

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0087

HOUSE COMMERCE ENGROSSED NO. **HB 1049** 1/23/2009

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding captive insurance
2 companies.

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

4 Section 1. That § 58-46-1 be amended to read as follows:

5 58-46-1. Terms used in this chapter mean:

6 (1) "Affiliated company," any company, in the same corporate system as a pure captive
7 insurance company, owned or controlled, directly or indirectly, by a parent or
8 subsidiary, or a member organization by virtue of control, operation, or management;

9 (2) "Association," any legal association of corporations, limited liability companies, or
10 partnerships, the members of the organization of which:

11 (a) Own, control, or hold with power to vote all of the outstanding voting
12 securities of a group captive insurance company incorporated as a stock
13 insurer or nonprofit corporation; or

14 (b) Have complete voting control over group captive insurance company formed



1 as a limited liability company;

2 (3) "Captive insurance company," any pure captive insurance company or any group
3 captive insurance company;

4 (4) "Controlled unaffiliated business," any person that is not in the corporate system of
5 a parent and its affiliated companies and has an existing contractual relationship for
6 its control, operation, or management with the parent or one of its affiliated
7 companies;

8 ~~(3)~~(5) "Director," the director of the Division of Insurance;

9 (6) "Group," any association of corporations, partnerships, or limited liability companies
10 with substantially similar or related risks, the members of which collectively own,
11 control, or hold with power to vote all of the outstanding voting securities or other
12 ownership interest of a group captive insurance company;

13 (7) "Group captive insurance company," any company that insures the risks of the
14 member organizations of the group, the risks of the affiliated companies of the
15 member organizations, or the risks of the association;

16 (8) "Member organization," any corporation, limited liability company, or partnership
17 that belongs to an association;

18 ~~(4)~~(9) "Parent," a corporation, partnership, or individual that directly or indirectly owns,
19 controls, or holds with power to vote more than fifty percent of the outstanding
20 voting securities of a pure captive insurance company;

21 ~~(5)~~(10) "Pure captive insurance company," any company that insures risks of its parent
22 and affiliated companies or a controlled unaffiliated business.

23 Section 2. That § 58-46-2 be repealed.

24 ~~58-46-2. Any captive insurance company may apply to the director for a certificate of~~

1 ~~authority to do insurance business. However, a captive insurance company may not insure any~~
2 ~~risks other than those of its parent and affiliated companies.~~

3 Section 3. That § 58-46-3 be amended to read as follows:

4 58-46-3. No captive insurance company may do any insurance business in this state unless:

5 (1) It first obtains from the director a certificate of authority authorizing it to do
6 insurance business in this state;

7 (2) Its board of directors commits to hold at least one meeting each year in this state;

8 (3) It maintains its principal place of business in this state and keeps at this place
9 complete records of its assets, transactions, and affairs, in accordance with the
10 methods and systems which are customary or suitable as to the kinds of insurance
11 transacted; and

12 (4) It appoints a resident agent to accept service of process and to otherwise act on its
13 behalf in this state. If the registered agent cannot, with reasonable diligence, be found
14 at the registered office of the captive insurance company, the director shall be an
15 agent of the captive insurance company upon whom any process, notice, or demand
16 may be served.

17 A group captive insurance company shall limit its exposure to loss on any one risk or hazard
18 as required by chapter 58-13, unless the risk or hazard is reinsured through an insurance
19 company which is licensed or accredited in this state, or unless other safeguards to the group
20 captive insurance company's financial solvency and stability are in place and are acceptable to
21 the director.

22 Section 4. That § 58-46-8 be amended to read as follows:

23 58-46-8. No pure captive insurance company may be issued a certificate of authority unless
24 it possesses and maintains unimpaired paid-in capital of one hundred thousand dollars and

1 surplus of one hundred thousand dollars. No group captive insurance company may be issued
2 a certificate of authority unless it possesses and maintains unimpaired paid-in capital and
3 surplus of at least two hundred fifty thousand dollars but not more than five hundred thousand
4 dollars, the amount of which shall be determined at the discretion of the director. A captive
5 insurance company may have capital and surplus in excess of five hundred thousand dollars.
6 However, for a group captive insurance company, the ratio of premium to surplus may not be
7 more than three to one unless the director has provided prior written approval for a different
8 ratio. The capital and surplus may be in the form of cash or an irrevocable letter of credit issued
9 by a bank chartered by the State of South Dakota or a member bank of the Federal Reserve
10 System and approved by the director.

