

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

400B0304

## SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 37** - 1/17/2019

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding association health  
2 plans.

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

4 Section 1. That § 58-18-3 be amended to read:

5 58-18-3. Group health insurance may be under a policy issued to ~~an~~ a bona fide association  
6 of employers, including a labor union, ~~which shall have~~ that has a constitution and bylaws and  
7 ~~which that~~ has been organized and is maintained in good faith ~~for purposes other than that of~~  
8 with at least one substantial business purpose unrelated to obtaining insurance, insuring  
9 members, employees, or employees of members of the association for the benefit of persons  
10 other than the association or its officers or trustees. ~~The term "employees" as used herein~~ For  
11 the purposes of this section, the term, employees, may include retired employees, and the term,  
12 employers, includes working owners without employees who qualify as both an employer and  
13 employee.

14 Section 2. That chapter 58-18 be amended by adding a NEW SECTION to read:



1 A group health insurance policy may not be issued to an association under §§ 58-18-3 and  
2 58-18-4 that is formed, owned, or controlled by any of the following, other than to the extent  
3 the entities participate in the group or association in their capacity as employer members of the  
4 group or association:

- 5 (1) A health insurance issuer;
- 6 (2) A subsidiary or affiliate of a health insurance issuer;
- 7 (3) A health care organization or network provider that is part of the health care delivery  
8 system; or
- 9 (4) An insurance producer, broker, or consultant.

10 Section 3. That chapter 58-18 be amended by adding a NEW SECTION to read:

11 An employer member that participates in an association under §§ 58-18-3 and 58-18-4 shall  
12 participate in the association plan for a period of not less than three consecutive calendar years.  
13 Any contract issued to an association shall contain reasonable enforcement provisions including  
14 reasonable fees or assessments for early departure or for enrollment in another multiple  
15 employer plan during the early departure date.

16 Section 4. That chapter 58-18 be amended by adding a NEW SECTION to read:

17 An association plan based in this state or any other state shall follow all applicable South  
18 Dakota laws and administrative rules if the association plan covers South Dakota residents.

19 Section 5. That chapter 58-18 be amended by adding a NEW SECTION to read:

20 A health insurer offering a fully insured health benefit plan through an association shall:

- 21 (1) Guarantee acceptance of all eligible individuals under the employer members'  
22 association or fully insured multiple employer arrangement and, if coverage is  
23 offered to spouses and dependents, to all of the spouses and dependents;
- 24 (2) Provide a bronze health plan that has an actuarial value of sixty percent;

- 1 (3) Comply with all applicable state mandates; and
- 2 (4) Have premium rates that meet a minimum loss ratio of eighty-five percent.

3 Section 6. That § 58-18-88 be amended to read:

4 58-18-88. A self-funded multiple employer trust, as defined in section 3 of the federal  
5 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that is  
6 sponsored by an association, may be authorized by the director if the multiple employer trust  
7 meets all of the following conditions:

- 8 (1) The multiple employer trust is administered by an authorized insurer or a licensed or  
9 registered third-party administrator;
- 10 (2) The multiple employer trust ~~meets all of the requirements of § 58-18B-59~~ is  
11 sponsored and maintained by a bona fide association of employers eligible to procure  
12 coverage under §§ 58-18-3 and 58-18-4;
- 13 (3) The association sponsoring the multiple employer trust is established by employers  
14 in a homogenous trade, industry, line of business, or ~~professional association of~~  
15 ~~employers that~~ profession with commonality of interest. The association has a  
16 constitution or bylaws, and is organized under the laws of South Dakota ~~and has been~~  
17 ~~maintained in good faith for purposes other than providing insurance for at least ten~~  
18 ~~continuous years;~~
- 19 (4) The association sponsoring the multiple employer trust ~~is engaged in~~ has a substantial  
20 ~~activity for its members~~ business purpose other than sponsorship of an employer  
21 welfare benefit plan;
- 22 (5) The association sponsoring the multiple employer trust is a nonprofit entity organized  
23 under applicable South Dakota law;
- 24 (6) The multiple employer trust, ~~upon authorization by the director,~~ participates in the

