

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1259

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to create and enact chapter 26.1-12.1 of the North Dakota Century Code,
2 relating to the reorganization of mutual insurance companies and formation by mutual
3 insurance companies of mutual insurance holding companies.

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

5 **SECTION 1.** Chapter 26.1-12.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **26.1-12.1-01. Definitions.** As used in this chapter, unless the context or subject matter
8 otherwise requires:

- 9 1. "Commissioner" means the commissioner of insurance.
- 10 2. "Eligible member" means a policyholder whose policy is in force as of the record
11 date, which is the date the mutual company's board of directors adopts a plan of
12 reorganization or some other date specified as the record date in the plan of
13 reorganization and approved by the commissioner. Unless otherwise provided in
14 the plan, a person insured under a certificate issued under a group policy is not an
15 eligible member.
- 16 3. "Membership interest" means all policyholders' rights as members of the converting
17 mutual insurance company, including the right to vote and to participate in any
18 distribution of surplus, whether or not incidental to the company's liquidation.
- 19 4. "Mutual insurance company" means a company incorporated as a mutual
20 insurance company under the laws of this state pursuant to chapter 26.1-12.
- 21 5. "Policy" means a policy or contract of insurance issued by a converting mutual
22 insurance company, including an annuity contract.

23 **26.1-12.1-02. Mutual insurance holding company - Formation.** A domestic mutual
24 insurance company, upon approval of the commissioner, may reorganize by forming an

1 insurance holding company based upon a mutual plan and continuing the corporate existence
2 of the reorganizing insurance company as a stock insurance company. The commissioner, if
3 satisfied that the interests of the policyholders are protected, may approve the proposed plan of
4 reorganization and may require as a condition of approval the modification of the proposed plan
5 of reorganization as the commissioner finds necessary for the protection of the policyholders'
6 interest. The commissioner retains jurisdiction over the mutual insurance holding company
7 according to this section and chapter 26.1-10 to assure that policyholders' interests are
8 protected.

9 All of the initial shares of the capital stock of the reorganized insurance company must
10 be issued to the mutual insurance holding company or to an intermediate stock holding
11 company that is wholly owned by the mutual insurance holding company. The membership
12 interests of the policyholders of the reorganized insurance company become membership
13 interests in the mutual insurance holding company. Policyholders of the reorganized insurance
14 company are members of the mutual insurance holding company in accordance with the
15 articles of incorporation and bylaws of the mutual insurance holding company. The mutual
16 insurance holding company, directly or indirectly through an intermediate stock holding
17 company, must control a majority of the voting shares of the capital stock of the reorganized
18 insurance company.

19 **26.1-12.1-03. Mutual insurance holding company - Merger.** A domestic mutual
20 insurance company, upon the approval of the commissioner, may reorganize by merging its
21 policyholders' member interest into a mutual insurance holding company formed according to
22 section 26.1-12.1-02 and continuing the corporate existence of the reorganizing insurance
23 company as a stock insurance company subsidiary of the mutual insurance holding company.
24 The commissioner, if satisfied that the interests of the policyholders are properly protected, may
25 approve the proposed merger and may require as a condition of approval the modification of
26 the proposed merger as the commissioner finds necessary for the protection of the
27 policyholders' interests. The commissioner retains jurisdiction over the mutual insurance
28 holding company organized according to this section to assure that the policyholders' interests
29 are protected.

30 All of the initial shares of the capital stock of the reorganized insurance company must
31 be issued to the mutual insurance holding company, or to an intermediate stock holding

1 company that is wholly owned by the mutual insurance holding company. The membership
2 interest of the policyholders of the reorganized insurance company become membership
3 interests in the mutual insurance holding company. Policyholders of the reorganized insurance
4 company are members of the mutual insurance holding company according to the articles of
5 incorporation and bylaws of the mutual insurance holding company. A merger as contemplated
6 by this section is not subject to chapter 26.1-07.

7 **26.1-12.1-04. Plan of reorganization - Contents.** The reorganizing or merging insurer
8 shall file a plan of reorganization, approved by the affirmative vote of a majority of its board of
9 directors, for review and approval by the commissioner. The plan must provide for the
10 following:

- 11 1. Establishing a mutual insurance holding company with at least one stock insurance
12 company subsidiary, the majority of its shares must be owned, either directly or
13 through an intermediate stock holding company, by the mutual insurance holding
14 company;
- 15 2. Insuring immediate membership in the mutual insurance holding company of all
16 existing policyholders of the reorganized domestic mutual insurance company;
- 17 3. Describing a plan providing for membership interest of future policyholders;
- 18 4. A copy of the proposed mutual insurance holding company's articles of
19 incorporation and bylaws specifying all membership rights;
- 20 5. A copy of the articles of incorporation and bylaws of any proposed insurance
21 company subsidiary or intermediate holding company subsidiary; and
- 22 6. Information sufficient to demonstrate that the financial condition of the reorganizing
23 or merging company will not be diminished upon reorganization.

