1-12.2-03.
- 7 2. "Converted stock company" means a mutual company or mutual holding company that
8 has converted to a stock company under this chapter.
- 9 3. "Converting mutual company" means a mutual company or mutual holding company
10 that has adopted a plan of conversion under this chapter.
- 11 4. "Eligible member" means a member of a converting mutual company whose policy is
12 in force on the date the governing body of the converting mutual company adopts a
13 plan of conversion or such earlier date as the converting mutual company may
14 establish with the consent of the commissioner. A person insured under a group policy
15 is not an eligible member. A person whose policy becomes effective after the
16 governing body adopts the plan of conversion but before the effective date of the plan
17 of conversion is not an eligible member but has those rights established under section
18 26.1-12.2-09.
- 19 5. "Issued minority shares" means the number of shares issued by a subsidiary
20 insurance company or subsidiary holding company of a mutual holding company in all
21 minority stock offerings.
- 22 6. "Minority stock offering" means an offering of capital stock by a subsidiary insurance
23 company or subsidiary holding company controlled by a mutual holding company in
24 which less than fifty percent of the voting stock of the subsidiary insurance company or
25 subsidiary holding company is offered and sold under this chapter or chapter
26 26.1-12.1.
- 27 7. "Mutual company" means a mutual property and casualty insurance company
28 domiciled in this state.
- 29 8. "Mutual holding company" means:
30 a. A corporation resulting from a reorganization of a mutual company under chapter
31 26.1-12.1; or

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

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

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

9 11. "Policy" means an insurance policy.

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

13 13. "Subscription right" means the nontransferable right to purchase, for a period of not
14 less than forty-five days, the stock of the converted stock company, its proposed
15 subsidiary holding company, or an unaffiliated stock insurance company or other
16 corporation or entity that will acquire the stock of the converted stock company.

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

20 **26.1-12.2-02. Adoption of plan of conversion.**

21 1. A plan of conversion does not become effective unless the converting mutual company
22 seeking to become a converted stock company adopted, by the affirmative vote of not
23 less than two-thirds of its governing body, a plan of conversion consistent with the
24 requirements of sections 26.1-12.2-03 and 26.1-12.2-04, or of section 26.1-12.2-05. At
25 any time before approval of a plan of conversion by the commissioner, the converting
26 mutual company, by the affirmative vote of not less than two-thirds of its governing
27 body, may amend or withdraw the plan.

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

- 1 a. The plan of conversion, including the independent evaluation required by
2 subsection 4 of section 26.1-12.2-03.
- 3 b. The form of notice and proxy required by subsection 7 of section 26.1-12.2-02.
- 4 c. The form of notice required by section 26.1-12.2-09 to persons whose policies
5 are issued after adoption of the plan of conversion but before the plan of
6 conversion's effective date.
- 7 d. The proposed certificate of incorporation and bylaws of the converted stock
8 company.
- 9 e. The acquisition of control statement, as required by section 26.1-10-03.
- 10 f. The application fee, equal to the greater of ten thousand dollars or an amount
11 equal to one-tenth of one percent of the estimated pro forma market value of the
12 converted stock company as determined in accordance with subsection 4 of
13 section 26.1-12.2-03. If such value is expressed as a range of values, the
14 application fee must be based upon the midpoint of the range. The application
15 fee is in addition to other direct costs incurred by the commissioner in reviewing
16 the proposed plan of conversion. For good cause shown, the commissioner may
17 waive the application fee in whole or in part, or permit a portion of the application
18 fee to be deferred until completion of the conversion.
- 19 g. Such other information as the commissioner may request.
- 20 3. Upon filing with the commissioner the documents required under subsection 2, the
21 converting mutual company shall send to eligible members a notice advising eligible
22 members of the adoption and filing of the plan of conversion, the ability of the eligible
23 members to provide the commissioner and the converting mutual company with
24 comments on the plan of conversion within thirty days of the date of such notice, and
25 the procedure of providing such comments.
- 26 4. The commissioner shall approve the plan if the commissioner finds:
 - 27 a. The plan complies with this chapter;
 - 28 b. The plan is fair and equitable to the converting mutual company, the members of
29 the converting mutual company, and the eligible members of the converting
30 mutual company;
 - 31 c. The plan's method of allocating subscription rights is fair and equitable;

