

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0327

## HOUSE BILL NO. 1031

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

1 FOR AN ACT ENTITLED, An Act to require workers' compensation third party administrators  
2 to become licensed and registered and to provide for standards for the continued registration  
3 of third party administrators.

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

5 Section 1. That § 58-29D-2 be amended to read as follows:

6 58-29D-2. For the purposes of this chapter, an administrator or third-party administrator or  
7 TPA is a person who directly or indirectly solicits or effects coverage of, underwrites, collects  
8 charges or premiums from, or adjusts or settles claims on residents of this state, or residents of  
9 another state from offices in this state, in connection with workers' compensation, life or health  
10 insurance coverage or annuities, except any of the following:

- 11 (1) An employer on behalf of its employees or the employees of one or more subsidiary  
12 or affiliated corporations of such employer;
- 13 (2) A union on behalf of its members;
- 14 (3) An insurer which is authorized to transact insurance in this state with respect to a  
15 policy lawfully issued and delivered in and pursuant to the laws of this state or another

1 state;

2 (4) An agent or broker licensed to sell workers' compensation, life or health insurance in  
3 this state, whose activities are limited exclusively to the sale of insurance;

4 (5) A creditor on behalf of its debtors with respect to insurance covering a debt between  
5 the creditor and its debtors;

6 (6) A trust and its trustees, agents and employees acting pursuant to such trust  
7 established in conformity with 29 U.S.C. § 186;

8 (7) A trust exempt from taxation under § 501(a) of the Internal Revenue Code, its  
9 trustees and employees acting pursuant to such trust, or a custodian and the  
10 custodian's agents or employees acting pursuant to a custodian account which meets  
11 the requirements of § 401(f) of the Internal Revenue Code;

12 (8) A financial institution which is subject to supervision or examination by federal or  
13 state banking authorities, or a mortgage lender, to the extent they collect and remit  
14 premiums to licensed insurance agents or authorized insurers in connection with loan  
15 payments;

16 (9) A credit card issuing company which advances for and collects premiums or charges  
17 from its credit card holders who have authorized collection if the company does not  
18 adjust or settle claims;

19 (10) A person who adjusts or settles claims in the normal course of that person's practice  
20 or employment as an attorney at law and who does not collect charges or premiums  
21 in connection with workers' compensation, life or health insurance coverage or  
22 annuities;

23 (11) An adjuster whose activities are limited to adjustment of claims;

24 (12) A person who acts solely as an administrator of one or more bona fide employee

benefit plans established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974. Such person shall comply with the requirements of § 58-29D-27;

(13) A licensed managing general agency;

(14) A licensed reinsurance intermediary; or

(15) A person regulated under the Broker Controlled Act.

This chapter applies to any third party administrator who performs administration functions on behalf of any workers' compensation insurer or employer with a self-funded workers' compensation program.

Section 2. That § 58-29D-3 be amended to read as follows:

58-29D-3. For the purposes of this chapter, an insurer is any person undertaking to provide workers' compensation, life or health insurance coverage in this state. An insurer includes a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of insurance subject to state insurance regulation. The term, insurer, does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.

Section 3. That § 58-29D-21 be amended to read as follows:

58-29D-21. No person may act as, or offer to act as, or hold himself out to be an administrator in this state without a valid license or registration as an administrator issued by the director.

Section 4. That § 58-29D-29 be amended to read as follows:

58-29D-29. Upon request from an administrator, the director may waive the application requirements of § 58-29D-22 if the administrator has a valid license as an administrator issued in a state which has standards for administrators that are at least as stringent as those contained in this chapter. If waived, the administrator shall register with the director in this state. The waiver shall automatically lapse if the third party administrator granted a waiver is no longer licensed in the state for which the waiver was granted. Any waiver given by this section does not extend to any suspension or revocation of licensure or registration pursuant to § 58-29D-31.

Section 5. That § 58-29D-31 be amended to read as follows:

58-29D-31. The license or registration of an administrator shall be suspended or revoked if the director finds that the administrator:

- (1) Is in an unsound financial condition;
- (2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public;
- (3) Has failed to pay any judgment rendered against it in this state within sixty days after the judgment has become final;
- (4) Has violated any lawful rule or order of the director or any provision of the insurance laws of this state;
- (5) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, if required by the director;
- (6) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept

1 less than the amount due them or caused covered individuals to employ attorneys or  
2 bring suit against the administrator to secure full payment or settlement of such  
3 claims;

4 (7) Is affiliated with or under the same general management or interlocking directorate  
5 or ownership as another administrator or insurer which unlawfully transacts business  
6 in this state without having a license;

7 (8) At any time fails to meet any qualification for which issuance of the certificate could  
8 have been refused had such failure then existed and been known to the Division of  
9 Insurance;

10 (9) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony  
11 without regard to whether adjudication was withheld;

12 (10) Is under suspension or revocation in another state; or

13 (11) Has supplied false information to the director.