11 The director may prescribe additional capital and surplus for either a pure captive insurance
12 company or a group captive insurance company based upon the type, volume, and nature of
13 insurance business transacted, which capital may be in the form of an irrevocable letter of credit
14 issued by a bank chartered by the State of South Dakota or a member of the Federal Reserve
15 System and which is approved by the director.

16 Section 5. That § 58-46-9 be amended to read as follows:

17 58-46-9. No group captive insurance company may pay a dividend out of, or other
18 distribution with respect to, capital or surplus, in excess of the limitations set forth in § 58-5A-
19 35, without the prior approval of the director. A pure captive insurance company may pay out
20 a dividend in excess of the limitations set forth in § 58-5A-35 if notice has been filed with the
21 director ten business days prior to the payment of the dividend and the director has not
22 disapproved the payment of the dividend during that ten-day time period.

23 Section 6. That § 58-46-10 be amended to read as follows:

24 58-46-10. A pure captive insurance company shall may be incorporated as a stock insurer,

1 as a nonprofit corporation with one or more members, or as a limited liability company. A group
2 captive insurance company may be incorporated as a stock insurer or as a limited liability
3 company.

4 Section 7. That § 58-46-15 be amended to read as follows:

5 58-46-15. On or before March first of each year, each group captive insurance company shall
6 submit to the director a report of its financial condition pursuant to § 58-6-75. The report shall
7 be audited by an independent certified public accountant pursuant to chapter 58-43. ~~The director~~
8 ~~shall, by rules adopted pursuant to chapter 1-26, promulgate the forms on which captive~~
9 ~~insurance companies shall report.~~ Each group captive insurance company shall file with its
10 annual report of financial condition an actuarial opinion pursuant to § 58-26-13.1. Each group
11 captive insurance company shall submit to the director annual reports of its financial condition
12 pursuant to § 58-6-75. If requested by the director, the group captive insurance company shall
13 submit quarterly reports of its financial condition pursuant to § 58-6-75. A pure captive
14 insurance company may submit, in lieu of the annual independent audit required by this section,
15 a certification of its financial condition using statutory accounting principles verified under oath
16 by two of its executive officers. However, a pure captive insurance company shall provide a
17 report of its financial condition audited by an independent certified public accountant at least
18 every five years. Upon request to and approval by the director, a pure captive insurance
19 company may use generally accepted accounting principles in lieu of statutory accounting
20 principles in its certification of its financial condition.

21 Section 8. That § 58-46-16 be amended to read as follows:

22 58-46-16. A pure captive insurance company may make written application for filing the
23 report required by § 58-46-15 on a fiscal year-end that is consistent with the parent company's
24 fiscal year. If an alternative reporting date is granted, the annual report is due sixty days after

1 the fiscal year-end.

2 Section 9. That § 58-46-19 be amended to read as follows:

3 58-46-19. No pure captive insurance company is subject to any restrictions on allowable
4 investments. However, the director may prohibit or limit any investment that threatens the
5 solvency or liquidity of any such company.

6 Unless the director has provided written approval of a different requirement or limitation,
7 group captive insurance companies shall comply with the investment requirements and
8 limitations applicable to other insurance companies pursuant to chapter 58-27.

9 Section 10. That § 58-46-20 be amended to read as follows:

10 58-46-20. A pure captive insurance company may make a loan to its parent or affiliated
11 companies. No loan to its parent or affiliated companies may be made without prior written
12 approval of the director. A group captive insurance company may make a loan to its group or
13 members of its group if prior written approval by the director has been provided. The approval
14 shall be evidenced by a note in a form approved by the director.

15 Section 11. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A pure captive insurance company may enter into any arrangement to provide risk
18 management services to an unaffiliated controlled business or an unaffiliated business but may
19 not accept any insurance risk from an unaffiliated business. A pure or group captive insurance
20 company may not insure:

- 21 (1) Any life or health risk;
22 (2) Any personal lines property casualty risk; or
23 (3) The risk other than that of itself or its affiliates.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0325

HOUSE APPROPRIATIONS ENGROSSED NO. HB 1069 - 1/23/2009

Introduced by: The Committee on Appropriations at the request of the Bureau of Finance and Management

1 FOR AN ACT ENTITLED, An Act to increase certain fees charged by the Office of the
2 Secretary of State.

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

4 Section 1. That § 1-8-10 be amended to read as follows:

5 1-8-10. The secretary of state shall charge the following fees for services performed in the
6 Office of the Secretary of State and shall collect the fees in advance:

7 (1) For filing, recording, and safekeeping of any instrument or paper required by law to
8 be filed and recorded in the office, one dollar per page;

