

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

400Q0081

HOUSE COMMERCE ENGROSSED NO. **HB 1059** 1/26/2009

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

1 FOR AN ACT ENTITLED, An Act to define and prohibit controlled business in insurance.

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

3 Section 1. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 As used in this chapter, the term, controlled business, means insurance written on the
6 interests of the producer, producer's immediate family, or producer's employer; or insurance
7 covering the producer, the members of the producer's immediate family, a business entity that
8 acts as an insurance producer or receives an insurance commission, or the officers, directors,
9 substantial stockholders, partners, or employees of such a business entity of which the producer
10 or member of the producer's immediate family is an officer, a director, a substantial stockholder,
11 a partner, an associate, or an employee.

12 Section 2. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The director may not grant, renew, continue, or permit to continue any license if the director



1 determines that the license is being used, will be used, or has been used by the applicant or
2 producer for the purpose of writing controlled business. A producer license is deemed to have
3 been or intended to be used for the purpose of writing controlled business if the director
4 determines that during any twelve month period the aggregate commissions earned from the
5 controlled business exceeded thirty percent of the aggregate commissions earned on all business
6 written by the producer during the same period of time.

7 Section 3. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 A business entity, that is incorporated or a partnership, is considered to be writing controlled
10 business pursuant to section 2 of this Act if the aggregate commissions on business written by
11 the business entity covering the owners, stockholders, members, or partners of the business
12 entity constitute more than thirty percent of the aggregate commissions earned by that business
13 entity on all business written during any twelve month period of time.

14 Section 4. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The provisions of sections 1 to 3, inclusive, of this Act, do not apply to insurance written
17 in connection with credit transactions, including title insurance.

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

973Q0066

HOUSE JUDICIARY ENGROSSED NO. **HB 1082** 1/26/2009

Introduced by: Representatives Hunt, Lust, and Thompson and Senators Hunhoff (Jean) and Hundstad at the request of the Interim Committee on Rules Review

1 FOR AN ACT ENTITLED, An Act to revise the procedure to adopt rules.

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

3 Section 1. That § 1-26-1.3 be amended to read as follows:

4 1-26-1.3. ~~To assist him in carrying out his duties, the~~ The director may delegate the duties
5 imposed ~~upon him~~ by this chapter to other persons in the Legislative Research Council's office.
6 ~~Such~~ Each person to whom the duties are delegated ~~shall have~~ has the same power and authority
7 as the director for the purposes of this chapter. The papers specifying the delegation of duties
8 shall be filed with the secretary of state.

9 Section 2. That § 1-26-4 be amended to read as follows:

10 1-26-4. The following notice, service, and public hearing procedure shall be ~~complied with~~
11 ~~prior to the adoption, amendment, or repeal of any rule, except an emergency used to adopt,~~
12 ~~amend, or repeal a permanent rule:~~

13 (1) An agency shall serve a copy of a proposed rule and any publication described in § 1-
14 26-6.6 upon the departmental secretary, bureau commissioner, public utilities



1 commissioner, or constitutional officer of the department to which it is attached for
2 the secretary's, commissioner's, or officer's written approval to proceed;

3 (2) Fifteen days after the service required by subdivision (1) or upon After receiving the
4 written approval of that the secretary, commissioner, or officer to proceed, whichever
5 comes first, and twenty days before the hearing, the agency shall serve the director
6 with a copy of: the proposed rules, a copy of; any publication described in § 1-26-6.6;
7 a copy of; the fiscal note described in § 1-26-4.2, a copy of; the impact statement on
8 small business described in § 1-26-2.1, and a copy of; and the notice of hearing
9 required by § 1-26-4.1. The copy of these documents shall be served at least twenty
10 days before the public hearing to adopt the proposed rules. Any publication described
11 in § 1-26-6.6 shall be returned to the agency upon completion of the director's review
12 and retained by the agency. Also, twenty days before the public hearing, the agency
13 shall serve the commissioner of the Bureau of Finance and Management with a copy
14 of: the proposed rules, a copy of; the fiscal note described in § 1-26-4.2, a copy of;
15 the impact statement on small business described in § 1-26-2.1, and a copy of; and
16 the notice of hearing required by § 1-26-4.1;

