



## 2020 South Dakota Legislature

# Senate Bill 8

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

1 **An Act to revise certain provisions regarding insurance holding companies.**

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

3 **Section 1.** That § 58-5A-1 be AMENDED:

4 **58-5A-1. Definition of terms**

5 Terms used in this chapter mean:

- 6 (1) "Affiliate of, or a person affiliated with, a specific person," any person who directly,  
7 or indirectly through one or more intermediaries, controls, or is controlled by, or is  
8 under common control with, the person specified;
- 9 (2) "Control," including "controlling," "controlled by," and "under common control with,"  
10 the possession, direct or indirect, of the power to direct or cause the direction of  
11 the management and policies of a person, whether through the ownership of voting  
12 securities, by contract other than a commercial contract for goods or  
13 nonmanagement services, or otherwise, unless the power is solely the result of an  
14 official position with or a corporate office held by the person. Control ~~shall be~~is  
15 presumed to exist if any person, directly or indirectly, owns, controls, holds with  
16 the power to vote, or holds proxies representing, ten percent or more of the voting  
17 securities of any other person. This presumption may be rebutted by a showing  
18 made in the manner provided by § 58-5A-29 that control does not exist in fact;
- 19 (3) "Enterprise risk," any activity, circumstance, event, or series of events involving  
20 one or more affiliates of an insurer that, if not remedied promptly, is likely to have  
21 a material adverse effect upon the financial condition or liquidity of the insurer or  
22 its insurance holding company system as a whole, including anything that may  
23 cause the insurer's risk-based capital to fall into company action level or may cause  
24 the insurer to be in hazardous financial condition pursuant to chapter 58-4;
- 25 (4) "Group-wide supervisor," the regulatory official authorized to engage in conducting  
26 and coordinating group-wide supervision activities who is determined or

- 1 acknowledged by the director under the provisions of §§ 58-5A-80.1 to 58-5A-80.8,  
2 inclusive, to have sufficient significant contacts with the internationally active  
3 insurance group;
- 4 ~~(5)~~ "Insurance group," for the purposes of conducting an ORSA, those insurers and  
5 affiliates included within an insurance holding company system;
- 6 ~~(5)(6)~~ "Insurance holding company system," any two or more affiliated persons, one or  
7 more of which is an insurer;
- 8 ~~(6)(7)~~ "Insurer," a company qualified and licensed by the director of the Division of  
9 Insurance to transact the business of insurance in this state. For ORSA purposes,  
10 the term, insurer, does not include agencies, authorities or instrumentalities of the  
11 United States, its possessions or territories, the Commonwealth of Puerto Rico, the  
12 District of Columbia, or a state or political subdivision of a state;
- 13 ~~(8)~~ "Internationally active insurance group," an insurance holding company system  
14 that includes an insurer registered under chapter 58-5A and that:
- 15 (a) Writes premiums in at least three countries;  
16 (b) Writes at least ten percent of its total gross premium outside the United  
17 States; and  
18 (c) Based on a three-year rolling average, has total assets in the insurance  
19 holding company system of at least fifty billion dollars or the total gross  
20 written premiums of the insurance holding company system are at least ten  
21 billion dollars;
- 22 ~~(7)(9)~~ "NAIC," the National Association of Insurance Commissioners;
- 23 ~~(8)(10)~~ "ORSA guidance manual," the version of the NAIC own risk and solvency  
24 assessment guidance manual as adopted by the director for use in South Dakota  
25 by administrative rule;
- 26 ~~(9)(11)~~ "ORSA summary report," a confidential high-level summary of an insurer or  
27 insurance group's ORSA;
- 28 ~~(10)(12)~~ "Own risk and solvency assessment" or "ORSA," a confidential internal  
29 assessment, appropriate to the nature, scale, and complexity of an insurer or  
30 insurance group, conducted by that insurer or insurance group of the material and  
31 relevant risks associated with the insurer or insurance group's current business plan  
32 and the sufficiency of capital resources to support those risks;
- 33 ~~(11)(13)~~ "Security holder" of a specified person is one who owns any security of ~~such~~  
34 the person, including common stock, preferred stock, debt obligations, and any  
35 other security convertible into or evidencing the right to acquire any of the

- 1           foregoing;
- 2       ~~(12)~~(14)   "Subsidiary of a specified person," any affiliate controlled by ~~such a~~ person
- 3           directly, or indirectly, through one or more intermediaries;
- 4       ~~(13)~~(15)   "Voting security," any security convertible into or evidencing a right to acquire
- 5           a voting security.

