# Sixty-fourth Legislative Assembly of North Dakota
# In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1313
(Representatives Keiser, Kasper, Klemin)

AN ACT to create and enact chapter 26.1-12.2 of the North Dakota Century Code, relating to conversion of a mutual property and casualty insurance company to a stock insurance company; to amend and reenact section 26.1-12.1-10 and subdivision b of subsection 12 of section 26.1-17-33.1 of the North Dakota Century Code, relating to references to demutualization of domestic mutual insurance companies; and to repeal section 26.1-12-32 of the North Dakota Century Code, relating to demutualization of domestic mutual insurance companies.

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

**SECTION 1. AMENDMENT.** Section 26.1-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**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 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~~Chapter 26.1-12.2 is not applicable to a reorganization or merger accomplished under this chapter.

**SECTION 2.** Chapter 26.1-12.2 of the North Dakota Century Code is created and enacted as follows:

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

As used in this chapter:

1. "Capital stock" means common or preferred stock or any hybrid security or other equity security issued by a converted stock company or other company or entity pursuant to the exercise of subscription rights granted pursuant to the provisions of subdivision c of subsection 1 of section 26.1-12.2-03.

2. "Converted stock company" means a mutual company or mutual holding company that has converted to a stock company under this chapter.

3. "Converting mutual company" means a mutual company or mutual holding company that has adopted a plan of conversion under this chapter.

4. "Eligible member" means a member of a converting mutual company whose policy is in force on the date the governing body of the converting mutual company adopts a plan of conversion or such earlier date as the converting mutual company may establish with the consent of the commissioner. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the governing body adopts the plan of conversion but before the effective date of the plan of conversion is not an eligible member but has those rights established under section 26.1-12.2-09.

5. "Issued minority shares" means the number of shares issued by a subsidiary insurance company or subsidiary holding company of a mutual holding company in all minority stock offerings.

6. "Minority stock offering" means an offering of capital stock by a subsidiary insurance company or subsidiary holding company controlled by a mutual holding company in which less than fifty percent of the voting stock of the subsidiary insurance company or subsidiary holding company is offered and sold under this chapter or chapter 26.1-12.1.

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

8. "Mutual holding company" means:

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

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

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

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

11. "Policy" means an insurance policy.

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

13. "Subscription right" means the nontransferable right to purchase, for a period of not less than forty-five days, the stock of the converted stock company, its proposed subsidiary holding company, or an unaffiliated stock insurance company or other corporation or entity that will acquire the stock of the converted stock company.

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

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

1. A plan of conversion does not become effective unless the converting mutual company seeking to become a converted stock company adopted, by the affirmative vote of not less than two-thirds of its governing body, a plan of conversion consistent with the requirements of sections 26.1-12.2-03 and 26.1-12.2-04, or of section 26.1-12.2-05. At any time before approval of a plan of conversion by the commissioner, the converting mutual company, by the affirmative vote of not less than two-thirds of its governing body, may amend or withdraw the plan.

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

   a. The plan of conversion, including the independent evaluation required by subsection 4 of section 26.1-12.2-03.

b. The form of notice and proxy required by subsection 7 of section 26.1-12.2-02.

c. The form of notice required by section 26.1-12.2-09 to persons whose policies are issued after adoption of the plan of conversion but before the plan of conversion's effective date.

d. The proposed certificate of incorporation and bylaws of the converted stock company.

e. The acquisition of control statement, as required by section 26.1-10-03.

f. The application fee, equal to the greater of ten thousand dollars or an amount equal to one-tenth of one percent of the estimated pro forma market value of the converted stock company as determined in accordance with subsection 4 of section 26.1-12.2-03. If such value is expressed as a range of values, the application fee must be based upon the midpoint of the range. The application fee is in addition to other direct costs incurred by the commissioner in reviewing the proposed plan of conversion. For good cause shown, the commissioner may waive the application fee in whole or in part, or permit a portion of the application fee to be deferred until completion of the conversion.

g. Such other information as the commissioner may request.

3. Upon filing with the commissioner the documents required under subsection 2, the converting mutual company shall send to eligible members a notice advising eligible members of the adoption and filing of the plan of conversion, the ability of the eligible members to provide the commissioner and the converting mutual company with comments on the plan of conversion within thirty days of the date of such notice, and the procedure of providing such comments.