17 (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-
18 4.1, at least twenty days before the public hearing;

19 (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise the
20 agency of any recommended corrections to the proposed rule. If the agency does not
21 concur with any recommendation of the director, the agency may appeal the
22 recommended correction to the interim Rules Review Committee for appropriate
23 action;

24 (5) The agency shall afford all interested persons reasonable opportunity to submit

1 amendments, data, opinions, or arguments, either orally or in writing, or both, at a
 2 public hearing held for that purpose to adopt the rule. The hearing may be continued
 3 from time to time until its business has been completed. The agency shall keep
 4 minutes of the hearing. A majority of the members of any board or commission
 5 authorized to pass rules must be present during the course of the public hearing
 6 required by this subdivision;

7 ~~(5)~~(6) For a period of ten days after the hearing If the agency is headed by a secretary,
 8 commissioner, or officer, the agency shall accept written comments regarding the
 9 proposed rule, unless the entity for a period of ten days after the public hearing. If the
 10 agency promulgating the rule is a part-time citizen board, commission, committee,
 11 or task force, or other multiperson decision maker, in which case the record of
 12 written comments shall be closed at the conclusion of the public hearing. However,
 13 the hearing may be specifically continued for the purpose of taking additional
 14 comments;

15 ~~(6)~~(7) After the written comment period, the agency shall fully consider all written and oral
 16 submissions amendments, data, opinions, or arguments regarding the proposed rule.
 17 A proposed rule may be modified or amended at this time to include or exclude
 18 matters which were described in the notice of hearing;

19 ~~(7)~~ After reviewing the proposed rule, the director shall advise the agency of any
 20 recommended corrections to the proposed rule;

21 ~~(8)~~ If the agency does not concur with any recommendation of the director, the agency
 22 shall appeal the recommended correction to the Interim Rules Review Committee for
 23 appropriate action; and

24 ~~(9)~~(8) The agency shall, at least five days prior to the time set for the agency to appear

1 ~~before the committee to present the rules, serve the minutes of the hearing, a~~
2 ~~complete record of written comments, the impact statement on small business, the~~
3 ~~fiscal note, the information required in § 1-26-4.8, and a corrected copy of the rules~~
4 ~~on the members of the Interim Rules Review Committee at least five days before the~~
5 ~~agency appears before the committee to present the rules.~~

6 The time periods specified in this section may be extended by the agency. The requirement
7 to serve the committee in subdivision (9) may be waived by the committee chair if the agency
8 presents sufficient reasons to the committee chair that the agency is unable to comply with the
9 time limit. The waiver may not be granted solely for the convenience of the agency.

10 Section 3. That § 1-26-4.1 be amended to read as follows:

11 1-26-4.1. Any notice required by this chapter The notice of a public hearing of an agency's
12 intent to adopt, amend, or repeal a rule shall be published in a manner selected to notify persons
13 likely to be affected by the proposed rule. Publication of a notice as a display advertisement At
14 a minimum the notice of the public hearing shall be published in at least three newspapers of
15 general circulation in different parts of the state shall be construed as compliance by the agency
16 with the requirements for publication. The provisions of chapter 17-2 do not apply to notices
17 required by this section.

18 Notices of hearings and notices of intention to adopt emergency rules shall be mailed to all
19 persons who have made timely requests The notice of a public hearing or the notice of intent to
20 adopt an emergency rule shall be mailed to each person who has made a timely request of the
21 agency for advance notice of its rule-making proceedings.

22 A notice of hearing or a notice of intent to adopt emergency rules shall contain a narrative
23 description of the effect of the proposed rule and the reasons for adopting the proposed rule. A
24 notice of hearing shall also state where and when the hearing will be held, how amendments,

1 data, opinions, and arguments may be presented by persons unable to attend the hearing, and
2 how the public may obtain copies of the proposed rule.

