

**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 demutilization of domestic mutual insurance companies; and to repeal section 26.1-12-32 of  
6 the North Dakota Century Code, relating to demutilization 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. AMENDMENT.** Subdivision b of subsection 12 of section 26.1-17-33.1 of the  
24 North Dakota Century Code is amended and reenacted as follows:

- 1           b. The restructured company must be treated as a mutual insurance company  
2           subject to the provisions of chapter 26.1-12, except for sections 26.1-12-01,  
3           26.1-12-02, 26.1-12-03, 26.1-12-05, 26.1-12-06, 26.1-12-07, 26.1-12-08,  
4           26.1-12-09, 26.1-12-10, 26.1-12-14, 26.1-12-16, 26.1-12-18, 26.1-12-19,  
5           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~~  
6           ~~26.1-12-32.~~

7           **SECTION 3.** Chapter 26.1-12.2 of the North Dakota Century Code is created and enacted  
8 as follows:

9           **26.1-12.2-01. Definitions.**

10          As used in this chapter:

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

1           which less than fifty percent of the voting stock of the subsidiary insurance company or  
2           subsidiary holding company is offered and sold under this chapter or chapter  
3           26.1-12.1.

4       7.   "Mutual company" means a mutual property and casualty insurance company  
5           domiciled in this state.

6       8.   "Mutual holding company" means:

7           a.   A corporation resulting from a reorganization of a mutual company under chapter  
8           26.1-12.1; or

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

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

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

17       11.  "Policy" means an insurance policy.

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

21       13.  "Subscription right" means the nontransferable right to purchase, for a period of not  
22           less than twenty or more than thirty-five days, the stock of the converted stock  
23           company, its proposed holding company, or an unaffiliated stock insurance company  
24           or other corporation or entity that will acquire the converted stock company through  
25           the purchase of all the stock of the converted stock company.

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

29       **26.1-12.2-02. Adoption of plan of conversion.**

30       1.   A plan of conversion does not become effective unless the converting mutual company  
31           seeking to become a converted stock company adopted, by the affirmative vote of not

1           less than a majority of its governing body, a plan of conversion consistent with the  
2           requirements of sections 26.1-12.2-03 and 26.1-12.2-04, or of section 26.1-12.2-05. At  
3           any time before approval of a plan of conversion by the commissioner, the converting  
4           mutual company, by the affirmative vote of not less than a majority of its governing  
5           body, may amend or withdraw the plan.

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

- 10          a. The plan of conversion, including the independent evaluation required by  
11           subsection 4 of section 26.1-12.2-03.
- 12          b. The form of notice and proxy required by subsection 7 of section 26.1-12.2-02.
- 13          c. The form of notice required by section 26.1-12.2-09 to persons whose policies  
14           are issued after adoption of the plan of conversion but before the plan of  
15           conversion's effective date.
- 16          d. The proposed certificate of incorporation and bylaws of the converted stock  
17           company.
- 18          e. The acquisition of control statement, as required by section 26.1-10-03.
- 19          f. The application fee, equal to the greater of ten thousand dollars or an amount  
20           equal to one-tenth of one percent of the estimated pro forma market value of the  
21           converted stock company as determined in accordance with subsection 4 of  
22           section 26.1-12.2-03. If such value is expressed as a range of values, the  
23           application fee must be based upon the midpoint of the range. For good cause  
24           shown, the commissioner may waive the application fee in whole or in part, or  
25           permit a portion of the application fee to be deferred until completion of the  
26           conversion.
- 27          g. Such other information as the commissioner may request.