9 ~~—(2)—~~ For making a copy or transcript of any record, instrument, or paper, except campaign
10 finance reports, on file in the office, one dollar per page;

11 ~~(3)~~(2) For filing and safekeeping of any instrument or paper required by law to be filed
12 only, one dollar ten dollars; except the oath of office of members of the Legislature
13 and legislative officers, employees and governmental officers, employees and
14 agencies, for which there is no fee;



1 (4)(3) For each commission, requisition, passport, or other document, signed by the
2 Governor and attested by the secretary of state, under the great seal of the state,
3 except commissions issued for executive appointment and extraditions, and making
4 the proper record for the same, five dollars;

5 (5)(4) For filing application, bond, and issuing commission of notary public, twenty-five
6 thirty dollars;

7 (6)(5) For official certificate, attestation, and impression of the great seal, five dollars;

8 (7)(6) For filing or recording any other instrument or document, one dollar ten dollars; and

9 (8)(7) For a certified copy of any document, instrument, or paper on file in the office, one
10 dollar per page and ten fifteen dollars for the certificate and affixing the seal.

11 However, there is no fee to any state government agency pursuant to subdivision (1) or (2).

12 Section 2. That § 1-8-12 be amended to read as follows:

13 1-8-12. The secretary of state shall charge a fee of twenty fifty dollars for any expedited
14 services service. Expedited service is defined as completion sooner than the normal course of
15 business upon request.

16 Section 3. That § 2-12-3 be amended to read as follows:

17 2-12-3. Each lobbyist who registers and is employed pursuant to this chapter shall pay to the
18 secretary of state an annual registration fee of thirty-five forty dollars for each employer
19 represented by the lobbyist. Upon payment, the lobbyist's name shall be registered by the
20 secretary of state in the directory provided by § 2-12-2, and the lobbyist is entitled to one copy
21 of the official directory of the current year's legislative session. A fee of ten dollars may be
22 charged for a weekly copy of an updated directory of lobbyists. All fees collected shall be
23 deposited by the secretary of state with the state treasurer and credited to the general fund.

24 Any lobbyist who registers pursuant to this section is exempt from the one dollar filing fee

1 ~~prescribed in subdivision 1-8-10(3):~~

2 Section 4. That § 2-12-11 be amended to read as follows:

3 2-12-11. On or before July first of each year, every each registered lobbyist and every each
4 employer of a registered lobbyist whose name appears in the directory in that year shall submit
5 to the secretary of state a complete and detailed report of all costs incurred for the purpose of
6 influencing legislation. However, the personal expenses of the lobbyist spent upon his the
7 lobbyist's own meals, travel, lodging, phone calls or other necessary personal needs while in
8 attendance at the legislative session need not be reported. The reports shall be personally sworn
9 to by the person making the report in the presence of a notary public. The secretary of state shall
10 prescribe concise and simple forms for reporting costs and expenses for lobbyists and the
11 employers of lobbyists. The completed reports shall be open to public inspection. "Costs" The
12 terms, costs, and "expenses", as used in this section do not mean the compensation paid by the
13 employer to the lobbyist.

14 Any lobbyist expense report filed pursuant to this section is exempt from the ten dollar filing
15 fee prescribed in subdivision 1-8-10(2).

16 Section 5. That § 15-7-7 be amended to read as follows:

17 15-7-7. Service of process as authorized by § 15-7-6 shall be made by serving a copy thereof
18 upon the secretary of state, or by filing the copy in the office of the secretary of state, together
19 with payment of a fee of ten fifteen dollars. The service shall be sufficient service upon the
20 absent resident or the nonresident or the resident's or nonresident's personal representative if the
21 notice of the service and a copy of the process are within ten days thereafter sent by mail by the
22 plaintiff to the defendant at the defendant's last-known address and that the plaintiff's affidavit
23 of compliance with the provisions of this section is attached to the summons. The secretary of
24 state shall keep a record of any process so served. The record shall show the day and hour of

1 such the service. The fee of ~~ten~~ fifteen dollars paid by the plaintiff to the secretary of state at the
2 time of service of the process shall be recovered as taxable costs if the plaintiff prevails in the
3 suit.

