

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2270
(Senators Lips, DeMers)
(Representatives Kilzer, Wald)

AN ACT to create and enact a new subsection to section 26.1-17-33.1 of the North Dakota Century Code, relating to nonprofit mutual insurance companies; to amend and reenact section 26.1-17-33.1 of the North Dakota Century Code, relating to the conversion of a nonprofit health service corporation to a nonprofit mutual insurance company; to provide for retroactive application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Any nonprofit health service corporation organized under chapter 26.1-17, having admitted assets in excess of all liabilities at least equal to the original surplus required of a mutual insurance company by section 26.1-12-10, without reincorporation, and upon adoption of a resolution by its board of directors, may petition the commissioner of insurance for an order to become a nonprofit mutual insurance company subject to chapter 26.1-12. For the purpose of obtaining approval from the commissioner of insurance, conversion to a nonprofit mutual insurance company under this section is deemed a consolidation pursuant to chapter 26.1-07 and the procedure described therein must be followed.
2. Upon becoming subject to chapter 26.1-12, the company may continue to provide health care and related services to its present or future members and subscribers by health care contracts and may make provision for the payment of health care services directly to hospitals and other agencies or institutions or persons rendering health care services or related services or may make direct payment to the member or subscriber. The conversion of a nonprofit health service corporation into a mutual insurance company must not impair the rights or obligations or any existing contractual rights of a health care service corporation or its members. Except as provided in this section, the laws that apply to mutual insurance companies, and insurance companies generally, apply to a nonprofit mutual insurance company converted from a nonprofit health service corporation pursuant to this section.
3. The nonprofit corporation laws apply to the operation and control of a nonprofit mutual insurance company converted from a nonprofit health service corporation under this section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more restrictive. Except as authorized in subsections 4 and 5, a nonprofit mutual insurance company may not sell, lease, transfer, or dispose of all or substantially all property or assets, and may not merge or consolidate with, or acquire, a stock insurance company or agency, for-profit subsidiary, or any other corporation. Except as provided in subsection 5, a nonprofit mutual insurance company may not pay dividends or issue stock.
4. The funds of a nonprofit mutual insurance company may be invested in those investments authorized to be made by domestic insurance companies under section 26.1-05-19, as limited by section 26.1-05-18.

5. A nonprofit mutual insurance company may form a stock insurance company for the purpose of administering medicare claims.
6. A nonprofit mutual insurance company may not demutualize or be converted to a for-profit mutual or stock company.
7. A nonprofit mutual insurance company may not avail itself of the additional investment authority under chapter 26.1-10.
8. A conversion of a nonprofit health service corporation to a nonprofit mutual insurance company under this section, to the extent that any assets of the nonprofit health service corporation are impressed with a charitable trust immediately before the conversion, does not give rise to a breach of the charitable trust or violate any fiduciary duty laws, and does not constitute grounds for disapproval of either the petition to convert to a nonprofit mutual insurance company or the articles of incorporation of the company under section 26.1-12-04. The conversion authorized by this section does not diminish the application of charitable trust or fiduciary duty laws that may apply to the company immediately before the conversion.
9. A nonprofit mutual insurance company may not engage in the practice of medicine, dentistry, optometry, or any other profession for which a license or registration is required.
10. Every nonprofit mutual insurance company is a charitable and benevolent organization and the laws of this state relating to and affecting nonprofit charitable and benevolent corporations are applicable to all nonprofit mutual insurance companies.

SECTION 2. A new subsection to section 26.1-17-33.1 of the North Dakota Century Code is created and enacted as follows:

A nonprofit mutual insurance company may not form a mutual insurance holding company.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to any conversion from a nonprofit health service corporation to a nonprofit mutual insurance company or a petition to convert or procedure for conversion from a nonprofit health service corporation to a nonprofit mutual insurance company under section 26.1-17-33.1 which occurs before the effective date of this Act.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective when 1997 House Bill No. 1259 becomes effective.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2270.

Senate Vote: Yeas 42 Nays 3 Absent 4

House Vote: Yeas 88 Nays 7 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State