

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

714N0319

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1102 - 02/14/2007

Introduced by: Representatives Cutler, Boomgarden, Brunner, Buckingham, Davis, Dykstra, Gassman, Gilson, Hackl, Halverson, Hargens, Heineman, Hills, Jerke, Juhnke, Kirkeby, Koistinen, Lucas, McLaughlin, Miles, Moore, Noem, Olson (Betty), Olson (Russell), Pederson (Gordon), Peters, Pitts, Rausch, Rounds, Sigdestad, Steele, Street, Tidemann, Turbiville, Van Etten, Vanneman, Weems, Wick, and Willadsen and Senators McCracken, Abdallah, Albers, Bartling, Duenwald, Garnos, Gray, Greenfield, Hanson (Gary), Hundstad, Koetzle, Lintz, Maher, McNenny, Napoli, Peterson (Jim), Schmidt, Smidt, and Sutton

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the establishment of
2 proof of compliance with applicable standards as due care in certain utility negligence
3 claims.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 47-21-75 be amended to read as follows:

6 47-21-75. Construction of electric lines by a cooperative shall, ~~as a minimum requirement,~~
7 comply with the standards of the National Electrical Safety Code in effect at the time of ~~such~~
8 the construction; ~~provided, however, that where Y-connected circuits with neutral conductors~~
9 ~~effectively grounded throughout their length are used in the construction or reconstruction of~~
10 ~~electrical distribution or transmission lines, minimum vertical clearance of wires or neutral~~
11 ~~conductors over ground or rails shall be determined by the voltage between the wires and the~~



1 ~~ground, if such voltage does not exceed fifteen thousand volts. Proof of compliance with the~~
2 ~~requirements of the applicable National Electrical Safety Code establishes due care in the~~
3 ~~defense of a negligence claim alleging a violation of that standard. Proof of noncompliance with~~
4 ~~the requirements of the applicable National Electrical Safety Code standard establishes lack of~~
5 ~~due care in the defense of a negligence claim alleging a violation of that standard.~~

6 Section 2. That § 31-26-5 be amended to read as follows:

7 31-26-5. The grantee under § 31-26-1 shall construct and maintain ~~said~~ the grantee's poles,
8 wires, or underground cable and line in accordance with the applicable National Electrical
9 Safety Code adopted by the Bureau of Standards of the United States Department of Commerce.
10 Proof of compliance with the requirements of the applicable National Electrical Safety Code
11 standard establishes due care in the defense of a negligence claim alleging a violation of that
12 standard. Proof of noncompliance with the requirements of the applicable National Electrical
13 Safety Code standard establishes lack of due care in the defense of a negligence claim alleging
14 a violation of that standard.

15 Section 3. That § 31-26-22 be amended to read as follows:

16 31-26-22. The Transportation Commission may ~~adopt~~ promulgate rules and the Department
17 of Transportation may issue permits, to allow electrical lines, pipelines, communication lines
18 and other utilities, including rural water service pipelines, whether above or below ground, to
19 operate the facilities over, under, or along public grounds, streets, alleys and highways under
20 its jurisdiction in this state. Any rule ~~adopted under~~ promulgated pursuant to this section shall
21 set forth application and issuance of permit criteria and installation standards necessary to
22 preserve a safe traffic environment, the appearance of the highway, and the efficiency and
23 economy of highway maintenance and shall be ~~adopted~~ promulgated pursuant to chapter 1-26.
24 Proof of compliance with the requirements of the applicable National Electrical Safety Code

1 standard establishes due care in the defense of a negligence claim alleging a violation of that
2 standard. Proof of noncompliance with the requirements of the applicable National Electrical
3 Safety Code standard establishes lack of due care in the defense of a negligence claim alleging
4 a violation of that standard.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

554N0527

SENATE ENGROSSED NO. **HB 1183** - 02/20/2007

Introduced by: Representatives Peters, Ahlers, Dennert, Elliott, Engels, Hackl, Hargens, Hunt, Juhnke, Moore, Novstrup (Al), Pederson (Gordon), Rhoden, Sigdestad, Street, Turbiville, and Weems and Senators Napoli, Bartling, Dempster, Duenwald, Garnos, Hansen (Tom), Hanson (Gary), Hauge, Hundstad, Kloucek, Koetzle, and Turbak

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of a
2 transporter license plate.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-9-57 be amended to read as follows:

5 32-9-57. Any commercial motor carrier located in the state hauling a new trailer with a
6 manufacturer's statement of origin or certificate of title and who has registered with the
7 Department of Revenue and Regulation as a transporter may use a transporter plate upon the
8 streets and highways for in-transit purposes. The fee for a transporter plate is fifty dollars and
9 the fee shall be deposited in the license plate special revenue fund. Any new trailer with bearing
10 a transporter plate may be used ~~to haul other new trailers~~ on the most direct route from the
11 trailer's manufacturer to the licensed trailer dealer for a period of ten days. A bill of lading that
12 contains the origin and destination of the new trailer shall accompany each movement. No
13 transporter may use a transporter plate for any other purpose. A violation of this section is a
14 ~~Class 1~~ Class 2 misdemeanor.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

707N0034

SENATE ENGROSSED NO. **SB 3** - 02/13/2007

Introduced by: Senators Gray, Hunhoff, Koetzle, Olson (Ed), and Peterson (Jim) and Representatives Dennert, Heineman, Pederson (Gordon), and Putnam at the request of the Constitutional Revision Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the circulation and
2 signing of initiative and referendum petitions and to provide a penalty for violation thereof.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 2-1-10 be amended to read as follows:

5 2-1-10. Each person, who circulates and secures signatures to a petition to initiate ~~or submit~~
6 a constitutional amendment or other measure or to refer legislation to the electors ~~any law~~
7 pursuant to S.D. Const., Art. III, § 1, shall sign a verification ~~of circulator~~ before filing the
8 petition with the officer in whose office it is by law required to be filed. The verification shall
9 prescribe that the circulator made reasonable inquiry and, to the best of the circulator's
10 knowledge, each person signing the petition is a qualified voter of the state in the county
11 indicated on the signature line and that no state statute regarding the circulation of petitions was
12 knowingly violated. The State Board of Elections shall prescribe the form for the verification
13 ~~of circulator~~. The verification ~~of circulator~~ shall be witnessed by a notary public commissioned
14 in South Dakota or other officer authorized to administer oaths pursuant to § 18-3-1. Any person
15 who falsely swears to the verification provided for in this section is guilty of a Class 1



1 misdemeanor.

2 Section 2. That § 2-1-6 be amended to read as follows:

3 2-1-6. Every person who is a qualified voter may sign a petition to ~~propose a measure~~
4 initiate a constitutional amendment or other measure or ~~submit to refer a law.~~ ~~Whoever~~ If a
5 person, knowing he or she is not a qualified voter of the state or knowing that he or she has
6 already signed the same petition, signs a petition for initiation ~~or referendum~~ of a constitutional
7 amendment or other measure or for referral of legislation, ~~when he is not a qualified voter of the~~
8 ~~state,~~ or if any person signs a name other than his or her own, that person is guilty of a Class 1
9 misdemeanor.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0226

SENATE ENGROSSED NO. **SB 32** - 01/12/2007

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the distribution of
2 funds to sparse school districts, and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-78 be amended to read as follows:

5 13-13-78. Terms used in § 13-13-79 mean:

6 (1) "Sparse school district," a school district that meets each of the following criteria:

7 (a) Has an average daily membership per square mile of 0.50 or less;

8 (b) Has an average daily membership of five hundred or less;

9 (c) Has an area of four hundred square miles or more;

10 (d) Has at least fifteen miles between its secondary attendance center or centers
11 and that of an adjoining district;

12 (e) Operates a secondary attendance center;

13 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
14 or more; and

15 (g) Has a general fund balance percentage of thirty percent or less excluding
16 revenue received from opting out of property tax limitations pursuant to



1 chapter 10-12;

2 (2) "Sparsity average daily membership for sparse school districts with an adjusted
3 average daily membership as defined in subdivision 13-13-10.1(2) of less than one
4 hundred or greater than two hundred seventy-five," calculated as follows:

5 (a) ~~For sparse school districts with an adjusted average daily membership as~~
6 ~~defined in subdivision 13-13-10.1(2) of less than one hundred or greater than~~
7 ~~two hundred seventy-five, divide~~ Divide the average daily membership as
8 defined in subdivision 13-13-10.1(1) by the area of the school district in
9 square miles;

10 (b) Multiply the quotient obtained in subsection (a) times negative 0.125;

11 (c) Add 0.0625 to the product obtained in subsection (b); and

12 (d) Multiply the sum obtained in subsection (c) times the average daily
13 membership;

14 (3) "Sparsity adjusted average daily membership for sparse school districts with an
15 adjusted average daily membership as defined in subdivision 13-13-10.1(2) of greater
16 than or equal to one hundred and less than two hundred seventy-five," calculated as
17 follows: ~~For any sparse school district with an adjusted average daily membership as~~
18 ~~defined in subdivision 13-13-10.1(2) of no less than one hundred, but no more than~~
19 ~~two hundred seventy-five, the sparsity adjusted average daily membership is two~~
20 ~~hundred seventy-five~~ Subtract the school district adjusted average daily membership
21 as defined in subdivision 13-13-10.1(2) from two hundred seventy-five.