- 1 d. The plan will not otherwise prejudice the interests of the members; and
2 e. The converted stock company will have the amount of capital and surplus
3 deemed by the commissioner to be reasonable for its future solvency.
- 4 5. At the expense of the converting mutual company, the commissioner may retain any
5 qualified expert not otherwise a part of the commissioner's staff, including counsel and
6 financial advisors, to assist in reviewing the plan of conversion and the independent
7 valuation required under subsection 4 of section 26.1-12.2-03.
- 8 6. The commissioner shall order a hearing on whether the terms of the plan of
9 conversion comply with this chapter after giving written notice by mail or publication to
10 the converting mutual company and other interested persons, all of whom have the
11 right to appear at the hearing.
- 12 7. The commissioner shall give written notice of any decision to the converting mutual
13 company and, in the event of disapproval, a detailed statement of the reasons for the
14 decision.
- 15 8. All voting members must be sent notice of the members' meeting to vote on the plan
16 of conversion no later than forty-five days before the meeting. The notice must
17 describe the proposed plan of conversion, must inform the member how the proposed
18 plan of conversion will affect the member's membership rights, must inform the voting
19 member of the voting member's right to vote upon the plan of conversion, and must be
20 sent to each voting member's last-known address, as shown on the records of the
21 converting mutual company. The notice must provide instructions on how the member
22 can obtain, either by mail or electronically, a full copy of the proposed plan of
23 conversion. If the meeting to vote upon the plan of conversion is held during the
24 annual meeting of policyholders, only a combined notice of meeting is required.
- 25 9. The plan of conversion must be voted upon by voting members and must be adopted
26 upon receiving the affirmative vote of at least two-thirds 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 10. 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 two-thirds of
4 the votes cast by voting members.

5 11. 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, which must include the record of total votes cast in
10 favor of the plan; and

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

12 **26.1-12.2-03. Required provisions of plan of conversion.**

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

14 a. The reasons for proposed conversion.

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

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

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

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

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

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

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

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

4 (a) An individual to such individual and the individual's spouse or children
5 or to a trust or other estate or wealth planning entity established for
6 the benefit of such individual or the individual's spouse or children;

7 (b) An individual to such individual's individual or joint individual
8 retirement account or other tax-qualified retirement plan;

9 (c) An entity to the shareholders, partners, or members of such entity; or

10 (d) The holder of such rights back to the converting mutual company, its
11 proposed subsidiary holding company, or an unaffiliated corporation or
12 entity that will purchase the stock of the converted stock company as
13 provided in item 3 of subparagraph a of paragraph 2 of subdivision c
14 of subsection 1.

15 (2) The grant of subscription rights to eligible members must include:

16 (a) A provision that each eligible member is to receive, without payment,
17 nontransferable subscription rights to purchase the capital stock of the
18 converted stock company and that, in the aggregate, all eligible
19 members have the right, before the right of any other party, to
20 purchase one hundred percent of the capital stock of the converted
21 stock company, exclusive of any shares of capital stock required to be
22 sold or distributed to the holders of surplus notes, if any, and any
23 capital stock purchased by the company's tax-qualified employee
24 stock benefit plan which is in excess of the pro-forma market value of
25 the capital stock established under subsection 4, as permitted by
26 subsection 3 of section 26.1-12.2-04. As an alternative to subscription
27 rights in the converting mutual company, the plan of conversion may
28 provide each eligible member is to receive, without payment,
29 nontransferable subscription rights to purchase a portion of the capital
30 stock of one of the following:

- 1 [1] A corporation or entity organized for the purpose of becoming a
2 holding company for the converted stock company;
3 [2] A stock insurance company owned by the mutual company into
4 which the mutual company will be merged; or
5 [3] An unaffiliated stock insurer or other corporation or entity that will
6 purchase the stock of the converted stock company.
- 7 (b) A provision that subscription rights must be allocated in whole shares
8 among the eligible members using a fair and equitable formula. The
9 formula need not allocate subscription rights to eligible members on a
10 pro rata basis based on premium payments or contributions to
11 surplus, but may take into account how the different classes of
12 policies of the eligible members contributed to the surplus of the
13 mutual company or any other factors that may be fair or equitable.
14 Allocation of subscription rights on a per capita basis are entitled to a
15 presumption that such method is fair, subject to a rebuttal of fairness
16 by clear and convincing evidence. In accordance with subsection 5 of
17 section 26.1-12.2-02, the commissioner may retain an independent
18 consultant to assist in the determination that the allocation of
19 subscription rights is fair and equitable.
- 20 2. The plan must provide a fair and equitable means for allocating shares of capital stock
21 in the event of an oversubscription to shares by eligible members exercising
22 subscription rights received under subdivision c of subsection 1.
- 23 3. The plan must provide any shares of capital stock not subscribed to by eligible
24 members exercising subscription rights received under subdivision c of subsection 1
25 or any other individuals or entities granted subscription rights pursuant to section
26 26.1-12.2-04 must be sold:
- 27 a. In a public offering; however, if the number of shares of capital stock not
28 subscribed by eligible members is so small in number or other factors exist that
29 do not warrant the time or expense of a public offering, the plan of conversion
30 may provide for sale of the unsubscribed shares through a private placement or

- 1 other alternative method approved by the commissioner which is fair and
2 equitable to eligible members; or
- 3 b. To a standby investor or to another corporation or entity that is participating in the
4 plan of conversion, as provided in paragraph 2 of subdivision c of subsection 1.
- 5 4. The plan must provide for the preparation of a valuation by a qualified independent
6 expert which establishes the dollar value of the capital stock for which subscription
7 rights must be granted pursuant to subdivision c of subsection 1 which must be equal
8 to the estimated pro forma market value of the converted stock company. The qualified
9 independent expert may, to the extent feasible, determine the pro forma market value
10 by reference to a peer group of stock companies and the application of generally
11 accepted valuation techniques; state the pro forma market value of the converted
12 stock company as a range of value; and establish the value as the value estimated to
13 be necessary to attract full subscription for the shares.
- 14 5. The dollar value of a subscription right based upon the application of the
15 Black-Scholes option pricing model or another generally accepted option pricing
16 model. In connection with the determination of stock price volatility or other valuation
17 inputs used in option pricing models, the qualified independent expert may assume
18 that the attributes of the converted stock company will be substantially similar to the
19 attributes of the stock of the peer companies used to determine the estimated
20 pro-forma market value of the converted stock company. The term of a subscription
21 right is a minimum of ninety days for the sole purpose of determining the value of a
22 subscription right.
- 23 6. The plan must provide that each eligible member has the right to require the mutual
24 company to redeem such subscription rights, in lieu of exercising the subscription
25 rights allocated to each eligible member, at a price equal to the number of subscription
26 rights allocated to each eligible member multiplied by the dollar value of the
27 subscription right as determined by the qualified independent expert pursuant to
28 subsection 4. The obligation of the mutual company to redeem subscription rights
29 arises only upon the effective date of the plan. The redemption price payable to each
30 eligible member must be paid to the member within thirty days of the effective date of
31 the plan. Alternatively, the converted stock company may offer each eligible member

1 the option of receiving the redemption amount in cash or having the redemption
2 amount credited against future premium payments. An eligible member that does not
3 exercise the member's subscription rights, and which also fails to affirmatively request
4 redemption of the member's subscription rights before the expiration of the
5 subscription offering, nevertheless is deemed to have requested redemption of the
6 member's subscription rights and shall receive the redemption amount in cash in the
7 manner otherwise provided in this subsection.

8 7. The plan must set the purchase price per share of capital stock equal to any
9 reasonable amount. However, the minimum subscription amount required of any
10 eligible member may not exceed five hundred dollars, but the plan may provide that
11 the minimum number of shares any person may purchase pursuant to the plan is
12 twenty-five shares. The purchase price per share at which capital stock is offered to
13 persons that are not eligible members may be greater than but not less than the
14 purchase price per share at which capital stock is offered to eligible members.