4 Section 6. That § 18-1-1 be amended to read as follows:

5 18-1-1. The secretary of state shall appoint notaries public, who have residence in this state
6 as defined in § 12-1-4. A notary public shall hold office for six years unless sooner removed by
7 the secretary of state. An applicant to become a notary public shall complete an application form
8 as prescribed by the secretary of state pursuant to chapter 1-26. The applicant shall submit a fee
9 of ~~twenty-five~~ thirty dollars. The application shall include the applicant's name, street, city, state,
10 zip code, county, and date of birth. The applicant shall apply in the same name as that which
11 will appear as the seal imprint. Each notary may, anywhere in this state, administer oaths and
12 perform all other duties required by law. The secretary of state may not appoint as a notary
13 public any person who has been convicted of a felony. The secretary of state may also appoint
14 an applicant as a notary public if the applicant resides in a county bordering South Dakota and
15 the applicant's place of work or business is within the State of South Dakota.

16 Section 7. That § 37-6-5 be amended to read as follows:

17 37-6-5. Subject to the limitations set forth in §§ 37-6-6 to 37-6-11, inclusive, any person
18 who adopts and uses a mark in this state may file in the Office of the Secretary of State, on a
19 form to be furnished by the secretary of state, an application for registration of that mark setting
20 forth the following information:

21 (1) The name and business address of the person applying for the registration; and, if a
22 corporation, the state of incorporation;

23 (2) The goods or services in connection with which the mark is used and the mode or
24 manner in which the mark is used in connection with the goods or services and the

1 class in which the goods fall;

2 (3) The date when the mark was first used anywhere and the date when it was first used
3 in this state by the applicant or the applicant's predecessor in business; and

4 (4) A statement that the applicant is the owner of the mark and that no other person has
5 the right to use the mark in this state either in the identical form thereof or in such
6 near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

7 The application shall be signed under oath by the applicant or by a member of the firm or
8 an officer of the corporation or association applying. The application shall be accompanied by
9 a specimen or facsimile of the mark in duplicate no larger than eight and one-half inches by
10 eleven inches. The application for registration shall be accompanied by a filing fee of one
11 hundred twenty-five dollars, payable to the secretary of state.

12 Section 8. That § 37-6-14 be amended to read as follows:

13 37-6-14. Registration of a mark under § 37-6-13 is effective for a term of four years from
14 the date of registration. Upon application filed within six months prior to the expiration of the
15 term, on a form to be furnished by the secretary of state, the registration may be renewed for a
16 like term. A renewal fee of one hundred twenty-five dollars, payable to the secretary of state,
17 shall accompany the application for renewal of the registration. A mark registration may be
18 renewed for successive periods of four years in like manner.

19 Section 9. That § 37-6-17 be amended to read as follows:

20 37-6-17. A mark and its registration under § 37-6-13 is assignable with the good will of the
21 business in which the mark is used, or with that part of the good will of the business connected
22 with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly
23 executed and may be recorded with the secretary of state upon the payment of a fee of one
24 hundred twenty-five dollars payable to the secretary of state. Upon recording of the assignment,

1 the secretary of state shall issue in the name of the assignee a new certificate for the remainder
2 of the term of the registration or of the last renewal thereof. An assignment of any registration
3 under § 37-6-13 is void as against any subsequent purchaser for valuable consideration without
4 notice unless it is recorded with the secretary of state within three months after the date thereof
5 or prior to the subsequent purchase.

6 Section 10. That § 43-27-1 be amended to read as follows:

7 43-27-1. The owner of any farm, ranch, or home in this state may, upon the payment of ten
8 fifteen dollars to the secretary of state, have the name of the farm, ranch, or home entered and
9 recorded in a register. The secretary of state shall keep the register and furnish the owner a
10 certificate setting forth the name and location of the farm, ranch, or home and the name of the
11 owner.

12 Section 11. That § 43-44-6 be amended to read as follows:

13 43-44-6. The fee of the secretary of state for filing the application and issuing certificate of
14 registration, alteration, or cancellation shall be fifty seventy-five dollars.

15 The fee for filing any assignment or other transfer of registration shall be ten dollars.

16 The fee for searches, certified copies, and other official acts of the secretary of state,
17 required under the provisions of this chapter, shall be the same as provided by law for similar
18 services except as otherwise specifically provided in this chapter.

