

CHAPTER 26.1-12 INCORPORATED MUTUAL INSURANCE COMPANIES

26.1-12-01. Organization of mutual insurance company - Minimum number of members. Any number of persons, not less than twenty, a majority of whom must be bona fide residents of this state, may become, together with others who thereafter may be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as provided in this chapter by complying with this chapter. Any number of persons, not less than seven, may form a mutual life insurance company and, with others who may become associated with them or their successors, may become a body corporate for the purpose of carrying on the business of a mutual life insurance company. A mutual life insurance company organized under this chapter may carry insurance upon the lives of persons, including every kind of insurance pertaining thereto.

26.1-12-02. Corporate name - Restrictions. The name of a mutual insurance company organized under this chapter must contain the word "mutual". A name which is so similar to any name already in use by any existing corporation, limited liability company, company, or association organized or doing business in this state as to be confusing or misleading is not permitted.

26.1-12-03. Articles of incorporation - Contents. Persons proposing to form a mutual insurance company under this chapter shall subscribe and acknowledge articles of incorporation specifying:

1. The name of the company and the purpose for which it is to be formed.
2. The location of its principal or home office, which must be within this state.
3. The names and addresses of those composing the board of directors in which the management is vested until the first meeting of the members.
4. The names and places of residence of the incorporators.
5. The term of existence of the company, which may be perpetual.

26.1-12-04. Articles of incorporation - Filing - Issuance of certificate. The articles of incorporation or amendments thereto of a mutual insurance company organized under this chapter must be submitted to the commissioner. If the commissioner determines the articles or amendments comply with this chapter, the commissioner shall approve the same. The articles or amendments must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The commissioner shall deliver a certificate to the company indicating that it has complied with this chapter.

26.1-12-05. Legal existence - Adoption of bylaws - Transaction of business. The mutual insurance company has legal existence as of the date of the certificate. The board of directors named in the articles thereafter may adopt bylaws which must be filed with the commissioner, accept applications for insurance, and proceed to transact company business. Insurance may not be put into force, however, until the company has been licensed to transact an insurance business as provided by this chapter.

26.1-12-06. Bylaws of mutual company - Meetings - Notice - Quorum. The bylaws of any mutual insurance company organized under this chapter must prescribe the manner of notification to members of all corporation meetings of members and must prescribe what constitutes a quorum of members. A quorum is those members present in person or represented by written proxies. A majority of those voting is sufficient to approve or reject any proposal submitted at any annual or special meeting. Every member of the company is entitled to one vote only. Every member must be notified of the time and place of the holding of the meetings of the company by a written notice or by an imprint on each policy, receipt, or certificate

of renewal. In addition, a notice of any annual or special meeting must be published in the official newspaper of the county in which the principal office of the company is located. The notice must be published at least twice, the first publication to be made at least sixty days before the meeting. If a special meeting of members is called, a notice of the time, place, and object of the meeting must be mailed to all members at least sixty days before the meeting.

26.1-12-07. Amendment of articles of incorporation - Amendment of bylaws - Extension of corporate existence. The articles of incorporation of a mutual insurance company organized under this chapter may be amended, its term of corporate existence extended, and its bylaws adopted, amended, or repealed at any annual meeting of the company, or at any special meeting called for that purpose, by the affirmative vote of two-thirds of the members voting on the proposition.

26.1-12-08. License required - Prerequisites to issuance of license. A mutual insurance company organized under this chapter may not issue policies or transact any insurance business unless it holds a license from the commissioner authorizing the transaction of insurance business. The license may not be issued unless and until the company complies with the following conditions:

1. It must hold bona fide applications for insurance upon which it will issue simultaneously at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk.
2. It must have collected a premium upon each application. All premiums must be held in cash or in securities in which insurance companies may invest, and in the case of fire insurance, must be equal to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars, and in any other kind of insurance as listed in section 26.1-12-11, to not less than five times the maximum single risk assumed nor less than ten thousand dollars.
3. It must maintain a surplus of at least one million dollars. However, for any company doing business only in this state, if the minimum assets and surplus requirements required by this subsection are more than the minimum requirements at the time the company was issued its original certificate of authority to do business, the company may maintain assets and surplus which satisfy the requirements in effect at that time. For all other companies, if the minimum assets and surplus requirements required by this subsection are more than the minimum requirements required at the time the company was issued its original certificate of authority, the company shall increase its surplus of assets over all liabilities according to the following schedule:
 - a. Two hundred fifty thousand dollars by December 31, 1994.
 - b. Five hundred thousand dollars by December 31, 1995.
 - c. Seven hundred fifty thousand dollars by December 31, 1996.
 - d. One million dollars by December 31, 1997.

