

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

634L0716

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 163 - 02/08/2005

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

Introduced by: Senators Dempster, Broderick, Earley, McCracken, and Schoenbeck and Representatives Vehle, Murschel, O'Brien, and Peters

1 FOR AN ACT ENTITLED, An Act to authorize certain multiple employer trusts.

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

3 Section 1. That chapter 58-18B be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The rating requirements of this chapter do not apply to an association if all of the following
6 criteria are met:

7 (1) The trade, industry, or professional association is comprised in part of homogenous
8 small employers, meets the requirements for the issuance of group health insurance
9 pursuant to § 58-18-3 and if applicable, § 58-18-4, has a constitution or bylaws, has
10 been organized under the laws of South Dakota and maintained in good faith for
11 purposes other than providing insurance for at least ten continuous years, and will
12 provide coverage to not fewer than five hundred employees by January 1, 2007;

13 (2) The group health plan provides coverage to association members' employees and
14 dependents on a community rated basis;



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

3 Section 2. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A self-funded multiple employer trust, as defined in section 3 of the federal Employee
6 Retirement Income Security Act of 1974, 29 U.S.C. §1002, paragraph 40, may be authorized
7 by the director if the multiple employer trust meets all of the following conditions:

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

10 (2) The multiple employer trust meets all of the requirements of section 1 of this Act;

11 (3) The multiple employer trust is established by a homogenous trade, industry, or
12 professional association of employers that has a constitution or bylaws, is organized
13 under the laws of South Dakota and has been maintained in good faith for purposes
14 other than providing insurance for at least ten continuous years;

15 (4) The association sponsoring the multiple employer trust is engaged in substantial
16 activity for its members other than sponsorship of an employer welfare benefit plan;

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

19 (6) The multiple employer trust, upon authorization by the director, participates in the
20 South Dakota Life and Health Insurance Guaranty Association pursuant to chapter
21 58-29C and is a member pursuant to subdivision 58-29C-48(12);

22 (7) The multiple employer trust:

23 (a) Meets the capital and surplus requirements of § 58-6-23;

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

- 1 (c) Is subject to the hazardous financial condition requirements of §§ 58-4-39 to
- 2 58-4-42, inclusive;
- 3 (d) Invests its assets pursuant to the requirements of chapters 58-26 and 58-27;
- 4 (e) Is subject to chapter 58-3 on the same basis as insurers;
- 5 (f) Is subject to the insurers supervision, rehabilitation, and liquidation provisions
- 6 of chapter 58-29B.

7 Section 3. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The director shall promulgate rules, pursuant to chapter 1-26, pertaining to multiple
10 employer trusts in the following areas:

- 11 (1) Consumer protection issues including minimum coverage standards for health
- 12 policies; claims processing and payment practices; resolution of consumer
- 13 complaints; compliance with federal HIPAA standards; plan termination processes
- 14 and managed care protections; financial and market conduct record keeping and
- 15 reporting; and unfair trade practices; and
- 16 (2) Financial and plan solvency issues including investment capital requirements; surplus
- 17 and deposit requirements; claims reserves, stop loss coverage, and standards for entry
- 18 and exit of plan members including a nonrefundable minimum deposit of not less
- 19 than two thousand five hundred dollars plus two percent of first year contributions
- 20 on an annual basis; and production of financial statements, audited financial
- 21 statements, and actuarial opinions.

22 Section 4. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Except as otherwise provided in this Act, a multiple employer trust organized pursuant to

1 this Act may not be deemed to be or considered to be an insurance company or association of
2 any kind or character under Title 58, or subject to the provisions of §§ 58-8-6 to 58-8-19,
3 inclusive.

4 Section 5. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A multiple employer trust authorized by this Act may have its authorization suspended or
7 revoked by the director for violating any provision of this Act or because its capital is impaired,
8 and in either instance the director may take action in lieu of suspension or revocation as though
9 the trust were an insurer as provided by § 58-4-28.1.

10 Section 6. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If not otherwise provided, a multiple employer trust doing business in this state on a self-
13 funded basis shall pay premium taxes as required in chapter 10-44 based upon the amount each
14 participating employer contributes, including any amounts contributed by employees and
15 dependents, to the plan on an annual basis. If a multiple employer trust purchases excess or stop
16 loss coverage, the multiple employer trust may not be taxed additionally for that coverage.

17 Section 7. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No agent may sell, solicit, or negotiate a self-funded multiple employer trust authorized by
20 this Act unless the agent is licensed to sell life and health insurance pursuant to chapter 58-30.

21 Section 8. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The provisions of this Act do not apply to any single employer self-funded plan as
24 preempted by Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144 or any

1 arrangement exempted pursuant to § 1-24-17. A self-funded multiple employer trust authorized
2 by this Act may include as participating employers both small employers and large employers.