3 Section 4. That § 1-26-5 be amended to read as follows:

4 1-26-5. Prior to the adoption or amendment of an emergency rule, an agency shall publish
5 a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall
6 serve on the person specified by subdivision 1-26-4(1), each member of the Interim Rules
7 Review Committee, and the director:

8 (1) A copy of the proposed rule, which shall bear a special number to distinguish it from
9 a permanent rule;

10 (2) Any publication described in § 1-26-6.6 which shall be returned to the agency upon
11 completion of the director's review and retained by the agency; and

12 (3) A statement, with the reasons therefor, that the emergency procedure is necessary:
13 because of imminent peril to the public health, safety, or welfare; is necessary; to
14 prevent substantial unforeseen financial loss to state government, or is necessary; or
15 because of the occurrence of an unforeseen event at a time when the adoption of a
16 rule in response to such event by the emergency procedure is required to secure or
17 protect the best interests of the state or its residents.

18 Any agency may use the emergency rule adoption procedure. However, no agency may use
19 the emergency rule adoption procedure for the convenience of the agency merely to avoid the
20 consequences for failing to timely promulgate rules.

21 Section 5. That § 1-26-6.3 be amended to read as follows:

22 1-26-6.3. The director may notify any agency whose rules are not in the proper style and
23 form as prescribed by him. A copy of such this notice shall be filed with the secretary of state.
24 One hundred eighty days after an agency receives such notification, the rules of that agency shall

1 be of no further force and effect unless redrafted in the prescribed style and form and filed with
2 the secretary of state and the director.

3 Section 6. That § 1-26-6.5 be amended to read as follows:

4 1-26-6.5. The director shall review ~~the rules received~~ each rule for compliance with ~~his~~ the
5 requirements for form, style, and clarity, ~~for their legality and for the sufficiency of the reasons~~
6 ~~for the passage of emergency rules.~~ The director shall review each rule for legality. The review
7 ~~for legality is a determination that the rule is authorized by the standards provided in the statutes~~
8 ~~cited by the agency to promulgate the rule. The director shall review the statement of reasons~~
9 ~~that the emergency procedure is necessary. If the director finds need for change ~~he shall make~~~~
10 ~~his, the director shall make the requirements known in writing to the agency prior to the hearing~~
11 ~~or within three days in the case of emergency rules.~~

12 Section 7. That § 1-26-7 be amended to read as follows:

13 1-26-7. Each agency shall keep the original records, documents, and instruments required
14 ~~by this chapter. Agencies and shall make copies of all records, documents, and exhibits available~~
15 ~~to members of the Legislature upon request. The secretary of state shall keep a copy of the~~
16 ~~agency's current rules and the certificates pertaining thereto, which shall be open to public~~
17 ~~inspection.~~

18 Section 8. That § 1-26-8 be amended to read as follows:

19 1-26-8. Each rule ~~hereafter adopted~~ is effective twenty days after filing with the secretary
20 ~~of state, except that:~~

21 (1) ~~If a later date is required by statute or specified in the rule, the later date is the~~
22 ~~effective date;~~

23 (2) ~~Subject to applicable constitutional or statutory provisions, an emergency rule~~
24 ~~becomes~~ is effective immediately upon filing with the secretary of state, or at a stated

1 date less than twenty days thereafter later. No emergency rule shall may remain in
2 effect for a period of longer than ninety days.

3 Section 9. That § 1-26-12.1 be amended to read as follows:

4 1-26-12.1. To assist interested persons dealing with it, each agency which has adopted rules
5 shall prepare and make available for inspection in a prominent place at each of its offices
6 servicing the public, either electronically or through paper copy, a list of its the agency's rules
7 and a descriptive statement of its central and field organization, including. This information
8 includes the locations of persons and places from which the public can secure information, make
9 submittals or requests, or obtain decisions. All such lists and descriptive statements shall be kept
10 current.

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.

