

AN ACT

ENTITLED, An Act to revise the provisions for the risk pool to allow uninsurable children to enroll and to provide for additional funding.

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

Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

A person under the age of nineteen, who is not otherwise qualified for the risk pool pursuant to § 58-17-85, may enroll in the risk pool if the following conditions are met:

- (1) The person is a citizen of the United States of America and a resident of this state;
- (2) The person has been rejected, or offered coverage conditioned upon exclusionary riders, by at least two carriers in the individual market for comprehensive major medical coverage in the last six months;
- (3) The person has not had comprehensive major medical coverage or other creditable coverage within the six months preceding application for the risk pool; and
- (4) The person is not covered or eligible to be covered by any other creditable coverage.

The risk pool board may establish an open enrollment period for persons, which qualify for enrollment pursuant to this section and which have been without creditable coverage for at least twelve months, during the first twelve months following July 1, 2009. No enrollee is subject to a preexisting waiting period as defined by § 58-17-84 during this twelve-month period. The open enrollment period shall be sixty days in duration.

Section 2. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as follows:

Any person qualifying for coverage in the risk pool pursuant to section 1 of this Act and who does not enroll during the sixty-day open enrollment period is subject to a six-month waiting period

for preexisting conditions as defined by § 58-17-84.

Section 3. That § 58-17-126 be amended to read as follows:

58-17-126. Following the close of each fiscal year, the board shall determine the net premiums and payments, the expenses of administration, and the incurred losses of the risk pool for the year. In sharing losses among the carriers, the board may abate or defer in any part the assessment of a carrier, if, in the opinion of the board, payment of the assessment would endanger the ability of the carrier to fulfill its contractual obligations. The board may also provide for an initial or interim assessment against carriers if necessary to assure the financial capability of the risk pool to meet the incurred or estimated claims expenses or operating expenses of the risk pool. This assessment may not exceed twenty-five cents per covered life per month from the time period the risk pool becomes effective. Any assessment made after June 30, 2009, may not be in excess of thirty-five cents per covered life per month. Net gains shall be held at interest to offset future losses or allocated to reduce future assessments.

The assessment of each carrier shall be based upon the number of persons each carrier covers through primary, excess, and stop loss insurance in this state and shall be as follows:

- (1) In addition to the powers enumerated in §§ 58-17-68, 58-17-70, 58-17-85, and 58-17-113 to 58-17-142, inclusive, the board may assess carriers in accordance with the provisions of this section, and make advance interim assessments as may be reasonable and necessary for the risk pool's organizational and interim operating expenses;
- (2) Following the close of each fiscal year, the board shall determine the expenses of administration, the net premiums (premiums less reasonable administrative expense allowances), and the incurred losses for the year, taking into account investment income and other appropriate gains and losses. The deficit incurred by the risk pool shall be recouped by assessments apportioned under this section by the board among carriers and

from other sources as may be allowed under law;

- (3) Each carrier's assessment shall be determined by multiplying the total assessment of all carriers as determined in subdivision (2) by a fraction, the numerator of which equals the number of individuals in this state covered under health benefit plans and certificates, including by way of excess or stop loss coverage, by that carrier, and the denominator of which equals the total number of all individuals in this state covered under health insurance policies and certificates, including by way of excess or stop loss coverage, by all carriers, all determined as of the end of the prior calendar year;
- (4) The board shall make reasonable efforts designed to ensure that each insured individual is counted only once with respect to any assessment. For that purpose, the board shall require each carrier that obtains excess or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured, including by way of excess or stop loss coverage, in whole or part. The board shall allow a carrier who is an excess or stop loss carrier to exclude from its number of insured individuals those who have been counted by the primary carrier, the primary reinsurer, or the primary excess or stop loss carrier for the purpose of determining its assessment under this section;
- (5) Each carrier shall file with the board annual statements and other reports deemed to be necessary by the board. The board shall determine each carrier's assessment based on these annual statements and reports. The board may use any reasonable method of estimating the number of insureds of a carrier if the specific number is unknown. With respect to carriers that are excess or stop loss carriers, the board may use any reasonable method of estimating the number of persons insured by each reinsurer or excess or stop loss carrier;
- (6) Each carrier may petition the board for an abatement or deferment of all or part of an

assessment imposed by the board. The board may abate or defer, in whole or in part, the assessment if, in the opinion of the board, payment of the assessment would endanger the ability of the carrier to fulfill the carrier's contractual obligations. If an assessment against a carrier is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other carriers in a manner consistent with the basis for assessments set forth in this section. The carrier receiving the deferment is liable to the risk pool and remains liable for the deficiency.

Any assessment of the carrier is due and payable on any covered person who is a resident in this state regardless of the state of issuance of the policy or master policy.

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I certify that the attached Act
originated in the

SENATE as Bill No. 109

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 109
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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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