Senate
Daily Reader

Friday, February 02, 2007

Bills Included				
SB 42	SB 47	SB 58	SB 106	

39 copies of this document were printed by the Legislative Research Council at an estimated cost of $0.025 per page.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0265

SENATE TAXATION COMMITTEE ENGROSSED NO. SB 42 - 01/31/2007

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

FOR AN ACT ENTITLED, An Act to revise the discount provided to tobacco distributors purchasing tobacco stamps and to revise and repeal certain provisions regarding the cigarette tax.

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

Section 1. That § 10-50-18 be amended to read as follows:

10-50-18. The secretary of revenue and regulation shall secure stamps, of ~~such~~ the design and denomination as ~~he shall prescribe~~ the secretary prescribes, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this chapter. ~~He~~ The secretary shall sell ~~such~~ the stamps to licensed distributors at a discount of ~~three and one-half~~ two percent of their face value and to no other person.

Section 2. That § 10-50-4 be amended to read as follows:

10-50-4. The payment of the tax imposed by § 10-50-3 shall be evidenced by the affixing of stamps ~~or by the impression of an imprint by suitable metering machines approved by the secretary of revenue and regulation as provided by this chapter,~~ to the packages containing the cigarettes as ~~hereinafter indicated. Provided, that~~ provided by this chapter. However, for

250 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.038 per page.

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

cigarettes offered by manufacturers for gratis distribution as samples, ~~such~~ the stamps are not required to be affixed to sample packages if the manufacturer of the cigarette reports and pays the tax directly to the state tax authority.

Section 3. That § 10-50-6 be amended to read as follows:

10-50-6. Any cigarette on which a tax has been paid, ~~such~~ the payment being evidenced by the affixing of ~~such~~ the stamp ~~or imprint~~, is not subject to a further tax under this chapter. However, any person, who possesses two thousand or more cigarettes that do not bear a tax stamp ~~or imprint~~ indicating that the South Dakota cigarette tax has been paid, shall pay the tax imposed pursuant to § 10-50-3 plus a penalty equal to ten percent of the total tax due.

Section 4. That § 10-50-22 be repealed.

~~10-50-22. If the secretary of revenue and regulation determines that it is practicable to stamp by impression packages of cigarettes by means of a metering machine, the secretary may, in lieu of the distributor affixing stamps as provided by this chapter, authorize any licensed distributor to use any metering machine approved by the secretary, such machine to be sealed by the secretary of revenue before being used and to be used in accordance with the procedure established by rule promulgated by the secretary pursuant to chapter 1-26.~~

Section 5. That § 10-50-23 be repealed.

~~10-50-23. Any licensed distributor authorized by the secretary of revenue and regulation to affix stamps to packages by means of a metering machine shall file with the secretary a bond issued by a surety company licensed to do business in this state in such amount as the secretary may fix, conditioned upon the payment of the tax upon cigarettes so stamped, or shall enter into a depository agreement with the secretary for the deposit of money or any other property to secure payment of the tax and conditioned upon the payment of the tax upon cigarettes. The bond shall be in full force and effect for a period of one year and a day after the expiration of~~

~~the bond, unless a certificate be issued by the secretary of revenue and regulation to the effect that all taxes due to the state under this chapter have been paid. The depository agreement hereinbefore provided shall be in full force and effect for a period of one year and a day after the expiration of the same, or until or unless a certificate be issued by the secretary of revenue and regulation to the effect that all taxes due to the state under this chapter have been paid.~~

Section 6. That § 10-50-24 be repealed.

~~10-50-24. The secretary of revenue and regulation shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of such inspection the amount of tax due from the distributor using such machine after allowing for the discount, if any, as provided in § 10-50-18, which tax shall be due and payable to the secretary of revenue upon demand of the secretary or his duly authorized agent.~~

Section 7. That § 10-50-24.1 be repealed.

