

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0314

## SENATE BILL NO. 44

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

1 FOR AN ACT ENTITLED, An Act to provide reciprocity for the licensing of insurance  
2 producers.

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

4 Section 1. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Except as to the underlying requirements of a surplus lines broker holding an insurance  
7 producer license in the applicable lines and except as provided in sections 19 to 22, inclusive, of  
8 this Act, this Act does not apply to surplus lines brokers licensed pursuant to chapter 58-32.

9 Section 2. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Terms used in this Act mean:

12 (1) "Agent of the insurer," any insurance producer who is compensated directly or  
13 indirectly by an insurer and sells, solicits, or negotiates any product of that insurer;

14 (2) "Agent of insured," any insurance producer or person who secures compensation from  
15 an insured or insurance customer only and receives no compensation directly or

- 1 indirectly from an insurer for a transaction with that insured or insurance customer;
- 2 (3) "Business entity," a corporation, association, partnership, limited liability company,  
3 limited liability partnership, or other legal entity;
- 4 (4) "Home state," the District of Columbia and any state or territory of the United States  
5 in which an insurance producer maintains the insurance producer's principal place of  
6 residence or principal place of business and is licensed to act as an insurance  
7 producer;
- 8 (5) "Insurance producer," any person required to be licensed under the laws of this state  
9 to sell, solicit, or negotiate insurance;
- 10 (6) "Limited line credit insurance," includes credit life, credit disability, credit property,  
11 credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty,  
12 mortgage disability, guaranteed automobile protection insurance, and any other form  
13 of insurance offered in connection with an extension of credit that is limited to  
14 partially or wholly extinguishing that credit obligation that the insurance director  
15 determines should be designated a form of limited line credit insurance;
- 16 (7) "Limited line credit insurance producer," any person who sells, solicits, or negotiates  
17 one or more forms of limited line credit insurance coverage to individuals through a  
18 master, corporate, group, or individual policy;
- 19 (8) "Limited lines insurance," those lines of insurance defined in § 58-30-68 or any other  
20 line of insurance that the insurance director may deem it necessary to recognize for  
21 the purposes of complying with section 23 of this Act;
- 22 (9) "Limited lines producer," any person authorized by the insurance director to sell,  
23 solicit, or negotiate limited lines insurance;
- 24 (10) "Negotiate," the act of conferring directly with or offering advice directly to a

1 purchaser or prospective purchaser of a particular contract of insurance concerning  
2 any of the substantive benefits, terms, or conditions of the contract if the person  
3 engaged in that act either sells insurance or obtains insurance from insurers for  
4 purchasers;

5 (11) "Sell," to exchange a contract of insurance by any means, for money or its equivalent,  
6 on behalf of an insurance company;

7 (12) "Solicit," attempting to sell insurance or asking or urging a person to apply for a  
8 particular kind of insurance from a particular company;

9 (13) "Terminate," the cancellation of the relationship between an insurance producer and  
10 the insurer or the termination of an insurance producer's authority to transact  
11 insurance.

12 Section 3. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 No person may sell, solicit, or negotiate insurance in this state for any line of insurance unless  
15 the person is licensed for that line of authority in accordance with this Act.

16 Section 4. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 Nothing in this Act requires an insurer to obtain an insurance producer license. In this  
19 section, the term, insurer, does not include an insurer's officers, directors, employees,  
20 subsidiaries, or affiliates.

21 A license as an insurance producer is not required of the following:

22 (1) Any officer, director, or employee of an insurer or of an insurance producer, if the  
23 officer, director, or employee does not receive any commission on policies written or  
24 sold to insure risks residing, located, or to be performed in this state and:

- 1 (a) The officer's, director's, or employee's activities are executive, administrative,  
2 managerial, clerical, or a combination of these, and are only indirectly related  
3 to the sale, solicitation, or negotiation of insurance;
- 4 (b) The officer's, director's, or employee's function relates to underwriting, loss  
5 control, inspection or the processing, adjusting, investigating, or settling of a  
6 claim on a contract of insurance; or
- 7 (c) The officer, director, or employee is acting in the capacity of a special agent or  
8 agency supervisor assisting insurance producers, if the person's activities are  
9 limited to providing technical advice and assistance to licensed insurance  
10 producers and do not include the sale, solicitation, or negotiation of insurance;
- 11 (2) Any person who secures and furnishes information for the purpose of group life  
12 insurance, group property and casualty insurance, group annuities, group or blanket  
13 accident and health insurance; or for the purpose of enrolling individuals under plans,  
14 issuing certificates under plans, or otherwise assisting in administering plans; or who  
15 performs administrative services related to mass marketed property and casualty  
16 insurance, if no commission is paid to the person for the service;
- 17 (3) Any employer or association or its officers, directors, employees, or the trustees of  
18 an employee trust plan, to the extent that the employers, officers, employees, director,  
19 or trustees are engaged in the administration or operation of a program of employee  
20 benefits for the employer's or association's own employees or the employees of its  
21 subsidiaries or affiliates, which program involves the use of insurance issued by an  
22 insurer, as long as the employers, associations, officers, directors, employees, or  
23 trustees are not in any manner compensated, directly or indirectly, by the company  
24 issuing the contracts;

- 1 (4) Any employee of an insurer or an organization employed by an insurer who is  
2 engaging in the inspection, rating, or classification of risks, or in the supervision of the  
3 training of insurance producers and who is not individually engaged in the sale,  
4 solicitation, or negotiation of insurance;
- 5 (5) Any person whose activities in this state are limited to advertising without the intent  
6 to solicit insurance in this state through communications in printed publications or  
7 other forms of electronic mass media whose distribution is not limited to residents of  
8 the state, if the person does not sell, solicit, or negotiate insurance that would insure  
9 risks residing, located, or to be performed in this state;
- 10 (6) Any person who is not a resident of this state who sells, solicits, or negotiates a  
11 contract of insurance for commercial property and casualty risks to an insured with  
12 risks located in more than one state insured under that contract, if that person is  
13 otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance  
14 in the state where the insured maintains its principal place of business and the contract  
15 of insurance insures risks located in that state, except that any contract of insurance  
16 applicable to this subdivision shall be countersigned by a licensed resident insurance  
17 producer appointed by the insurer as required by § 58-6-62;
- 18 (7) Any salaried full-time employee who counsels or advises his or her employer relative  
19 to the insurance interests of the employer or of the subsidiaries or business affiliates  
20 of the employer, if the employee does not sell or solicit insurance or receive a  
21 commission;
- 22 (8) Any person engaged in the business of fur storage who delivers to customers  
23 certificates or policies providing insurance on specified furs, garments trimmed with  
24 fur, or other garments accepted for storage and who collects the premium therefor,

1 if the person receives no commissions for such service; or

2 (9) Any person engaged in the sale or issuance by motor vehicle dealers licensed under  
3 chapter 32-6B of motor vehicle service contracts, extended service agreements,  
4 mechanical breakdown insurance, or insurance of the mechanical condition, or  
5 freedom from defective or worn parts or equipment of motor vehicles.

6 Section 5. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 A resident individual applying for an insurance producer license shall pass a written  
9 examination unless exempt pursuant to § 58-30-52. The examination shall test the knowledge  
10 of the individual concerning the lines of authority for which application is made, the duties and  
11 responsibilities of an insurance producer, and the insurance laws and rules of this state.

12 Section 6. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The director may make arrangements, including contracting with an outside testing service,  
15 for administering examinations and collecting the fee set forth in § 58-2-29.

16 Section 7. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 Each individual applying for an examination shall remit a fee as prescribed by the director as  
19 set forth in § 58-2-29 and pay any fees charged by the outside testing service.

20 Section 8. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 A person applying for a resident insurance producer license shall make application to the  
23 director on an application form or format as prescribed by the director and declare under penalty  
24 of refusal, suspension, or revocation of the license that the statements made in the application

1 are true, correct, and complete to the best of the individual's knowledge and belief. The director  
2 shall consider the use of a uniform application form or format.

3 Before approving the application, the director shall find that the individual:

- 4 (1) Is at least eighteen years of age;
- 5 (2) Has not committed any act that is a ground for denial, suspension, or revocation set  
6 forth in section 26 of this Act;
- 7 (3) Has paid the fees set forth in § 58-2-29; and
- 8 (4) Has successfully passed the examinations for the lines of authority for which the  
9 person has applied.

10 Section 9. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 A business entity acting as an insurance producer is required to obtain an insurance producer  
13 license. Application shall be made using a form or format prescribed by the director. The director  
14 shall consider the use of a uniform form or format. Before approving the application, the  
15 insurance director shall find that:

- 16 (1) The business entity has paid the fees set forth in § 58-2-29; and
- 17 (2) The business entity has designated a licensed insurance producer responsible for the  
18 business entity's compliance with the insurance laws and rules of this state.

19 Section 10. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 The director may require any documents reasonably necessary to verify the information  
22 contained in an application.

23 Section 11. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1 Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall  
2 provide a program of instruction to each business entity acting as a licensed insurance producer  
3 for the insurer. Using the insurer's program of instruction, the insurer or the business entity shall  
4 train any employee of the business entity whose duties include selling, soliciting, or negotiating  
5 limited credit line insurance. Upon request by the director, the program of instruction is subject  
6 to approval by the director.

7 Section 12. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Unless denied licensure pursuant to section 27 of this Act, any person who has met the  
10 requirements of sections 5 to 11, inclusive, of this Act shall be issued an insurance producer  
11 license. An insurance producer may receive qualification for a license in one or more of the  
12 following lines of authority:

- 13 (1) Life - insurance coverage on human lives including benefits of endowment and  
14 annuities and may include benefits in the event of death or dismemberment by accident  
15 and benefits for disability income;
- 16 (2) Accident and health or sickness - insurance coverage for sickness, bodily injury, or  
17 accidental death and may include benefits in the event of death or dismemberment by  
18 accident and for disability income;
- 19 (3) Property - insurance coverage for the direct or consequential loss or damage to  
20 property of every kind;
- 21 (4) Casualty - insurance coverage against legal liability, including that for death, injury,  
22 or disability, damage to real or personal property, or fidelity and surety bonds;
- 23 (5) Variable life and variable annuity products - insurance coverage provided under  
24 variable life insurance contracts and variable annuities;



- 1       (6)   Commercial lines - property and casualty insurance coverage sold to businesses
- 2           including farming, professionals, and other commercial enterprises;
- 3       (7)   Personal lines - property and casualty insurance coverage sold to individuals and
- 4           families for primarily noncommercial purposes;
- 5       (8)   Credit - limited line credit insurance;
- 6       (9)   Any other line of insurance permitted under state laws or rules.

7       Section 13. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9       An insurance producer license shall remain in effect unless revoked, suspended, or expired  
10 as long as the fee set forth in § 58-2-29 is paid and the education requirements for resident  
11 individual insurance producers are met by the due date.

12       Section 14. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14       An individual insurance producer who allows his or her license to lapse may, within twelve  
15 months from the due date of the renewal fee apply to reinstate the same license without the  
16 necessity of passing a written examination. A penalty in the amount of double the unpaid renewal  
17 fee shall be required for any license reinstatement. This section only applies to renewals if the  
18 continuing education due date was missed or timely payment of the fee was not made.