28          3. Upon filing with the commissioner the documents required under subsection 2, the  
29           converting mutual company shall send to eligible members a notice advising eligible  
30           members of the adoption and filing of the plan of conversion, the ability of the eligible  
31           members to provide the commissioner and the converting mutual company with

- 1           comments on the plan of conversion within thirty days of the date of such notice, and  
2           the procedure of providing such comments.
- 3           4. Immediately, the commissioner shall give written notice to the converting mutual  
4           company of any decision and, in the event of disapproval, a statement in detail of the  
5           reasons for the decision. The commissioner shall approve the plan if the commissioner  
6           finds:
- 7           a. The plan complies with this chapter;  
8           b. The plan's method of allocating subscription rights is fair and equitable; and  
9           c. The plan will not otherwise prejudice the interests of the members.
- 10          5. At the expense of the converting mutual company, the commissioner may retain any  
11          qualified expert not otherwise a part of the commissioner's staff, including counsel and  
12          financial advisors, to assist in reviewing the plan of conversion and the independent  
13          valuation required under subsection 4 of section 26.1-12.2-03.
- 14          6. The commissioner may order a hearing on whether the terms of the plan of conversion  
15          comply with this chapter after giving written notice by mail or publication to the  
16          converting mutual company and other interested persons, all of whom have the right to  
17          appear at the hearing.
- 18          7. All voting members must be sent notice of the members' meeting to vote on the plan  
19          of conversion. The notice must briefly but fairly describe the proposed plan of  
20          conversion, must inform the voting member of the voting member's right to vote upon  
21          the plan of conversion, and must be sent to each voting member's last-known  
22          address, as shown on the records of the converting mutual company. If the meeting to  
23          vote upon the plan of conversion is held during the annual meeting of policyholders,  
24          only a combined notice of meeting is required.
- 25          8. The plan of conversion must be voted upon by voting members and must be adopted  
26          upon receiving the affirmative vote of at least a majority 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       9. 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 a majority of  
4       the votes cast by voting members.

5       10. 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; and

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

11      **26.1-12.2-03. Required provisions of plan of conversion.**

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

13      a. The reasons for proposed conversion.

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

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

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

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

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

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

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

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

- 1                   (a) An individual to such individual and the individual's spouse or children  
2                                   or to a trust or other estate or wealth planning entity established for  
3                                   the benefit of such individual or the individual's spouse or children;  
4                   (b) An individual to such individual's individual or joint individual  
5                                   retirement account or other tax-qualified retirement plan;  
6                   (c) An entity to the shareholders, partners, or members of such entity; or  
7                   (d) The holder of such rights back to the converting mutual company, its  
8                                   proposed holding company, or an unaffiliated corporation or entity that  
9                                   will purchase all the stock of the converted stock company as  
10                                   provided in subparagraph c.  
11               (2) The grant of subscription rights to eligible members must include:  
12                   (a) A provision that each eligible member is to receive, without payment,  
13                                   nontransferable subscription rights to purchase the capital stock of the  
14                                   converted stock company and that, in the aggregate, all eligible  
15                                   members have the right, before the right of any other party, to  
16                                   purchase one hundred percent of the capital stock of the converted  
17                                   stock company, exclusive of any shares of capital stock required to be  
18                                   sold or distributed to the holders of surplus notes, if any, and any  
19                                   capital stock purchased by the company's tax-qualified employee  
20                                   stock benefit plan which is in excess of the total price of the capital  
21                                   stock established under subsection 4, as permitted by subsection 3 of  
22                                   section 26.1-12.2-04. As an alternative to subscription rights in the  
23                                   converting mutual company, the plan of conversion may provide each  
24                                   eligible member is to receive, without payment, nontransferable  
25                                   subscription rights to purchase a portion of the capital stock of one of  
26                                   the following:  
27                               [1] A corporation or entity organized for the purpose of becoming a  
28   holding company for the converted stock company;  
29                               [2] A stock insurance company owned by the mutual company into  
30   which the mutual company will be merged; or

1                                    [3] An unaffiliated stock insurer or other corporation or entity that will  
2                                    purchase all the stock of the converted stock company.