~~10-50-24.1. The secretary of revenue and regulation may designate and appoint one or more county treasurers as agents to read, inspect, sell stamp impressions and collect therefor, from any meter machine approved by the secretary and under the procedure established by rule promulgated by the secretary pursuant to chapter 1-26. Such county treasurer shall, on or before the fifth day of each calendar month, transmit to the secretary of revenue and regulation a report showing the number of stamp impressions sold, to whom sold, together with a remittance for the stamp impressions sold during the period for which the report is made.~~

Section 8. That § 10-50-25 be amended to read as follows:

10-50-25. ~~When~~ If the secretary of revenue and regulation ~~shall find~~ finds that the collection of the tax imposed by this chapter would be facilitated thereby, ~~he~~ the secretary may authorize any person, resident or located outside this state, engaged in the business of selling and shipping cigarettes into this state and purchasing at least seventy-five percent of ~~such~~ the cigarettes from

the manufacturers thereof, and who is a resident of any state authorizing by law the licensing of nonresidents, including residents of this state, to distribute cigarettes therein, upon complying with the requirements of the secretary of revenue and regulation, to affix or cause to be affixed the stamps required by this chapter on behalf of the purchasers of ~~such~~ the cigarettes, who would otherwise be taxable therefor~~, and the~~. The secretary of revenue and regulation may sell ~~such~~ the stamps to such person as hereinbefore provided~~, or the secretary of revenue and regulation may authorize the use of a metering machine by such person as hereinbefore provided~~.

Section 9. That § 10-50-30 be amended to read as follows:

10-50-30. Each distributor shall affix or cause to be affixed, in ~~such~~ the manner as the secretary of revenue and regulation may specify in rules promulgated pursuant to chapter 1-26, to each individual package of cigarettes, to cartons containing more than one individual package of three, four, or five cigarettes sold or distributed by such distributor, stamps of the proper denomination, as required by this chapter~~, or, in lieu thereof, an imprint impressed by means of a suitable metering machine approved by the secretary of revenue and regulation. Such~~. The stamps ~~or imprint~~ shall be affixed by a distributor before the cigarettes are transferred out of the distributor's premises, or in lieu thereof the amount of the tax due shall be entered on the invoice and stamps sufficient in denominations and amount shall accompany ~~such~~ the invoice on every delivery of cigarettes.

Section 10. That § 10-50-31 be amended to read as follows:

10-50-31. Each dealer upon opening any shipping package containing any unstamped taxable articles for purposes of sale or delivery to consumers, shall immediately affix ~~or imprint~~ the tax stamps required by this chapter.

Section 11. That § 10-50-32 be amended to read as follows:

10-50-32. No person, other than a person licensed pursuant to § 10-50-9, may sell, offer for

sale, display for sale, or possess with intent to sell, advertise for sale, ship or cause to be shipped, or possess with intent to deliver to another person, any cigarettes which do not bear stamps ~~or an imprint impressed by a suitable metering machine approved by the secretary as provided by this chapter,~~ evidencing the payment of the tax imposed by this chapter.

A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class 6 felony.

Section 12. That § 10-50-35 be amended to read as follows:

10-50-35. Any cigarettes found at any place in this state without stamps affixed thereto ~~or without bearing the imprint impressed by a suitable metering machine approved by the secretary of revenue and regulation~~ as required by this chapter unless ~~such~~ the cigarettes ~~shall be~~ are in the possession of a licensed distributor or wholesaler in the original unopened shipping package or unless they ~~shall be~~ are in a course of transit from without this state and consigned to a licensed distributor or a licensed wholesaler, are declared to be contraband goods and may be seized by the secretary, ~~his~~ the secretary's agents, or employees, or by any ~~peace officer~~ law enforcement of this state ~~when~~ if directed by the secretary to do so, without a warrant.

Section 13. That § 10-50-80 be amended to read as follows:

10-50-80. No later than twenty days after the end of each calendar quarter, and more frequently if so directed by the secretary, each distributor and wholesaler shall submit information concerning each nonparticipating manufacturer as the secretary requires to facilitate compliance with §§ 10-50-72 to 10-50-92, inclusive, including, a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count, for which the distributor or wholesaler affixed cigarette tax stamps ~~or imprints~~ to a cigarette package, or otherwise paid the cigarette tax due during the previous calendar quarter. The distributor or wholesaler shall maintain and make available to the secretary all invoices and documentation

of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the secretary for a period of six years. The secretary may, in addition to any other provision of law, impose and collect a monetary penalty in an amount not to exceed five hundred dollars per day, for the failure of a distributor or wholesaler to timely or accurately comply with this section. Any monetary penalty collected pursuant to this section shall be deposited in the state general fund.

