

HOUSE BILL NO. 1153

Introduced by

Representatives Keiser, Kasper, Vigesaa

Senators Grindberg, Klein, Laffen

1 A BILL for an Act to amend and reenact section 26.1-17-33.1 of the North Dakota Century
2 Code, relating to restructuring of nonprofit mutual insurance companies.

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

4 **SECTION 1. AMENDMENT.** Section 26.1-17-33.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-17-33.1. Nonprofit health service corporation - Conversion to nonprofit mutual**
7 **insurance company - Application of law.**

8 1. Any nonprofit health service corporation organized under chapter 26.1-17, having
9 admitted assets in excess of all liabilities at least equal to the original surplus required
10 of a mutual insurance company by section 26.1-12-10, without reincorporation, and
11 upon adoption of a resolution by its board of directors, may petition the insurance
12 commissioner for an order to become a nonprofit mutual insurance company subject
13 to chapter 26.1-12. For the purpose of obtaining approval from the insurance
14 commissioner, conversion to a nonprofit mutual insurance company under this section
15 is deemed a consolidation pursuant to chapter 26.1-07 and the procedure described
16 therein must be followed.

17 2. Upon becoming subject to chapter 26.1-12, the company may continue to provide
18 health care and related services to its present or future members and subscribers by
19 health care contracts and may make provision for the payment of health care services
20 directly to hospitals and other agencies or institutions or persons rendering health care
21 services or related services or may make direct payment to the member or subscriber.
22 The conversion of a nonprofit health service corporation into a mutual insurance
23 company must not impair the rights or obligations or any existing contractual rights of
24 a health care service corporation or its members. Except as provided in this section,

1 the laws that apply to mutual insurance companies, and insurance companies
2 generally, apply to a nonprofit mutual insurance company converted from a nonprofit
3 health service corporation pursuant to this section.

4 3. The nonprofit corporation laws apply to the operation and control of a nonprofit mutual
5 insurance company converted from a nonprofit health service corporation under this
6 section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more
7 restrictive. ~~Except as authorized in subsections 4 and 5, a nonprofit mutual insurance~~
8 ~~company may not sell, lease, transfer, or dispose of all or substantially all property or~~
9 ~~assets, and may not merge or consolidate with, or acquire, a stock insurance company~~
10 ~~or agency, for-profit subsidiary, or any other corporation. Except as provided in~~
11 ~~subsection 5, a nonprofit mutual insurance company may not issue stock.~~

12 4. The funds of a nonprofit mutual insurance company may be invested in those
13 investments authorized to be made by domestic insurance companies under section
14 26.1-05-19, as limited by section 26.1-05-18.

15 5. A nonprofit mutual insurance company may form a wholly owned company for the
16 purpose of administering medicare claims and engaging in other business activities
17 that do not accept insurance risk. A company established under this subsection may
18 form a joint venture or subsidiary to conduct one or more of the functions the nonprofit
19 mutual insurance company could conduct directly. An officer, a director, or a
20 management employee of the nonprofit mutual insurance company may not directly or
21 indirectly own an interest in a subsidiary.

22 6. ~~A~~Except as authorized under subsection 12, a nonprofit mutual insurance company
23 may not demutualize or be converted to a for-profit mutual or stock company. A
24 nonprofit mutual insurance company may not be converted to a for-profit mutual
25 company or to a for-profit stock company.

26 7. A nonprofit mutual insurance company may ~~not~~ avail itself of the additional investment
27 authority under chapter 26.1-10. Upon approval by the commissioner after a showing
28 of good cause by the nonprofit mutual insurance company, aggregate investments in
29 all subsidiaries of the company under subsection 21 of section 26.1-05-19 and under
30 chapter 26.1-10 may exceed an amount equal to twenty-five percent of the company's
31 admitted assets.

- 1 8. A conversion of a nonprofit health service corporation to a nonprofit mutual insurance
2 company under this section or the restructuring of a nonprofit mutual insurance
3 company under subsection 12, to the extent that any assets of the nonprofit health
4 service corporation or the restructured nonprofit mutual insurance company and the
5 restructured nonprofit mutual insurance company's nonprofit holding corporation
6 parent formed pursuant to subsection 12 are impressed with a charitable trust
7 immediately before the conversion or restructuring, does not give rise to a breach of
8 the charitable trust or violate any fiduciary duty laws, and does not constitute grounds
9 for disapproval of either the petition to convert to a nonprofit mutual insurance
10 company ~~or~~, the articles of incorporation of the company under section 26.1-12-04, or
11 application for restructuring of a nonprofit mutual insurance company under
12 subsection 12. ~~The~~A conversion or restructuring authorized by this section does not
13 diminish the application of charitable trust or fiduciary duty laws that may apply to the
14 converted or restructured company immediately before the conversion.
- 15 9. A nonprofit mutual insurance company may not engage in the practice of medicine,
16 dentistry, optometry, or any other profession for which a license or registration is
17 required.
- 18 10. ~~Every~~Each nonprofit mutual insurance company ~~is~~ and each nonprofit mutual
19 insurance company and its nonprofit holding corporation parent are charitable and
20 benevolent ~~organization~~organizations and the laws of this state relating to and
21 affecting nonprofit charitable and benevolent corporations are applicable to all
22 nonprofit mutual insurance companies and restructured nonprofit mutual insurance
23 companies and their nonprofit holding corporation parents.
- 24 11. ~~A~~Except as authorized under subsection 12, a nonprofit mutual insurance company
25 may not form a mutual insurance holding company.
- 26 12. Upon approval of the nonprofit mutual insurance company's board of directors, the
27 approval of the commissioner pursuant to this subsection, and any necessary approval
28 of the nonprofit mutual insurance company's members, a nonprofit mutual insurance
29 company may restructure, while remaining a nonprofit corporation, by forming a
30 nonprofit holding corporation that will be the sole member of the restructured
31 company.