22 Section 2. That § 13-13-79 be amended to read as follows:

23 13-13-79. At the same time that foundation program state aid is distributed to school
24 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of

1 Education shall distribute funds to sparse school districts by multiplying ~~either the sparsity~~
2 ~~average daily membership calculation or the sparsity adjusted average daily membership~~
3 ~~calculation in § 13-13-78~~ the result of the calculation in subdivision (2) or (3) of § 13-13-78 by
4 the per student allocation as defined in § 13-13-10.1. However, no sparse school district may
5 receive a sparsity benefit in any year that exceeds two hundred fifty thousand dollars.

6 Section 3. Whereas, this Act is necessary for the support of the state government and its
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
8 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0227 SENATE EDUCATION COMMITTEE ENGROSSED NO.
SB 33 - 01/11/2007

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to revise certain kindergarten enrollment requirements and
2 repeal the nursery school age requirement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-28-2 be amended to read as follows:

5 13-28-2. Any child who is five years old on the first day of September is eligible for
6 enrollment in kindergarten during that school year. Any child who is six years old by September
7 first is eligible for enrollment in first grade during that school year. ~~Any child in a kindergarten~~
8 ~~or prekindergarten program who was in compliance with the statutory eligibility dates in effect~~
9 ~~at the time of his enrollment may proceed in a continuous educational program without~~
10 ~~interruption.~~ Any child who transfers from another state may proceed in a continuous
11 educational program without interruption.

12 ~~Any child under the age of five is eligible for admittance to a nursery school.~~

13 Section 2. That section 3 of chapter 80 of the 2006 Session Laws be amended to read as
14 follows:

15 Section 3. That § 13-28-2 be amended to read as follows:



1 13-28-2. Any child who is five years old on the first day of September is eligible for
2 enrollment in kindergarten during that school year. ~~Any child who is six years old by September~~
3 ~~first is eligible for enrollment in first grade during that school year. Any child in a kindergarten~~
4 ~~or prekindergarten program who was in compliance with the statutory eligibility dates in effect~~
5 ~~at the time of his enrollment may proceed in a continuous educational program without~~
6 ~~interruption.~~ Any child who transfers from another state may proceed in a continuous
7 educational program without interruption.

8 ~~Any child under the age of five is eligible for admittance to a nursery school.~~

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0261

SENATE ENGROSSED NO. **SB 47** - 02/05/2007

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to prevent illegal multiple employer welfare arrangements
2 and other illegal health insurers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this in this Act mean:

7 (1) "Admitted insurer," an insurer licensed to do an insurance business in this state
8 including an entity authorized pursuant to § 58-18-88, a health maintenance
9 organization or nonprofit hospital, or medical service corporation under the laws of
10 this state;

11 (2) "Arrangement," a fund, trust, plan, program, or other mechanism by which a person
12 provides, or attempts to provide, health care benefits;

13 (3) "Employee leasing arrangement," a labor leasing, staff leasing, employee leasing,
14 professional employer organization, contract labor, extended employee staffing or
15 supply, or other arrangement, under contract or otherwise, whereby one business or



- 1 entity represents that it leases or provides its workers to another business or entity;
- 2 (4) "Employee welfare benefit plan" or "health benefit plan," a plan, fund, or program
- 3 which is or was established or maintained by an employer or by an employee
- 4 organization, or by both, to the extent that the plan, fund, or program is or was
- 5 established or maintained for the purpose of providing for its participants or their
- 6 beneficiaries, through the purchase of insurance or otherwise, medical, surgical or
- 7 hospital care or benefits, or benefits in the event of sickness, accident, disability,
- 8 death, or unemployment;
- 9 (5) "Fully insured," for the health care benefits or coverage provided or offered by or
- 10 through a health benefit plan or arrangement:
- 11 (a) An admitted insurer is directly obligated by contract to each participant to
- 12 provide all of the coverage under the plan or arrangement; and
- 13 (b) The liability and responsibility of the admitted insurer to provide covered
- 14 services or for payment of benefits is not contingent, and is directly to the
- 15 individual employee, member, or dependent;
- 16 (6) "Licensee," a person that is, or that is required to be, licensed or registered under the
- 17 laws of this state as a producer, third party administrator, insurer, or preferred
- 18 provider organization;
- 19 (7) "MEWA," multiple employer welfare arrangement;
- 20 (8) "MEWA contact," the individual or position designated by the division to be the
- 21 MEWA contact as identified on the division web site;
- 22 (9) "Nonadmitted insurer," an insurer not licensed to do insurance business in this state;
- 23 (10) "Preferred provider organization," an entity that engages in the business of offering
- 24 a network of health care providers, whether or not on a risk basis, to employers,