Section 14. That § 10-50-82 be amended to read as follows:

10-50-82. No distributor or wholesaler or other person may:

(1) Affix a South Dakota cigarette tax stamp ~~or imprint~~ to a package or other container of cigarettes, or pay South Dakota cigarette tax on cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) Sell or distribute, or acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes of a tobacco product manufacturer or brand family not included in the directory that the distributor, wholesaler, or other person knows or should know are intended for distribution or sale in this state.

The secretary may, in addition to any other provision of law, impose and collect a monetary penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars for each violation of this section by a distributor or wholesaler. Any monetary penalty collected pursuant to this section shall be deposited in the state general fund.

Section 15. That § 10-50B-6 be amended to read as follows:

10-50B-6. For the purposes of §§ 10-50B-1 to 10-50B-10, inclusive, the term, units sold, means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or

intermediaries, during the year in question, as measured by excise taxes collected by the state on packs bearing the excise tax stamp ~~or imprint~~ of the state, or on roll-your-own tobacco. The secretary of revenue and regulation shall promulgate, pursuant to chapter 1-26, such rules as are necessary to obtain information from any licensee, licensed under the authority of the Department of Revenue and Regulation, to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year. The Department of Revenue and Regulation may provide information obtained pursuant to this section as is necessary for a tobacco product manufacturer to compute its escrow payment under § 10-50B-7.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0261 **SENATE COMMERCE COMMITTEE ENGROSSED NO.**

SB 47 - 01/30/2007

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

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

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

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

Terms used in this in this Act mean:

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

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

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

250 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.038 per page.

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

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,

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

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

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

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

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

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

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

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

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

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

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

state or to persons authorized to do business in this state;

(6) The solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof;

(7) The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of risks with respect to properties, risks, or exposures located or to be performed in this state;

(8) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;

(9) The offering of insurance; or

(10) Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

No provision of this section prohibits employees, officers, directors, or partners of a commercial insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer, if the person's compensation is not based on buying insurance. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered or issued for delivery or takes effect. Nothing in this Act applies to an admitted insurer, nonadmitted insurer, or a MEWA if the arrangement is neither issued to a person in this state nor solicited in this state.

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

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

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

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

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

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

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

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

(1) Fully insured by an admitted insurer; or

(2) Licensed or otherwise authorized under the laws of this state to offer a self-funded

1 health benefit plan.

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

4 Unauthorized health insurance does not include:

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

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

13 (3) Health care benefits or coverage under an employee welfare benefit plan of the
14 employees of two or more employers but only if the employers are within the same
15 control group so the plan is deemed to be a single employer plan under 29 U.S.C.
16 § 1002(40)(B) as of January 1, 2007; or

17 (4) Health care benefits or coverage under a church plan as defined under 29 U.S.C
18 § 1002(33) as of January 1, 2007.

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

21 A licensee shall notify the division MEWA contact if the licensee knows a product is, or is
22 about to be, offered to the public in this state, and the licensee, based on the information known
23 to the licensee, reasonably should know the product is unauthorized health insurance. A licensee
24 meets the requirements of this section if that licensee reviews the division's website of admitted

1 health insurers and either does not notify the division's MEWA contact if that insurer is listed
2 as an admitted insurer or notifies the division's MEWA contact if that insurer is not listed as an
3 admitted insurer. For the purposes of this section an insurer does not include a stop loss insurer
4 but a stop loss insurer is a licensee under this section. Knowledge of a producer regarding an
5 unrelated unauthorized health insurance arrangement is not imputed to licensed insurers
6 represented by that producer. Circumstances where a licensee knows that a product is, or is
7 about to be, offered to the public in this state, include if the licensee knows that any person is:
8 (1) Recruiting producers to solicit or offer, or is soliciting or offering, a health benefit
9 plan generally to the public in this state; or
10 (2) Seeking an administrator for, or is administering a health benefit plan that is intended
11 to be offered generally to the public in this state.
12 A licensee complies with this section if the licensee notifies the division within thirty days
13 or a period reasonable under the circumstances, whichever is later.
14 Section 7. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
15 follows:
16 Circumstances where a licensee reasonably should know that a product is unauthorized
17 health insurance include the following:
18 (1) The licensee knows that the product is represented to be a self-funded plan and that
19 it is offered widely to the multiple employers or generally to individuals;
20 (2) The licensee knows that the product is a professional employer organization self-
21 funded plan and that it is offered widely to multiple client employers; or
22 (3) The licensee knows that the plan is represented to be a self-funded plan established
23 or maintained pursuant to a collective bargaining agreement and that the plan is
24 offered widely to multiple employers, or generally to individuals, or both, through

1 agents who are compensated on a commission or similar basis.

