AN ACT

ENTITLED, An Act to revise certain provisions regarding the regulation of insurance rating organizations.

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

Section 1. That § 58-24-12 be amended to read as follows:

58-24-12. An insurer may satisfy its obligation to make filings pursuant to this chapter by:

(1) Becoming a member of, or a subscriber to, a licensed rating organization that makes filings; and

(2) Authorizing the director to accept filings on its behalf.

Nothing contained in this chapter may be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

Section 2. That § 58-24-35 be amended to read as follows:

58-24-35. A corporation, unincorporated association, partnership, individual, or any other legal business entity, whether located within or outside this state, may apply for a license as a rating organization by providing the following information in its application:

(1) A copy of its governing documents, to include its constitution, articles of agreement or association, certificate of incorporation, bylaws, rules, and regulations, as applicable;

(2) A list of its members and subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served;

(4) A statement of its qualifications as a rating organization; and

(5) A statement specifying the kind of insurance, or subdivision, class, or part of risk or combination thereof for which the rating organization intends to be licensed.

Section 3. That § 58-24-36 be amended to read as follows:

58-24-36. If the director finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that the contents of its application conform to the requirements of law, the director shall issue a license specifying the kinds of insurance, or subdivisions or classes of risks or parts or combinations thereof for which the applicant is authorized to act as a rating organization. Each application shall be granted or denied in whole or in part by the director within sixty days of the date of its filing with the director.

Section 4. That § 58-24-37 be amended to read as follows:

58-24-37. Each license issued pursuant to § 58-24-36 remains in effect for three years unless suspended or revoked by the director. The license fee for any applicant pursuant to this chapter is twenty-five dollars.

Section 5. That § 58-24-38 be amended to read as follows:

58-24-38. Any license issued pursuant to § 58-24-36 may be suspended or revoked by the director, after hearing upon notice, if the rating organization ceases to meet any requirement of this chapter, including the requirements of initial licensure.

Section 6. That § 58-24-39 be amended to read as follows:

58-24-39. Each rating organization shall notify the director promptly of any change in information from what was provided in its application pursuant to § 58-24-35.

Section 7. That § 58-24-40 be amended to read as follows:

58-24-40. Subject to rules and regulations of the rating organization that have been approved by the director as reasonable, each rating organization shall permit any insurer that is not a member to be a subscriber to its rating services for any kind of insurance for which it is licensed. Notice of any proposed change to a rule shall be given to each subscriber. Each rating organization shall furnish its rating services without discrimination to each member and subscriber.

Section 8. That § 58-24-41 be amended to read as follows:

58-24-41. Any subscriber, member, or insurer may request a hearing held by the director to determine the reasonableness of any rule or regulation of a rating organization in its application to each subscriber or the refusal of any rating organization to admit an insurer as a subscriber. The hearing shall be held upon at least ten days' written notice to such rating organization and to each subscriber or insurer pursuant to chapter 1-26. If the director finds that the rule is unreasonable in its application to subscribers, or that an insurer is denied subscription without justification, the director shall order that the rule is not applicable to subscribers or that the insurer is to be admitted as a subscriber, as applicable.

Section 9. That § 58-24-42 be amended to read as follows:

58-24-42. If, after the hearing held pursuant to § 58-24-41, the director finds that the action of the rating organization was justified, the director shall issue an order affirming its action.

Section 10. That § 58-24-44 be amended to read as follows:

58-24-44. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements, or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Rules shall contain a provision that if any insurer does not furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization within sixty days, the rating organization shall notify the director thereof. All information submitted for examination under this section is confidential.

Section 11. That § 58-24-45 be amended to read as follows:

58-24-45. No rating organization may adopt any rule the effect of which would prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

Section 12. That § 58-24-45.1 be amended to read as follows:

58-24-45.1. An insurer may market insurance through a group insurance or mass marketing plan, franchise, or blanket policy for any line of insurance regulated under this chapter if:

(1) The insured group was not formed solely for the purpose of purchasing insurance; and

(2) The premium is paid or collected by:

(a) An employer, labor union, or the trustee of a fund established by the employer or labor union;

(b) The trustee of a fund established by two or more employers in the same industry, or related industries;

(c) Two or more labor unions or an association which have been in existence for one or more years and which have a constitution and bylaws; or

(d) A wireless telecommunications provider from its customers and the premium is for insurance covering wireless telecommunications equipment.