6       **Section 2.** That a NEW SECTION be added:

7           **58-5A-80.1. Internationally active insurance group--Supervision.**

8           The director may act as the group-wide supervisor for any internationally active

9           insurance group in accordance with the provisions of this section. The director may also

10          acknowledge another regulatory official as the group-wide supervisor if the internationally

11          active insurance group:

- 12          (1) Does not have substantial insurance operations in the United States;
- 13          (2) Has substantial insurance operations in the United States, but not in this state; or
- 14          (3) Has substantial insurance operations in the United States and this state, but the
- 15                director has determined pursuant to the factors set forth in § 58-5A-80.2 that
- 16                another regulatory official is the appropriate group-wide supervisor.

17          An insurance holding company system that does not qualify as an internationally

18          active insurance group may request that the director make a determination or

19          acknowledgment as to a group-wide supervisor pursuant to §§ 58-5A-80.2 and 58-5A-

20          80.6.

21       **Section 3.** That a NEW SECTION be added:

22           **58-5A-80.2. International active insurance group--Group-wide supervisor**

23           **determination.**

24           In cooperation with other state, federal, and international regulatory agencies, the

25           director shall identify a single group-wide supervisor for an internationally active insurance

26           group. The director may determine that the director is the appropriate group-wide

27           supervisor for an internationally active insurance group that conducts substantial

28           insurance operations concentrated in this state. The director may acknowledge that an

29           insurance regulatory official from another jurisdiction is the appropriate group-wide

30           supervisor for the internationally active insurance group. When making a determination

31           or acknowledgment under this section, the director shall consider the following factors:

1 (1) The place of domicile of the insurers within the internationally active insurance  
2 group that hold the largest share of the group's written premiums, assets, or  
3 liabilities;

4 (2) The place of domicile of the top-tiered insurer or insurers in the insurance holding  
5 company system of the internationally active insurance group;

6 (3) The location of the executive offices or largest operational offices of the  
7 internationally active insurance group;

8 (4) Whether another regulatory official is acting or is seeking to act as the group-wide  
9 supervisor under a regulatory system that the director determines is:

10 (a) Substantially similar to the system of regulation provided under the laws of  
11 this state; or

12 (b) Otherwise sufficient in terms of providing for group-wide supervision,  
13 enterprise risk analysis, and cooperation with other regulatory officials; and

14 (5) Whether another regulatory official acting or seeking to act as the group-wide  
15 supervisor provides the director with reasonably reciprocal recognition and  
16 cooperation.

17 The insurance regulatory official identified under this section as the group-wide  
18 supervisor may determine that it is appropriate to acknowledge another supervisor to  
19 serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor  
20 shall be made after consideration of the factors listed above and made in cooperation with  
21 and subject to the acknowledgment of other regulatory officials involved with supervision  
22 of members of the internationally active insurance group, and in consultation with the  
23 internationally active insurance group.

24 **Section 4.** That a NEW SECTION be added:

25 **58-5A-80.3. Internationally active insurance group--Group-wide supervisor**  
26 **acknowledgment.**

27 Notwithstanding any other provision in §§ 58-5A-80.1 to 58-5A-80.9, inclusive, if  
28 another regulatory official is acting as the group-wide supervisor of an internationally  
29 active insurance group, the director shall acknowledge that regulatory official as the  
30 group-wide supervisor. The director shall make a determination or acknowledgment as to  
31 the appropriate group-wide supervisor pursuant to § 58-5A-80.2 if a material change in  
32 the internationally active insurance group results in any of the following:

33 (1) The internationally active insurance group's insurers domiciled in this state hold  
34 the largest share of the group's premiums, assets or liabilities; or

- 1       (2) This state becomes the place of domicile of the top-tiered insurer or insurers in the  
2       insurance holding company system of the internationally active insurance group.

3       **Section 5.** That a NEW SECTION be added:

4               **58-5A-80.4. Group-wide supervisor--Information for determination.**

5               The director, as provided in § 58-5A-37, may collect any information necessary to  
6       determine if the director may act as the group-wide supervisor of an internationally active  
7       insurance group or if the director may acknowledge another regulatory official to act as  
8       the group-wide supervisor. Prior to issuing a determination that an internationally active  
9       insurance group is subject to group-wide supervision by the director, the director shall  
10       notify the insurer registered under this chapter and the ultimate controlling person within  
11       the internationally active insurance group. The internationally active insurance group shall  
12       have at least thirty days to provide the director with additional information pertinent to  
13       the pending determination. The director shall publish the identity of any internationally  
14       active insurance group that the director has determined is subject to group-wide  
15       supervision by the director on the division's website.