15 8. The plan must provide that any person or group of persons acting in concert may not
16 acquire, in the public offering or pursuant to the exercise of subscription rights, more
17 than five percent of the capital stock of the converted stock company or the stock of
18 another corporation that is participating in the plan of conversion, as provided in item 3
19 of subparagraph a of paragraph 2 of subdivision c of subsection 1, except with the
20 approval of the commissioner. This limitation does not apply to any entity that is to
21 purchase one hundred percent of the capital stock of the converted stock company as
22 part of the plan of conversion approved by the commissioner or to any person that
23 acts as a standby investor for the capital stock of the converted stock company for an
24 amount equal to ten percent or more of the capital stock of the converted stock
25 company, if in each case such purchase is approved by the commissioner in
26 accordance with the provisions of North Dakota law following the filing of an
27 acquisition of control statement under section 26.1-10-03.

28 9. The plan must provide that a director or officer or person acting in concert with a
29 director or officer of the mutual company may not acquire any capital stock of the
30 converted stock company or the stock of another corporation that is participating in the
31 plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of

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

- 1 conversion pursuant to, or item 1 of subparagraph a of paragraph 2 of
2 subdivision c of subsection 1, or item 2 of subparagraph a of paragraph 2 of
3 subdivision c of subsection 1; or
4 b. Purchase in the open market by a tax-qualified or nontax-qualified employee
5 stock benefit plan in an amount reasonable and appropriate to fund the plan.

6 **26.1-12.2-04. Optional provisions of plan of conversion.**

- 7 1. The plan of conversion may allocate to a tax-qualified employee benefit plan
8 nontransferable subscription rights to purchase up to ten percent of the capital stock of
9 the converting mutual company or the stock of another corporation that is participating
10 in 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. A tax-qualified employee benefit
12 plan may exercise subscription rights granted under this subsection regardless of the
13 total number of shares purchased by eligible members. If eligible members purchase
14 shares sufficient to yield gross proceeds equal to the maximum of the valuation range
15 established by subsection 4 of section 26.1-12.2-03, then the tax-qualified employee
16 benefit plan may purchase additional shares of capital stock of the converting mutual
17 company or the stock of another corporation that is participating in the plan of
18 conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of
19 subsection 1 of section 26.1-12.2-03 in an amount sufficient to equal ten percent of the
20 total shares of capital stock of the converted stock company outstanding.
21 2. The plan may provide that other classes of subscribers approved by the commissioner
22 shall receive nontransferable subscription rights to purchase capital stock of the
23 converting stock company or the stock of another corporation that is participating in
24 the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of
25 subdivision c of subsection 1 of section 26.1-12.2-03 provided that such subscription
26 rights are subordinate to the subscription rights of eligible members. Other classes of
27 subscribers that may be approved by the commissioner include:
28 a. Members of the converting mutual company which became members after the
29 date fixed for establishing eligible members;

- 1 b. The shareholders of another corporation that is participating in the plan of
2 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; or
4 c. The shareholders of another corporation that is a party to an acquisition, merger,
5 consolidation, or other similar transaction with the converting mutual company.

6 **26.1-12.2-05. Alternative plan of conversion.**

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

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

21 **26.1-12.2-06. Minority stock offering by a mutual holding company.**

22 A mutual holding company may make a minority stock offering in accordance with the
23 provisions of chapter 26.1-12.1 or this chapter. A minority stock offering pursuant to chapter
24 26.1-12.1 may not include the grant of subscription rights to policyholders. Except as otherwise
25 provided in section 26.1-12.2-05 concerning an alternative plan of conversion, a minority stock
26 offering pursuant to this chapter must include the grant of subscription rights to policyholders.

27 **26.1-12.2-07. Conversion of a mutual holding company.**

- 28 1. If a mutual holding company converts from a mutual to stock form, the conversion
29 must comply with the provisions of this chapter.
30 2. If a mutual holding company seeks to convert to stock form under this chapter and it
31 has previously completed one or more minority stock offerings in which policyholders

1 were granted subscription rights pursuant to this chapter, the valuation required by
2 subsection 4 of section 26.1-12.2-03 must take into account the existence of this
3 minority interest as provided in this section. The amount of capital stock required to be
4 offered by the mutual holding company or another corporation that is participating in
5 the plan of 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 may be expressed as a range of
7 value and must equal: the pro forma fair market value of the mutual holding company,
8 multiplied by one minus a quotient equal to the number of issued minority shares,
9 divided by the sum of the issued minority shares and the number of shares held by the
10 mutual holding company.