19 Section 12. That § 47-1A-122 be amended to read as follows:

20 47-1A-122. The Office of the Secretary of State shall collect the following fees when the
21 documents described in this section are delivered for filing:

22 (1) Articles of incorporation, ~~\$125~~ \$150;

23 (2) Application for use of indistinguishable name, ~~\$20~~ \$25;

24 (3) Application for reserved name, ~~\$20~~ \$25;

- 1 (4) Notice of transfer of reserved name, ~~\$10~~ \$15;
- 2 (5) Application for registered name, ~~\$12~~ \$25;
- 3 (6) Application for renewal of registered name, \$10 \$15. A renewal application may be
4 filed between the first day of October and the thirty-first day of December in each
5 year and shall extend the registration for the following year;
- 6 (7) to (9) Repealed by SL 2008, ch 275, § 27;
- 7 (10) Articles of domestication, ~~\$125~~ \$150;
- 8 (11) Articles of charter surrender, ~~\$125~~ \$150;
- 9 (12) Articles of domestication and conversion, ~~\$125~~ \$150;
- 10 (13) Articles of entity conversion, ~~\$125~~ \$150;
- 11 (14) Amendment of articles of incorporation, ~~\$50~~ \$60;
- 12 (15) Restatement of articles of incorporation, ~~\$50~~ \$60;
- 13 (16) Articles of merger or share exchange, ~~\$50~~ \$60;
- 14 (17) Articles of dissolution, \$10;
- 15 (18) Articles of revocation of dissolution, \$10;
- 16 (19) Certificate of administrative dissolution, no charge;
- 17 (20) Application for reinstatement following administrative dissolution, plus any
18 delinquent annual report filing fees for the period prior to the reinstatement
19 application, ~~\$250~~ \$300;
- 20 (21) Certificate of reinstatement, no charge;
- 21 (22) Certificate of judicial dissolution, no charge;
- 22 (23) Application for certificate of authority, ~~\$550~~ \$750;
- 23 (24) Application for amended certificate of authority, ~~\$200~~ \$250;
- 24 (25) Application for certificate of withdrawal, \$10;

1 (26) Application for transfer of authority, ~~\$20~~ \$25;

2 (27) Certificate of revocation of authority to transact business, no charge;

3 (28) Annual report, ~~\$30~~ \$50;

4 (29) Articles of correction, \$20 \$25;

5 (30) Application for certificate of existence or authorization, \$15 \$20;

6 (31) Any other document required or permitted to be filed by this chapter, \$20.

7 The Office of the Secretary of State shall collect a fee of ~~twenty-five~~ thirty dollars each time
8 process is served on the Office of the Secretary of State under this chapter. The party to a
9 proceeding causing service of process is entitled to recover this fee as costs if the party prevails
10 in the proceeding.

11 Section 13. That § 47-14A-57 be amended to read as follows:

12 47-14A-57. No ~~documents~~ document required to be filed under this section ~~becomes~~ is
13 effective until the applicable fee required by this section is paid. The ~~secretary of state may~~
14 ~~promulgate rules, pursuant to chapter 1-26, relating to the actual fee to be charged for the use~~
15 ~~of this state consistent with this section:~~

16 ~~(1) Upon the receipt for filing of an application for reservation of name, and application~~
17 ~~for renewal of reservation, or notice of transfer or cancellation of reservation~~
18 ~~pursuant to this chapter, a fee not to exceed fifty dollars;~~

19 ~~(2) Upon the receipt for filing of a certificate of trust, a certificate of amendment, a~~
20 ~~certificate of cancellation or a certificate of merger or consolidation, a certificate of~~
21 ~~correction, a corrected certificate, a certificate of termination or amendment or a~~
22 ~~restated certificate, a fee not to exceed one hundred dollars;~~

23 ~~(3) For certifying copies of any paper on file as provided for by this section, a fee not to~~
24 ~~exceed ten dollars for each copy certified;~~

1 ~~(4) For issuing further copies of instruments on file, whether certified or not, a fee not~~
2 ~~to exceed one dollar per page; and~~

3 ~~(5) Upon the receipt for filing of a certificate under this chapter, a fee not to exceed fifty~~
4 ~~dollars.~~

5 ~~In addition to such fees, there may be collected by and paid to the secretary of state the~~
6 ~~following:~~

7 ~~(1) For all services described above that are requested to be completed within the same~~
8 ~~day as the day of the request, an additional fee not to exceed two hundred dollars; and~~

9 ~~(2) For all services described above that are requested to be completed within a~~
10 ~~twenty-four-hour period from the time of the request, an additional fee not to exceed~~
11 ~~one hundred dollars following fees shall be paid to and collected by the secretary of~~
12 ~~state for the use of the state:~~

13 (1) Application for reservation of name, \$50;

14 (2) Application for renewal of reservation, \$50;

15 (3) Notice of transfer or cancellation of reservation, \$50;

16 (4) Certificate of trust, \$125;

17 (5) Certificate of amendment, \$125;

18 (6) Certificate of cancellation, \$125;

19 (7) Certificate of merger or consolidation, \$125;

20 (8) Certificate of correction, \$125;

21 (9) Certificate of termination or amendment or a restated certificate, \$125; and

22 (10) All other certificates filed under this chapter, \$50.