1 insurers, or any other person who provides a health benefit plan including a managed
2 care contractor registered or required to be registered pursuant to chapter 58-17C;

3 (11) "Producer," a person required to be licensed pursuant to chapter 58-30 of this state
4 to sell, solicit, or negotiate insurance;

5 (12) "Professional employer organization," an arrangement, under contract or otherwise,
6 whereby one business or entity represents that it co-employs or leases workers to
7 another business or entity for an ongoing and extended, rather than a temporary or
8 project-specific, relationship;

9 (13) "Third party administrator" or "administrator," has the meaning provided in chapter
10 58-29D.

11 Section 2. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 For purposes of this Act, any of the following acts in this state effected by mail or otherwise
14 by a nonadmitted insurer or by any person acting with the actual or apparent authority of the
15 insurer, on behalf of the insurer, constitutes the transaction of an insurance business in or from
16 this state:

17 (1) The making of or proposing to make, as an insurer, an insurance contract;

18 (2) The making of or proposing to make, as guarantor or surety, any contract of guaranty
19 or suretyship as a vocation and not merely incidental to any other legitimate business
20 or activity of the guarantor or surety;

21 (3) The taking or receiving of an application for insurance;

22 (4) The receiving or collection of any premium, commission, membership fees,
23 assessments, dues, or other consideration for insurance or any part thereof;

24 (5) The issuance or delivery in this state of contracts of insurance to residents of this

- 1 state or to persons authorized to do business in this state;
- 2 (6) The solicitation, negotiation, procurement, or effectuation of insurance or renewals
3 thereof;
- 4 (7) The dissemination of information as to coverage or rates, or forwarding of
5 applications, or delivery of policies or contracts, or inspection of risks, the fixing of
6 rates or investigation or adjustment of claims or losses or the transaction of matters
7 subsequent to effectuation of the contract and arising out of it, or any other manner
8 of representing or assisting a person or insurer in the transaction of risks with respect
9 to properties, risks, or exposures located or to be performed in this state;
- 10 (8) The transaction of any kind of insurance business specifically recognized as
11 transacting an insurance business within the meaning of the statutes relating to
12 insurance;
- 13 (9) The offering of insurance; or
- 14 (10) Offering an agreement or contract which purports to alter, amend or void coverage
15 of an insurance contract.

16 No provision of this section prohibits employees, officers, directors, or partners of a
17 commercial insured from acting in the capacity of an insurance manager or buyer in placing
18 insurance on behalf of the employer, if the person's compensation is not based on buying
19 insurance. The venue of an act committed by mail is at the point where the matter transmitted
20 by mail is delivered or issued for delivery or takes effect.

21 Section 3. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 For the purposes of this Act, the term, transacting of insurance, includes:

- 24 (1) Issuing a stop loss policy covering an employer located in this state. Stop loss policy

1 coverage of an employer for claims incurred under the employer's self-funded health
2 benefit plan is insurance, not reinsurance, regardless of whether the contract is
3 described by the insurer as reinsurance;

4 (2) Issuing a stop loss policy to a trust or trustee, whether the trust or trustee is located
5 in this state or otherwise, with an employer located in this state directly or indirectly
6 the beneficiary of the trust;

7 (3) Agreeing to loan or advance funds to pay claims incurred under an employer's self-
8 funded health benefit plan if the availability of funds to advance is significantly
9 dependent on payment of contributions and the claims experience of two or more
10 employers who have entered into similar loan or advance agreements; or

11 (4) Engaging in a risk distribution arrangement providing for compensation of loss
12 through the provision of services, including an arrangement established through
13 marketing or representations to consumers, without specification in a contract.

14 Section 4. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 For the purposes of this Act, the term, unauthorized health insurance, means health
17 insurance offered by a nonadmitted insurer except to the extent the laws of this state allow the
18 coverage to be offered by a nonadmitted insurer licensed in another state through an employer
19 or group located out of state; and includes health care benefits or coverage offered by a
20 professional employer organization or an employee leasing arrangement that is not:

21 (1) Fully insured by an admitted insurer; or

22 (2) Licensed or otherwise authorized under the laws of this state to offer a self-funded
23 health benefit plan.