19       Section 15. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21       A licensed insurance producer who is unable to comply with license renewal procedures due  
22 to military service or some other extenuating circumstance, such as a long-term medical  
23 disability, may request a waiver of those procedures. The producer may also request a waiver  
24 of any examination requirement or any other monetary penalty or sanction imposed for failure

1 to comply with renewal procedures. The director may promulgate rules pursuant to chapter 1-26  
2 for determining what constitutes extenuating circumstances if the director finds that application  
3 of this section or the imposition of sanctions would create an unreasonable hardship.

4 Section 16. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The license shall contain the licensee's name, address, personal identification number, the date  
7 of issuance, the lines of authority, the expiration date, and any other information the director  
8 determines to be necessary.

9 Section 17. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 A licensee shall inform the director in a form or format prescribed by the director of a change  
12 of address within thirty days of the change.

13 Section 18. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 In order to assist in the performance of the director's duties, the director may contract with  
16 nongovernmental entities, including the National Association of Insurance Commissioners  
17 (NAIC) or any affiliates or subsidiaries that the NAIC oversees to perform any ministerial  
18 functions, including the collection of fees, related to insurance producer licensing that the  
19 director and the nongovernmental entity may deem appropriate.

20 Section 19. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Unless denied licensure pursuant to section 27 of this Act, a nonresident person is entitled  
23 to receive a nonresident insurance producer license if:

24 (1) The person is currently licensed as a resident insurance producer and in good standing

1 in the person's home state;

2 (2) The person has submitted the proper request for licensure and has paid the fees  
3 required by § 58-2-29;

4 (3) The person has submitted or transmitted to the director the application for licensure  
5 that the person submitted to the person's home state or the application required by  
6 section 8 of this Act; and

7 (4) Except for fees, the person's home state issues nonresident insurance producer  
8 licenses to residents of this state on the same basis.

9 Section 20. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 A licensee as nonresident insurance producer shall at all times be qualified for and hold in the  
12 licensee's home state of domicile the license of that home state as a resident insurance producer  
13 covering all kinds of insurance covered or to be covered under the South Dakota nonresident  
14 license. A hearing is not necessary in order to revoke or suspend a nonresident insurance  
15 producer's license in this state if that insurance producer's license is revoked or suspended in the  
16 insurance producer's home state of domicile.

17 Section 21. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 The director may verify the insurance producer's licensing status through databases  
20 maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

21 Section 22. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 A nonresident insurance producer who moves from one state to another state or a resident  
24 insurance producer who moves from this state to another state shall file a change of address and

1 provide certification from the new resident state within thirty days of the change of legal  
2 residence. No fee or license application is required.

3 Section 23. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Notwithstanding any other provision of this Act, a person licensed as a limited line credit  
6 insurance producer or other type of limited lines insurance producer in the person's home state  
7 is entitled to receive a nonresident limited lines insurance producer license if eligible pursuant to  
8 section 18 of this Act granting the same scope of authority as granted under the license issued  
9 by the insurance producer's home state. For the purposes of this section, limited line insurance  
10 is any authority granted by the home state which restricts the authority of the license to less than  
11 the total authority prescribed in the associated major lines pursuant to section 12, subdivisions  
12 (1) to (7), inclusive, of this Act. The director may issue a resident license for a type of license  
13 not specified in this title to a person for insurance activities which do not require licensure in this  
14 state provided that another state which that person does insurance business in requires such  
15 license.

16 Section 24. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 An insurance producer doing business under any name other than the insurance producer's  
19 legal name is required to notify the director prior to using the assumed name.

20 Section 25. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 The director may issue a temporary insurance producer license for a period not to exceed one  
23 hundred eighty days without requiring an examination if the director determines that the  
24 temporary license is necessary for the servicing of an insurance business in the following cases:

- 1       (1)    To the surviving spouse or court-appointed personal representative of a licensed  
2            insurance producer who dies or becomes mentally or physically disabled to allow  
3            adequate time for the sale of the insurance business owned by the insurance producer  
4            or for the recovery or return of the insurance producer to the business or to provide  
5            for the training and licensing of new personnel to operate the insurance producer's  
6            business;
- 7       (2)    To a member or employee of a business entity licensed as an insurance producer, upon  
8            the death or disability of an individual designated in the business entity application or  
9            the license;
- 10      (3)    To the designee of a licensed insurance producer entering active service in the armed  
11            forces of the United States of America; or
- 12      (4)    In any other circumstance where the director determines that the public interest will  
13            be best served by the issuance of this license.

14       Section 26. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16       The director may by order limit the authority of any temporary licensee in any way  
17 determined to be necessary to protect insureds and the public. The director may require the  
18 temporary licensee to be under the supervision of a licensed insurance producer or insurer who  
19 assumes responsibility for all acts of the temporary licensee and may impose other similar  
20 requirements designed to protect insureds and the public. The director may by order revoke a  
21 temporary license if the interest of insureds or the public are endangered. A temporary license  
22 does not continue after the owner or the personal representative disposes of the business.

23       Section 27. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1       The director may suspend, revoke, or refuse to issue or renew an insurance producer's license  
2       or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof,  
3       for any one or more of the following causes:

- 4       (1)    Providing incorrect, misleading, incomplete, or materially untrue information in the  
5            license application;
- 6       (2)    Violating any insurance laws or rules, subpoena, or order of the director or of another  
7            state's insurance director, commissioner, or superintendent;
- 8       (3)    Obtaining or attempting to obtain a license through misrepresentation or fraud;
- 9       (4)    Withholding, misappropriating, or converting any monies or properties received in the  
10           course of doing insurance business;
- 11       (5)    Intentionally misrepresenting the terms of an actual or proposed insurance contract  
12           or application for insurance;
- 13       (6)    Having been convicted of a felony;
- 14       (7)    Having admitted or been found to have committed any insurance unfair trade practice  
15           or fraud;
- 16       (8)    Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence,  
17           untrustworthiness, or financial irresponsibility in the conduct of business in this state  
18           or elsewhere;
- 19       (9)    Having an insurance producer license, or its equivalent, denied, suspended, or  
20           revoked in any other state, province, district, or territory;
- 21       (10)   Forging another's name to an application for insurance or to any document related to  
22           an insurance transaction;
- 23       (11)   Using notes or any other reference material to complete an examination for an  
24           insurance license;

1 (12) Knowingly accepting insurance business from an individual who sells, solicits, or  
2 negotiates insurance and is not licensed; or

3 (13) Failing to comply with an administrative or court order imposing a child support  
4 obligation.

5 Section 28. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 If the director denies an application for a license or does not renew a license, the director  
8 shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason  
9 for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may  
10 make a written request to the director within thirty days of the date of the nonrenewal or denial  
11 for a hearing to determine the reasonableness of the director's action. A notice of hearing shall  
12 be issued within thirty days of receipt of a written request. A hearing shall be held pursuant to  
13 chapter 1-26. This section does not apply to emergency suspensions pursuant to § 1-26-29 or  
14 cease and desist orders in § 58-4-7.

15 Section 29. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 The license of a business entity may be suspended, revoked, refused, or the director may  
18 accept a monetary penalty in accordance with § 58-4-28.1, or any combination thereof, if the  
19 director finds, after hearing, that an individual licensee's violation was known or should have  
20 been known by one or more of the partners, officers, or managers acting on behalf of the  
21 partnership or corporation and the violation was neither reported to the director nor corrected.

22 Section 30. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 The director retains the authority to enforce the provisions of and impose any penalty or

1 remedy authorized by this Act and Title 58 against any person who is under investigation for or  
2 charged with a violation of this Act or Title 58 even if the person's license or registration has  
3 been surrendered or has lapsed by operation of law.

4 Section 31. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No insurer or insurance producer may pay a commission, service fee, brokerage, or other  
7 valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if  
8 that person is required to be licensed under this Act and is not so licensed. Nothing in this section  
9 allows an insurer to pay commissions to a nonappointed insurance producer if an appointment  
10 is otherwise required.

11 Section 32. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 No person may accept a commission, service fee, brokerage, or other valuable consideration  
14 for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed  
15 or appointed under this Act and is not so licensed or appointed.

16 Section 33. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 Renewal or other deferred commissions may be paid to a person for selling, soliciting, or  
19 negotiating insurance in this state if the person was required to be licensed under this Act at the  
20 time of the sale, solicitation, or negotiation and was so licensed at that time.

21 Section 34. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 An insurer or insurance producer may pay or assign a commission, service fee, brokerage,  
24 nominal fee of a fixed dollar amount for each referral that does not depend on whether the



1 referral results in a transaction, or other valuable consideration to an insurance agency or to  
2 persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would  
3 violate § 58-33-14 or 58-33-24.

4 Section 35. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No insurance producer or business entity may act as an agent of an insurer unless the  
7 insurance producer becomes an appointed insurance producer of that insurer. An insurance  
8 producer who is not acting as an agent of an insurer is not required to become appointed. This  
9 section does not apply to property and casualty insurance producers who sell, solicit, or  
10 negotiate and place insurance with admitted insurers although the insurance producer is not  
11 appointed with the insurer if all insurance business placed by the unappointed insurance producer  
12 is through and countersigned by a licensed resident insurance producer who is appointed by the  
13 insurer involved in the transaction and if the coverage is not reasonably available through the  
14 insurance producer's existing appointed insurers for placements made as authorized by this  
15 section. The unappointed insurance producer may receive compensation from the insurer or a  
16 resident appointed insurance producer.

17 Section 36. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 To appoint an insurance producer or business entity as its agent, the appointing insurer shall  
20 file, in a format approved by the director, a notice of appointment within fifteen days from the  
21 date the agency contract is executed or the first insurance application is submitted. An insurer  
22 may also elect to appoint an insurance producer to all or some insurers within the insurer's  
23 holding company system or group by the filing of a single appointment request. The insurer is  
24 responsible for the acts of its representatives and insurance producers, including those acts where

1 the insurance producer has solicited, sold, or negotiated insurance on behalf of that insurer prior  
2 to the date of appointment.

3 Section 37. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Upon receipt of the notice of appointment, the director shall verify within a reasonable time,  
6 not to exceed thirty days, that the insurance producer is eligible for appointment. If the insurance  
7 producer is determined to be ineligible for appointment, the director shall notify the insurer  
8 within five days of its determination.

9 Section 38. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 An insurer shall pay an appointment fee in the amount as set forth in § 58-2-29 in a manner  
12 prescribed by the director for each insurance producer appointed by the insurer.

13 Section 39. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 An insurer shall remit, in a manner prescribed by the director, a renewal appointment fee in  
16 the amount set forth in § 58-2-29.

17 Section 40. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 An insurer or authorized representative of the insurer that terminates the appointment,  
20 employment, contract, or other insurance business relationship with an insurance producer shall  
21 notify the director within thirty days following the effective date of the termination, using a  
22 format prescribed by the director. Upon the written request of the director, the insurer shall  
23 provide additional information, documents, records, or other data pertaining to the termination  
24 or activity of the insurance producer pursuant to § 58-30-8, such information is confidential.

1 Section 41. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 The insurer or authorized representative of the insurer shall promptly notify the director in  
4 a written or electronic format if, upon further review or investigation, the insurer discovers  
5 additional information that would have been reportable to the director in accordance with section  
6 40 of this Act had the insurer then known of its existence.