23 Section 14. That § 47-14B-22 be amended to read as follows:

24 47-14B-22. No document required to be filed under this chapter shall be effective until

1 the applicable fee required by this section is paid. The following fees shall be paid to and
2 collected by the secretary of state for the use of the state:

- 3 (1) Upon receipt for filing of an application for registration as a foreign business trust,
4 a certificate, or a certificate of cancellation, a fee ~~not to exceed fifty~~ of one hundred
5 twenty-five dollars; and
- 6 (2) Upon the receipt for filing of a certificate, a fee ~~not to exceed~~ of fifty dollars.

7 Section 15. That § 47-28-6 be amended to read as follows:

8 47-28-6. The secretary of state shall charge and collect for:

- 9 (1) Filing articles of incorporation and issuing a certificate of incorporation, ~~twenty-five~~
10 thirty dollars;
- 11 (2) Filing articles of amendment and issuing a certificate of amendment, ~~ten~~ fifteen
12 dollars;
- 13 (3) Filing articles of merger or consolidation and issuing a certificate of merger or
14 consolidation, ~~ten~~ fifteen dollars;
- 15 (4) Repealed by SL 2008, ch 275, § 72;
- 16 (5) Filing articles of dissolution, five dollars;
- 17 (6) Filing an application of a foreign corporation for a certificate of authority to conduct
18 affairs in this state and issuing a certificate of authority, one hundred twenty-five
19 dollars;
- 20 (7) Filing an application of a foreign corporation for an amended certificate of authority
21 to conduct affairs in this state and issuing an amended certificate of authority, ~~twenty~~
22 twenty-five dollars;
- 23 (8) Filing an application for withdrawal of a foreign corporation and issuing a certificate
24 of withdrawal, five dollars;

1 (9) Filing any other statement or report, including an annual report, of a foreign
2 corporation, ten dollars;

3 (10) Filing an annual report of a domestic nonprofit corporation under chapter 47-24, ten
4 dollars; and

5 (11) Filing a petition for reinstatement and issuing a certificate of reinstatement, ~~twenty-~~
6 five thirty dollars; and

7 (12) Filing a notice of sale, transfer, or merger, fifteen dollars.

8 Section 16. That § 47-28-7 be amended to read as follows:

9 47-28-7. The secretary of state shall charge and collect, at the time of any service of process
10 on the secretary of state as resident agent of a corporation, ~~twenty-five~~ thirty dollars, which
11 amount may be recovered as taxable costs by the party to the suit or action causing the service
12 to be made if the party prevails in the suit or action.

13 Section 17. That § 47-28-8 be amended to read as follows:

14 47-28-8. The secretary of state shall charge and collect for furnishing a certified copy of any
15 document, instrument, or paper relating to a corporation, one dollar per page, and ~~ten~~ fifteen
16 dollars for the certificate and affixing the seal thereto.

17 Section 18. That § 47-34A-212 be amended to read as follows:

18 47-34A-212. The secretary of state shall charge and collect for:

19 (a) Filing the articles of organization in the case of a domestic limited liability company,
20 a filing fee of one hundred ~~twenty-five~~ fifty dollars. Filing the articles of organization
21 in the case of a foreign limited liability company, a filing fee of ~~five~~ seven hundred
22 fifty dollars;

23 (b) Deleted by SL 2004, ch 279, § 2.

24 (c) A reporting fee of fifty dollars, due and payable with the filing of each annual report.

1 Section 19. That § 47-34A-811 be amended to read as follows:

2 47-34A-811. (a) A limited liability company administratively dissolved may apply to the
3 secretary of state for reinstatement after the effective date of dissolution. The applicant shall
4 submit with the application the appropriate filing fee. The secretary of state shall base charge
5 filing fees on for any delinquent annual reports report and fees for the period prior to the
6 reinstatement application a fee for application of reinstatement in the amount of one hundred
7 fifty dollars. The application must:

8 (1) Recite the name of the company and the effective date of its administrative
9 dissolution;

10 (2) State that the ground for dissolution either did not exist or have been eliminated;

11 (3) State that the company's name satisfies the requirements of § 47-34A-105; and

12 (4) Contain a certificate from the appropriate state authority reciting that all taxes owed
13 by the company have been paid.