4. The commissioner shall approve the plan if the commissioner finds:

a. The plan complies with this chapter;

b. The plan is fair and equitable to the converting mutual company, the members of the converting mutual company, and the eligible members of the converting mutual company;

c. The plan's method of allocating subscription rights is fair and equitable;

d. The plan will not otherwise prejudice the interests of the members; and

e. The converted stock company will have the amount of capital and surplus deemed by the commissioner to be reasonable for its future solvency.

5. At the expense of the converting mutual company, the commissioner may retain any qualified expert not otherwise a part of the commissioner's staff, including counsel and financial advisors, to assist in reviewing the plan of conversion and the independent valuation required under subsection 4 of section 26.1-12.2-03.

6. The commissioner shall order a hearing on whether the terms of the plan of conversion comply with this chapter after giving written notice by mail or publication to the converting mutual company and other interested persons, all of whom have the right to appear at the hearing.

7. The commissioner shall give written notice of any decision to the converting mutual company and, in the event of disapproval, a detailed statement of the reasons for the decision.

8. All voting members must be sent notice of the members' meeting to vote on the plan of conversion no later than forty-five days before the meeting. The notice must describe the proposed plan of conversion, must inform the member how the proposed plan of conversion will affect the member's membership rights, must inform the voting member of the voting member's right to vote upon the plan of conversion, and must be sent to each voting member's last-known address, as shown on the records of the converting mutual company.

The notice must provide instructions on how the member can obtain, either by mail or electronically, a full copy of the proposed plan of conversion. If the meeting to vote upon the plan of conversion is held during the annual meeting of policyholders, only a combined notice of meeting is required.

9. The plan of conversion must be voted upon by voting members and must be adopted upon receiving the affirmative vote of at least two-thirds of the votes cast by voting members at the meeting. Voting members entitled to vote upon the proposed plan of conversion may vote in person or by proxy. The number of votes each voting member may cast must be determined by the bylaws of the converting mutual company. If the bylaws are silent, each voting member may cast one vote.

10. The certificate of incorporation of the converted stock company must be considered at the meeting of the voting members called for the purpose of adopting the plan of conversion and must require for adoption the affirmative vote of at least two-thirds of the votes cast by voting members.

11. Within thirty days after the voting members have approved the plan of conversion in accordance with the requirements of this section, the converted stock company shall file with the commissioner:

    a. The minutes of the meeting of the voting members at which the plan of conversion was approved, which must include the record of total votes cast in favor of the plan; and

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

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

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

    a. The reasons for proposed conversion.

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

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

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

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

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

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

    c. The grant of subscription rights to eligible members.

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

            (a) An individual to such individual and the individual's spouse or children or to a trust or other estate or wealth planning entity established for the benefit of such individual or the individual's spouse or children;

(b) An individual to such individual's individual or joint individual retirement account or other tax-qualified retirement plan;

(c) An entity to the shareholders, partners, or members of such entity; or

(d) The holder of such rights back to the converting mutual company, its proposed subsidiary holding company, or an unaffiliated corporation or entity that will purchase the stock of the converted stock company as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1.

(2) The grant of subscription rights to eligible members must include:

(a) A provision that each eligible member is to receive, without payment, nontransferable subscription rights to purchase the capital stock of the converted stock company and that, in the aggregate, all eligible members have the right, before the right of any other party, to purchase one hundred percent of the capital stock of the converted stock company, exclusive of any shares of capital stock required to be sold or distributed to the holders of surplus notes, if any, and any capital stock purchased by the company's tax-qualified employee stock benefit plan which is in excess of the pro-forma market value of the capital stock established under subsection 4, as permitted by subsection 3 of section 26.1-12.2-04. As an alternative to subscription rights in the converting mutual company, the plan of conversion may provide each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

[1] A corporation or entity organized for the purpose of becoming a holding company for the converted stock company;

[2] A stock insurance company owned by the mutual company into which the mutual company will be merged; or

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

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

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

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

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

b. To a standby investor or to another corporation or entity that is participating in the plan of conversion, as provided in paragraph 2 of subdivision c of subsection 1.