7 Section 42. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Within fifteen days after making the notification required by sections 40 and 41 of this Act,  
10 the insurer shall mail, or if acceptable, send by electronic means, a copy of the notification to the  
11 insurance producer at the insurance producer's last known address. If the insurance producer is  
12 terminated for any of the reasons listed in section 27 of this Act, the insurer shall provide a copy  
13 of the notification to the insurance producer at the insurance producer's last known address by  
14 certified mail, return receipt requested and postage prepaid, by overnight delivery using a  
15 nationally recognized carrier, or if acceptable, by electronic means.

16 Section 43. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 Within thirty days after the insurance producer has received the original or additional  
19 notification, the insurance producer may file written comments concerning the substance of the  
20 notification with the director. The insurance producer shall simultaneously send a copy of the  
21 comments to the reporting insurer, and the comments shall become a part of the director's file  
22 and accompany every copy of a report distributed or disclosed for any reason about the insurance  
23 producer as permitted under section 47 of this Act.

24 Section 44. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 In the absence of actual malice, an insurer, the authorized representative of the insurer, an  
3 insurance producer, the director, or an organization of which the director is a member that  
4 compiles the information and makes it available to other insurance directors, commissioners, or  
5 superintendents, or regulatory or law enforcement agencies, is not subject to civil liability, and  
6 no civil cause of action of any nature may arise against these entities or their respective agents  
7 or employees, as a result of any statement or information required by or provided pursuant to  
8 sections 40 to 53, inclusive, of this Act, or any information relating to any statement that may  
9 be requested in writing by the director, from an insurer or insurance producer; or any statement  
10 by a terminating insurer or insurance producer to an insurer or insurance producer limited solely  
11 and exclusively to whether a termination for cause under section 40 of this Act was reported to  
12 the director, if the propriety of any termination for cause under section 40 of this Act is certified  
13 in writing by an officer or authorized representative of the insurer or insurance producer  
14 terminating the relationship.

15 Section 45. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 In any action brought against a person that may have immunity under section 44 of this Act  
18 for making any statement required by sections 40 to 53, inclusive, of this Act, providing any  
19 information relating to any statement that may be requested by the director, the party bringing  
20 the action shall plead specifically in any allegation that section 44 of this Act does not apply  
21 because the person making the statement or providing the information did so with actual malice.

22 Section 46. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 The provisions of sections 44 and 45 of this Act do not abrogate or modify any existing

1 statutory or common law privileges or immunities.

2 Section 47. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any documents, materials, or other information in the control or possession of the Division  
5 of Insurance that is furnished by the insurer, insurance producer, or an employee or agent thereof  
6 acting on behalf of the insurer or insurance producer, or obtained by the director in an  
7 investigation pursuant to sections 40 to 53, inclusive, of this Act, are confidential by law and  
8 privileged, are not subject to open records, freedom of information, sunshine, or other related  
9 laws, are not subject to subpoena, and are not subject to discovery or admissible in evidence in  
10 any private civil action. The director is authorized to use the documents, materials, or other  
11 information in the furtherance of any regulatory function or legal action brought as a part of the  
12 director's duties.

13 Section 48. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Neither the director nor any person who received documents, materials, or other information  
16 while acting under the authority of the director may testify in any private civil action concerning  
17 any confidential documents, materials, or information subject to section 47 of this Act.

18 Section 49. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 In order to assist in the performance of the director's duties under this Act, the director may:

- 21 (1) Share documents, materials, or other information, including the confidential and  
22 privileged documents, materials, or information subject to section 47 of this Act, with  
23 other state, federal, and international regulatory agencies, with the National  
24 Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state,

1 federal, and international law enforcement authorities, if the recipient agrees to  
2 maintain the confidentiality and privileged status of the document, material, or other  
3 information;

4 (2) Receive documents, materials, or information, including otherwise confidential and  
5 privileged documents, materials, or information from the National Association of  
6 Insurance Commissioners, its affiliates, or subsidiaries and from regulatory and law  
7 enforcement officials of other foreign or domestic jurisdictions, and shall maintain as  
8 confidential or privileged any document, material, or information received with notice  
9 or the understanding that it is confidential or privileged under the laws of the  
10 jurisdiction that is the source of the document, material, or information; and

11 (3) Enter into agreements governing sharing and use of information consistent with this  
12 section.

13 Section 50. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 No waiver of any applicable privilege or claim of confidentiality in the documents, materials,  
16 or information occurs as a result of disclosure to the director under sections 40 to 53, inclusive,  
17 of this Act, or as a result of sharing as authorized in section 47 of this Act.

18 Section 51. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 Nothing in this Act prohibits the director from releasing final orders, including for cause  
21 terminations that are open to public inspection pursuant to Title 58 and chapters 1-26 and 1-27,  
22 to a database or other clearinghouse service maintained by the National Association of Insurance  
23 Commissioners, its affiliates, or its subsidiaries.

24 Section 52. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 An insurer, the authorized representative of the insurer, or insurance producer that fails to  
3 report as required under the provisions of this Act or that is found to have reported with actual  
4 malice by a court of competent jurisdiction may, after notice and hearing, have its license or  
5 certificate of authority suspended or revoked and may be assessed a monetary penalty in  
6 accordance with § 58-4-28.1.

7 Section 53. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 An insurance producer shall report to the director any administrative action taken against the  
10 insurance producer in another jurisdiction or by another governmental agency in this state within  
11 thirty days of the final disposition of the matter. This report shall include a copy of the order,  
12 consent order, or other relevant legal documents.

13 Section 54. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Within thirty days of the initial pretrial hearing date, an insurance producer shall report to the  
16 director any felony criminal prosecution of the insurance producer taken in any jurisdiction. The  
17 report shall include a copy of the initial complaint filed, the order resulting from the hearing, and  
18 any other relevant legal documents.

19 Section 55. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 The director may promulgate rules pursuant to chapter 1-26 to provide for:

- 22 (1) Qualifications for licensure;
- 23 (2) Exceptions to licensure;
- 24 (3) Application for licensure;

- 1 (4) Rights and obligations of licensure;
- 2 (5) Temporary licenses;
- 3 (6) Nonresident licensing;
- 4 (7) Denial, nonrenewal, or revocation of license;
- 5 (8) Application for examination and examination procedures;
- 6 (9) Exemption from examination;
- 7 (10) Commissions;
- 8 (11) Appointments and termination thereof;
- 9 (12) Reciprocity;
- 10 (13) Reporting of actions;
- 11 (14) Definition of terms; and
- 12 (15) Required forms or procedures.

13 Section 56. That § 58-1-2 be amended to read as follows:

14 58-1-2. Terms used throughout this title mean:

15 (1) ~~"Agent," any individual, firm, or corporation licensed by the director and if authorized~~  
 16 ~~by an insurer to solicit, negotiate, issue, countersign, and effectuate insurance~~  
 17 ~~contracts;~~

18 ~~(2)~~ "Alien insurer," one formed under the laws of any country or jurisdiction other than  
 19 the United States of America, its states, districts, territories, and commonwealths;

20 ~~(3)~~(2) "Authorized insurer," one authorized, by a subsisting certificate of authority issued  
 21 by the director, to engage in the insurance business in this state;

22 ~~(4)~~ "Broker," any person, partnership, association, or corporation, which acts or aids for  
 23 or on behalf of the assured in any manner, with or without compensation, in the  
 24 solicitation or negotiation of policies or contracts for insurance covering property or



- 1 risks in this state;
- 2 ~~(5)~~(3) "Certificate of authority," permission granted to an insurer to issue policies or make
- 3 contracts of insurance in this state;
- 4 ~~(6)~~(4) "Director," the director of the Division of Insurance;
- 5 ~~(7)~~(5) "Division," the Division of Insurance of the Department of Commerce and Regulation;
- 6 ~~(8)~~(6) "Domestic insurer," one formed under the laws of this state;
- 7 ~~(9)~~(7) "Foreign insurer," one formed under the laws of any jurisdiction other than this state;
- 8 except where distinguished by context, foreign insurer includes an alien insurer;
- 9 ~~(10)~~(8) "Insurance," a contract whereby one undertakes to indemnify another or to pay
- 10 or provide a specified or determinable amount or benefit upon determinable
- 11 contingencies;
- 12 ~~(11)~~(9) "Insurance business," includes the transaction of all matters pertaining to a
- 13 contract of insurance, both before and after the effectuation of that contract,
- 14 and all matters arising out of that contract or any claim thereunder;
- 15 ~~(12)~~(10) "Insurer," every person engaged as indemnitor, surety, or contractor in the
- 16 business of entering into contracts of insurance;
- 17 ~~(13)~~(11) "License," permission granted to an agent or broker to engage in those
- 18 activities permitted by such persons under this title;
- 19 ~~(13A)~~(12) "Maintenance agreement," a contract of limited duration that provides for
- 20 scheduled maintenance only;
- 21 ~~(13B)~~(13) "Mechanical breakdown insurance," any contract or agreement to perform or
- 22 indemnify for a specific duration the repair, replacement, or maintenance of
- 23 property for operational or structural failure due to a defect in materials,
- 24 workmanship, or normal wear and tear;

- 1 (14) "Person," an individual, insurer, company, association, organization, Lloyds, society,  
2 reciprocal or inter-insurance exchange, partnership, syndicate, business trust,  
3 corporation, and any other legal entity;
- 4 (15) "Principal office;" or "principal place of business," the office or regional home office  
5 from which the business affairs of the insurer are directed and managed;
- 6 (16) "State," when used in context signifying a jurisdiction other than the State of South  
7 Dakota, a state, the District of Columbia, a territory, commonwealth, or possession  
8 of the United States of America, or a province of the Dominion of Canada; and
- 9 (17) "Unauthorized insurer," one which does not hold a subsisting certificate of authority  
10 issued by the director to engage in the insurance business in this state.

11 Section 57. That § 58-1-3.2 be amended to read as follows:

12 58-1-3.2. ~~Transacting the business of insurance includes direct response and mass marketing~~  
13 ~~advertising as well as agent solicitation.~~ The Division of Insurance ~~has the authority to~~ may  
14 regulate a person, trust, or other entity using ~~such~~ direct response or mass market advertising  
15 within this state regardless of the source of the direct response or mass marketing advertisement  
16 if the advertisement is intended to place insurance within the state.

17 Section 58. That § 58-1-7 be amended to read as follows:

18 58-1-7. No county or first or second class municipality of this state ~~shall~~ may require that any  
19 insurer, or any insurance ~~agent or any broker~~ producer obtain a certificate of authority or license  
20 to transact an insurance business in such county or municipality; and no county or municipality  
21 ~~shall~~ may levy any occupational tax or fee for transacting any such business. This section ~~shall~~  
22 does not be construed so as to preempt or prevent the taxation and regulation of persons  
23 engaged in the bail bond business other than corporate sureties and their agents who are required  
24 to qualify and be licensed by the provisions of this title.

1 Section 59. That § 58-1-10 be amended to read as follows:

2 58-1-10. Every license of an ~~agent or broker~~ insurance producer in force immediately prior  
3 to July 1, 1966, and existing under any law herein repealed by chapter 111 of the Session Laws  
4 of 1966, shall be subject to renewal, suspension, revocation, or termination as though originally  
5 issued under this title.