26.1-12-09. Temporary capital on organization of mutual life insurance company - Retirement. A mutual life insurance company may be organized with, and an existing mutual life insurance company may establish, a temporary capital of not less than one hundred thousand dollars which must be invested in the manner provided for the investment of its other funds. Out of the net surplus of the company, the holders of the temporary capital stock may receive a dividend of not more than eight percent per annum, and the dividend may be cumulative. The capital stock may not be a liability of the company except that it must be retired as soon as, but not before, the surplus of the company remaining after its retirement will equal at least the amount of the temporary capital. At the time for the retirement of the capital stock, the holders

must receive from the company the par value thereof and any dividends thereon due and unpaid, and the stock must be surrendered and canceled, and the right to vote thereon ceases.

26.1-12-10. Mutual life insurance company - Amount of subscribed insurance required - Surplus required. A mutual life insurance company may not issue a policy until not less than two hundred thousand dollars of insurance in not less than two hundred separate risks have been subscribed for and entered on its books. The commissioner may not issue a certificate of authority for the transaction of business to the company unless it has a surplus of assets over all liabilities of at least one million dollars. A domestic mutual life insurance company shall maintain surplus of at least this amount. However, for any company doing business only in this state, if the minimum asset and surplus requirements required by this section are more than the minimum requirements required at the time a company was issued its original certificate of authority, the company shall increase its assets and surplus to a minimum of one hundred thousand dollars. All other companies shall increase their surplus of assets over all liabilities according to the schedule set out in subsection 4 of section 26.1-12-08.

26.1-12-11. Authority to insure or reinsure - Types of insurance open to mutual insurance company. Any mutual insurance company organized under this chapter may make insurance contracts, and may reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles of incorporation, for the following lines of insurance:

1. Life and annuity means insurance coverage on human lives, including benefits of endowment, annuities, and credit life.
2. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Casualty means insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.
5. Variable life and annuity means insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity that reflects the investment experience of a separate account.

26.1-12-11.1. Authority to define products. The product types found under each of the above lines of insurance are those adopted pursuant to section 26.1-05-02.1.

26.1-12-12. Compliance with general insurance laws - Provisions or conditions in policy. A mutual insurance company organized under this chapter shall comply with the provisions of any law applicable to a stock insurance company effecting the same kind of insurance. A company may insert in any form of policy prescribed by the law of this state any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with the law of this state. The policy may conform to the form prescribed by the law, if the policy includes a provision or endorsement reciting that the policy is to be construed as if it were in the form prescribed by the law.

26.1-12-13. Applicability of general insurance laws to mutual companies. In all respects not specifically provided for in this chapter, mutual insurance companies organized under this chapter are subject to the provisions of this title relating to insurance companies generally.

26.1-12-14. Membership in domestic mutual insurance company - Votes of members - Notice of meetings. Every member of a domestic mutual insurance company organized under this chapter is a member of the company while the policy is in force. A member may be an insured or owner of a policy as provided in the bylaws of the company. Every member of the company is entitled to one vote. Every member must be notified of the time and

place of the holding of the meetings of the company by a written notice or by an imprint on each policy, receipt, or certificate of renewal as follows:

The member is hereby notified that by virtue of this policy you are a member of _____ mutual insurance company, and that the annual meetings of such company are held at its home office on the _____ day of _____ in each year at _____ o'clock.

When the blanks in the notice are properly filled, the notice is sufficient.

26.1-12-15. Corporations, limited liability companies, associations, boards, and estates may become member of mutual insurance company - Rights and liabilities. Any public or private corporation, limited liability company, board, or association in this state or elsewhere may make applications and enter into agreements for, and hold, policies in any mutual insurance company organized under this chapter. Any officer, stockholder, trustee, manager, member, governor, or legal representative of the corporation, limited liability company, board, association, or the representative of an estate may be recognized as acting for or on its behalf for the purpose of the membership but is not liable personally upon the insurance contract by reason of acting in the representative capacity. The right of any corporation or limited liability company organized under the laws of this state to participate as a member of any mutual insurance company is declared to be incidental to the purpose for which the corporation or limited liability company is organized and granted as fully as the rights and powers expressly conferred upon it.

26.1-12-16. Vote by proxy permitted - Manner of voting by proxy. Members of a mutual insurance company may vote by proxy dated and executed within three months prior to the meeting at which the proxy is to be used when returned and recorded on the books of the company three days or more before the meeting. A person may not as proxy or otherwise cast more than fifty votes, and an officer, personally or by another, may not ask for, receive, procure to be obtained, or use, a proxy vote. This section does not apply to a proxy committee duly established by the bylaws comprised of no less than three members appointed by the board of directors whose duty is to cast the vote by proxy of members at any duly called annual or special meeting of the mutual insurance company.

26.1-12-17. Members of mutual company entitled to share of net profits. Repealed by S.L. 1993, ch. 292, § 49.

