

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to create and enact chapters 26.1-12.1 and 26.1-12.2 of the North Dakota
2 Century Code, relating to the reorganization of mutual insurance companies and formation by
3 mutual insurance companies of mutual insurance holding companies and demutualization of
4 insurers.

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

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

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

- 10 1. "Commissioner" means the commissioner of insurance.
- 11 2. "Eligible member" means a policyholder whose policy is in force as of the record
12 date or member as defined under the bylaws or articles of incorporation of the
13 reorganizing insurer. Unless otherwise provided in the reorganization plan, a
14 person insured under a certificate issued under a group policy is not an eligible
15 member.
- 16 3. "Membership interest" means all eligible members of the reorganizing insurer,
17 including rights to vote and to participate in any distribution of surplus, whether or
18 not incident to the company's liquidation.
- 19 4. "Mutual insurance company" means a mutual insurance company incorporated
20 under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of
21 this title.
- 22 5. "Mutual insurance holding company" means a company formed under section
23 26.1-12.1-02.

6. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to this chapter.

7. "Policy" means a policy or contract of insurance issued by a mutual insurance company, including an annuity contract.

8. "Record date" means the date the reorganizing insurer's board of directors adopts a plan of reorganization or some other date specified as the record date in the plan of reorganization and approved by the commissioner.

9. "Reorganization" means any plan or transaction described in section 26.1-12.1-02 or 26.1-12.1-03, or any change in the reorganized insurer's articles of incorporation or bylaws which is a material change to the plan of reorganization filed and approved by the commissioner affecting the ability of the reorganizing insurer to meet the standards described in section 26.1-12.1-06.

10. "Reorganized insurance company" means a mutual insurance company that has completed a reorganization to a stock company that is subject to this chapter.

11. "Reorganizing insurer" means a mutual insurance company seeking to participate, or participating, in merger or other reorganization as defined in this chapter.

26.1-12.1-02. Mutual insurance holding company - Formation. A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurer as a stock insurance company. The commissioner, if satisfied the reorganization meets the standards set forth in section 26.1-12.1-06, may approve the proposed plan of reorganization or may require as a condition of approval the modification of the proposed plan of reorganization as the commissioner finds necessary for the plan to meet the standards of section 26.1-12.1-06. The commissioner shall retain jurisdiction over the mutual insurance holding company and the reorganized insurer according to this section and chapter 26.1-10 to assure that policyholders' and members' interests are protected.

All of the initial shares of the capital stock of the reorganized insurer must be issued to the mutual insurance holding company or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurer must be converted into membership interests in the mutual insurance holding company. Policyholders of the reorganizing insurance company must

1 become members of the mutual insurance holding company in accordance with the articles of
2 incorporation and bylaws of the mutual insurance holding company and the articles of
3 incorporation and bylaws of the reorganized insurance company as approved by the
4 commissioner. The mutual insurance holding company, directly or indirectly through an
5 intermediate stock holding company, must control at all times a majority of the voting shares of
6 the capital stock of the reorganized insurance company but this does not prohibit any future
7 demutualization or other conversion.

8 **26.1-12.1-03. Mutual insurance holding company - Merger.** A domestic mutual
9 insurance company, upon the approval of the commissioner, may reorganize by merging its
10 policyholders' member interests into a mutual insurance holding company formed according to
11 section 26.1-12.1-02 and continuing the corporate existence of the reorganizing insurer as a
12 stock insurance company subsidiary of the mutual insurance holding company. The
13 commissioner, if satisfied that the reorganization meets the standards in section 26.1-12.1-06,
14 may approve the proposed merger or may require as a condition of approval the modification of
15 the proposed merger as the commissioner finds necessary for the merger to meet the
16 standards in section 26.1-12.1-06. The commissioner shall retain jurisdiction over the mutual
17 insurance holding company and the reorganized insurer organized according to this section to
18 assure that the policyholders' and members' interests are protected.

19 All of the initial shares of the capital stock of the reorganized insurance company must
20 be issued to the mutual insurance holding company, or to an intermediate stock holding
21 company that is wholly owned by the mutual insurance holding company. The membership
22 interests of the policyholders of the reorganizing insurer must be converted into membership
23 interests in the mutual insurance holding company. Policyholders of the reorganized insurance
24 company must become members of the mutual insurance holding company according to the
25 articles of incorporation and bylaws of the mutual insurance holding company. A merger as
26 contemplated by this section is not subject to chapter 26.1-07.