4. The plan must provide for the preparation of a valuation by a qualified independent expert which establishes the dollar value of the capital stock for which subscription rights must be granted pursuant to subdivision c of subsection 1 which must be equal to the estimated pro forma market value of the converted stock company. The qualified independent expert may, to the extent feasible, determine the pro forma market value by reference to a peer group of stock companies and the application of generally accepted valuation techniques; state the pro forma market value of the converted stock company as a range of value; and establish the value as the value estimated to be necessary to attract full subscription for the shares.

5. The dollar value of a subscription right based upon the application of the Black-Scholes option pricing model or another generally accepted option pricing model. In connection with the determination of stock price volatility or other valuation inputs used in option pricing models, the qualified independent expert may assume that the attributes of the converted stock company will be substantially similar to the attributes of the stock of the peer companies used to determine the estimated pro-forma market value of the converted stock company. The term of a subscription right is a minimum of ninety days for the sole purpose of determining the value of a subscription right.

6. The plan must provide that each eligible member has the right to require the mutual company to redeem such subscription rights, in lieu of exercising the subscription rights allocated to each eligible member, at a price equal to the number of subscription rights allocated to each eligible member multiplied by the dollar value of the subscription right as determined by the qualified independent exert pursuant to subsection 4. The obligation of the mutual company to redeem subscription rights arises only upon the effective date of the plan. The redemption price payable to each eligible member must be paid to the member within thirty days of the effective date of the plan. Alternatively, the converted stock company may offer each eligible member the option of receiving the redemption amount in cash or having the redemption amount credited against future premium payments. An eligible member that does not exercise the member's subscription rights, and which also fails to affirmatively request redemption of the member's subscription rights before the expiration of the subscription offering, nevertheless is deemed to have requested redemption of the member's subscription rights and shall receive the redemption amount in cash in the manner otherwise provided in this subsection.

7. The plan must set the purchase price per share of capital stock equal to any reasonable amount. However, the minimum subscription amount required of any eligible member may not exceed five hundred dollars, but the plan may provide that the minimum number of shares any person may purchase pursuant to the plan is twenty-five shares. The purchase price per share at which capital stock is offered to persons that are not eligible members may be greater than but not less than the purchase price per share at which capital stock is offered to eligible members.

8. The plan must provide that any person or group of persons acting in concert may not acquire, in the public offering or pursuant to the exercise of subscription rights, more than five percent of the capital stock of the converted stock company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1, except with the approval of the commissioner. This limitation does not apply to any entity that is to purchase one hundred percent of the capital stock of the

converted stock company as part of the plan of conversion approved by the commissioner or to any person that acts as a standby investor for the capital stock of the converted stock company for an amount equal to ten percent or more of the capital stock of the converted stock company, if in each case such purchase is approved by the commissioner in accordance with the provisions of North Dakota law following the filing of an acquisition of control statement under section 26.1-10-03.

9. The plan must provide that a director or officer or person acting in concert with a director or officer of the mutual company may not acquire any capital stock of the converted stock company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1, for three years after the effective date of the plan of conversion, except through a broker-dealer, without the permission of the commissioner. This provision does not prohibit the directors and officers from:

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

   b. Exercising subscription rights received under the plan; or

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

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

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

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

   a. Repurchase on a pro rata basis pursuant to an offer made to all shareholders of the converted stock company or any corporation participating in the plan of conversion pursuant to, or item 1 of subparagraph a of paragraph 2 of subdivision c of subsection 1, or item 2 of subparagraph a of paragraph 2 of subdivision c of subsection 1; or

   b. Purchase in the open market by a tax-qualified or nontax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

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

1. The plan of conversion may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase up to ten percent of the capital stock of the converting mutual company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section

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

2. The plan may provide that other classes of subscribers approved by the commissioner shall receive nontransferable subscription rights to purchase capital stock of the converting stock company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 provided that such subscription rights are subordinate to the subscription rights of eligible members. Other classes of subscribers that may be approved by the commissioner include:

   a. Members of the converting mutual company which became members after the date fixed for establishing eligible members;

   b. The shareholders of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03; or

   c. The shareholders of another corporation that is a party to an acquisition, merger, consolidation, or other similar transaction with the converting mutual company.