16       **Section 6.** That a NEW SECTION be added:

17               **58-5A-80.5. Group-wide supervisor--Director supervision--Permitted**  
18       **activities.**

19               If the director is the group-wide supervisor for an internationally active insurance  
20       group, the director may engage in any of the following group-wide supervision activities:

21       (1) Assess the enterprise risks within the internationally active insurance group to  
22       ensure that:

23               (a) The material financial condition and liquidity risks to the members of the  
24               internationally active insurance group that are engaged in the business of  
25               insurance are identified by management; and

26               (b) Reasonable and effective mitigation measures are in place;

27       (2) Request, from any member of an internationally active insurance group subject to  
28       the director's supervision, information necessary and appropriate to assess  
29       enterprise risk, including information about the members of the internationally  
30       active insurance group regarding:

31               (a) Governance, risk assessment and management;

32               (b) Capital adequacy; and

33               (c) Material intercompany transactions;

- 1       (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions  
2       where members of the internationally active insurance group are domiciled, compel  
3       development and implementation of reasonable measures designed to ensure that  
4       the internationally active insurance group is able to timely recognize and mitigate  
5       enterprise risks to members of the internationally active insurance group that are  
6       engaged in the business of insurance;
- 7       (4) Communicate with other state, federal, and international regulatory agencies for  
8       members within the internationally active insurance group and share relevant  
9       information subject to the confidentiality provisions of § 58-5A-41, through  
10       supervisory colleges as set forth in § 58-5A-78;
- 11       (5) Enter into an agreement with or obtain documentation from any insurer registered  
12       under this chapter, any member of the internationally active insurance group, and  
13       any other state, federal and international regulatory agency for members of the  
14       internationally active insurance group, providing the basis for or otherwise  
15       clarifying the director's role as group-wide supervisor, including provisions for  
16       resolving disputes with other regulatory officials. The agreement or documentation  
17       may not serve as evidence in any proceeding that any insurer or person within an  
18       insurance holding company system not domiciled or incorporated in this state is  
19       doing business in this state or is otherwise subject to jurisdiction in this state; and
- 20       (6) Other group-wide supervision activities, consistent with the authorities and  
21       purposes enumerated above, as considered necessary by the director.

22       **Section 7.** That a NEW SECTION be added:

23               **58-5A-80.6. Group-wide supervisor--Director cooperation.**

24               If the director acknowledges that another regulatory official from a jurisdiction that  
25       is not accredited by the NAIC is the group-wide supervisor, the director may reasonably  
26       cooperate, through supervisory colleges, with group-wide supervision undertaken by the  
27       group-wide supervisor, if:

- 28       (1) The director's cooperation is in compliance with the laws of this state; and  
29       (2) The regulatory official acknowledged as the group-wide supervisor also recognizes  
30       and cooperates with the director's activities as a group-wide supervisor for other  
31       internationally active insurance groups, where applicable. If the recognition and  
32       cooperation is not reasonably reciprocal, the director may refuse recognition and  
33       cooperation.

1 **Section 8.** That a NEW SECTION be added:

2 **58-5A-80.7. Information sharing.**

3 The director may enter into any agreement with or obtain documentation from any  
4 insurer registered under this chapter, any affiliate of the insurer, and any other state,  
5 federal, and international regulatory agency for members of the internationally active  
6 insurance group, that provide the basis for or otherwise clarify a regulatory official's role  
7 as group-wide supervisor.

8 **Section 9.** That a NEW SECTION be added:

9 **58-5A-80.8. Promulgation of rules.**

10 The director may promulgate rules, pursuant to chapter 1-26, establishing  
11 requirements, standards, criteria, and limitations for group-wide supervisors.

12 **Section 10.** That a NEW SECTION be added:

13 **58-5A-80.9. Reasonable expenses.**

14 A registered insurer subject to the provisions of §§ 58-5A-80.1 to 58-5A-80.8,  
15 inclusive, is liable for and shall pay the reasonable expenses of the director's participation  
16 in the administration of this Act, including the engagement of attorneys, actuaries, and  
17 any other professionals and all reasonable travel expenses.