

SENATE BILL NO. 2093

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact section 26.1-07-05.1 and subsection 4 of section
2 26.1-10-03 of the North Dakota Century Code, relating to waiver of dissolution, merger, or
3 acquisition hearings by the insurance commissioner.

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

5 **SECTION 1. AMENDMENT.** Section 26.1-07-05.1 of the North Dakota Century Code
6 is amended and reenacted as follows:

7 **26.1-07-05.1. Hearing on petition - General duties of commissioner.** The
8 commissioner shall hold a hearing on the petition and determine whether the consolidation or
9 reinsurance will be allowed. The hearing must be conducted under chapter 28-32. Within sixty
10 days of the close of the hearing, the commissioner shall enter findings of fact, conclusions of
11 law, and an order either approving or disapproving any petition. The commissioner in making
12 the determination shall consider the following:

- 13 1. Whether the proposed consolidation or reinsurance contract is inequitable to the
14 policyholders of any domestic insurance company involved;
- 15 2. Whether the proposed consolidation or reinsurance contract would materially
16 reduce the financial security of policyholders of the domestic insurer in this state or
17 elsewhere; and
- 18 3. Whether the competence, experience, and integrity of the persons of a foreign
19 insurance company who would control the operation of the consolidated insurance
20 company or the reinsuring company are such that it would not be in the interest of
21 the policyholders of the company to permit the consolidation or reinsurance
22 contract.

1 The findings of fact, conclusions of law, and order entered by the commissioner are subject to
2 appeal under chapter 28-32. The commissioner may waive the hearing if no policyholder exists
3 or upon a finding of good cause for waiving the hearing.

4 **SECTION 2. AMENDMENT.** Subsection 4 of section 26.1-10-03 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 4. The commissioner shall approve any merger or other acquisition of control referred
7 to in subsection 1 unless, after a public hearing, the commissioner finds that:

- 8 a. After the change of control, the domestic insurance company referred to in
9 subsection 1 would not be able to satisfy the requirements for the issuance of
10 a certificate of authority to write the lines of insurance for which it is presently
11 licensed.
- 12 b. The effect of the merger or other acquisition of control would be substantially
13 to lessen competition in insurance in this state or tend to create a monopoly
14 therein.
- 15 c. The financial condition of any acquiring party might jeopardize the financial
16 stability of the insurance company or prejudice the interest of its policyholders.
- 17 d. The plans or proposals which the acquiring party has to liquidate the
18 insurance company, sell its assets or consolidate or merge it with any person,
19 or to make any other material change in its business or corporate structure or
20 management, are unfair and unreasonable to policyholders of the company
21 and not in the public interest.
- 22 e. The competence, experience, and integrity of those persons who would
23 control the operation of the insurance company are such that it would not be
24 in the interest of policyholders of the company and of the public to permit the
25 merger or other acquisition of control.
- 26 f. The acquisition is likely to be hazardous or prejudicial to the insurance buying
27 public.

28 The commissioner shall hold the public hearing referred to in this subsection within
29 thirty days after the statement required by subsection 1 is filed and shall give at
30 least twenty days' notice to the person filing the statement. Not less than seven
31 days' notice of the hearing must be given by the person filing the statement to the

1 insurance company and to other persons designated by the commissioner. The
2 commissioner shall make a determination within thirty days after the conclusion of
3 the hearing. At the hearing, the person filing the statement, the insurance
4 company, any person to whom notice of hearing was sent, and any other person
5 whose interests may be affected have the right to present evidence, examine and
6 cross-examine witnesses, and offer oral and written arguments and in connection
7 therewith are entitled to conduct discovery proceedings in the same manner
8 allowed in district court of this state. All discovery proceedings must be concluded
9 not later than three days prior to the hearing. The commissioner may retain at the
10 acquiring person's expense any attorneys, actuaries, accountants, and other
11 experts not otherwise a part of the commissioner's staff as may be reasonably
12 necessary to assist the commissioner in reviewing the proposed acquisition of
13 control. The commissioner may waive the hearing if no policyholder exists or upon
14 a finding of good cause for waiving the hearing.