24 Section 5. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Unauthorized health insurance does not include:

3 (1) Health care benefits or coverage under an employee welfare benefit plan of the
4 employees of two or more employers (including one or more self-employed
5 individuals), that is established or maintained under or pursuant to a collective
6 bargaining agreement under the criteria provided under 29 CFR 2510.3-40 as of
7 January 1, 2007;

8 (2) Health care benefits or coverage under an employee welfare benefit plan established
9 or maintained by a rural electric cooperative or a rural telephone cooperative as
10 defined under 29 U.S.C. § 1002(40)(B) as of January 1, 2007;

11 (3) Health care benefits or coverage under an employee welfare benefit plan of the
12 employees of two or more employers but only if the employers are within the same
13 control group so the plan is deemed to be a single employer plan under 29 U.S.C.
14 § 1002(40)(B) as of January 1, 2007; or

15 (4) Health care benefits or coverage under a church plan as defined under 29 U.S.C
16 § 1002(33) as of January 1, 2007.

17 Section 6. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A licensee shall notify the division MEWA contact if the licensee knows a product is, or is
20 about to be, offered to the public in this state, and the licensee, based on the information known
21 to the licensee, reasonably should know the product is unauthorized health insurance. A licensee
22 meets the requirements of this section if that licensee reviews the division's website of admitted
23 health insurers and either does not notify the division's MEWA contact if that insurer is listed
24 as an admitted insurer or notifies the division's MEWA contact if that insurer is not listed as an

1 admitted insurer. For the purposes of this section an insurer does not include a stop loss insurer
2 but a stop loss insurer is a licensee under this section. Knowledge of a producer regarding an
3 unrelated unauthorized health insurance arrangement is not imputed to licensed insurers
4 represented by that producer. Circumstances where a licensee knows that a product is, or is
5 about to be, offered to the public in this state, include if the licensee knows that any person is:

- 6 (1) Recruiting producers to solicit or offer, or is soliciting or offering, a health benefit
7 plan generally to the public in this state; or
- 8 (2) Seeking an administrator for, or is administering a health benefit plan that is intended
9 to be offered generally to the public in this state.

10 A licensee complies with this section if the licensee notifies the division within thirty days
11 or a period reasonable under the circumstances, whichever is later.

12 Section 7. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Circumstances where a licensee reasonably should know that a product is unauthorized
15 health insurance include the following:

- 16 (1) The licensee knows that the product is represented to be a self-funded plan and that
17 it is offered widely to the multiple employers or generally to individuals;
- 18 (2) The licensee knows that the product is a professional employer organization self-
19 funded plan and that it is offered widely to multiple client employers; or
- 20 (3) The licensee knows that the plan is represented to be a self-funded plan established
21 or maintained pursuant to a collective bargaining agreement and that the plan is
22 offered widely to multiple employers, or generally to individuals, or both, through
23 agents who are compensated on a commission or similar basis.

24 A licensee may provide other evidence to the division to indicate that the licensee did not

1 reasonably know that a product is unauthorized. In making its determination regarding whether
2 a licensee should have known the product is unauthorized and the appropriateness of any penalty
3 for failing to notify the division of such a product, the division shall consider the prior
4 experience and the existence or lack of training of that licensee.

5 Section 8. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any notification made pursuant to section 6 of this Act is confidential and privileged from
8 disclosure in response to a subpoena or otherwise, and is not subject to discovery or admissible
9 in evidence in any private action. Nothing in this Act limits the director's authority to use a
10 report filed or information provided pursuant to this Act in the furtherance of any legal or
11 regulatory action that the director, in the director's sole discretion, determines to be necessary
12 to further the purposes of this Act.

13 Section 9. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Nothing in this Act prevents the director from disclosing the contents of a report or
16 notification filed under this section to the insurance division of any other state or agency of the
17 federal government at any time, or any other regulatory or law enforcement agency if the agency
18 or office receiving the report or matters relating thereto agrees to hold it confidential and in a
19 manner consistent with this Act. A report filed or notification provided under this Act is
20 confidential and privileged from disclosure in response to a subpoena or otherwise except to the
21 extent the director determines disclosure is appropriate to accomplish a regulatory purpose.
22 There is no civil liability imposed on and no cause of action arises from a person's furnishing
23 information pursuant to this Act concerning suspected, anticipated, or completed acts, if the
24 information is provided to or received from:

- 1 (1) The director or the director's employees, agents, or representatives;
- 2 (2) Federal, state, or local law enforcement or regulatory officials or their employees,
3 agents, or representatives;
- 4 (3) A person involved in the prevention and detection of fraudulent insurance acts or that
5 person's agents, employees, or representatives; or
- 6 (4) The NAIC or its employees, agents, or representatives.