1 ~~South Dakota Life and Health Insurance Guaranty Association~~ pursuant to chapter  
2 ~~58-29C~~ and is a member pursuant to subdivision ~~58-29C-48(12)~~ trust's board of  
3 trustees shall assess participating employers in an amount necessary to remedy  
4 deficiencies at any time the assets and stop loss insurance policies of the multiple  
5 employer trust are insufficient to:

6 (a) Pay claims made against the multiple employer trust;

7 (b) Discharge liabilities and obligations relating to health benefit plan claims; or

8 (c) Maintain adequate reserves and surpluses;

9 (7) The multiple employer trust:

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

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

12 (c) Is subject to the hazardous financial condition requirements of §§ 58-4-39 to  
13 58-4-42, inclusive;

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

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

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

18 (g) Maintains a minimum loss ratio of eighty-five percent or be community rated;

19 and

20 (h) Complies with all coverage mandates that are applicable to group health  
21 insurance under this title;

22 (8) Each sponsoring association is comprised of and controlled by employer members,  
23 consists of five hundred or more covered employees, and has been in existence for  
24 a period of three continuous years;

1       (9) Any solicitation or sales materials to prospective members discloses the provisions  
2             regarding fees and assessments for participation in the multiple employer trust; and

3       (10) The director, after consideration of the impact on the insurance-buying public,  
4             determines that the arrangement is in the best interests of the public.

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

12       Section 7. That chapter 58-18 be amended by adding a NEW SECTION to read:

13       An association not formed in this state may request a waiver of subdivisions 58-18-88(3)  
14 and (5) regarding organization in South Dakota to sponsor a multiple employer trust in this state  
15 if the association provides sufficient evidence a waiver is in the best interests of the insurance-  
16 buying public. An association not formed in this state shall be in full compliance with the laws  
17 of all states where the association does business.

18       Section 8. That § 58-18-90 be amended to read:

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

24       Section 9. That § 58-18-91 be amended to read:

1 58-18-91. A multiple employer trust authorized by §§ 58-18-88 to 58-18-94, inclusive, and  
2 § 58-18B-59 under this chapter may have its authorization suspended or revoked by the director  
3 for violating any applicable provision of §§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59  
4 ~~or because its capital is impaired, and in either instance the this title. The~~ director may take  
5 action in lieu of suspension or revocation as though the trust were an insurer as provided by  
6 § 58-4-28.1.

7 Section 10. That § 58-18-93 be amended to read:

8 58-18-93. No agent may sell, solicit, or negotiate a self-funded multiple employer trust  
9 authorized by §§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59 under this chapter unless  
10 the agent is licensed to sell life and health insurance pursuant to chapter 58-30.

11 Section 11. That § 58-18-94 be amended to read:

12 58-18-94. The provisions of §§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59 this  
13 chapter regarding multiple employer trusts do not apply to any single employer self-funded plan  
14 as preempted by Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144 or any  
15 arrangement exempted pursuant to § 1-24-17. ~~A~~ An authorized self-funded multiple employer  
16 trust authorized by §§ 58-18-88 to 58-18-94, inclusive, and § 58-18B-59 may include as  
17 participating employers both small employers and large employers.

18 Section 12. That § 58-18B-59 be repealed.

19 ~~58-18B-59. The rating requirements of this chapter do not apply to an association if all of~~  
20 ~~the following criteria are met:~~

- 21 ~~(1) The trade, industry, or professional association is comprised in part of homogenous~~  
22 ~~small employers, meets the requirements for the issuance of group health insurance~~  
23 ~~pursuant to § 58-18-3 and if applicable, § 58-18-4, has a constitution or bylaws, has~~  
24 ~~been organized under the laws of South Dakota and maintained in good faith for~~

1 ~~purposes other than providing insurance for at least ten continuous years, and will~~  
2 ~~provide coverage to not fewer than five hundred employees by January 1, 2007;~~

3 ~~—(2)—The group health plan provides coverage to association members' employees and~~  
4 ~~dependents on a community rated basis;~~

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