6 Section 60. That § 58-2-29 be amended to read as follows:

7 58-2-29. The director of the Division of Insurance shall collect in advance, and persons so  
8 served shall pay to ~~him~~ the director in advance, fees, licenses, and miscellaneous charges as  
9 follows:

10 (1) Certificate of authority of insurer:

11 (a) Application for original certificate of authority:

12 For filing application for certificate of authority, articles of incorporation, and  
13 other charter documents, bylaws, financial statements, examination reports,  
14 power of attorney to the director, and all other documents and filings required  
15 in connection with such application: . . . . . \$500.00

16 (b) Issuance of original certificate of authority . . . . . 25.00

17 (c) Annual renewal of certificate of authority . . . . . 25.00

18 (d) Reinstatement of certificate of authority . . . . . 25.00

19 (e) Amendment or reissuance of certificate of authority . . . . . 25.00

20 (f) Annual audit . . . . . 500.00

21 This fee to be reduced by the total dollar amount of premium taxes remitted in  
22 each calendar year. The fee is waived for all licensed insurers remitting five  
23 hundred dollars or more in premium taxes in a calendar year.

24 (2) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive

1 of fees required to be paid to the secretary of state by a domestic corporation 10.00

2 (3) Filing bylaws or amendments thereto ..... 5.00

3 (4) Filing annual statement of insurer, other than as part of application for original

4 certificate of authority ..... 25.00

5 (5) ~~Agents, brokers, Insurance producers~~ and solicitors:

6 (a) ~~Agent's Insurance producer's license, general lines agents,~~ including also

7 disability insurance when written by property, casualty, or surety insurer

8 otherwise represented by the ~~agent~~ insurance producer:

9 (i) Filing application for original license, and including issuance of license,

10 if issued ..... 25.00

11 (ii) Original appointment of ~~agent~~ insurance producer, each insurer 10.00

12 (iii) Annual renewal of appointment, each insurer:

13 Domestic insurer ..... 10.00

14 Foreign insurer ..... 10.00

15 (iv) Temporary license ..... 10.00

16 (b) ~~Agent's Insurance producer's license, life or health insurance, including both life~~

17 ~~and disability insurance when so licensed as to the same insurer:~~

18 (i) Application for original license, including issuance of license, if issued,

19 each insurer ..... 25.00

20 (ii) Original appointment of ~~agent~~ insurance producer, each insurer 10.00

21 (iii) Annual renewal of appointment, each insurer:

22 Domestic insurer ..... 10.00

23 Foreign insurer ..... 10.00

24 (iv) Temporary license ..... 10.00

- 1 (c) Limited license as ~~agent~~ insurance producer:
- 2 (i) Motor vehicle physical damage . . . Same as for ~~general lines agent~~
- 3 insurance producer's license
- 4 (ii) Accident ticket policies, each insurer each year . . . . . 10.00
- 5 (iii) Baggage ticket policies, each insurer each year . . . . . 10.00
- 6 (iv) Credit insurance . . . Same as for ~~general lines agent~~ insurance producer
- 7 license
- 8 (d) Examination for license, each examination and each time taken . . . . 10.00
- 9 (e) Nonresident ~~agent~~ insurance producer license:
- 10 (i) Original license . . . . . 30.00
- 11 (ii) Appointments, each insurer . . . . . 20.00
- 12 (iii) Annual renewal of appointments, each insurer . . . . . 20.00
- 13 (f) Resident ~~broker~~ insurance producer, original license . . . . . 25.00
- 14 (i) Annual renewal . . . . . 25.00
- 15 (g) Corporation or partnership license:
- 16 (i) Original license . . . . . 25.00
- 17 (ii) Appointment, each insurer . . . . . 10.00
- 18 (iii) Annual renewal of appointment, each insurer . . . . . 10.00
- 19 (h) Nonresident corporation or partnership license:
- 20 (i) Original license . . . . . 30.00
- 21 (ii) Appointment, each insurer . . . . . 20.00
- 22 (iii) Annual renewal of appointment, each insurer . . . . . 20.00
- 23 (6) Insurance vending machine license, each machine, each year . . . . . 20.00
- 24 (7) Surplus line broker's license, application for original license including issuance of

1 license, if issued ..... 50.00

2 (a) Annual renewal of license ..... 50.00

3 (8) Rating bureau, original license ..... 25.00

4 (a) Annual renewal of license ..... 35.00

5 (9) Examination of rating bureau . . . Same fees as provided in this chapter for

6 examination of foreign insurance companies

7 (10) Farm mutuals:

8 (a) Application for original certificate of authority: For filing application for

9 certificate of authority, articles of incorporation, and all other documents and

10 filings required in connection with such application, and for issuance of an

11 original certificate of authority, if issued ..... 25.00

12 (b) Annual renewal of certificate of authority ..... 10.00

13 (c) Filing annual statement ..... 5.00

14 (11) Broker's license as attorney in fact of a reciprocal or interinsurance exchange 20.00

15 (12) Miscellaneous services:

16 (a) For a copy of any paper filed in the insurance division, for which another price

17 is not set by statute, each page ..... .75

18 (b) Director's sworn certificate, except when on certificates of authority or licenses

19 ..... 10.00

20 (c) For receiving and forwarding copy of summons or other process served upon

21 the director, as process agent of an insurer or nonresident ~~agent~~ insurance

22 producer ..... 10.00

23 (13) Application for continuing education course approval ..... 25.00.

24 Section 61. That § 58-3-5 be amended to read as follows:

1        58-3-5. For the purpose of ascertaining compliance with this title, the director may as often  
2 as ~~he~~ the director deems advisable examine the accounts, records, documents, and transactions,  
3 pertaining to or affecting its insurance affairs or proposed insurance affairs, of:

- 4        (1) Any insurance ~~agent, broker~~ producer, surplus line broker, or general agent;
- 5        (2) Any person having a contract under which ~~he~~ the person enjoys in fact the exclusive  
6 or dominant right to manage or control an insurer;
- 7        (3) Any person holding the shares of voting stock or policyholder proxies of a domestic  
8 insurer, for the purpose of controlling the management thereof, as voting trustee or  
9 otherwise;
- 10       (4) Any person engaged in or proposing to be engaged in or assisting in the promotion  
11 or formation of a domestic insurer or insurance holding corporation, or corporation  
12 to finance a domestic insurer or the production of its business.

13       Section 62. That § 58-3-7 be amended to read as follows:

14       58-3-7. Every person being examined, its officers, employees, ~~agents~~ insurance producers,  
15 and representatives shall produce and make freely available to the director or ~~his~~ the director's  
16 examiners the accounts, records, documents, files, information, assets, and matters in ~~his~~ the  
17 director's possession or control relating to the subject of the examination; and shall otherwise  
18 facilitate and aid ~~such~~ the examination as far as reasonably possible.

19       Section 63. That § 58-3-7.2 be amended to read as follows:

20       58-3-7.2. The refusal of any company, by its officers, directors, employees, or ~~agents~~  
21 insurance producers, to submit to examination or to comply with any reasonable written request  
22 of the examiners constitutes grounds for suspension or refusal of, or nonrenewal of any license  
23 or authority held by the insurer or person to engage in an insurance or other business subject to  
24 the director's jurisdiction.

1 Section 64. That § 58-3-13 be amended to read as follows:

2 58-3-13. The report when so filed shall be admissible in evidence, in any action or proceeding  
3 brought by the director against the person examined, or against its officers, representatives, or  
4 ~~agents~~ insurance producers, of the facts stated therein. The director and ~~his~~ the director's  
5 examiners may at any time testify and offer other proper evidence as to information secured  
6 during the course of an examination, whether or not a written report of the examination has at  
7 that time been either made, served, or filed in the director's office.

8 Section 65. That § 58-4-1 be amended to read as follows:

9 58-4-1. The director of the Division of Insurance may promulgate rules pursuant to chapter  
10 1-26 to administer the provisions of this title. No rule may extend, modify, or conflict with any  
11 provision of this title or the reasonable implications thereof.

12 The director may not pass a rule pertaining to the replacement of existing life insurance.  
13 However, a rule may be adopted requiring the insurer or its ~~agent~~ insurance producer replacing  
14 a life insurance policy to provide written notification of the replacement to the insurer of the  
15 existing policy within ten days prior to the delivery date of the new policy coverage.

16 Section 66. That § 58-4-28.1 be amended to read as follows:

17 58-4-28.1. In any case in which the director has the power to deny an application, revoke,  
18 refuse to renew, or suspend the license of any ~~agent, broker~~ insurance producer, solicitor, or  
19 administrator or the certificate of authority of any insurance company or health maintenance  
20 organization, the director may permit an applicant or licensee to elect in writing to pay a  
21 specified money penalty within a specified time in lieu of a license suspension or other permitted  
22 action.

23 The money penalty may not exceed five thousand dollars for an ~~agent~~ insurance producer or  
24 twenty-five thousand dollars for an ~~insurance company~~ insurer, administrator, or health



1 maintenance organization for each offense.

2 Section 67. That § 58-4A-2 be amended to read as follows:

3 58-4A-2. For purposes of this chapter, a person commits a fraudulent insurance act if the  
4 person:

5 (1) Knowingly and with intent to defraud or deceive issues or possesses fake or  
6 counterfeit insurance policies, certificates of insurance, insurance identification cards,  
7 or insurance binders;

8 (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives  
9 money for the purpose of purchasing insurance and converts the money to the  
10 person's own benefit or for a purpose not intended or authorized by an insured or  
11 prospective insured;

12 (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,  
13 premiums, credits, or other property of an insurer or person engaged in the business  
14 of insurance or of an insured or prospective insured;

15 (4) Knowingly and with intent to defraud or deceive makes any false entry of a material  
16 fact in or pertaining to any document or statement filed with or required by the  
17 Division of Insurance;

18 (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,  
19 or destroys assets or records of an insurer or other person engaged in the business of  
20 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records  
21 of an insurer or other person engaged in the business of insurance;

22 (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or  
23 prepares with knowledge or belief that it will be presented to or by an insurer, or any  
24 ~~agent~~ insurance producer of an insurer, any statement as part of a claim, in support

1 of a claim, or in denial of a claim for payment or other benefit pursuant to an  
2 insurance policy knowing that the statement contains any false, incomplete, or  
3 misleading information concerning any fact or thing material to a claim;

4 (7) Assists, abets, solicits, or conspires with another to prepare or make any statement  
5 that is intended to be presented to or by an insurer or person in connection with or in  
6 support of any claim for payment or other benefit, or denial, pursuant to an insurance  
7 policy knowing that the statement contains any false, incomplete, or misleading  
8 information concerning any fact or thing material to the claim; or

9 (8) Makes any false or fraudulent representations as to the death or disability of a policy  
10 or certificate holder in any statement or certificate for the purpose of fraudulently  
11 obtaining money or benefit from an insurer.

12 Any violation of this section for an amount of five hundred dollars or less is a Class 1  
13 misdemeanor. Any violation of this section for an amount in excess of five hundred dollars is a  
14 Class 4 felony. Any other violation of this section is a Class 1 misdemeanor.