14 (b) If the secretary of state determines that the application contains the information required
15 by subsection (a) and that the information is correct, the secretary of state shall cancel the
16 certificate of dissolution and prepare a certificate of reinstatement that recites this determination
17 and the effective date of reinstatement, file the original of the certificate, and serve the company
18 with a copy of the certificate.

19 (c) When reinstatement is effective, it relates back to and takes effect as of the effective date
20 of the administrative dissolution and the company may resume its business as if the
21 administrative dissolution had never occurred.

22 Section 20. That § 47-34A-1206 be amended to read as follows:

23 47-34A-1206. The secretary of state may charge the following fees:

24 (a) For amending or restating the articles of organization in the case of a domestic

1 limited liability company, a filing fee of ~~fifty~~ sixty dollars. For amending the
2 registration in the case of a foreign limited liability company, a filing fee of ~~five~~
3 seven hundred ~~fifty~~ dollars;

4 (b) For filing articles of termination, ten dollars;

5 (c) For filing articles of merger, ~~fifty~~ sixty dollars;

6 (d) For filing a statement of dissociation, ten dollars;

7 (e) For filing an application to reserve a name, ~~twenty~~ twenty-five dollars;

8 (f) For issuing a certificate of existence, ~~fifteen~~ twenty dollars;

9 (g) For filing an application for registration of name, ~~one dollar for each month, or~~
10 ~~fraction thereof, between the date of filing such application and December thirty-first~~
11 ~~of the calendar year in which such application is filed~~ twenty-five dollars;

12 (h) For filing an annual renewal of registration, a limited liability company which has in
13 effect a registration of its name, may renew such registration from year to year by
14 annually filing an application for renewal setting forth the facts required to be set
15 forth in an original application for registration and a certificate of good standing as
16 required for the original registration and by paying a fee of ~~ten~~ fifteen dollars. A
17 renewal application may be filed between the first day of October and the thirty-first
18 day of December in each year and shall extend the registration for the following year;

19 (i) For acting as agent for service of process the secretary of state shall charge and
20 collect at the time of such service ~~twenty-five~~ thirty dollars which may be recoverable
21 as taxable costs by the party to the suit or action causing the service to be made if the
22 party prevails in the suit or action.

23 Section 21. That § 48-7-206.1 be amended to read as follows:

24 48-7-206.1. The provisions of § 1-8-10 notwithstanding, the fee for filing any document

1 required under this chapter with the secretary of state is one hundred twenty-five dollars.

2 Section 22. That § 48-7A-1003 be amended to read as follows:

3 48-7A-1003. (a) A limited liability partnership, and a foreign limited liability partnership
4 authorized to transact business in this state, shall file an annual report pursuant to §§ 59-11-24
5 to 59-11-26, inclusive.

6 (b) Repealed by SL 2008, ch 275, § 86.

7 (c) The secretary of state may revoke the statement of qualification of a partnership that fails
8 to file an annual report when due or pay the required filing fee. To do so, the secretary of state
9 shall provide the partnership at least sixty days' written notice of intent to revoke the statement.
10 The notice must be mailed to the partnership at its chief executive office set forth in the last
11 filed statement of qualification or annual report. The notice must specify the annual report that
12 has not been filed, the fee that has not been paid, and the effective date of the revocation. The
13 revocation is not effective if the annual report is filed and the fee is paid before the effective
14 date of the revocation.

15 (d) A revocation under subsection (c) only affects a partnership's status as a limited liability
16 partnership and is not an event of dissolution of the partnership.

17 (e) A partnership whose statement of qualification has been revoked may apply to the
18 secretary of state for reinstatement within two years after the effective date of the revocation.
19 The applicant shall submit with the application the filing fee of one hundred twenty-five dollars,
20 plus any delinquent annual reports and fees for the period prior to the reinstatement application.

21 The application must state:

22 (1) The name of the partnership and the effective date of the revocation; and

23 (2) That the ground for revocation either did not exist or has been corrected.

24 (f) A reinstatement under subsection (e) relates back to and takes effect as of the effective

1 date of the revocation, and the partnership's status as a limited liability partnership continues as
2 if the revocation had never occurred.