2 A licensee may provide other evidence to the division to indicate that the licensee did not
3 reasonably know that a product is unauthorized. In making its determination regarding whether
4 a licensee should have known the product is unauthorized and the appropriateness of any penalty
5 for failing to notify the division of such a product, the division shall consider the prior
6 experience and the existence or lack of training of that licensee.

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

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

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

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

information pursuant to this Act concerning suspected, anticipated, or completed acts, if the information is provided to or received from:

(1) The director or the director's employees, agents, or representatives;

(2) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(3) A person involved in the prevention and detection of fraudulent insurance acts or that person's agents, employees, or representatives; or

(4) The NAIC or its employees, agents, or representatives.

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

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

(1) For any insurance coverage that is represented as issued relating to the health benefit plan:

(a) The insurer issued the policy;

(b) The coverage is as represented;

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

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

(2) For any health benefit plan that is represented as established or maintained pursuant to a collective bargaining agreement, the health benefit plan is established or maintained under or pursuant to a collective bargaining agreement under the criteria

provided under 29 CFR 2510.3-40 as of January 1, 2007;

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

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

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

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

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

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

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

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

1 follows:

2 A third party administrator, prior to entering into any administrative contract for a health
3 benefit plan, and prior to assisting any person with administration of a health benefit plan,
4 covering employees of an employer or a person located in this state, shall carry out appropriate
5 due diligence to establish that the health benefit plan is not unauthorized health insurance,
6 including those measures reasonably appropriate to establish:

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

10 (a) The insurer issued the policy;

11 (b) The coverage is as represented;

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

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

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

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

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

1 Section 13. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
2 follows:
3 An insurer, prior to issuing a stop loss policy for a health benefit plan covering employees,
4 employee dependents, or individuals located in this state, shall carry out appropriate due
5 diligence to establish that the health benefit plan is not unauthorized health insurance, including
6 those measures reasonably appropriate to establish:
7 (1) For any health benefit plan that is represented as established or maintained pursuant
8 to a collective bargaining agreement, the health benefit plan is established or
9 maintained under or pursuant to a collective bargaining agreement under the criteria
10 provided under 29 CFR 2510.3-40 as of January 1, 2007;
11 (2) The health benefit plan is not offered by an employee leasing arrangement or
12 professional employer organization to client employers; or
13 (3) For any health benefit plan that is represented as established by a single employer,
14 the health benefit plan is covering solely employees, and dependents of employees,
15 of the employer and the employer controls and directs the work of the employee.
16 Section 14. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
17 follows:
18 No insurer may engage in the transacting of insurance by issuing a stop loss policy unless
19 the insurer is an admitted insurer in this state and the stop loss policy form has been filed and
20 approved by the division, unless the form is exempt by law from filing. The transacting of
21 insurance includes:
22 (1) Issuing a stop loss policy covering an employer located in this state. Coverage of an
23 employer for claims incurred under the employer's self-funded health benefit plan
24 with a stop loss policy is insurance, not reinsurance, regardless of whether the

contract is described by the insurer as reinsurance; or

(2) Issuing a stop loss policy to a trust or trustee, whether the trust or trustee is located in this state or otherwise, if an employer located in this state is directly or indirectly the beneficiary of the trust.

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

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

(1) The employer is not covered for claims below the stop loss attachment point;

(2) A description of the attachment point, including the specific and aggregate attachment points; and

(3) The insurer provides no other coverage of the employer's retention.