27 **26.1-12.1-04. Plan of reorganization - Contents.** No insurer authorized to do
28 business in this state may take part in a reorganization unless the reorganization has first been
29 approved by the commissioner in accordance with this chapter. A reorganizing insurer shall file
30 a plan of reorganization consistent with the requirements of this section, approved by the

1 affirmative vote of a majority of its board of directors, for review and approval by the
2 commissioner. The plan must include:

- 3 1. A description of the nature and content, or a copy, of the annual report and
4 financial statement to be sent to each eligible member.
- 5 2. An analysis of the benefits and risks attendant to the proposed reorganization,
6 including the rationale for the reorganization and analysis of the comparative
7 benefits and risks to the reorganizing insurer of the reorganization.
- 8 3. Information sufficient to demonstrate the financial condition of the reorganizing
9 insurer will not be affected adversely upon reorganization.
- 10 4. Information demonstrating that the reorganization will:
 - 11 a. Establish a mutual insurance holding company with at least one stock
12 insurance company subsidiary, the majority of whose shares must be owned,
13 either directly or through an intermediate stock holding company, by the
14 mutual insurance holding company;
 - 15 b. Ensure immediate membership in the mutual insurance holding company of
16 all existing eligible members of the reorganizing mutual insurance company;
 - 17 c. Describe a plan providing for membership interest of future policyholders;
 - 18 d. Include a copy of the proposed mutual insurance holding company's articles
19 of incorporation and bylaws specifying all membership rights;
 - 20 e. Include a copy of the articles of incorporation and bylaws of the reorganizing
21 insurer, any proposed insurance company subsidiary, or intermediate holding
22 company subsidiary; and
 - 23 f. Describe the number of members of the board of directors of the mutual
24 insurance holding company required to be policyholders.
- 25 5. Information demonstrating that upon an insolvency involving a stock insurance
26 company subsidiary of the mutual insurance holding company that resulted from
27 the reorganization, the assets of the mutual holding company will be available to
28 satisfy the policyholder obligations of the stock insurance company.
- 29 6. Information describing the mutual insurance holding company's general plans
30 regarding whether any accumulation or prospective accumulation of earnings by
31 the mutual insurance holding company which is or would be in excess of that

determined by the board of directors of the mutual insurance holding company to be necessary will inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

26.1-12.1-05. Retention of experts. The commissioner may retain, at the reorganizing insurer's reasonable expense, any qualified experts if the commissioner determines that staff not otherwise a part of the commissioner's staff is necessary to assist in reviewing the plan.

26.1-12.1-06. Hearing by commissioner - General duties. The commissioner shall conduct a public hearing regarding a proposed reorganization plan within sixty days after submission of a completed plan of reorganization to the commissioner, unless the commissioner and reorganizing insurer agree to extend the sixty days or unless the commissioner and the reorganizing insurer, based upon the facts and circumstances of the transaction, agree that a hearing may be waived. If a hearing is held, the commissioner shall give the reorganizing insurer at least twenty days' notice of the hearing. At the hearing, the reorganizing insurer, its policyholders, and any other person whose interests may be affected by the proposed reorganization, may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and comments according to the procedure for contested cases under chapter 28-32. The commissioner, in making the determination as to a plan of reorganization under this chapter, shall consider whether:

1. The reorganizing insurer's surplus in regard to policyholders following a plan of reorganization is reasonable in relation to the reorganizing insurer's outstanding liabilities and adequate to its financial needs;
2. Under a plan of reorganization that materially affects the membership interest of eligible members in the reorganizing insurer, the eligible members will receive a membership interest in a mutual holding company commensurate with an equitable share of the value of the reorganizing insurer;
3. After the reorganization, the reorganized insurance company will be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it was licensed before the reorganization; and
4. The plan of the reorganization is fair, reasonable, and equitable to the policyholders of the reorganizing insurer.

1 **26.1-12.1-07. Action by commissioner.** Within sixty days after the conclusion of the
2 public hearing, or within the sixty days after filing the plan of reorganization if by mutual
3 agreement the hearing is waived, unless there is a mutual agreement by the commissioner and
4 the reorganizing insurer to extend such time, the commissioner shall enter findings of fact,
5 conclusions of law, and an order either approving, conditionally approving, or disapproving the
6 plan. An approval or conditional approval of a plan of reorganization expires if the
7 reorganization is not completed within one hundred eighty days after the approval or conditional
8 approval, unless the time period is extended by the commissioner upon a showing of good
9 cause.