3 Section 23. That § 48-7A-1208 be amended to read as follows:

4 48-7A-1208. The provisions of § 1-8-10 notwithstanding, the fee for filing the statements
5 and reports provided for in the following sections with the secretary of state is as follows:

6 (1) Section 48-7A-303, Statement of Authority, one hundred twenty-five dollars;

7 (2) Section 48-7A-304, Statement of Denial, ten dollars;

8 (3) Section 48-7A-704, Statement of Dissociation, ten dollars;

9 (4) Section 48-7A-805, Statement of Dissolution, ten dollars;

10 (5) Section 48-7A-907, Statement of Merger, fifty sixty dollars;

11 (6) Section 48-7A-1001, Statement of Qualification, one hundred twenty-five dollars;

12 (6A) Section 48-7A-1001, Statement of Change, ten dollars;

13 (7) Section 48-7A-1003, Annual Report, ~~thirty~~ fifty dollars;

14 (8) Section 48-7A-1001.1, Statement of Amendment, ~~ten~~ fifteen dollars;

15 (9) Section 48-7A-1001.2, Statement of Cancellation, ten dollars;

16 (10) Section 48-7A-1102, Statement of Foreign Qualification, one hundred twenty-five
17 dollars;

18 (11) Section 48-7A-1102.1, Statement of Amendment, ~~ten~~ of Foreign Qualification,
19 fifteen dollars;

20 (12) Section 48-7A-1102.2, Statement of Cancellation, ten dollars; and

21 (13) Filing any other statement, ten dollars.

22 Each limited liability partnership, domestic or foreign, that fails or refused to file its annual
23 report for any year within the time prescribed is subject to a penalty of fifty dollars to be
24 assessed by the secretary of state.

1 Section 24. That § 57A-9-525 be amended to read as follows:

2 57A-9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and
3 indexing a record under this part, other than an initial financing statement of the kind described
4 in subsection (b), is the amount specified in subsection (c), if applicable, plus:

5 (1) Twenty ~~Twenty~~ Twenty-five dollars if the record is communicated in writing and consists of
6 one page, and ~~four~~ five dollars for additional pages. One dollar of this fee shall be
7 deposited into the financing statement filing fee fund;

8 (2) Fifteen ~~Twenty~~ dollars if the record is communicated by internet. One dollar of this
9 fee shall be deposited into the financing statement filing fee fund; and

10 (3) Twenty ~~Twenty~~ Twenty-five dollars if the record is communicated by another medium
11 authorized by filing-office rule.

12 (b) Except as otherwise provided in subsection (e), the fee for filing, whether communicated
13 in writing, electronically, or another medium authorized by filing-office rule, and indexing an
14 initial financing statement of the following kind is the amount specified in subsection (c), if
15 applicable, plus:

16 (1) Thirty ~~Thirty~~ Forty dollars if the financing statement indicates that it is filed in connection
17 with a public-finance transaction;

18 (2) Thirty ~~Thirty~~ Forty dollars if the financing statement indicates that it is filed in connection
19 with a manufactured-home transaction.

20 (c) Except as otherwise provided in subsection (e), if a record is communicated in writing
21 or electronically, the fee for each name more than one required to be indexed is ~~two~~ three
22 dollars.

23 (d) The fee for responding to a request for information from the filing office, including for
24 issuing a certificate showing whether there is on file any financing statement naming a particular

1 debtor, is:

2 (1) Twenty dollars if the request is communicated in writing; and

3 (2) Ten dollars if the request is communicated by internet authorized by filing-office
4 rule.

5 Upon request the filing officer shall furnish a copy of any filed financing statement or
6 statement of assignment for a uniform fee of one dollar per page.

7 (e) This section does not require a fee with respect to a record of a mortgage which is
8 effective as a financing statement filed as a fixture filing or as a financing statement covering
9 as-extracted collateral or timber to be cut under § 57A-9-502(c). However, the recording and
10 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

880Q0106

HOUSE JUDICIARY ENGROSSED NO. HB 1086 - 1/23/2009

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to provide for and to require the attachment of an affidavit
2 in certain garnishment proceedings.

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

4 Section 1. That § 21-18-31 be amended to read as follows:

5 21-18-31. The plaintiff may in all cases move the court upon the answer of the garnishee and
6 of the defendant, if ~~he~~ the defendant shall also answer, for such judgment as ~~he shall be the~~
7 plaintiff is entitled to thereon, ~~but such~~. Such judgment ~~shall be no~~ is not a bar beyond the facts
8 stated in such answers. The plaintiff shall attach an affidavit to the motion setting forth:

9 (1) Amount that is owed on judgment and daily interest;

10 (2) Additional costs claimed;

11 (3) Credit for any payments made;

12 (4) Net balance due;

13 (5) Specific request for payment of the garnished amount sufficient to satisfy judgment;

14 and

15 (6) An agreement that the court order that any surplus be returned to defendant.