15 Section 68. That § 58-4A-13 be amended to read as follows:

16 58-4A-13. Any person acting in good faith is immune from civil liability for filing a report  
17 with or for furnishing any information relating to suspected, anticipated, or completed fraudulent  
18 insurance acts to:

- 19 (1) The Department of Commerce and Regulation and the director of insurance;
- 20 (2) Any governmental agency established to detect and prevent fraud;
- 21 (3) Law enforcement officials;
- 22 (4) The Department of Labor;
- 23 (5) Any insurer or insurance agent producer;
- 24 (6) The National Association of Insurance Commissioners; and

1 (7) Any nonprofit organization established to detect and prevent insurance fraud, if the  
2 organization is approved by the director pursuant to rules promulgated by the director  
3 under chapter 1-26 setting forth the standards, criteria, and procedures necessary to  
4 obtain approval.

5 If a civil action is commenced against a person for damages related to the filing of a report  
6 or the furnishing of information under this section and the court determines that the person acted  
7 in good faith in filing the report or furnishing the information, the person filing the report or  
8 furnishing the information may recover costs or disbursements under chapter 15-17, including  
9 reasonable attorney's fees.

10 If the trier of fact concludes that the person filing the report or furnishing the information was  
11 not acting in good faith, the person filing a civil action may recover costs or disbursements under  
12 chapter 15-17, including reasonable attorney's fees.

13 This section does not abrogate or modify in any way any common law or statutory privilege  
14 or immunity.

15 Section 69. That § 58-5-16 be amended to read as follows:

16 58-5-16. The director shall, upon the corporation's application therefor, issue temporary  
17 ~~agent's~~ insurance producer's licenses for a period not exceeding six months for the solicitation  
18 of such applications to individuals qualifying for a resident ~~agent's~~ insurance producer license  
19 except as to the taking or passing of an examination. The director may suspend or revoke any  
20 such license for any of the causes and pursuant to the same procedures as are applicable to  
21 suspension or revocation of licenses of ~~agents~~ insurance producers in general.

22 Section 70. That § 58-5-100 be amended to read as follows:

23 58-5-100. No domestic insurer or ~~agent~~ insurance producer thereof ~~shall~~ may knowingly  
24 solicit insurance business in any reciprocating state in which it is not then licensed as an

1 authorized insurer.

2 Section 71. That § 58-5-122 be amended to read as follows:

3 58-5-122. No director, officer, ~~agent~~ insurance producer, or employee of any insurer party  
4 to such reinsurance, nor any other person, ~~shall~~ may receive any fee, commission, or other  
5 valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein  
6 except as set forth in the reinsurance agreement.

7 Section 72. That § 58-5-127 be amended to read as follows:

8 58-5-127. No director, officer, ~~agent~~ insurance producer, or employee of any insurer party  
9 to such reinsurance, nor any other person, ~~shall~~ may receive any fee, commission, or other  
10 valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein  
11 except as set forth in the reinsurance agreement.

12 Section 73. That § 58-5-130 be amended to read as follows:

13 58-5-130. No director, officer, ~~agent~~ insurance producer, or employee of any insurer party  
14 to such merger or consolidation ~~shall~~ may receive any fee, commission, compensation, or other  
15 valuable consideration whatsoever for aiding, promoting, or assisting therein except as set forth  
16 in such plan and agreement.

17 Section 74. That § 58-5-138.1 be amended to read as follows:

18 58-5-138.1. No director, officer, ~~agent~~ insurance producer, or employee of any mutual  
19 insurer party to a reorganization or conversion to a corporation with capital stock may receive  
20 any fee, commission, compensation, or other valuable consideration for that participation except  
21 as set forth in the reorganization or conversion plan.

22 Section 75. That § 58-6-1 be amended to read as follows:

23 58-6-1. No person ~~shall~~ may act as an insurer and no insurer or its ~~agents~~ insurance  
24 producers, attorneys, subscribers, or representatives ~~shall~~ may directly transact insurance in this

1 state except as authorized by a subsisting certificate of authority issued to the insurer by the  
2 director, except as to such transactions as are expressly otherwise provided for in this title.

3 ~~Violation~~ Any violation of this section is a Class 2 misdemeanor.

4 Section 76. That § 58-6-3 be amended to read as follows:

5 58-6-3. The state hereby preempts the field of regulating insurers and their agents insurance  
6 producers and solicitors; and all political subdivisions of the state are prohibited from requiring  
7 of any insurer, agent insurance producer, or solicitor regulated under this title any authorization,  
8 permit, or registration of any kind for conducting transactions lawful under the authority granted  
9 by the state under this title.

10 Section 77. That § 58-6-50 be amended to read as follows:

11 58-6-50. Upon suspending or revoking or refusing to renew the insurer's certificate of  
12 authority, the director shall forthwith give, by registered or certified mail, notice thereof to the  
13 insurer's agents insurance producers in this state of record in the department, and shall likewise  
14 suspend or revoke the authority of ~~such agents~~ the insurance producers to represent the insurer.

15 Section 78. That § 58-6-55 be amended to read as follows:

16 58-6-55. Upon reinstatement of the insurer's certificate of authority, the authority of its  
17 agents insurance producers in this state to represent the insurer shall likewise reinstate. The  
18 director shall promptly notify by registered or certified mail the insurer and its agents insurance  
19 producers in this state, of record in the division, of such reinstatement. If pursuant to § 58-6-51  
20 the director has published notice of ~~such~~ the suspension, ~~he~~ the director shall in like manner  
21 publish notice of the reinstatement.

22 Section 79. That § 58-6-60 be amended to read as follows:

23 58-6-60. Upon refusal, suspension, or revocation of an insurer's certificate of authority, the  
24 director shall forthwith give notice thereof by registered or certified mail to the insurer and to

1 its ~~agents~~ insurance producers in this state of record in the director's office.

2 Section 80. That § 58-6-61 be amended to read as follows:

3 58-6-61. Such refusal, suspension, or revocation shall likewise automatically suspend or  
4 revoke, as the case may be, the authority of all such ~~agents~~ insurance producers to act as ~~agents~~  
5 insurance producers of the insurer in this state, and the director shall so state in the notice to  
6 ~~agents~~ insurance producers provided for in § 58-6-60.

7 Section 81. That § 58-6-62 be amended to read as follows:

8 58-6-62. No authorized insurer may make, write, issue, or place any policy, bond, contract  
9 of insurance, or general or floating policy upon persons or property, or covering a subject of  
10 insurance or bonding to be performed in South Dakota, unless the policy is written through a  
11 licensed resident ~~agent~~ insurance producer, or a licensed nonresident ~~agent when~~ insurance  
12 producer, except where the license of the nonresident insurance producer is not required  
13 pursuant to subdivision (6) of section 4 of this Act, if countersigned by a resident ~~agent~~ insurance  
14 producer. If two or more insurers issue a single policy, it may be countersigned on behalf of all  
15 of them by one of the insurer's licensed resident ~~agents~~ insurance producers in this state.  
16 ~~Violation~~ Any violation of this section is a Class 2 misdemeanor.

17 Section 82. That § 58-6-63 be amended to read as follows:

18 58-6-63. The licensed resident ~~agent when~~ insurance producer, if countersigning for a  
19 licensed nonresident ~~agent will~~ insurance producer, shall receive for this service five percent of  
20 the total premium or twenty-five percent of the commission whichever is less. Either the resident  
21 ~~agent~~ insurance producer or the insurer, or both, shall enter this payment amount on ~~his~~ the  
22 insurance producer's or insurer's record so that the state will receive the necessary tax required  
23 by law. The resident ~~agent~~ insurance producer has the option of waiving countersignature fees  
24 of less than two dollars.

1 Section 83. That § 58-6-64 be amended to read as follows:

2 58-6-64. Any insurer requesting countersignature from a resident agent insurance producer  
3 shall furnish, for that agent's insurance producer's permanent records, full information regarding  
4 policy number, name of insured, amount of premium applicable to South Dakota, and the name  
5 and license number of the licensed South Dakota nonresident agent insurance producer. On audit  
6 type policies, the company shall furnish full information at the audit period to the resident agent  
7 insurance producer regarding the earned premium applicable to the State of South Dakota. The  
8 insurer is obligated to see that the correct resident agent insurance producer countersignature  
9 fee is paid.

10 Section 84. That § 58-6-65 be amended to read as follows:

11 58-6-65. The director of the Division of Insurance may suspend or revoke the certificate of  
12 authority of any insurer who intentionally fails to observe or comply with the provisions of  
13 §§ 58-6-62 to 58-6-64, inclusive. The director may also suspend or revoke the license of any  
14 resident agent insurance producer who agrees to accept or who accepts a lesser percentage of  
15 commission than that provided by § 58-6-63, and the license of any licensed South Dakota  
16 nonresident agent insurance producer who seeks to induce, or who induces, any resident agent  
17 insurance producer to accept a lesser percentage of commission than that provided by § 58-6-63.

18 Section 85. That § 58-6-70 be amended to read as follows:

19 58-6-70. If any other state or foreign country imposes any taxes, licenses, and other fees, in  
20 the aggregate, or fines, penalties, deposit requirements, or other material obligations,  
21 prohibitions, or restrictions upon South Dakota insurers, or upon the agents insurance producers  
22 or representatives of such insurers, which are, pursuant to the laws of that other state or country,  
23 in excess of those directly imposed upon similar insurers, or upon the agents insurance producers  
24 or representatives of such insurers, of that other state or country under the statutes of this state,

1 then, so long as the laws of that other state or country continue in force or are so applied, the  
2 director of the Division of Insurance shall impose the same taxes, licenses, and other fees, in the  
3 aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions,  
4 or restrictions of whatever kind upon the insurers, or upon the ~~agents~~ insurance producers or  
5 representatives of the insurers, of the other state or country doing business or seeking to do  
6 business in South Dakota. Any tax, license, or other fee or obligation imposed on South Dakota  
7 insurers or their ~~agents~~ insurance producers or representatives by any first or second class  
8 municipality, county, or other political subdivision or agency of the other state or country is  
9 considered to be imposed by such state or country within the meaning of this section. The time  
10 and period of payment of the retaliatory tax is the same, in all cases, as that of the gross  
11 premiums tax provided for in § 10-44-2. No interest charges or credits may be made or allowed  
12 for the use or loss of the use of funds due to any difference in the time or period of payment used  
13 in this state and the time or period used in a foreign state or country.

14 Section 86. That § 58-6-76 be amended to read as follows:

15 58-6-76. The director of the Division of Insurance shall cause a summary, condensed from  
16 the annual statement of each company to be published three times, at the expense of the  
17 company, at legal rates, in a legal newspaper printed and published in each judicial circuit of the  
18 state in which the insurance company has a licensed ~~agent~~ insurance producer. Condensed  
19 statements for publication shall be made on blanks furnished by the director, which shall be  
20 uniform as to the information conveyed to the public and which, ~~when~~ set in nonpareil type,  
21 together with the annual certificate of authority of the company, constitute a printed statement  
22 uniformly ten inches in length. A printer's affidavit, in duplicate, shall be filed with the director  
23 in all cases. The affidavit shall state that the insurance company has paid the newspaper the  
24 authorized rate for publishing legal notices, that the full amount named inures to the sole benefit



1 of the publisher or publishers thereof, that no agreement or understanding for the division thereof  
2 was made with any person, and that no part thereof was agreed to be paid to any person. Every  
3 affidavit of publication shall state in plain terms that the full amount authorized herein was  
4 charged and collected for the publication.

