

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

544Z0789

## HOUSE COMMERCE AND ENERGY

### ENGROSSED NO. **HB 1287** - 2/14/2018

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

Introduced by: Representatives DiSanto, Brunner, Campbell, Dennert, Frye-Mueller, Goodwin, Gosch, Haugaard, Heinemann, Howard, Jensen (Kevin), Kaiser, Latterell, May, Peterson (Sue), Pischke, Qualm, Rasmussen, Rhoden, and Steinhauer and Senators Curd, Greenfield (Brock), Jensen (Phil), Nelson, Netherton, Stalzer, Wiik, and Youngberg

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding multiple employer  
2 trusts.

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

4 Section 1. That § 58-18-88 be amended to read:

5 58-18-88. A self-funded multiple employer trust, as defined in section 3 of the federal  
6 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that is  
7 sponsored by an association under subdivision (2), may be authorized by the director if the  
8 multiple employer trust meets all of the following conditions:

9 (1) The multiple employer trust is administered by an authorized insurer or a licensed or  
10 registered third-party administrator;

11 (2) The multiple employer trust ~~meets all of the requirements of § 58-18B-59~~ is  
12 sponsored and maintained by at least one bona fide association of employers that is



1 organized under the laws of this or any other state and has a governing charter,  
2 bylaws, and a board of directors;

3 (3) ~~The multiple employer trust is established by a homogenous trade, industry, or~~  
4 ~~professional association of employers that has a constitution or bylaws, is organized~~  
5 ~~under the laws of South Dakota and has been maintained in good faith for purposes~~  
6 ~~other than providing insurance for at least ten continuous years~~ Each sponsoring  
7 association under subdivision (2) shall be comprised of twenty-five or more  
8 members, all of whom are in the same trade or industry;

9 (4) The association sponsoring the multiple employer trust under subdivision (2) is  
10 engaged in substantial activity for its members other than sponsorship of an employer  
11 welfare benefit plan;

12 (5) The association sponsoring the multiple employer trust is a nonprofit entity ~~organized~~  
13 ~~under applicable South Dakota law;~~

14 (6) The multiple employer trust, upon authorization by the director, participates in the  
15 South Dakota Life and Health Insurance Guaranty Association pursuant to chapter  
16 58-29C and is a member pursuant to subdivision 58-29C-48(12) regarding employers  
17 and employees in this state participating in the multiple employer trust plan;

18 (7) The multiple employer trust:

19 (a) Meets the capital and surplus requirements of § 58-6-23. The director may  
20 approve a request by a multiple employer trust for a reduced capital and  
21 surplus level if the trust demonstrates any reduction would not compromise  
22 the trust's ability to pay claims on an ongoing basis;

23 (b) Meets the risk based capital requirements of § 58-4-48;

24 (c) Is subject to the hazardous financial condition requirements of §§ 58-4-39 to

1 58-4-42, inclusive;

2 (d) Invests its assets pursuant to the requirements of chapters 58-26 and 58-27;

3 (e) Is subject to chapter 58-3 on the same basis as insurers;

4 (f) Is subject to the insurers supervision, rehabilitation, and liquidation provisions  
5 of chapter 58-29B;

6 (8) Before application for an authorization is made, the multiple employer trust shall  
7 have received an application for participation from two or more members of the  
8 association who are employers with an aggregate of two hundred or more covered  
9 employees; and

10 (9) The director, after consideration of the impact on the insurance-buying public, has  
11 determined that the arrangement is in the best interest of the public.

12 ~~The director may authorize a multiple employer trust that is not an association meeting the~~  
13 ~~requirements of subdivisions (2) to (5), inclusive, of this section, if the multiple employer trust~~  
14 ~~is comprised exclusively of employers engaged in a common industry for which there is some~~  
15 ~~degree of common ownership, the ownership of two or more participating employers has existed~~  
16 ~~since July 1, 2007, the employers forming the trust were previously providing health benefits~~  
17 ~~collectively to their employees in this state, and the director finds that authorizing the multiple~~  
18 ~~employer trust pursuant to this section is in the public interest.~~

19 Section 2. That § 58-18-90 be amended to read:

20 58-18-90. Except as otherwise provided in §§ ~~58-18-88 to 58-18-94, inclusive, and § 58-~~  
21 ~~18B-59, a~~ this chapter, an authorized multiple employer trust ~~organized pursuant to §§ 58-18-88~~  
22 ~~to 58-18-94, inclusive, and § 58-18B-59 may not be deemed to be or considered to be an~~  
23 ~~insurance company or association of any kind or character under Title 58~~ this title, or subject  
24 to the provisions of §§ 58-8-6 to 58-8-19, inclusive.

Section 3. That § 58-18-91 be amended to read:

58-18-91. A multiple employer trust authorized by ~~§§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59 pursuant to this chapter~~ may have its authorization suspended or revoked by the director for violating any ~~provision of §§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59 applicable provision of this title~~ or because its capital is impaired, ~~and in either instance the~~. The director may take action in lieu of suspension or revocation as though the trust were an insurer as provided by § 58-4-28.1.

Section 4. That § 58-18-93 be amended to read:

58-18-93. No agent may sell, solicit, or negotiate a self-funded multiple employer trust authorized by ~~§§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59 pursuant to this chapter~~ unless the agent is licensed to sell life and health insurance pursuant to chapter 58-30.

Section 5. That § 58-18-94 be amended to read:

58-18-94. The provisions of ~~§§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59~~ this chapter regarding the authorization of multiple employer trusts do not apply to any single employer self-funded plan as preempted by Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144 or any arrangement exempted pursuant to § 1-24-17. ~~A~~ An authorized self-funded multiple employer trust ~~authorized by §§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59~~ may include as participating employers both small employers and large employers.