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

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

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

(a) The insurer issued the policy;

(b) The coverage is as represented;

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

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

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

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

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

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

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

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

1 Section 18. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
2 follows:
3 Any violation of sections 10 to 16, of this Act, is mitigated, and the division shall reduce
4 or eliminate any sanction otherwise applicable, if a licensee or other person demonstrates all of
5 the following:
6 (1) The licensee or other person maintained supervisory procedures and controls that
7 complied with section 20 of this Act;
8 (2) The violation occurred despite the maintenance of those procedures and controls;
9 (3) The licensee or other person promptly reported the health benefit plan to the MEWA
10 contact once the licensee or other person had actual knowledge that it was
11 unauthorized health insurance; and
12 (4) The licensee or other person took prompt corrective action.
13 Section 19. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
14 follows:
15 Nothing in sections 17 or 18 of this Act requires a producer, third party administrator,
16 insurer, or preferred provider organization to conduct due diligence with respect to a health
17 benefit plan that it is not assisting and with respect to which it does not engage in the transacting
18 of insurance.
19 Section 20. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
20 follows:
21 An insurance producer, third party administrator, insurer, preferred provider organization,
22 or an agent of the same shall establish and maintain documented supervision procedures and
23 controls that are reasonably designed to achieve compliance with this Act. The supervisory
24 procedures shall include:

1 (1) Training;

2 (2) Internal controls;

3 (3) Periodic audits;

4 (4) Supervisory review; and

5 (5) Monitoring and enforcement of contractual provisions established under sections 12

6 and 16 of this Act.

7 The extent of the supervisory procedures and controls a producer is required to maintain

8 under this section may appropriately reflect the size and complexity of the producer's operations

9 and the scope and nature of the producer's insurance activities.

10 Section 21. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

11 follows:

12 An insurer providing health insurance in this state shall require its listed producers to obtain

13 not less than one hour of continuing education every four years covering:

14 (1) Identification of unauthorized health insurance; and

15 (2) The producer's responsibilities under this Act.

16 A third party administrator, preferred provider organization, or insurer shall include in its

17 application for a license a brief summary of its procedures and controls required under section

18 20 of this Act. A license or registration application may be denied if the applicant fails to

19 demonstrate that the applicant maintains the required procedures and controls.

20 Section 22. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

21 follows:

22 If a preferred provider organization violates a provision of this Act, the organization's

23 registration may be suspended or revoked or other action may be taken by the director as is

24 otherwise authorized by this title to ensure that compliance with this Act will be achieved in the

1 future.

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

3 follows:

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

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0382

HOUSE ENGROSSED NO. SB 58 - 01/31/2007

Introduced by: The Committee on State Affairs at the request of the Department of Tourism and State Development

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the South Dakota Energy Infrastructure Authority.

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

Section 1. That § 1-16I-2 be amended to read as follows:

1-16I-2. The South Dakota Energy Infrastructure Authority is created <u>as a body corporate and politic</u> to diversify and expand the state's economy by developing in this state the energy production facilities and the energy transmission facilities necessary to produce and transport energy to markets within the state and outside of the state.

Section 2. That § 1-16I-5 be amended to read as follows:

1-16I-5. In order to finance energy transmission facilities <u>as</u> authorized pursuant to this chapter, the authority may issue and have outstanding bonds to finance such facilities in an amount not to exceed one billion dollars. However, no bonds may be issued until the issuance of the bonds is specifically approved by an act of the Legislature. The authority shall have contracts sufficient to justify the issuance of bonds.

Section 3. That § 1-16I-6 be amended to read as follows:

250 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.038 per page.

Insertions into existing statutes are indicated by <u>underscores</u>.
Deletions from existing statutes are indicated by ~~overstrikes~~.

1-16I-6. The authority shall:

(1) Meet with any interested owner of transmission lines in South Dakota and any interested generator and distributor of electricity to consumers in South Dakota by August first each year to understand the generation of electricity in South Dakota and the transmission enhancements needed for the transmission of electricity to, from, and within South Dakota, and to analyze how the authority could proactively assist in developing the generation and transmission infrastructure;

(2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the generation of electricity in South Dakota and the transmission of electricity to, from, and within South Dakota. The report due December 1, ~~2005~~ 2007, shall address and quantify market opportunities for the development, use in-state, and ~~export of South Dakota's enormous wind power resource~~, including, as appropriate, the export of South Dakota's enormous wind power resource;

(3) Annually evaluate state laws and rules affecting electric generation and electric transmission and make recommendations to the Governor and the Legislature for improvements ~~by December first of each year~~;

(4) Annually evaluate federal laws and rules affecting electric generation and electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;

(5) Identify opportunities where owners of transmission lines in South Dakota and generators and distributors of electricity to consumers in South Dakota can cooperate to improve and increase electric transmission in South Dakota and communicate

those opportunities to owners, generators, and distributors of electricity in South Dakota;

(6) Assist any entity that wants to build new or upgrade existing electric transmission facilities to, from, and within South Dakota by helping the entity develop a business plan and identify financing options; and

(7) Assist other state transmission authorities and any federal or regional entity wanting to build new or upgrade existing transmission facilities to deliver electricity to, from, and within South Dakota.