5 Section 87. That § 58-6-77 be amended to read as follows:

6 58-6-77. ~~It shall be the duty of the~~ The director ~~to shall~~ cause the publication of such  
7 statements to be made within sixty days from the end of the limit of time provided by law for  
8 filing such annual statements, ~~and he.~~ The director shall, thereafter, provide for publication of  
9 the annual statements in such judicial circuits as shall be occupied by the appointment of an ~~agent~~  
10 insurance producer after the first statements ~~shall~~ have been assigned.

11 Section 88. That § 58-6A-5 be amended to read as follows:

12 58-6A-5. All premiums paid for coverages within this state to risk retention groups are  
13 subject to taxation at the same rate and subject to the same interest, fines, and penalties for  
14 nonpayment as that applicable to foreign admitted insurers. To the extent ~~agents or brokers~~  
15 insurance producers are utilized, they shall report and pay the taxes for the premiums for risks  
16 which they have placed with or on behalf of a risk retention group not chartered in this state. To  
17 the extent ~~agents or brokers~~ insurance producers are not utilized or fail to pay the tax, each risk  
18 retention group shall pay the tax for risks insured within this state. Further, each risk retention  
19 group shall report all premiums paid to it for risks insured within this state.

20 Section 89. That § 58-6A-5.1 be amended to read as follows:

21 58-6A-5.1. The premium tax imposed by chapter 10-44 and taxes on premiums paid for  
22 coverage of risks resident or located in this state by a purchasing group or any member of a  
23 purchasing group shall be imposed at the same rate and subject to the same interest, fines, and  
24 penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage

1 from a similar insurance source by other insureds. The tax may be paid first by such insurance  
2 source or the ~~agent or broker~~ insurance producer for the purchasing group or by the purchasing  
3 group or by each member of a purchasing group.

4 Section 90. That § 58-6A-6 be amended to read as follows:

5 58-6A-6. Any risk retention group, its ~~agents~~ insurance producers, and representatives shall  
6 comply with the Unfair Trade Practices Act of this state, §§ 58-33-66 to 58-33-69, inclusive.

7 Section 91. That § 58-6A-16.1 be amended to read as follows:

8 58-6A-16.1. A purchasing group and its insurer or insurers ~~shall be~~ are subject to all  
9 applicable laws of this state, except that a purchasing group and its insurer or insurers ~~shall be~~  
10 are exempt, in regard to liability insurance for the purchasing group, from any law that would:

- 11 (1) Prohibit the establishment of a purchasing group;
- 12 (2) Make it unlawful for an insurer to provide or offer to provide insurance on a basis  
13 providing advantages to a purchasing group or its members based on their loss and  
14 expense experience, which coverage is not afforded to other persons with respect to  
15 rates, policy forms, coverages, or other matters;
- 16 (3) Prohibit a purchasing group or its members from purchasing insurance on a group  
17 basis as described in subdivision (2) of this section;
- 18 (4) Prohibit a purchasing group from obtaining insurance on a group basis because the  
19 group has not been in existence for a minimum period of time or because any member  
20 has not belonged to the group for a minimum period of time;
- 21 (5) Require that a purchasing group shall have a minimum number of members, common  
22 ownership or affiliation, or certain legal form;
- 23 (6) Require that a certain percentage of a purchasing group shall obtain insurance on a  
24 group basis;

1 (7) Otherwise discriminate against a purchasing group or any of its members; or

2 (8) Require that any insurance policy issued to a purchasing group or any of its members  
3 be countersigned by an insurance ~~agent or broker~~ producer residing in this state.

4 Section 92. That § 58-6A-19.1 be amended to read as follows:

5 58-6A-19.1. A purchasing group may not purchase insurance from a risk retention group that  
6 is not chartered in a state or from an insurer not admitted in the state in which the purchasing  
7 group is located, unless the purchase is effected through a licensed ~~agent or broker~~ insurance  
8 producer acting pursuant to the surplus lines laws and regulations of such state.

9 Section 93. That § 58-6A-19.4 be amended to read as follows:

10 58-6A-19.4. No person, firm, association, or corporation may act or aid in any manner in  
11 soliciting, negotiating, or procuring liability insurance in this state from a risk retention group  
12 unless ~~such~~ the person, firm, association, or corporation is licensed as an insurance ~~agent or~~  
13 ~~broker~~ producer in accordance with Title 58.

14 Section 94. That § 58-6A-19.5 be amended to read as follows:

15 58-6A-19.5. No person, firm, association, or corporation may act or aid in any manner in  
16 soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from  
17 an authorized insurer or a risk retention group chartered in a state unless ~~such~~ the person, firm,  
18 association, or corporation is licensed as an insurance ~~agent or broker~~ producer in accordance  
19 with Title 58.

20 Section 95. That § 58-6A-19.6 be amended to read as follows:

21 58-6A-19.6. No person, firm, association, or corporation may act or aid in any manner in  
22 soliciting, negotiating, or procuring liability insurance coverage in this state for any member of  
23 a purchasing group under a purchasing group's policy unless ~~such~~ the person, firm, association,  
24 or corporation is licensed as an insurance ~~agent or broker~~ producer in accordance with Title 58.

1 Section 96. That § 58-6A-19.7 be amended to read as follows:

2 58-6A-19.7. No person, firm, association, or corporation may act or aid in any manner in  
3 soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do  
4 business in this state on behalf of a purchasing group located in this state unless ~~such~~ the person,  
5 firm, association, or corporation is licensed as a surplus lines ~~agent~~ producer or excess line  
6 ~~broker~~ producer in accordance with Title 58.

7 Section 97. That § 58-6A-22 be amended to read as follows:

8 58-6A-22. Any person acting, or offering to act, as an ~~agent or broker~~ insurance producer  
9 for a risk retention group or purchasing group, which solicits members, sells insurance coverage,  
10 purchases coverage for its members located within this state, or otherwise does business in this  
11 state shall, before commencing any such activity, obtain a license from the Division of Insurance.  
12 The residency requirements shall be waived for any ~~broker~~ insurance producer license issued  
13 under this chapter.

14 Section 98. That § 58-8-1 be amended to read as follows:

15 58-8-1. No person ~~shall~~ may in this state, directly or indirectly, act as ~~agent~~ insurance  
16 producer for, or otherwise represent any insurer not then authorized to transact insurance  
17 business in this state, in the solicitation, negotiation, or effectuation of insurance or of annuity  
18 contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of  
19 premiums, or in any other manner in the transaction of insurance business with respect to  
20 subjects of insurance resident, located or to be performed in this state. ~~Violation~~ Any violation  
21 of this section is a Class 2 misdemeanor.

22 Section 99. That § 58-8-3 be amended to read as follows:

23 58-8-3. It ~~shall be~~ is a Class 2 misdemeanor for any person to publish or print in this state in  
24 any newspaper, magazine, periodical, circular, letter, pamphlet, or in any other manner, or to

1 publish by radio or television broadcasting in this state, any advertisement or other notice, either  
2 directly or indirectly, setting forth the advantages of or soliciting business for any insurer, ~~agent~~  
3 insurance producer, or other person who has not been authorized to transact insurance business  
4 in this state.

5 Section 100. That § 58-8-4 be amended to read as follows:

6 58-8-4. No person ~~shall~~ may accept for publication or printing any newspaper, magazine, or  
7 other periodical, or for radio or television broadcasting in this state, any advertisement or other  
8 notice, either directly or indirectly setting forth the advantages of or soliciting business for any  
9 insurer, ~~agent~~ insurance producer, or other person, unless the publisher holds a certificate to the  
10 effect that the insurer, ~~agent~~ insurance producer, or other person named therein is authorized to  
11 transact insurance business in this state for the current license year. ~~Such~~ The certificate shall be  
12 issued by the director without cost to any person applying therefor.

13 ~~Violation~~ Any violation of this section is a Class 2 misdemeanor.

14 Section 101. That § 58-8-5 be amended to read as follows:

15 58-8-5. It ~~shall be~~ is a Class 2 misdemeanor for any manufacturer, jobber, wholesaler, or  
16 retailer to distribute or to cause to be distributed any match books or other advertising matter,  
17 directly or indirectly, setting forth the advantages of or soliciting business for any insurer, ~~agent~~  
18 insurance producer, or other person, who has not been authorized to transact insurance business  
19 in this state.

20 Section 102. That § 58-11-29 be amended to read as follows:

21 58-11-29. Binders or other contracts for temporary insurance may be made orally or in  
22 writing, and shall be deemed to include all the usual terms of the policy as to which the binder  
23 was given together with such applicable endorsements as are designated in the binder, except as  
24 superseded by the clear and express terms of the binder. Any ~~agent, broker,~~ insurance producer

1 or surplus lines broker who knowingly makes any false or fraudulent material statement on a  
2 binder, certificate of insurance, or other document offered as proof of insurance is guilty of a  
3 Class 1 misdemeanor for each offense.

4 Section 103. That § 58-11-45 be amended to read as follows:

5 58-11-45. ~~As~~ Terms used in §§ 58-11-46 to 58-11-54, inclusive, mean:

6 (1) "Automobile collision coverage<sub>2</sub>" includes all coverage of loss or damage to an  
7 automobile insured under the policy resulting from collision or upset;

8 (2) "Automobile liability coverage<sub>2</sub>" includes only coverage of bodily injury and property  
9 damage liability, medical payments, and uninsured motorists' coverage;

10 (3) "Automobile physical damage coverage<sub>2</sub>" includes all coverage of loss or damage to  
11 an automobile insured under the policy except loss or damage resulting from collision  
12 or upset;

13 (4) "Nonpayment of premium<sub>1</sub>" ~~means~~ failure of the named insured to discharge when due  
14 any of ~~his~~ the insured's obligations in connection with the payment of premiums on a  
15 policy, or any installment of ~~such~~ the premium, whether the premium is payable  
16 directly to the insurer or its agent insurance producer or indirectly under any premium  
17 finance plan or extension of credit;

18 (5) "Policy<sub>2</sub>" ~~means~~ an automobile liability, automobile physical damage, or automobile  
19 collision policy, or any combination thereof, delivered or issued for delivery in this  
20 state, insuring a single individual or husband and wife resident of the same household,  
21 as named insured, and under which the insured vehicles therein designated are of the  
22 following types only:

23 (a) A motor vehicle of the private passenger or station wagon type that is not used  
24 as a public or livery conveyance for passengers, nor rented to others; or

1 (b) Any other four-wheel motor vehicle with a load capacity of fifteen hundred  
2 pounds or less which is not used in the occupation, profession, or business of  
3 the insured;

4 ~~provided, however, that~~ However, §§ 58-11-46 to 58-11-54, inclusive, ~~shall do~~ not  
5 apply (i) to any policy issued under an automobile assigned risk plan, or (ii) to any  
6 policy insuring more than four automobiles, or (iii) to any policy covering garage,  
7 automobile sales agency, repair shop, service station, or public parking place  
8 operation hazards;

9 (6) "Renewal" or "to renew," means the issuance and delivery by an insurer of a policy  
10 replacing at the end of the policy period a policy previously issued and delivered by  
11 the same insurer, or the issuance and delivery of a certificate or notice extending the  
12 term of a policy beyond its policy period or term; ~~provided, however that.~~ However,  
13 any policy with a policy period or term of less than six months shall for the purpose  
14 of §§ 58-11-46 to 58-11-54, inclusive, be considered as if written for a policy period  
15 or term of six months. ~~Provided, further, that~~ Moreover, any policy written for a term  
16 longer than one year or any policy with no fixed expiration date, shall for the purpose  
17 of §§ 58-11-46 to 58-11-54, inclusive, be considered as if written for successive  
18 policy periods or terms of one year, and such policy may be terminated at the  
19 expiration of any annual period upon giving sixty days' notice of cancellation prior to  
20 such anniversary date, and ~~such~~ the cancellation ~~shall~~ is not be subject to any other  
21 provisions of §§ 58-11-46 to 58-11-54, inclusive.