7 Section 10. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 An insurance producer, prior to engaging in or assisting any person to engage in offering a
10 health benefit plan to an employer or person located in this state, shall carry out appropriate due
11 diligence to establish that the health benefit plan is not unauthorized health insurance, including
12 those measures reasonably appropriate to establish:

- 13 (1) For any insurance coverage that is represented as issued relating to the health benefit
14 plan:
 - 15 (a) The insurer issued the policy;
 - 16 (b) The coverage is as represented;
 - 17 (c) The insurer is an admitted insurer in this state; and
 - 18 (d) The policy has been filed with, and approved by, the division or is exempt
19 from filing requirements;
- 20 (2) For any health benefit plan that is represented as established or maintained pursuant
21 to a collective bargaining agreement, the health benefit plan is established or
22 maintained under or pursuant to a collective bargaining agreement under the criteria
23 provided under 29 CFR 2510.3-40 as of January 1, 2007;
- 24 (3) For any health benefit plan that is represented as established or maintained by an

1 employee leasing arrangement or professional employer organization, the health
2 benefit plan is fully insured; or

3 (4) For any health benefit plan that is represented as established by a single employer,
4 the health benefit plan is covering solely employees and their dependents, and the
5 employer controls and directs the work of the employee.

6 Section 11. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 An insurance producer, prior to submitting an application for a stop loss policy to an insurer
9 for a health benefit plan offered to employees, employee dependents, or a person located in this
10 state, shall carry out appropriate due diligence to establish that the health benefit plan is not
11 unauthorized health insurance, including measures reasonably appropriate to establish:

12 (1) For any health benefit plan that is represented as established or maintained pursuant
13 to a collective bargaining agreement, the health benefit plan is established or
14 maintained under or pursuant to a collective bargaining agreement under the criteria
15 provided under 29 CFR 2510.3-40 as of January 1, 2007;

16 (2) The health benefit plan that is not offered by an employee leasing arrangement or
17 professional employer organization to client employers; or

18 (3) For any health benefit plan that is represented as established by a single employer,
19 that the health benefit plan is covering solely employees, and dependents of
20 employees, of the employer and the employer controls and directs the work of the
21 employee.

22 Section 12. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 A third party administrator, prior to entering into any administrative contract for a health

1 benefit plan, and prior to assisting any person with administration of a health benefit plan,
2 covering employees of an employer or a person located in this state, shall carry out appropriate
3 due diligence to establish that the health benefit plan is not unauthorized health insurance,
4 including those measures reasonably appropriate to establish:

5 (1) Through initial inquiry, contract provisions and measures to monitor and enforce
6 compliance with the contract provisions, that for any insurance coverage that is
7 represented as issued relating to the health benefit plan:

8 (a) The insurer issued the policy;

9 (b) The coverage is as represented;

10 (c) The insurer is an admitted insurer in this state; and

11 (d) The policy has been filed with, and approved by, the division or is exempt
12 from filing requirements;

13 (2) For any health benefit plan that is represented as established or maintained pursuant
14 to a collective bargaining agreement, the health benefit plan is established or
15 maintained under or pursuant to a collective bargaining agreement under the criteria
16 provided under 29 CFR 2510.3-40 as of January 1, 2007;

17 (3) For any health benefit plan that is represented as established or maintained by an
18 employee leasing arrangement or professional employer organization, the health
19 benefit plan is fully insured; or

20 (4) For any health benefit plan that is represented as established by a single employer,
21 that the health benefit plan is covering solely employees and their dependents, and
22 the employer controls and directs the work of the employee.

23 Section 13. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 An insurer, prior to issuing a stop loss policy for a health benefit plan covering employees,
2 employee dependents, or individuals located in this state, shall carry out appropriate due
3 diligence to establish that the health benefit plan is not unauthorized health insurance, including
4 those measures reasonably appropriate to establish:

5 (1) For any health benefit plan that is represented as established or maintained pursuant
6 to a collective bargaining agreement, the health benefit plan is established or
7 maintained under or pursuant to a collective bargaining agreement under the criteria
8 provided under 29 CFR 2510.3-40 as of January 1, 2007;

9 (2) The health benefit plan is not offered by an employee leasing arrangement or
10 professional employer organization to client employers; or

11 (3) For any health benefit plan that is represented as established by a single employer,
12 the health benefit plan is covering solely employees, and dependents of employees,
13 of the employer and the employer controls and directs the work of the employee.