26.1-12-18. Premiums and contingent liabilities to be stated in bylaws and on policy - Collection of premiums. A mutual insurance company, other than a mutual life insurance company, shall charge and collect the full mutual premium upon its policies in cash or in the form of a note. It may fix in its bylaws the contingent mutual liability of its members for the payment of losses and expenses not provided for by the cash funds of the company, but the contingent liability of a member, if any, may not be less than a sum equal, and in addition to, the cash premium written in the policy. The total amount of the liability of a policyholder must be stated clearly and legibly upon the face of each policy. A policy may not be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the surplus required of domestic stock insurance companies transacting the same kinds of insurance.

26.1-12-19. Nonpayment of premiums and contingent liabilities - Effect - Continuation of liability on mortgage clause policy. If the premium on a policy issued by a mutual insurance company is not paid in cash or in an unconditional note within sixty days after the date of issue of the policy, the policy becomes void and remains void during the period of nonpayment of premium. Upon the payment of the premium, the policy reattaches if no loss has occurred thereunder while the policy was void. If, however, the company has issued a policy with a mortgage clause making loss, if any, payable to the mortgagee to the extent of the mortgagee's interest and not exceeding the amount of the policy, the company, notwithstanding the nonpayment of premium or contingent mutual liability, is liable on the policy to the mortgagee until the secretary of the company has notified the mortgagee in writing that the premium or contingent mutual liability has not been paid and the mortgagee has twenty days from the date of

the notice in which to pay the same, and in default of the payment, the liability of the company to the mortgagee ceases.

26.1-12-20. Separate reserves to be maintained for each kind of insurance written by mutual insurance company. Every mutual insurance company organized under this chapter shall maintain unearned premium and other reserves separately for each kind of insurance written by it upon the same basis as is required of a domestic stock insurance company transacting the same kind of insurance business. Any reserve for losses or claims based upon the premium income, however, must be computed upon the net premium income after deducting any so-called dividend or premium returned or credited to the member.

26.1-12-21. Reserve fund may be established - Limitation - Use. Any mutual insurance company, at a meeting called for that purpose, may provide for the accumulation of a permanent fund, in an amount determined from time to time by the board of directors, by reserving a portion of the net profits for investment as a reserve for the security of the policyholders. When the fund amounts to five percent of the sum insured by all policies in force, the whole of the net profits thereafter must be divided among the insureds in cash as provided in the bylaws of the company. The fund must be used for the payment of losses and expenses whenever the cash funds of the company in excess of an amount equal to its liabilities are exhausted.

26.1-12-22. Investments. A mutual insurance company organized under this chapter may invest its assets only in accordance with the provisions of the laws of this state relating to the investment of the assets of domestic stock companies transacting the same kind or kinds of insurance business.

26.1-12-23. Deficiency in assets - Assessments required. A mutual insurance company not possessed of assets at least equal to its unearned premium reserve and other liabilities shall make an assessment upon its members liable to assessment to provide for the deficiency. The assessment must be made against each such member in proportion to the member's liability as expressed in the member's policy. The commissioner, however, may relieve the company, by written order, from any assessment or other proceedings to restore the assets during the time fixed in the order. The company shall record in a book kept for that purpose the order for the assessment and a statement setting forth the condition of the company at the date of the order, the amount of its cash assets and of the notes of its policyholders or of other contingent funds liable to the assessment, the amount of the assessment, and the particular losses or other liabilities for which the assessment is made. The record must be made and signed by the directors who voted for the order before any part of the assessment is collected, and any person liable for the assessment may inspect and take a copy of the record.

26.1-12-24. Making premium reserve good - Assessments - Cancellation of policies - Reinsurance. When, by reason of depreciation or loss of its funds or otherwise, the cash assets of a mutual insurance company, after providing for its other debts, are less than the required premium reserve upon its policies, it shall make good the deficiency by assessment in the mode provided in section 26.1-12-23. If the directors are of the opinion that the company is likely to become insolvent, the board of directors, instead of the assessment, may make two assessments, the first determining what each policyholder must equitably pay or receive in case of withdrawal from the company and having the policy canceled and the second determining what further sum each must pay in order to reinsure the unexpired term of the policy at the rate at which the whole was insured at first. Each policyholder subject to assessment shall pay or receive according to the first assessment, and the policy then must be canceled unless the policyholder pays the further sum determined by the second assessment, in which case the policy continues in force. In neither case, however, may a policyholder receive or have credited more than the policyholder would have received on having the policy canceled by a vote of the board of directors under the bylaws. If, within two months after the alternative assessments have become collectible, the amount of the policies whose holders have settled for both assessments is less than two hundred thousand dollars, the company shall stop issuing policies. All policies the holders of which have not settled for both assessments are void, and the company may continue only for the purpose of adjusting the deficiency or excess of premiums among the

members and settling outstanding claims. No assessment is valid against a person who has not been notified thereof within two years after the expiration or cancellation of the policy.