22 Section 104. That § 58-11-45.3 be amended to read as follows:

23 58-11-45.3. If an applicant for such insurance has made a full disclosure to the ~~agent~~  
24 insurance producer of the insurer in response to the ~~agent's~~ insurance producer's inquiry and the

1 application is tendered with premium, the insurer, if it fails or refuses to issue the policy based  
2 upon information other than the ~~agent's~~ insurance producer's recommendation, shall notify the  
3 ~~agent~~ insurance producer and the applicant of the name and location of the person or agency  
4 upon which such insurer relied as a basis for its failure or refusal to insure. ~~Violation~~ Any  
5 violation of this section is a Class 2 misdemeanor.

6 Section 105. That § 58-11-54 be amended to read as follows:

7 58-11-54. ~~There shall be no~~ No liability on the part of and no cause of action of any nature  
8 ~~shall~~ may arise against the director of the Division of Insurance or against any insurer, its  
9 authorized representative, its ~~agents~~ insurance producers, its employees, or any firm, person, or  
10 corporation furnishing to the insurer information as to reasons for cancellation, for any statement  
11 made by any of them in any written notice of cancellation, notice of nonrenewal, or statement  
12 in their notice of refusal to insure, or in any other communication, oral or written specifying the  
13 reasons for cancellation, nonrenewal, or refusal to insure, or the providing of information  
14 pertaining thereto, or for statements made or evidence submitted at any hearings conducted in  
15 connection therewith.

16 Section 106. That § 58-15-8.1 be amended to read as follows:

17 58-15-8.1. Every individual life insurance policy issued for delivery in South Dakota on or  
18 after July 1, 1982, by an insurance company or fraternal benefit society, shall have a notice  
19 printed on or attached to the face page of the policy, stating in substance that the person issued  
20 the policy is permitted to return the policy, with a written request for cancellation within ten days  
21 of its actual receipt by the purchaser, and to have the premium paid refunded if, after examination  
22 of the policy, the purchaser is not satisfied with it for any reason. If a policyholder or purchaser,  
23 pursuant to the notice, returns the policy to the company or fraternal benefit society at its home  
24 or branch office or to the ~~agent~~ insurance producer through whom it was purchased, it is void



1 from the beginning and the parties are in the same position as if no policy had been issued.

2 Section 107. That § 58-15-8.2 be amended to read as follows:

3 58-15-8.2. An insurance company or fraternal benefit society shall issue policies in this state  
4 for which an examination period is required in accordance with one of the following methods:

5 (1) If the policy is delivered by an agent insurance producer, a receipt shall be signed by  
6 the policyowner acknowledging delivery of the policy. The receipt shall include the  
7 policy number and the date of the delivery;

8 (2) If the policy is delivered by mail, it shall be sent by registered or certified mail, return  
9 receipt requested, or a certificate of mailing shall be obtained showing the date the  
10 policy was mailed to the policyowner. For policy issuances verified by a certificate of  
11 mailing, it is presumed that the policy is received by the policyowner ten days from  
12 the date of mailing.

13 The receipts and the certificates of mailing described in this section shall be retained by the  
14 insurer or agent insurance producer for three years.

15 Section 108. That § 58-15-41 be amended to read as follows:

16 58-15-41. ~~Sections~~ The provisions of §§ 58-15-31 to 58-15-43, inclusive, shall do not apply  
17 to any reinsurance; group insurance; pure endowment; annuity or reversionary annuity contract;  
18 term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment  
19 benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which  
20 uniform premiums are payable during the entire term of the policy; term policy of decreasing  
21 amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each  
22 adjusted premium, calculated as specified in §§ 58-15-35 to 58-15-38, inclusive, and  
23 §§ 58-15-43.1 to 58-15-43.11, inclusive, is less than the adjusted premium so calculated, on a  
24 term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture

1 or endowment benefits, issued at the same age and for the same initial amount of insurance and  
2 for a term of twenty years or less expiring before age seventy-one, for which uniform premiums  
3 are payable during the entire term of the policy; policy, which provides no guaranteed  
4 nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value  
5 of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified  
6 in §§ 58-15-33 to 58-15-38, inclusive, and §§ 58-15-43.1 to 58-15-43.11, inclusive, exceeds two  
7 and one-half percent of the amount of insurance at the beginning of the same policy year; nor  
8 policy which is delivered outside this state through an ~~agent~~ insurance producer or other  
9 representative of the company issuing the policy. For purposes of determining the applicability  
10 of §§ 58-15-31 to 58-15-43, inclusive, the age at expiry for a joint term life insurance policy is  
11 the age at expiry of the oldest life.

12 Section 109. That § 58-15-44 be amended to read as follows:

13 58-15-44. No insurer ~~shall~~ may knowingly deliver or issue for delivery in this state any life  
14 insurance policy which purports to be issued or to take effect as of a date more than six months  
15 before the application therefor was made, if thereby the premium on such policy is reduced below  
16 the premium which would be payable thereon as determined by the insuring age of the insured  
17 at the time when such application was made. No ~~agent~~ insurance producer or other  
18 representative of an insurer ~~shall~~ may in this state prepare, submit, or accept any application for  
19 life insurance which bears a date earlier than the date when such application was made by the  
20 insured or applicant, if thereby the premium on such contract is reduced as above stated. Nothing  
21 contained in this section ~~shall invalidate~~ validates any contract made in violation of this section.  
22 This section ~~shall~~ does not be construed to prohibit the exchange, alteration, or conversion of  
23 any policy of life insurance.

24 Section 110. That § 58-15-47 be amended to read as follows:

1        58-15-47. No policy of life insurance shall may be delivered or issued for delivery in this state  
2 if it contains any provision to the effect that the agent insurance producer soliciting the insurance  
3 or annuity is the agent insurance producer of the person covered under such contract, or making  
4 the acts or representations of such agent insurance producer binding upon the person so covered.

5        Section 111. That § 58-15-59.1 be amended to read as follows:

6        58-15-59.1. Every individual annuity contract, excluding variable annuity contracts, issued  
7 for delivery in South Dakota on or after July 1, 1978, by an insurance company or fraternal  
8 benefit society, shall have printed on or attached to the annuity contract, a notice stating in  
9 substance that the person to whom the annuity contract is issued shall be permitted to return the  
10 annuity contract, with a written request for cancellation within ten days of its actual receipt by  
11 the purchaser, and to have the premium paid refunded if, after examination of the annuity  
12 contract, the purchaser is not satisfied with it for any reason. If annuitant or purchaser pursuant  
13 to the notice, returns the annuity contract to the company or fraternal benefit society at its home  
14 or branch office or to the agent insurance producer through whom it was purchased, it is void  
15 from the beginning and the parties are in the same position as if no annuity contract had been  
16 issued.

17        Section 112. That § 58-15-59.2 be amended to read as follows:

18        58-15-59.2. An insurance company or fraternal benefit society shall issue policies in this state  
19 for which an examination period is required in accordance with one of the following methods:

- 20        (1) If the policy is delivered by an agent insurance producer, a receipt shall be signed by  
21 the policyowner acknowledging delivery of the policy. The receipt shall include the  
22 policy number and the date of the delivery;
- 23        (2) If the policy is delivered by mail, it shall be sent by registered or certified mail, return  
24 receipt requested, or a certificate of mailing shall be obtained showing the date the

1 policy was mailed to the policyowner. For policy issuances verified by a certificate of  
2 mailing, it is presumed that the policy is received by the policyowner ten days from  
3 the date of mailing.

4 The receipts and the certificates of mailing described in this section shall be retained by the  
5 insurer or ~~agent~~ insurance producer for three years.

6 Section 113. That § 58-15-73 be amended to read as follows:

7 58-15-73. ~~Sections~~ The provisions of §§ 58-15-72 to 58-15-81, inclusive, ~~shall do~~ not apply  
8 to any reinsurance, group annuity purchased under a retirement plan or plan of deferred  
9 compensation established or maintained by an employer, including a partnership or sole  
10 proprietorship, or by an employee organization, or by both, other than a plan providing individual  
11 retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue  
12 Code, as amended to January 1, 1977, premium deposit fund, variable annuity, investment  
13 annuity, immediate annuity, any deferred annuity contract after annuity payments have  
14 commenced, or reversionary annuity, nor to any contract which shall be delivered outside this  
15 state through an ~~agent~~ insurance producer or other representative of the company issuing the  
16 contract.

17 Section 114. That § 58-17-11 be amended to read as follows:

18 58-17-11. Every individual health insurance policy or contract, except single premium  
19 nonrenewable policies or contracts, issued for delivery in South Dakota on or after December 31,  
20 1966, by an insurance company, nonprofit hospital service plan, or medical service corporation,  
21 shall have printed thereon or attached thereto a notice stating in substance that the person to  
22 whom the policy or contract is issued shall be permitted to return the policy or contract within  
23 ten days of its delivery to said purchaser and to have the premium paid refunded if, after  
24 examination of the policy or contract, the purchaser is not satisfied with it for any reason. If a

1 policyholder or purchaser pursuant to such notice, returns the policy or contract to the company  
2 or association at its home or branch office or to the ~~agent~~ insurance producer through whom it  
3 was purchased, it ~~shall be~~ is void from the beginning and the parties shall be in the same position  
4 as if no policy or contract had been issued.

5 Section 115. That § 58-17-11.1 be amended to read as follows:

6 58-17-11.1. An insurance company, nonprofit hospital service plan, medical service  
7 corporation, or fraternal benefit society shall issue policies in this state for which an examination  
8 period is required in accordance with one of the following methods:

- 9 (1) If the policy is delivered by an ~~agent~~ insurance producer, a receipt shall be signed by  
10 the policyowner acknowledging delivery of the policy. The receipt shall include the  
11 policy number and the date of the delivery;
- 12 (2) If the policy is delivered by mail, it shall be sent by registered or certified mail, return  
13 receipt requested, or a certificate of mailing shall be obtained showing the date the  
14 policy was mailed to the policyowner. For policy issuances verified by a certificate of  
15 mailing, it is presumed that the policy is received by the policyowner ten days from  
16 the date of mailing.

17 The receipts and the certificates of mailing described in this section shall be retained by the  
18 insurer or ~~agent~~ insurance producer for three years.

19 Section 116. That § 58-17-14 be amended to read as follows:

20 58-17-14. There shall be a provision as follows: "Entire contract; changes: This policy,  
21 including the endorsements and the attached papers, if any, constitutes the entire contract of  
22 insurance. No change in this policy is valid until approved by an executive officer of the  
23 insurance company and unless such approval is endorsed or attached to this policy. No ~~agent~~  
24 insurance producer has authority to change this policy or to waive any of its provisions. Any

1 rider, endorsement, or application which modifies, limits, or excludes coverage under this policy  
2 must be signed by you, the insured, to be valid." This provision applies to any rider,  
3 endorsement, or amendment of an application whether attached at the time of the application or  
4 after.