3                                    (b) A provision that subscription rights must be  
4                                    allocated in whole shares among the eligible members using a  
5                                    fair and equitable formula. The formula need not allocate  
6                                    subscription rights to eligible members on a pro rata basis based  
7                                    on premium payments or contributions to surplus, but may take  
8                                    into account how the different classes of policies of the eligible  
9                                    members contributed to the surplus of the mutual company or  
10                                   any other factors that may be fair or equitable. Allocation of  
11                                   subscription rights on a per capita basis are entitled to a  
12                                   presumption that such method is fair, subject to a rebuttal of  
13                                   fairness by clear and convincing evidence. In accordance with  
14                                   subsection 5 of section 26.1-12.2-02, the commissioner may  
15                                   retain an independent consultant to assist in the determination  
16                                   that the allocation of subscription rights is fair and equitable.

17                                   2. The plan must provide a fair and equitable means for allocating shares of capital stock  
18                                   in the event of an oversubscription to shares by eligible members exercising  
19                                   subscription rights received under subdivision c of subsection 1.

20                                   3. The plan must provide any shares of capital stock not subscribed to by eligible  
21                                   members exercising subscription rights received under subdivision c of subsection 1  
22                                   or any other individuals or entities granted subscription rights pursuant to section  
23                                   26.1-12.2-04 must be sold:

24                                   a. In a public offering; however, if the number of shares of capital stock not  
25                                   subscribed by eligible members is so small in number or other factors exist that  
26                                   do not warrant the time or expense of a public offering, the plan of conversion  
27                                   may provide for sale of the unsubscribed shares through a private placement or  
28                                   other alternative method approved by the commissioner which is fair and  
29                                   equitable to eligible members; or

30                                   b. To a standby investor or to another corporation or entity that is participating in the  
31                                   plan of conversion, as provided in paragraph 1 of subdivision c of subsection 1.



- 1       4.   The plan must provide for the preparation of a valuation by a qualified independent  
2       expert which establishes the dollar amount of the capital stock for which subscription  
3       rights must be granted pursuant to subdivision c of subsection 1 which must be equal  
4       to the estimated pro forma market value of the converted stock company. The qualified  
5       independent expert may, to the extent feasible, determine the pro forma market value  
6       by reference to a peer group of stock companies and the application of generally  
7       accepted valuation techniques; state the pro forma market value of the converted  
8       stock company as a range of value; and establish the value as the value estimated to  
9       be necessary to attract full subscription for the shares.
- 10      5.   The plan must set the purchase price per share of capital stock equal to any  
11      reasonable amount. However, the minimum subscription amount required of any  
12      eligible member may not exceed five hundred dollars, but the plan may provide that  
13      the minimum number of shares any person may purchase pursuant to the plan is  
14      twenty-five shares. The purchase price per share at which capital stock is offered to  
15      persons that are not eligible members may be greater than but not less than the  
16      purchase price per share at which capital stock is offered to eligible members.
- 17      6.   The plan must provide that any person or group of persons acting in concert may not  
18      acquire, in the public offering or pursuant to the exercise of subscription rights, more  
19      than five percent of the capital stock of the converted stock company or the stock of  
20      another corporation that is participating in the plan of conversion, as provided in item 3  
21      of subparagraph a of paragraph 2 of subdivision c of subsection 1, except with the  
22      approval of the commissioner. This limitation does not apply to any entity that is to  
23      purchase one hundred percent of the capital stock of the converted stock company as  
24      part of the plan of conversion approved by the commissioner or to any person that  
25      acts as a standby investor for the capital stock of the converted stock company for an  
26      amount equal to ten percent or more of the capital stock of the converted stock  
27      company, if in each case such purchase is approved by the commissioner in  
28      accordance with the provisions of North Dakota law following the filing of an  
29      acquisition of control statement under section 26.1-10-03.
- 30      7.   The plan must provide that a director or officer or person acting in concert with a  
31      director or officer of the mutual company may not acquire any capital stock of the

1 converted stock company or the stock of another corporation that is participating in the  
2 plan of conversion, as provided in subparagraph c of paragraph 1 of subdivision c of  
3 subsection 1, for three years after the effective date of the plan of conversion, except  
4 through a broker-dealer, without the permission of the commissioner. This provision  
5 does not prohibit the directors and officers from:

6 a. Making block purchases of one percent or more of the outstanding common  
7 stock other than through a broker-dealer if approved in writing by the insurance  
8 department;

9 b. Exercising subscription rights received under the plan; or

10 c. Participating in a stock benefit plan permitted by subsection 3 of section  
11 26.1-12.2-04 or approved by shareholders pursuant to subsection 2 of section  
12 26.1-12.2-11.