Section 13. That § 58-24-47 be amended to read as follows:

58-24-47. Any member or subscriber to a rating organization may appeal to the director from the action or decision of the rating organization in approving or rejecting any proposed change in or addition to the filings of the rating organization. The director shall, after a hearing held upon not less than ten days' written notice to the appellant and to the rating organization, issue an order approving the action or decision of the rating organization or, if the director finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings on behalf of its members and subscribers, in a manner consistent with the director's findings within a reasonable time after the issuance of the order.

Section 14. That § 58-24-48 be amended to read as follows:

58-24-48. If an appeal under § 58-24-47 is based upon the failure of the rating organization to make a filing on behalf of the member or subscriber, which is based on a system of expense

provisions which differs, in accordance with the right granted in § 58-24-8, from the system of expense provisions included in a filing made by the rating organization, the director shall, if the director grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the director shall apply the standards set forth in §§ 58-24-5 to 58-24-9, inclusive.

Section 15. That § 58-24-53 be amended to read as follows:

58-24-53. Each group, association, or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate-making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter shall be subject to licensure pursuant to this chapter as an advisory organization.

Section 16. That § 58-24-54 be amended to read as follows:

58-24-54. Each advisory organization shall file with the director the requirements of § 58-24-35 and an agreement that the director may examine the advisory organization in accordance with the provisions of § 58-24-59.

Section 17. That § 58-24-55 be amended to read as follows:

58-24-55. If the director finds that an advisory organization has furnished information or assistance that involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the director may issue an order specifying in what respect such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

Section 18. That § 58-24-56 be amended to read as follows:

58-24-56. No insurer that makes its own filings or any rating organization that submits filings with the division may support its filings by statistics or adopt rate-making recommendations

furnished to it by an advisory organization which has not complied with § 58-24-54 or with an order of the director involving statistics or recommendations issued under § 58-24-55. If the director finds an insurer or rating organization to be in violation of this section the director may issue an order requiring the discontinuance of the violation.

Section 19. That § 58-24-58 be amended to read as follows:

58-24-58. If, after a hearing, the director finds that any activity or practice of any group identified in § 58-24-57 is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the director may issue an order specifying in what respect the activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of the activity or practice.

Section 20. That § 58-24-59 be amended to read as follows:

58-24-59. As often as the director deems necessary, the director shall examine each rating organization licensed in this state as provided in §§ 58-24-35 to 58-24-39, inclusive, each advisory organization referred to in § 58-24-53, and each group, association, or other organization referred to in § 58-24-57. The cost of any examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined. The officers, manager, agents, and employees of the rating organization, advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of the above, the director may accept the report of an examination made by the insurance supervisory official of another state. No rating organization examined may be reimbursed from the examination fund.

Section 21. That § 58-24-61 be amended to read as follows:

58-24-61. The director may, if the director finds that any person or organization has violated any provision of this chapter, issue an order which imposes a penalty of not more than five hundred

dollars for each violation, but if the director finds a violation to be willful the director may impose a penalty of not more than five thousand dollars for each violation. The penalties may be in addition to any other penalty provided by law or order of the director issued pursuant to this chapter.

Section 22. That § 58-24-62 be amended to read as follows:

58-24-62. The director may suspend the license of any rating organization or insurer that fails to comply with an order of the director after the time prescribed for an appeal therefrom has expired or the order has been affirmed on appeal. The director may determine when a suspension of license becomes effective. Any suspension remains in effect for the period fixed by the director, or until the order upon which the suspension is based is modified, rescinded, or reversed.

Section 23. That § 58-24-64 be amended to read as follows:

58-24-64. Any insurer or rating organization aggrieved by any order or decision of the director made without a hearing, may, within thirty days after notice of the order to the insurer or organization, make written request to the director for a hearing thereon. The director shall issue a notice of hearing pursuant to chapter 1-26 within twenty days after receipt of a request and shall give not less than ten days' written notice of the time and place of the hearing. Within a reasonable time after the hearing the director shall affirm, reverse, or modify the director's previous action, specifying the reasons therefor. Pending the hearing and decision thereon the director may suspend or postpone the effective date of the director's previous action.

An Act to revise certain provisions regarding the regulation of insurance rating organizations.

I certify that the attached Act originated in the

HOUSE as Bill No. 1053

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1053
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State