

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

652L0510

## HOUSE BILL NO. 1188

Introduced by: Representatives Michels, Gillespie, Rounds, and Willadsen and Senators  
Sutton (Dan) and Bogue

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding amounts payable  
2 under reinsurance contracts in liquidation proceedings of insurers.

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

4 Section 1. That § 58-29B-94 be amended to read as follows:

5 58-29B-94. The amount recoverable by the liquidator from reinsurers may not be reduced  
6 as a result of delinquency proceedings, ~~regardless of any provision in the reinsurance contract~~  
7 ~~or other agreement. Payment made directly to an insured or other creditor may not diminish the~~  
8 ~~reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for~~  
9 ~~direct coverage of a named insured and the payment was made in discharge of that obligation~~  
10 unless the reinsurance contract provides, in substance, that in the event of the insolvency of the  
11 ceding insurer, the reinsurance is payable under a contract reinsured by the reinsurer on the basis  
12 of reported claims allowed in the liquidation proceeding or proof of payment of the claim by a  
13 guaranty association, without diminution because of the insolvency of the ceding insurer. Such  
14 payments shall be made directly to the ceding insurer or to its domiciliary liquidator unless:

15 (1) The contract or other written agreement specifically provides another payee of such



1           reinsurance in the event of the insolvency of the ceding insurer; or  
2       (2)   The reinsurer, with the consent of the direct insured, has assumed such policy  
3           obligations of the ceding insurer as direct obligations of the reinsurer to the payees  
4           under such policies and in substitution for the obligations of the ceding insurer to  
5           such payees. The consent of the liquidator is required for any such assumption of  
6           policy obligations effected after an order of liquidation.

7       Section 2. That chapter 58-29B be amended by adding thereto a NEW SECTION to read as  
8 follows:

9       Notwithstanding § 58-29B-94, if a life and health insurance guaranty association has made  
10 the election to succeed to the rights and obligations of the insolvent insurer under the contract  
11 of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the  
12 contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for  
13 such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant  
14 to the direction of the guaranty association or its designated successor. Any payment made at  
15 the direction of the guaranty association or its designated successor by the reinsurer discharges  
16 the reinsurer of any further liability to any other party for the claim payment.

17       Section 3. That § 58-14-4 be amended to read as follows:

18       58-14-4. No credit may be allowed, as an asset or as a deduction from liability, to any ceding  
19 insurer for reinsurance unless the reinsurance contract provides, in substance, that in the event  
20 of the insolvency of the ceding insurer, the reinsurance is payable under a contract reinsured by  
21 the assuming insurer reinsurer on the basis of the liability of the ceding insurer under the  
22 contracts reinsured reported claims allowed in the liquidation proceeding or proof of payment  
23 of the claim by a guaranty association without diminution because of the insolvency of the  
24 ceding insurer ~~or unless under the reinsurance contract the liability for the reinsurance is~~

1 ~~assumed by the assuming reinsurer, or insurer, as of the same effective date. Such payments~~  
2 shall be made directly to the ceding insurer or to its domiciliary liquidator unless:

3 (1) The contract or other written agreement specifically provides another payee of such  
4 reinsurance in the event of the insolvency of the ceding insurer; or

5 (2) The reinsurer, with the consent of the direct insured, has assumed such policy  
6 obligations of the ceding insurer as direct obligations of the reinsurer to the payees  
7 under such policies and in substitution for the obligations of the ceding insurer to  
8 such payees. The consent of the liquidator is required for any such assumption of  
9 policy obligations effected after an order of liquidation.

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

12 Notwithstanding § 58-14-4, if a life and health insurance guaranty association has made the  
13 election to succeed to the rights and obligations of the insolvent insurer under the contract of  
14 reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract  
15 of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such  
16 coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the  
17 direction of the guaranty association or its designated successor. Any payment made at the  
18 direction of the guaranty association or its designated successor by the reinsurer discharges the  
19 reinsurer of any further liability to any other party for the claim payment.

20 Section 5. That chapter 58-14 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 The reinsurance agreement may provide that the domiciliary liquidator of an insolvent  
23 ceding insurer shall give written notice to the reinsurer of the pendency of a claim against such  
24 ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the

1 liquidation proceeding. During the pendency of such claim, any reinsurer may investigate such  
2 claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated  
3 any defenses that it deems available to the ceding insurer or its liquidator. Such expense may  
4 be filed as a claim against the insolvent ceding insurer as a Class 6 claim pursuant to § 58-29B-  
5 124 to the extent of a proportionate share of the benefit that may accrue to the ceding insurer  
6 solely as result of the defense undertaken by the reinsurer. If two or more reinsurers are involved  
7 in the same claim and a majority in interest elect to interpose a defense to such claim, the  
8 expense shall be apportioned in accordance with the terms of the reinsurance agreement as  
9 though such expense had been incurred by the ceding insurer.