13 8. The plan must provide that a director or officer may not sell stock purchased pursuant  
14 to this section or subsection 1 of section 26.1-12.2-04 within one year after the  
15 effective date of the conversion, except that nothing contained in this section may be  
16 deemed to restrict a transfer of stock by such director or officer if the stock is the stock  
17 of an unaffiliated corporation that is participating in the plan of conversion as provided  
18 in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 and has a  
19 class of stock registered under the federal Securities Exchange Act of 1934 [15 U.S.C.  
20 78a et seq.], or if the transfer is to the spouse or minor children of such director or  
21 officer, or to a trust or other estate or wealth planning entity established for the benefit  
22 of such director or officer, or the spouse or minor children of such director or officer.

23 9. The plan of conversion must provide the rights, if any, of a holder of a surplus note to  
24 participate in the conversion are governed by the terms of the surplus note.

25 10. The plan of conversion must provide that without the prior approval of the  
26 commissioner, for a period of three years from the date of the completion of the  
27 conversion, a converted stock company or any corporation participating in the plan of  
28 conversion pursuant to item 1 of subparagraph a of paragraph 2 of subdivision c of  
29 subsection 1 or item 2 of subparagraph a of paragraph 2 of subdivision c of  
30 subsection 1, may not repurchase any of its capital stock from any person. However,  
31 this restriction does not apply to a:

- 1           a. Repurchase on a pro rata basis pursuant to an offer made to all shareholders of  
2           the converted stock company or any corporation participating in the plan of  
3           conversion pursuant to, or item 1 of subparagraph a of paragraph 2 of  
4           subdivision c of subsection 1, or item 2 of subparagraph a of paragraph 2 of  
5           subdivision c of subsection 1; or
- 6           b. Purchase in the open market by a tax-qualified or nontax-qualified employee  
7           stock benefit plan in an amount reasonable and appropriate to fund the plan.

8           **26.1-12.2-04. Optional provisions of plan of conversion.**

- 9           1. The plan of conversion may provide the directors, officers, and employees of the  
10           mutual company shall receive, without payment, nontransferable subscription rights to  
11           purchase capital stock of the converted stock company or the stock of another  
12           corporation that is participating in the plan of conversion, as provided in item 3 of  
13           subparagraph a of paragraph 2 of subdivision c of subsection 1 of section  
14           26.1-12.2-03. These subscription rights must be allocated among the directors,  
15           officers, and employees by a fair and equitable formula and are subordinate to the  
16           subscription rights of eligible members. This chapter does not require the  
17           subordination of subscription rights received by directors, officers, and employees in  
18           their capacity as eligible members.
- 19           2. Unless otherwise approved by the commissioner, the aggregate total number of  
20           shares that may be purchased by directors and officers of the converting mutual  
21           company, both in their capacity as directors and officers and in their capacity as  
22           eligible members under item 3 of subparagraph a of paragraph 2 of subdivision c of  
23           subsection 1 of section 26.1-12.2-03, may not exceed thirty-five percent of the total  
24           number of shares to be issued if total assets of the converting mutual company are  
25           less than fifty million dollars or twenty-five percent of the total number of shares to be  
26           issued if total assets of the converting mutual company are more than five hundred  
27           million dollars. For converting companies with total assets between fifty million dollars  
28           and five hundred million dollars, the percentage of the total number of shares that may  
29           be purchased by directors and officers must be interpolated.
- 30           3. The plan of conversion may allocate to a tax-qualified employee benefit plan  
31           nontransferable subscription rights to purchase up to ten percent of the capital stock of

