

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2093
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-07-05.1 and subsection 4 of section 26.1-10-03 of the North Dakota Century Code, relating to waiver of dissolution, merger, or acquisition hearings by the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-07-05.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-07-05.1. Hearing on petition - General duties of commissioner. The commissioner shall hold a hearing on the petition and determine whether the consolidation or reinsurance will be allowed. The hearing must be conducted under chapter 28-32. Within sixty days of the close of the hearing, the commissioner shall enter findings of fact, conclusions of law, and an order either approving or disapproving any petition. The commissioner in making the determination shall consider the following:

1. Whether the proposed consolidation or reinsurance contract is inequitable to the policyholders of any domestic insurance company involved;
2. Whether the proposed consolidation or reinsurance contract would materially reduce the financial security of policyholders of the domestic insurer in this state or elsewhere; and
3. Whether the competence, experience, and integrity of the persons of a foreign insurance company who would control the operation of the consolidated insurance company or the reinsuring company are such that it would not be in the interest of the policyholders of the company to permit the consolidation or reinsurance contract.

The findings of fact, conclusions of law, and order entered by the commissioner are subject to appeal under chapter 28-32. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.

SECTION 2. AMENDMENT. Subsection 4 of section 26.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing, the commissioner finds that:
 - a. After the change of control, the domestic insurance company referred to in subsection 1 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.
 - b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.
 - c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest of its policyholders.
 - d. The plans or proposals which the acquiring party has to liquidate the insurance company, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are

unfair and unreasonable to policyholders of the company and not in the public interest.

- e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.
- f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

The commissioner shall hold the public hearing referred to in this subsection within thirty days after the statement required by subsection 1 is filed and shall give at least twenty days' notice to the person filing the statement. Not less than seven days' notice of the hearing must be given by the person filing the statement to the insurance company and to other persons designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurance company, any person to whom notice of hearing was sent, and any other person whose interests may be affected have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner allowed in district court of this state. All discovery proceedings must be concluded not later than three days prior to the hearing. The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.

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-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2093.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State