26.1-12-25. Directors and treasurer of mutual insurance company personally liable for not making and collecting assessments. If the directors of any mutual insurance company neglect or omit for the space of six months to lay, or to use reasonable diligence to collect, any assessment which the board of directors is required to make, they are liable personally for all debts and claims then outstanding against the company or that may accrue until the assessment is laid and put in process of collection. If the treasurer of the company unreasonably neglects to collect an assessment made by order of the board of directors and to apply the assessment to the payment of the claims for which it was made, the treasurer is liable personally to the parties having the claims for the amount of the assessment. The treasurer may repay oneself out of any money afterwards received for the company on account of the assessment.

26.1-12-26. Advance to mutual insurance company - Repayment - Reporting - Commission or promotion expense. Any director, officer, or member of a mutual insurance company, or any other person, may advance to the company any sum of money necessary for the purpose of its business or to enable it to comply with any of the requirements of the law, and such moneys, together with any interest agreed upon, but not exceeding the maximum contract rate, is not a liability or claim against the company or any of its assets and may be repaid only out of the surplus earnings of the company. A commission or promotional expense may not be paid in connection with the advance to the company. The amount of any advance must be reported in each annual statement.

26.1-12-27. Licensing foreign mutual insurance company - Prerequisites. Any mutual insurance company organized outside of this state and authorized to transact insurance business on the mutual plan in any state, district, or territory must be admitted and licensed to transact the kinds of insurance authorized by its charter or articles, to the extent and with the powers and privileges specified in this chapter and subject to all the provisions of law relating to information to, and examinations by, the commissioner, the making of annual reports, the payment of taxes, and the renewal of licenses applicable to stock insurance companies transacting the same kinds of insurance business except as otherwise provided in this chapter, when it is solvent under this chapter and when it has:

1. Filed with the commissioner a certified copy of its charter or articles of association;
2. Filed with the commissioner a copy of its bylaws certified by its secretary;
3. Appointed the commissioner its agent for the service of process in any action, suit, or proceeding in any court of this state, for as long as any liability remains outstanding in this state;
4. Filed a financial statement under oath, in the form required by the commissioner, and complied with other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance business;
5. Made and maintained, if organized without the United States, the deposit required of stock insurance companies formed without the United States transacting the same kinds of insurance business;
6. Adopted a name which is not so similar to a name already in use by an existing corporation, limited liability company, company, or association organized or licensed in this state as to be confusing or misleading; and
7. Accumulated assets in excess of all of its liabilities in an amount not less than five hundred thousand dollars, except if the minimum surplus requirement for the company is more than the minimum requirement provided by this subsection at the

time the company was originally issued a license to do business, the company may maintain surplus which satisfies the requirements in effect at that time.

26.1-12-28. Annual statements and examinations of mutual insurance companies.

Every mutual insurance company doing business in this state shall make its annual statement and report in the form and submit to the examinations and furnish the information required by the commissioner. As far as practicable, examinations of foreign mutual insurance companies must be made in cooperation with the insurance departments of other states, and the forms of annual reports must be such as are in general use throughout the United States.

26.1-12-29. Dividends payable by mutual insurance company. Any mutual insurance company writing fire, accident, or other forms of insurance protection on its own motion or at the request of policyholders may pay dividends to the different classes of policyholders based upon the losses sustained as compared with the income received from those engaged in a particular trade, occupation, or profession.

26.1-12-30. Determination of dividends. In determining the rate of dividend due a given trade, occupation, or profession, if the dividend is allowed, the income received and losses sustained must be tabulated for a period of not less than five years immediately preceding the determination of the dividend rate, and the return dividend to policyholders must be based upon the experience of such period after deduction for expenses and allowances for reserves as required by law.

26.1-12-31. Taxable premiums of mutual insurance company. For the purposes of taxation under the laws of this state, the taxable premiums or premium receipts of a mutual insurance company organized or admitted to do business in this state are the gross premiums received for direct insurance upon property or risks in this state less:

1. Any amount paid for reinsurance upon which a tax has been, or is to be, paid to this state.
2. Premiums upon policies not accepted.
3. Premiums returned on canceled policies.
4. Any refund or return made to the policyholder other than for losses.

26.1-12-32. Demutualization of domestic mutual insurance companies - Rules. The insurance commissioner may adopt rules necessary to provide for the orderly and equitable demutualization of domestic insurance companies. Rules adopted must provide for the requirements to be included in a plan of conversion; guarantee that policyholders receive an equitable share of the surplus or stock, or both, of the company being demutualized; address the compensation paid to any person providing services relating to the proposed demutualization; and establish a procedure for the commissioner's approval of a plan for conversion prior to the adoption of such a plan by the company's policyholders.