1 the converting mutual company or the stock of another corporation that is participating  
2 in the plan of 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. A tax-qualified employee benefit  
4 plan may exercise subscription rights granted under this subsection regardless of the  
5 total number of shares purchased by eligible members. If eligible members purchase  
6 shares sufficient to yield gross proceeds equal to the maximum of the valuation range  
7 established by subsection 4 of section 26.1-12.2-03, then the tax-qualified employee  
8 benefit plan may purchase additional shares of capital stock of the converting mutual  
9 company or the stock of another corporation that is participating in the plan of  
10 conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of  
11 subsection 1 of section 26.1-12.2-03 in an amount sufficient to equal ten percent of the  
12 total shares of capital stock of the converted stock company outstanding.

13 4. The plan may provide the other classes of subscribers approved by the commissioner  
14 shall receive, without payment, nontransferable subscription rights to purchase capital  
15 stock of the converting stock company or the stock of another corporation that is  
16 participating in the plan of conversion, as provided in item 3 of subparagraph a of  
17 paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 provided that  
18 such subscription rights are subordinate to the subscription rights of eligible members.

19 Other classes of subscribers that may be approved by the commissioner include:

- 20 a. Members of the converting mutual company which became members after the  
21 date fixed for establishing eligible members;
- 22 b. Brokers, agents, or other producers or their directors, officers, or employees that  
23 represent the mutual company or the insurance company subsidiary of the  
24 mutual holding company;
- 25 c. The shareholders of another corporation that is participating in the plan of  
26 conversion, as provided in item 3 of subparagraph a of paragraph 2 of  
27 subdivision c of subsection 1 of section 26.1-12.2-03; or
- 28 d. The shareholders of another corporation that is a party to an acquisition, merger,  
29 consolidation, or other similar transaction with the converting mutual company.

1       **26.1-12.2-05. Alternative plan of conversion.**

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

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

16       **26.1-12.2-06. Minority stock offering by a mutual holding company.**

17       A mutual holding company may make a minority stock offering in accordance with the  
18 provisions of chapter 26.1-12.1 or this chapter. A minority stock offering pursuant to chapter  
19 26.1-12.1 may not include the grant of subscription rights to policyholders. Except as otherwise  
20 provided in section 26.1-12.2-05 concerning an alternative plan of conversion, a minority stock  
21 offering pursuant to this chapter must include the grant of subscription rights to policyholders.

22       **26.1-12.2-07. Conversion of a mutual holding company.**

- 23       1. If a mutual holding company converts from a mutual to stock form, the conversion  
24 must comply with the provisions of this chapter.  
25       2. If a mutual holding company seeks to convert to stock form under this chapter and it  
26 has previously completed one or more minority stock offerings in which policyholders  
27 were granted subscription rights pursuant to this chapter, the valuation required by  
28 subsection 4 of section 26.1-12.2-03 must take into account the existence of this  
29 minority interest as provided in this section. The amount of capital stock required to be  
30 offered by the mutual holding company or another corporation that is participating in  
31 the plan of conversion as provided in item 3 of subparagraph a of paragraph 2 of

1 subdivision c of subsection 1 of section 26.1-12.2-03 may be expressed as a range of  
2 value and must equal: the pro forma fair market value of the mutual holding company,  
3 multiplied by one minus a quotient equal to the number of issued minority shares,  
4 divided by the sum of the issued minority shares and the number of shares held by the  
5 mutual holding company.

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

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

23 **26.1-12.2-08. Effective date of plan of conversion.**

24 A plan of conversion is effective when the commissioner has approved the plan of  
25 conversion, the voting members have approved the plan of conversion and adopted the  
26 certificate of incorporation of the converted stock company, and the certificate of incorporation is  
27 filed in the office of the secretary of state of this state.

28 **26.1-12.2-09. Rights of members whose policies are issued after adoption of the plan**  
29 **of conversion and before effective date.**

30 1. All members whose policies are issued after the proposed plan of conversion has  
31 been adopted by the governing body and before the effective date of the plan of

1           conversion must be sent a written notice regarding the plan of conversion upon  
2           issuance of such policy.