- 1 a. The restructured company shall retain any additional authority granted to the
2 restructured company as a nonprofit mutual insurance company under this
3 section and the restructured company shall remain subject to subsections 3, 4, 5,
4 6, 7, 8, 9, and 10, except to the extent inconsistent with this subsection and
5 chapter 10-33.
- 6 b. The restructured company must be treated as a mutual insurance company
7 subject to the provisions of chapter 26.1-12, except for sections 26.1-12-01,
8 26.1-12-02, 26.1-12-03, 26.1-12-05, 26.1-12-06, 26.1-12-07, 26.1-12-08,
9 26.1-12-09, 26.1-12-10, 26.1-12-14, 26.1-12-16, 26.1-12-18, 26.1-12-19,
10 26.1-12-23, 26.1-12-24, 26.1-12-25, 26.1-12-26, 26.1-12-29, 26.1-12-30, and
11 26.1-12-32.
- 12 c. The restructured company may elect to use the term "mutual" in the company's
13 name, marketing materials, and other communications.
- 14 d. The nonprofit holding corporation is subject to the provisions of sections
15 26.1-12-06, 26.1-12-07, 26.1-12-14, and 26.1-12-16. After restructuring under
16 this subsection, chapter 26.1-12.1 does not apply to the restructured company or
17 the restructured company's nonprofit holding corporation parent.
- 18 e. The membership interests of the members of the restructuring company must be
19 converted into membership interests in the nonprofit holding corporation;
20 however, notwithstanding section 26.1-12-14, upon the effective date of the
21 restructuring, such membership interests may be weighted or otherwise adjusted
22 to reflect the number of subscribers covered under a particular policy.
23 Concomitantly with the restructuring, and without complying with sections
24 26.1-10-05 and 26.1-10-05.1, the restructuring company may transfer or assign
25 the restructuring company's shares, membership units, or other incidents of
26 ownership in one or more of the restructuring company's subsidiaries and
27 affiliates, as well as the restructuring company's workforce, to the nonprofit
28 holding corporation.
- 29 f. The restructuring company shall submit an application for restructuring,
30 consisting of revised articles and bylaws, the articles and bylaws of the nonprofit
31 holding company, any share or membership interest transfer documents,

- 1 authorizing resolutions and other materials the restructuring company deems
2 pertinent to the restructuring to the commissioner. The commissioner shall
3 approve the restructuring unless, after a public hearing, the commissioner finds:
- 4 (1) After the change of control, the domestic insurance company referenced in
5 subsection 1 would not be able to satisfy the requirements for the issuance
6 of a certificate of authority to write the lines of insurance for which the
7 domestic insurance company is presently licensed;
- 8 (2) The effect of the merger or other acquisition of control would be to
9 substantially lessen competition in insurance in this state or tend to create a
10 monopoly in this state;
- 11 (3) The financial condition of any acquiring party might jeopardize the financial
12 stability of the insurance company or prejudice the interest of the insurance
13 company's policyholders;
- 14 (4) The acquiring party's plans or proposals to liquidate the insurance company,
15 to sell the insurance company's assets, to consolidate or merge with any
16 person, or to make any other material change in the insurance company's
17 business or corporate structure or management are unfair and
18 unreasonable to policyholders of the company and are not in the public
19 interest;
- 20 (5) The competence, experience, and integrity of those persons that would
21 control the operation of the insurance company are such that it would not be
22 in the interest of policyholders of the company and of the public to permit
23 the merger or other acquisition of control; or
- 24 (6) The acquisition is likely to be hazardous or prejudicial to the insurance
25 buying public.
- 26 g. Within thirty days of submission of the application to the commissioner under this
27 subsection, the commissioner shall make written findings, conclusions, and a
28 determination on the application.
- 29 13. A merger or consolidation of a nonprofit mutual insurance company that has been
30 restructured under subsection 12, merger or consolidation of the restructured nonprofit
31 mutual insurance company's nonprofit holding corporation parent, acquisition of

- 1 control of either, or acquisition of another insurer by the restructured company or the
2 restructured company's nonprofit holding corporation parent is subject to the
3 provisions of sections 26.1-10-03 and 26.1-10-03.1 and chapter 26.1-07 which would
4 be applicable to the type of transaction involved.
- 5 14. This section does not supersede or impair the rights, powers, or authority of the
6 attorney general or courts of this state established by statute, case law, or common
7 law with respect to charitable or benevolent corporations.