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

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

1. Include the merger of a domestic mutual insurance company into a domestic or foreign stock insurance company.

2. Provide for the issuance of transferable or redeemable subscription rights.

3. Provide for issuing stock, cash, policyholder credits, or other consideration, or any combination of the foregoing, to policyholders instead of subscription rights.

4. Set forth another plan of conversion containing any other provisions approved by the commissioner.

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

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

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

1. If a mutual holding company converts from a mutual to stock form, the conversion must comply with the provisions of this chapter.

2. If a mutual holding company seeks to convert to stock form under this chapter and it has previously completed one or more minority stock offerings in which policyholders were granted subscription rights pursuant to this chapter, the valuation required by subsection 4 of section 26.1-12.2-03 must take into account the existence of this minority interest as provided in this section. The amount of capital stock required to be offered by the mutual holding company or another corporation that is participating in the plan of conversion as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 may be expressed as a range of value and must equal: the pro forma fair market value of the mutual holding company, multiplied by one minus a quotient equal to the number of issued minority shares, divided by the sum of the issued minority shares and the number of shares held by the mutual holding company.

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

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

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

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

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

1. All members whose policies are issued after the proposed plan of conversion has been adopted by the governing body and before the effective date of the plan of conversion must be sent a written notice regarding the plan of conversion upon issuance of such policy.

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

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

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

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

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

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

1. A director, officer, agent, or employee of the converting mutual company may not receive any fee, commission, or other valuable consideration, other than such person's usual regular salary or compensation, for aiding, promoting, or assisting in a conversion under this chapter. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants, financial advisors, and actuaries for services performed in the independent practice of their professions, even if the attorney, accountant, financial advisor, or actuary is also a director or officer of the converting mutual company.

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

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

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

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

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

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

1. Sixty days after the approval of the plan of conversion by the commissioner; or

2. Thirty days after notice of the meeting of voting members to approve the plan of conversion is first mailed or delivered to voting members or posted on the website of the converting mutual company.

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

1. If a converting mutual company seeking to convert under this chapter is insolvent or is in hazardous financial condition according to information supplied in the mutual company's most recent annual or quarterly statement filed with the insurance department or as determined by

a financial examination performed by the insurance department, the requirements of this chapter, including notice to and policyholder approval of the plan of conversion, may be waived at the discretion of the commissioner. If a waiver under this section is ordered by the commissioner, the converting mutual company shall specify in the mutual company's plan of conversion:

a. The method and basis for the issuance of the converted stock company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the converted stock company to a sound financial condition.

b. That the conversion must be accomplished without granting subscription rights or other consideration to policyholders.

2. This section does not alter or limit the authority of the commissioner under any other provisions of law, including receivership and liquidation provisions applicable to insurance companies.

**26.1-12.2-15. Rules.**

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

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

1. A converting mutual company is not permitted to convert under this chapter if, as a direct result of the conversion, any person or any affiliate thereof acquires control of the converted stock company, unless that person and such person's affiliates comply with the provisions of North Dakota law regarding the acquisition of control of an insurance company.

2. Except as otherwise specified in this chapter, a converted stock company has and may exercise all the rights and privileges and is subject to all of the requirements and regulations imposed on stock insurance companies under the laws of North Dakota relating to the regulation and supervision of insurance companies, but the converting stock company may not exercise rights or privileges that other stock insurance companies may not exercise.

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

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

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

A mutual company, by endorsement or rider approved by the commissioner and sent to the policyholder, may simultaneously with or at any time after the effective date of the conversion amend any outstanding insurance policy for the purpose of extinguishing the membership rights of such policyholder.

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

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

**SECTION 3. AMENDMENT.** Subdivision b of subsection 12 of section 26.1-17-33.1 of the North Dakota Century Code is amended and reenacted as follows:

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1313.

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|---|---|---|---|
| House Vote: | Yeas 72 | Nays 20 | Absent 2 |
| Senate Vote: | Yeas 39 | Nays 8 | Absent 0 |

Chief Clerk of the House

Received by the Governor at 10:26 A.M. on April 17, 2015.

Approved at 10:16 A.M. on April 20, 2015.

Governor

Filed in this office this 20th day of April, 2015,

at 2:33 o'clock P. M.

Secretary of State