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

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

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

11           1. On the effective date of the conversion, the corporate existence of the converting  
12           mutual company continues in the converted stock company. On the effective date of  
13           the conversion, all the assets, rights, franchises, and interests of the converting mutual  
14           company in and to every species of property, real, personal, and mixed, and any  
15           accompanying things in action, are vested in the converted stock company without any  
16           deed or transfer and the converted stock company assumes all the obligations and  
17           liabilities of the converting mutual company.

18           2. Unless otherwise specified in the plan of conversion, the individuals who are directors  
19           and officers of the converting mutual company on the effective date of the conversion  
20           shall serve as directors and officers of the converted stock company until new  
21           directors and officers of the converted stock company are elected pursuant to the  
22           certificate of incorporation and bylaws of the converted stock company.

23           **26.1-12.2-11. Conflict of interest.**

24           1. Except as provided for in a plan of conversion approved by the commissioner, a  
25           director, officer, agent, or employee of the converting mutual company may not receive  
26           any fee, commission, or other valuable consideration, other than such person's usual  
27           regular salary or compensation, for aiding, promoting, or assisting in a conversion  
28           under this chapter. This provision does not prohibit the payment of reasonable fees  
29           and compensation to attorneys, accountants, financial advisors, and actuaries for  
30           services performed in the independent practice of their professions, even if the

1           attorney, accountant, financial advisor, or actuary is also a director or officer of the  
2           converting mutual company.

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

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

13          **26.1-12.2-12. Failure to give notice.**

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

17          **26.1-12.2-13. Limitation on actions.**

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

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

24          **26.1-12.2-14. Converting mutual company insolvent or in hazardous financial**  
25          **condition.**

26          1. If a converting mutual company seeking to convert under this chapter is insolvent or is  
27          in hazardous financial condition according to information supplied in the mutual  
28          company's most recent annual or quarterly statement filed with the insurance  
29          department or as determined by a financial examination performed by the insurance  
30          department, the requirements of this chapter, including notice to and policyholder  
31          approval of the plan of conversion, may be waived at the discretion of the



- 1           commissioner. If a waiver under this section is ordered by the commissioner, the  
2           converting mutual company shall specify in the mutual company's plan of conversion:  
3           a. The method and basis for the issuance of the converted stock company's shares  
4           of its capital stock to an independent party in connection with an investment by  
5           the independent party in an amount sufficient to restore the converted stock  
6           company to a sound financial condition.  
7           b. That the conversion must be accomplished without granting subscription rights or  
8           other consideration to policyholders.  
9           2. This section does not alter or limit the authority of the commissioner under any other  
10           provisions of law, including receivership and liquidation provisions applicable to  
11           insurance companies.

12           **26.1-12.2-15. Rules.**

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

14           **26.1-12.2-16. Laws applicable to converted stock company.**

- 15           1. A converting mutual company is not permitted to convert under this chapter if, as a  
16           direct result of the conversion, any person or any affiliate thereof acquires control of  
17           the converted stock company, unless that person and such person's affiliates comply  
18           with the provisions of North Dakota law regarding the acquisition of control of an  
19           insurance company.  
20           2. Except as otherwise specified in this chapter, a converted stock company has and  
21           may exercise all the rights and privileges and is subject to all of the requirements and  
22           regulations imposed on stock insurance companies under the laws of North Dakota  
23           relating to the regulation and supervision of insurance companies, but the converting  
24           stock company may not exercise rights or privileges that other stock insurance  
25           companies may not exercise.

26           **26.1-12.2-17. Commencement of business as a stock insurance company.**

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

29           **26.1-12.2-18. Amendment of policies.**

30           A mutual company, by endorsement or rider approved by the commissioner and sent to the  
31           policyholder, may simultaneously with or at any time after the effective date of the conversion

1 amend any outstanding insurance policy for the purpose of extinguishing the membership rights  
2 of such policyholder.

3 **26.1-12.2-19. Prohibition on acquisitions of control.**

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

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