10 **26.1-12.1-08. Notice to eligible members.** Following approval or conditional approval
11 of the plan by the commissioner, all eligible members shall be given notice of a regular or
12 special meeting of the policyholders called for the purpose of considering the plan and any
13 corporate action that is a part of, or is reasonably attendant to, the accomplishment of the plan.
14 A copy of the plan or a summary of the plan must accompany the notice. A notice approved by
15 the commissioner must be mailed to each eligible member's last known address, as shown on
16 the reorganizing insurer's records, within forty-five days of the commissioner's approval of the
17 plan, unless the commissioner directs an earlier date for mailing. The meeting to vote upon a
18 plan of reorganization must be set for a date no less than forty-five days after the date when the
19 notice of the meeting is mailed by the reorganizing insurer, unless the commissioner directs an
20 earlier date for the meeting. If the meeting to vote upon the plan of reorganization is held
21 coincident with the reorganizing insurer's annual meeting of policyholders or members, only
22 one combined notice of meeting is required. If the reorganizing insurer complies substantially
23 and in good faith with the notice requirements of this section, the reorganizing insurer's failure
24 to give any member or members any required notice does not impair the validity of any action
25 taken under this section.

26 **26.1-12.1-09. Approval by eligible members.** The plan of reorganization must be
27 adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members.
28 Eligible members may vote in person or by proxy. The form of any proxy along with a copy or
29 summary of the plan which accompanied the notice to eligible members must be filed with and
30 approved by the commissioner. The number of votes each eligible member may cast must be

determined by the converting reorganizing insurer's bylaws. If the bylaws are silent, each eligible member may cast one vote. The plan must be approved as follows:

1. In the case of formation of a mutual insurance holding company under section 26.1-12.1-02, the reorganization plan must be approved by the affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing insurer; and
2. In the case of a merger under section 26.1-12.1-03, the reorganization plan must be approved by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing insurer and by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged, provided that the vote of the eligible members of the mutual insurance holding company may not be required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

26.1-12.1-10. Applicability of certain provisions. A mutual insurance holding company is deemed to be an insurer subject to chapter 26.1-06.1 and is automatically a mandatory party to any proceeding under that chapter involving an insurance company that, as a result of a reorganization according to section 26.1-12.1-02 or section 26.1-12.1-03, is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 26.1-06.1 involving the reorganized insurance company, the assets of the mutual insurance holding company are considered to be the assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company may not dissolve or liquidate without the approval of the commissioner or as ordered by the district court according to chapter 26.1-06.1. Section 26.1-12-32 is not applicable to a reorganization or merger accomplished under this chapter.

26.1-12.1-11. Membership interest. A membership interest in a domestic mutual insurance holding company does not constitute a security as defined in subsection 13 of section 10-04-02. No member of a mutual insurance holding company may transfer or pledge membership in the mutual insurance holding company or any right arising from the membership

1 except as attendant to the valid transfer or assignment of the member's policy in any
2 reorganized insurer which gave rise to the member's membership interest. A member of a
3 mutual insurance holding company is not, as a member, personally liable for the acts, debts,
4 liabilities, or obligations of the reorganized insurer. No assessment of any kind may be
5 imposed upon the members of a mutual insurance holding company by the directors or
6 members, or because of any liability of any company owned or controlled by the mutual
7 insurance holding company, or because of any act, debt, or liability of the reorganized
8 company. A member's interest in the mutual insurance holding company automatically
9 terminates upon cancellation, nonrenewal, expiration, or termination of the member's policy in
10 any reorganized company which gave rise to the member's membership interest.

11 **26.1-12.1-12. Sale of stock and payment of dividends.** No solicitation for the sale of
12 any of the stock of the reorganized insurer, or of an intermediate stock holding company of the
13 mutual insurance holding company, may be made without the commissioner's prior written
14 approval. Dividends and other distributions to the shareholders or members of the reorganized
15 mutual insurance company or of an intermediate stock holding company may not be made
16 except in compliance with sections 26.1-10-05 and 26.1-10-05.1.

17 **26.1-12.1-13. Incorporation.** A mutual insurance holding company resulting from the
18 reorganization of a domestic mutual insurance company must be incorporated under chapter
19 10-19.1. The articles of incorporation of the mutual insurance holding company are subject to
20 approval of the commissioner in the same manner as those of an insurance company.

21 **26.1-12.1-14. Applicability.** This chapter does not apply to any mutual insurance
22 company that was formerly organized as a nonprofit health service corporation.