14 Section 14. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 No insurer may engage in the transacting of insurance by issuing a stop loss policy unless
17 the insurer is an admitted insurer in this state and the stop loss policy form has been filed and
18 approved by the division, unless the form is exempt by law from filing. The transacting of
19 insurance includes:

20 (1) Issuing a stop loss policy covering an employer located in this state. Coverage of an
21 employer for claims incurred under the employer's self-funded health benefit plan
22 with a stop loss policy is insurance, not reinsurance, regardless of whether the
23 contract is described by the insurer as reinsurance; or

24 (2) Issuing a stop loss policy to a trust or trustee, whether the trust or trustee is located

1 in this state or otherwise, if an employer located in this state is directly or indirectly
2 the beneficiary of the trust.

3 Section 15. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 No insurer may engage in the transacting of insurance in this state by issuing a stop loss
6 policy unless, prior to issuing a contract for the stop loss policy, the insurer discloses clearly and
7 conspicuously to the employer, in writing the following:

- 8 (1) The employer is not covered for claims below the stop loss attachment point;
- 9 (2) A description of the attachment point, including the specific and aggregate
10 attachment points; and
- 11 (3) The insurer provides no other coverage of the employer's retention.

12 Section 16. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 A preferred provider organization, prior to entering into any contract with a person offering
15 or providing a health benefit plan in this state, shall carry out appropriate due diligence to
16 establish that the health benefit plan is not unauthorized health insurance, including those
17 measures reasonably appropriate to establish:

- 18 (1) Through initial inquiry, contract provisions, and measures to monitor and enforce
19 compliance with the contract provisions, that for any insurance coverage that is
20 represented as issued relating to the health benefit plan:
 - 21 (a) The insurer issued the policy;
 - 22 (b) The coverage is as represented;
 - 23 (c) The insurer is an admitted insurer in this state; and
 - 24 (d) The policy has been filed with and approved by the division or is exempt from

1 filing requirements;

2 (2) For any health benefit plan that is represented as established or maintained pursuant
3 to a collective bargaining agreement, the health benefit plan is established or
4 maintained under or pursuant to a collective bargaining agreement under the criteria
5 provided under 29 CFR 2510.3-40 as of January 1, 2007;

6 (3) For any health benefit plan that is represented as established or maintained by an
7 employee leasing arrangement or professional employer organization, the health
8 benefit plan is fully insured; or

9 (4) For any health benefit plan that is represented as established by a single employer,
10 the health benefit plan is covering solely employees, and dependents of employees,
11 of the employer and the employer controls and directs the work of the employee.

12 Section 17. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 A licensee or other person who acts according to the written advice of the MEWA contact
15 has a defense to any violation of sections 11 to 16, inclusive, of this Act if the information
16 provided by the licensee or other person to the MEWA contact, to the extent material to the
17 MEWA contact's advice, is accurate and complete.

18 For the purpose of this Act, the division's published list of admitted insurers on its web site
19 is deemed to be accurate. A licensee or other person has a defense to any allegation that a listed
20 insurer is not an admitted insurer. Nothing in this Act requires a licensee or other person to
21 notify the division of an unauthorized product or insurer if that licensee or person has reviewed
22 the division's website and the unauthorized insurer is listed as an admitted insurer.

23 Section 18. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Any violation of sections 10 to 16, of this Act, is mitigated, and the division shall reduce
2 or eliminate any sanction otherwise applicable, if a licensee or other person demonstrates all of
3 the following:

- 4 (1) The licensee or other person maintained supervisory procedures and controls that
5 complied with section 20 of this Act;
- 6 (2) The violation occurred despite the maintenance of those procedures and controls;
- 7 (3) The licensee or other person promptly reported the health benefit plan to the MEWA
8 contact once the licensee or other person had actual knowledge that it was
9 unauthorized health insurance; and
- 10 (4) The licensee or other person took prompt corrective action.

11 Section 19. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Nothing in sections 17 or 18 of this Act requires a producer, third party administrator,
14 insurer, or preferred provider organization to conduct due diligence with respect to a health
15 benefit plan that it is not assisting and with respect to which it does not engage in the transacting
16 of insurance.

17 Section 20. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 An insurance producer, third party administrator, insurer, preferred provider organization,
20 or an agent of the same shall establish and maintain documented supervision procedures and
21 controls that are reasonably designed to achieve compliance with this Act. The supervisory
22 procedures shall include:

- 23 (1) Training;
- 24 (2) Internal controls;

- 1 (3) Periodic audits;
- 2 (4) Supervisory review; and
- 3 (5) Monitoring and enforcement of contractual provisions established under sections 12
- 4 and 16 of this Act.

5 The extent of the supervisory procedures and controls a producer is required to maintain
6 under this section may appropriately reflect the size and complexity of the producer's operations
7 and the scope and nature of the producer's insurance activities.