24 **26.1-12.1-05. Retention of experts.** The commissioner may retain, at the reorganizing
25 or merging mutual company's expense, any qualified experts not otherwise a part of the
26 commission's staff to assist in reviewing the plan. The cost of retaining the experts must be
27 reasonable and the retention of the experts must be done on a competitive bid basis.

28 **26.1-12.1-06. Hearing by commissioner - General duties.** The commissioner must
29 conduct a public hearing regarding the proposed plan, unless the commissioner and the mutual
30 insurance company, based upon the facts and circumstances of the transaction, both agree that
31 a hearing may be waived. If a hearing is held, the hearing must be held within thirty days after

1 submission of a completed plan of reorganization to the commissioner. The commissioner shall
2 give the reorganizing mutual company at least twenty days' notice of the hearing. At the
3 hearing, the reorganizing mutual company, its policyholders, and any other person whose
4 interest may be affected by the proposed reorganization, may present evidence, examine and
5 cross-examine witnesses, and offer oral and written arguments and comments according to the
6 procedure for contested cases under chapter 28-32. The commissioner, in making the
7 determination as to a plan of reorganization, shall consider the following:

8 1. Whether the plan of reorganization would not materially diminish the status of the
9 policyholders; and

10 2. Whether the plan of reorganization would materially reduce the financial security of
11 policyholders of the mutual insurance company.

12 **26.1-12.1-07. Action by commissioner.** Within thirty days after the conclusion of the
13 public hearing, if held, or within the thirty days after filing the plan of reorganization, the
14 commissioner shall enter findings of fact, conclusions of law, and an order either approving,
15 conditionally approving, or disapproving the plan. An approval or conditional approval of a plan
16 of reorganization expires if the reorganization is not completed within one hundred eighty days
17 after the approval or conditional approval, unless the time period is extended by the
18 commissioner upon a showing of good cause.

19 **26.1-12.1-08. Approval by eligible members - Notice - Voting.** Following approval or
20 conditional approval of the plan by the commissioner, all eligible members shall be given notice
21 of a regular or special meeting of the policyholders called for the purpose of considering the
22 plan and any corporate action that is a part of, or is reasonably attended to, the
23 accomplishment of the plan. A copy of the plan or a summary of the plan must accompany the
24 notice. The notice must be mailed to each eligible member's last known address, as shown on
25 the converting mutual insurance company's records, within forty-five days of the commissioner's
26 approval of the plan, unless the commissioner directs an earlier date for mailing. The meeting
27 to vote upon a plan must be set for a date no less than forty-five days after the date when the
28 notice of the meeting is mailed by the converting mutual insurance company, unless the
29 commissioner directs an earlier date for the meeting. If the meeting to vote upon the plan is
30 held coincidentally with the converting mutual insurance company's annual meeting of
31 policyholders, only one combined notice of meeting is required. If the converting mutual

1 insurance company complies substantially and in good faith with the notice requirements of this
2 section, the converting mutual insurance company's failure to give any member or members
3 any required notice does not impair the validity of any action taken under this section.

4 The plan must be adopted upon receiving the affirmative vote of a majority of the votes
5 cast by eligible members. Eligible members may vote in person or by proxy. The form of any
6 proxy must be filed with and approved by the commissioner. The number of votes each eligible
7 member may cast must be determined by the converting mutual insurance company's bylaws.
8 If the bylaws are silent, each eligible member may cast one vote.

9 **26.1-12.1-09. Applicability of certain provisions.** A mutual insurance holding
10 company is deemed to be an insurer subject to chapter 26.1-06.1 and is automatically a party to
11 any proceeding under that chapter involving an insurance company that, as a result of a
12 reorganization according to section 26.1-12.1-02 or section 26.1-12.1-03, is a subsidiary of the
13 mutual insurance holding company. In any proceeding under chapter 26.1-06.1 involving the
14 reorganized insurance company, the assets of the mutual insurance holding company are
15 considered to be the assets of the estate of the reorganized insurance company for purposes of
16 satisfying the claims of the reorganized insurance company's policyholders. A mutual
17 insurance holding company may not be dissolved or liquidated without the approval of the
18 commissioner or as ordered by the district court according to chapter 26.1-06.1.

19 A stock insurance company owned, directly or indirectly, by a mutual insurance holding
20 company is subject to chapter 26.1-10, except for sections 26.1-10-03 and 26.1-10-03.1, to the
21 extent consistent with this section.

22 Section 26.1-12.1-32 is not applicable to a reorganization or merger accomplished
23 pursuant to the provisions of this chapter.

24 **26.1-12.1-10. Membership interest.** A membership interest in a domestic mutual
25 insurance holding company does not constitute a security as defined in subsection 13 of
26 section 10-04-03.

27 **26.1-12.1-11. Sale of stock and payment of dividends.** No solicitation for the sale of
28 the stock of the reorganized insurance company, or of an intermediate stock holding company
29 of the mutual insurance holding company, may be made without the commissioner's prior
30 written approval. Dividends and other distributions to the shareholders of the reorganized

- 1 mutual insurance company or of an intermediate stock holding company may not be made
- 2 except in compliance with sections 26.1-10-05 and 26.1-10-05.1.