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

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

28 **26.1-12.2-08. Effective date of plan of conversion.**

29 A plan of conversion is effective when the commissioner has approved the plan of
30 conversion, the voting members have approved the plan of conversion and adopted the

1 certificate of incorporation of the converted stock company, and the certificate of incorporation is
2 filed in the office of the secretary of state of this state.

3 **26.1-12.2-09. Rights of members whose policies are issued after adoption of the plan**
4 **of conversion and before effective date.**

5 1. All members whose policies are issued after the proposed plan of conversion has
6 been adopted by the governing body and before the effective date of the plan of
7 conversion must be sent a written notice regarding the plan of conversion upon
8 issuance of such policy.

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

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

16 **26.1-12.2-10. Corporate existence.**

17 1. On the effective date of the conversion, the corporate existence of the converting
18 mutual company continues in the converted stock company. On the effective date of
19 the conversion, all the assets, rights, franchises, and interests of the converting mutual
20 company in and to every species of property, real, personal, and mixed, and any
21 accompanying things in action, are vested in the converted stock company without any
22 deed or transfer and the converted stock company assumes all the obligations and
23 liabilities of the converting mutual company.

24 2. Unless otherwise specified in the plan of conversion, the individuals who are directors
25 and officers of the converting mutual company on the effective date of the conversion
26 shall serve as directors and officers of the converted stock company until new
27 directors and officers of the converted stock company are elected pursuant to the
28 certificate of incorporation and bylaws of the converted stock company.

29 **26.1-12.2-11. Conflict of interest.**

30 1. A director, officer, agent, or employee of the converting mutual company may not
31 receive any fee, commission, or other valuable consideration, other than such

1 person's usual regular salary or compensation, for aiding, promoting, or assisting in a
2 conversion under this chapter. This provision does not prohibit the payment of
3 reasonable fees and compensation to attorneys, accountants, financial advisors, and
4 actuaries for services performed in the independent practice of their professions, even
5 if the attorney, accountant, financial advisor, or actuary is also a director or officer of
6 the converting mutual company.

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

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

17 **26.1-12.2-12. Failure to give notice.**

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

21 **26.1-12.2-13. Limitation on actions.**

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

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

28 **26.1-12.2-14. Converting mutual company insolvent or in hazardous financial**
29 **condition.**

- 30 1. If a converting mutual company seeking to convert under this chapter is insolvent or is
31 in hazardous financial condition according to information supplied in the mutual

1 company's most recent annual or quarterly statement filed with the insurance
2 department or as determined by a financial examination performed by the insurance
3 department, the requirements of this chapter, including notice to and policyholder
4 approval of the plan of conversion, may be waived at the discretion of the
5 commissioner. If a waiver under this section is ordered by the commissioner, the
6 converting mutual company shall specify in the mutual company's plan of conversion:

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

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

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

16 **26.1-12.2-15. Rules.**

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

18 **26.1-12.2-16. Laws applicable to converted stock company.**

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

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

1 **26.1-12.2-17. Commencement of business as a stock insurance company.**

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

4 **26.1-12.2-18. Amendment of policies.**

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

9 **26.1-12.2-19. Prohibition on acquisitions of control.**

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

20 **SECTION 3. AMENDMENT.** Subdivision b of subsection 12 of section 26.1-17-33.1 of the
21 North Dakota Century Code is amended and reenacted as follows:

22 b. The restructured company must be treated as a mutual insurance company
23 subject to the provisions of chapter 26.1-12, except for sections 26.1-12-01,
24 26.1-12-02, 26.1-12-03, 26.1-12-05, 26.1-12-06, 26.1-12-07, 26.1-12-08,
25 26.1-12-09, 26.1-12-10, 26.1-12-14, 26.1-12-16, 26.1-12-18, 26.1-12-19,
26 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
27 26.1-12-32.

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