8 Section 21. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 An insurer providing health insurance in this state shall require its listed producers to obtain
11 not less than one hour of continuing education every four years covering:

- 12 (1) Identification of unauthorized health insurance; and
- 13 (2) The producer's responsibilities under this Act.

14 A third party administrator, preferred provider organization, or insurer shall include in its
15 application for a license a brief summary of its procedures and controls required under section
16 20 of this Act. A license or registration application may be denied if the applicant fails to
17 demonstrate that the applicant maintains the required procedures and controls.

18 Section 22. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If a preferred provider organization violates a provision of this Act, the organization's
21 registration may be suspended or revoked or other action may be taken by the director as is
22 otherwise authorized by this title to ensure that compliance with this Act will be achieved in the
23 future.

24 Section 23. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Nothing in this Act applies to a joint powers agreement authorized pursuant to chapter 1-24.

3 Section 24. Nothing in this Act applies to an admitted insurer, nonadmitted insurer, or a
4 MEWA if the arrangement is neither issued to a person in this state nor solicited in this state.

5 For purposes of this section, the phrase, issued to a person, does not include providing a
6 certificate of coverage, evidence of coverage, or other similar documents to an employee,
7 participant, or dependent showing coverage under an employer's health benefit plan or
8 arrangement.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

556N0050

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 142 - 02/05/2007

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Katus, Apa, Hanson (Gary), Jerstad, Kloucek, Koetzle, and Napoli
and Representatives Van Norman, Boomgarden, Elliott, Kirkeby, Lucas,
Moore, and Sigdestad

1 FOR AN ACT ENTITLED, An Act to provide for collection of certain workers' compensation
2 by court order.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 62-7-31 be amended to read as follows:

5 62-7-31. Any party in interest may, after expiration of the time for a petition for review or
6 appeal, present a memorandum of agreement, approved by the department, or a certified copy
7 of any portion of an order or decision of the department; from which no petition for review or
8 appeal has been filed, together with all papers in connection with the case, to the circuit court
9 for the county in which the injury occurred ~~whereupon~~. Thereupon the court shall render a
10 judgment in accordance ~~therewith and~~ with the memorandum of agreement or portion of any
11 order or decision of the department from which no petition for review has been filed, and the
12 court shall notify the parties. ~~Such~~The judgment shall have the same effect and in all
13 proceedings in relation thereto be the same as though rendered in an action duly heard and
14 determined by the court except that ~~there shall be~~ no appeal ~~therefrom~~ may be made on



1 questions of fact.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

715N0658

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 160 - 01/30/2007

Introduced by: Senators Gray, Abdallah, Apa, Gant, Garnos, Koetzle, McCracken, and Nesselhuf and Representatives Rounds, Faehn, Krebs, and Willadsen

1 FOR AN ACT ENTITLED, An Act to require timely honoring of rebates and to provide a
2 private cause of action.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Provider," any cellular phone service provider or manufacturer;

6 (2) "Rebate fulfillment company," any third party handling rebate claims on behalf of a
7 cell phone service provider;

8 (3) "Date of issuance," the date on which the customer purchased a good or service for
9 which a rebate was offered.

10 Section 2. Any provider offering a rebate shall pay, or ensure payment, of a valid rebate
11 claim within sixty days of the date of issuance or, in cases where a rebate claim must be mailed
12 in by a customer, within sixty days of the date on which valid rebate claim was mailed. In no
13 instance may a provider or rebate fulfillment company require a customer to mail in a rebate
14 claim later than the date of the next regular billing following the date of issuance. If a provider
15 or rebate fulfillment company dishonors a rebate claim, the reasons for such dishonor shall be



1 provided to the customer, in writing, along with the original rebate claim and attached
2 documentation no later than thirty days from the date on which the rebate claim was mailed.
3 Rebate offers must remain valid for at least nine months from the date of issuance. Any
4 violation of this section is a Class 2 misdemeanor.

5 Section 3. Any person may bring an action for civil damages against any provider or rebate
6 fulfillment company who violates section 2 of this Act, in addition to any other penalties
7 provided by law. The civil damages are limited to:

8 (1) Payment of up to three times the amount of any wrongfully dishonored rebate claim
9 or rebate claim not honored within the time periods specified in this Act, including
10 the cost of investigation and litigation; and

11 (2) Payment in the sum of two thousand dollars for each wrongfully dishonored rebate
12 claim or rebate claim not honored within the time periods specified in this Act.

13 In the event the plaintiff substantially prevails, the court shall award to the plaintiff, in
14 addition to other relief provided in this section, costs and reasonable attorney fees.