Section 4. That § 1-16I-9 be amended to read as follows:

1-16I-9. Members of the board shall receive compensation for the performance of their duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the authority. Members may be reimbursed at rates established by the ~~Bureau of Personnel~~ Board of Finance for necessary expenses, including travel and lodging expenses, incurred in connection with the performance of their duties as members.

Section 5. That § 1-16I-12 be amended to read as follows:

1-16I-12. The board shall meet on the call of the chair, upon the written request of ~~four~~ three members of the board, or upon the request of the executive director.

Section 6. That § 1-16I-13 be amended to read as follows:

1-16I-13. A majority of the members of the board constitute a quorum for the transaction of business. All official acts of the authority shall require the affirmative vote of at least ~~four~~ three members of the board at a meeting of the board at which the members casting those affirmative votes are present.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

538N0644 **SENATE JUDICIARY COMMITTEE ENGROSSED NO.**

SB 106 - 01/31/2007

Introduced by: Senators Napoli and Abdallah and Representatives Van Etten and Howie

FOR AN ACT ENTITLED, An Act to require certain family members to report sexual abuse to law enforcement authorities, to grant civil immunity for any good faith report, and to provide a penalty for failure to report.

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

Section 1. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

Whenever any person, who is a relative of a child under the age of eighteen, has reasonable cause to suspect that the child is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care, as provided in subdivision 26-8A-2(8), that person shall report that information in accordance with § 26-8A-8. Any person who intentionally fails to make the required report is guilty of a Class 1 misdemeanor.

As used in this section, the term, relative, means an adult who is related to the child by blood, adoption, or marriage, and who is the child's grandparent, aunt, uncle, sibling, brother-in-law, sister-in-law, niece, nephew, great grandparent, stepparent, or stepsibling.

250 copies of this document were printed by the South Dakota Legislative Research Council at a cost of $.038 per page.

Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

Section 2. That § 26-8A-14 be amended to read as follows:

26-8A-14. Any person or party participating in good faith in the making of a report or the submitting of copies of medical examination, treatment, or hospitalization records pursuant to §§ 26-8A-3 to 26-8A-8, inclusive, pursuant to section 1 of this Act, or pursuant to any other provisions of this chapter, is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, and has the same immunity for participation in any judicial proceeding resulting from the report. Immunity also extends in the same manner to persons requesting the taking of photographs and X rays pursuant to § 26-8A-16, to persons taking the photographs and X rays, to child protection teams established by the secretary of social services, to public officials or employees involved in the investigation and treatment of child abuse or neglect or making a temporary placement of the child pursuant to this chapter, or to any person who in good faith cooperates with a child protection team or the Department of Social Services in investigation, placement, or a treatment plan. The provisions of this section or any other section granting or allowing the grant of immunity do not extend to any person alleged to have committed an act or acts of child abuse or neglect.

Section 3. That § 26-8A-8 be amended to read as follows:

26-8A-8. The reports required by §§ 26-8A-3, 26-8A-6, ~~and~~ 26-8A-7, and section 1 of this Act and by other sections of this chapter shall be made orally and immediately by telephone or otherwise to the state's attorney of the county in which the child resides or is present, to the Department of Social Services or to law enforcement officers. The state's attorney or law enforcement officers, upon receiving a report, shall immediately notify the Department of Social Services. Any person receiving a report of suspected child abuse or child neglect shall keep the report confidential as provided in § 26-8A-13, except as otherwise provided in chapter 26-7A or this chapter.

The person receiving a report alleging child abuse or neglect shall ask whether or not the reporting party desires a response report. If requested by the reporting person, the Department of Social Services or the concerned law enforcement officer shall issue within thirty days, a written acknowledgment of receipt of the report and a response stating whether or not the report will be investigated.