5 Section 117. That § 58-17-19 be amended to read as follows:

6 58-17-19. There shall be a provision as follows: "Reinstatement: If any renewal premium be  
7 not paid within the time granted the insured for payment, a subsequent acceptance of premium  
8 by the insurer or by any ~~agent~~ insurance producer duly authorized by the insurer to accept such  
9 premium, without requiring in connection therewith an application for reinstatement, shall  
10 reinstate the policy; provided, however, that if the insurer or such ~~agent~~ insurance producer  
11 requires an application for reinstatement and issues a conditional receipt for the premium  
12 tendered, the policy will be reinstated upon approval of such application by the insurer or,  
13 lacking such approval, upon the forty-fifth day following the date of such conditional receipt  
14 unless the insurer has previously notified the insured in writing of its disapproval of such  
15 application. The reinstated policy shall cover only loss resulting from such accidental injury as  
16 may be sustained after the date of reinstatement and loss due to such sickness as may begin more  
17 than ten days after such date. In all other respects the insured and insurer shall have the same  
18 rights thereunder as they had under the policy immediately before the due date of the defaulted  
19 premium, subject to any provisions endorsed hereon or attached hereto in connection with a  
20 reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a  
21 period for which premium has not been previously paid, but not to any period more than sixty  
22 days prior to the date of reinstatement."

23 Section 118. That § 58-17-21 be amended to read as follows:

24 58-17-21. There shall be a provision as follows: "Notice of claim: Written notice of claim

1 must be given to the insurer within twenty days after the occurrence or commencement of any  
2 loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on  
3 behalf of the insured or the beneficiary to the insurer at \_\_\_\_\_ (insert the location of such  
4 office as the insurer may designate for the purpose), or to any authorized ~~agent~~ insurance  
5 producer of the insurer, with information sufficient to identify the insured, shall be deemed notice  
6 to the insurer."

7 Section 119. That § 58-17A-7 be amended to read as follows:

8 58-17A-7. The director may promulgate rules pursuant to chapter 1-26 for captions or notice  
9 requirements determined to be in the public interest and designed to inform prospective insureds  
10 that particular insurance coverages are not medicare supplement coverages, for all health  
11 insurance policies sold to persons eligible for medicare other than medicare supplement policies  
12 and disability income policies.

13 The director may promulgate rules pursuant to chapter 1-26 to govern the full and fair  
14 disclosure of information, marketing, and conduct of ~~agents~~ insurance producers in connection  
15 with the replacement of health insurance policies, subscriber contracts, and certificates by  
16 persons eligible for medicare.

17 Section 120. That § 58-17A-8.1 be amended to read as follows:

18 58-17A-8.1. An issuer shall issue policies in this state for which an examination period is  
19 required in accordance with one of the following methods:

- 20 (1) If the policy is delivered by an ~~agent~~ insurance producer, a receipt shall be signed by  
21 the policyowner acknowledging delivery of the policy. The receipt shall include the  
22 policy number and the date of the delivery;
- 23 (2) If the policy is delivered by mail, it shall be sent by registered or certified mail, return  
24 receipt requested, or a certificate of mailing shall be obtained showing the date the

1 policy was mailed to the policyowner. For policy issuances verified by a certificate of  
2 mailing, it is presumed that the policy is received by the policyowner ten days from  
3 the date of mailing.

4 The receipts and the certificates of mailing described in this section shall be retained by the  
5 issuer or agent insurance producer for three years.

6 Section 121. That § 58-17A-15 be amended to read as follows:

7 58-17A-15. No issuer or agent insurance producer may sell a medicare supplement policy  
8 to a person who has an existing, in force medicare supplement policy unless the issuer or agent  
9 insurance producer is replacing the existing coverage. However, no issuer ~~may be~~ is liable  
10 beyond a refund of premium for the duplication of such medicare supplement coverage when a  
11 statement, signed by the insured, is obtained from the insured verifying that no other medicare  
12 supplement coverage is then in effect.

13 Section 122. That § 58-18B-33 be amended to read as follows:

14 58-18B-33. The director shall study and report on or before ~~January 5, 1996, and once~~  
15 ~~before~~ January fifth of each ~~subsequent~~ year to the Legislature and Governor on the effectiveness  
16 of this chapter. The report shall analyze the effectiveness of this chapter in promoting rate  
17 stability, product availability, and coverage affordability. The report may contain  
18 recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the  
19 small group health insurance marketplace. The report shall include information pertinent to the  
20 basic and standard plans and their effectiveness and appropriateness. The report shall address  
21 whether carriers and agents insurance producers are fairly and actively marketing or issuing  
22 health benefit plans to small employers in fulfillment of the purposes of this chapter. The report  
23 may contain recommendations for future regulatory standards or action.

24 Section 123. That § 58-18B-38 be amended to read as follows:



1       58-18B-38. No small employer carrier or ~~agent~~ insurance producer may, directly or  
2 indirectly, engage in the following activities:

- 3       (1) Encouraging or directing small employers to refrain from filing an application for  
4 coverage with the small employer carrier because of the health status, claims  
5 experience, industry, occupation, or geographic location of the small employer; or  
6       (2) Encouraging or directing small employers to seek coverage from another carrier  
7 because of the health status, claims experience, industry, occupation, or geographic  
8 location of the small employer.

9       Section 124. That § 58-18B-39 be amended to read as follows:

10       58-18B-39. The provisions of § 58-18B-38 do not apply with respect to information  
11 provided by a small employer carrier or ~~agent~~ insurance producer to a small employer regarding  
12 a restricted network provision of a small employer carrier.

13       Section 125. That § 58-18B-40 be amended to read as follows:

14       58-18B-40. No small employer carrier may, directly or indirectly, enter into any contract,  
15 agreement, or arrangement with an ~~agent~~ insurance producer that provides for or results in the  
16 compensation paid to an agent for the sale of a health benefit plan to be varied because of the  
17 health status, claims experience, industry, occupation, or geographic location of the small  
18 employer.

19       Section 126. That § 58-18B-41 be amended to read as follows:

20       58-18B-41. The provisions of § 58-18B-40 do not apply with respect to a compensation  
21 arrangement that provides compensation to an ~~agent~~ insurance producer on the basis of  
22 percentage of premium, if the percentage does not vary because of the health status, claims  
23 experience, industry, occupation, or geographic area of the small employer.

24       Section 127. That § 58-18B-42 be amended to read as follows:

1       58-18B-42. Each small employer carrier shall provide reasonable compensation to an ~~agent~~  
2 insurance producer, if any, for the sale of a basic or standard health benefit plan.

3       Section 128. That § 58-18B-43 be amended to read as follows:

4       58-18B-43. No small employer carrier may terminate, fail to renew, or limit its contract or  
5 agreement of representation with an ~~agent~~ insurance producer for any reason related to the health  
6 status, claims experience, occupation, or geographic location of the small employers placed by  
7 the agent with the small employer carrier.

8       Section 129. That § 58-18B-46 be amended to read as follows:

9       58-18B-46. The director may promulgate rules pursuant to chapter 1-26 setting forth  
10 additional standards to provide for the fair marketing and broad availability of health benefit  
11 plans to small employers in the state. Any violation of §§ 58-18B-37 to 58-18B-48, inclusive,  
12 by a small employer carrier or an ~~agent~~ insurance producer constitutes an unfair trade practice  
13 under chapter 58-33. Nothing in this section limits or excludes other penalties which are  
14 otherwise authorized by law.

15       Section 130. That § 58-21-4 be amended to read as follows:

16       58-21-4. Any such insurer doing business in this state without a valid certificate of authority  
17 shall forfeit one hundred dollars for every day it neglects to procure such certificate. Any ~~agent~~  
18 insurance producer making assurance or soliciting applications for any insurer having no such  
19 certificate shall forfeit the sum of three hundred dollars, and any person acting for an insurer  
20 authorized to transact business in this state without having the required ~~agent's~~ insurance  
21 producer's certificate in ~~his~~ the person's possession shall be liable to pay twenty-five dollars for  
22 each day's neglect to procure such certificate. Such penalties may be recovered in a civil action  
23 in the circuit court of any county in this state.

24       Section 131. That § 58-22-5 be amended to read as follows:

1 58-22-5. No license may be issued except in compliance with this chapter and none may be  
2 issued except to an individual. However, any person performing the functions of a bail  
3 bondsperson or runner, within the definition of this chapter, on July 1, 1966, is not required to  
4 take an examination, but shall be issued a license upon making the application required by this  
5 chapter, and renewals shall be granted subject to the provisions of §§ 58-22-6, 58-22-19, and  
6 58-22-21. The provisions of this chapter do not apply to the holder of a valid all lines fire and  
7 casualty ~~agent's~~ insurance producer's license held prior to July 1, 1998.

8 A firm, partnership, association, or corporation, as such need not be licensed.

9 Section 132. That § 58-23A-7 be amended to read as follows:

10 58-23A-7. There ~~shall be~~ is no liability on the part of, and a no cause of action of any nature  
11 ~~shall not~~ may arise against, an insurer reporting pursuant to this chapter or its ~~agents~~ insurance  
12 producers or employees, or the division or its representatives, for any action taken by them  
13 pursuant to this chapter.

14 Section 133. That § 58-25-13 be amended to read as follows:

15 58-25-13. Every insurer ~~must~~ shall hold to the rates or premiums as approved by the director  
16 and may not deviate therefrom nor allow to or for the account of any insured a rebate or discount  
17 on the rates or premiums payable. As compensation for procuring business, an insurer may pay  
18 or allow a commission to any licensed ~~agent~~ insurance producer of the insurer.

19 Section 134. That § 58-26-10 be amended to read as follows:

20 58-26-10. In addition to assets impliedly excluded by other provisions of this title, the  
21 following expressly ~~shall~~ may not be allowed as assets in any determination of the financial  
22 condition of an insurer:

- 23 (1) Good will, trade names, and other like intangible assets;
- 24 (2) Advances to officers, other than policy loans, whether secured or not, and advances

1 to employees, ~~agents~~ representatives, insurance producers, and other persons on  
2 personal security only;

3 (3) Stock of such insurer, owned by it, or any material equity therein or loans secured  
4 thereby, or any material proportionate interest in such stock acquired or held through  
5 the ownership by such insurer of an interest in another firm, corporation, or business  
6 unit;

7 (4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature, and  
8 supplies, except in the case of title insurers such materials and plants as the insurer is  
9 expressly authorized to invest in under this title and except, in the case of any insurer,  
10 such personal property as the insurer is permitted to hold pursuant to this title, or  
11 which is acquired through foreclosure of chattel mortgages or which is reasonably  
12 necessary for the maintenance and operation of real estate lawfully acquired and held  
13 by the insurer other than real estate used by it for home office, branch office, and  
14 similar purposes;

15 (5) The amount, if any, by which the aggregate book value of investments as carried in  
16 the ledger assets of the insurer exceeds the aggregate value thereof as determined  
17 under this title.

18 Section 135. That § 58-27-61 be amended to read as follows:

19 58-27-61. In addition to investments excluded pursuant to other provisions of this title, ~~an~~  
20 no insurer ~~shall not~~ may invest in or lend its funds upon the security of issued shares of its own  
21 capital stock except out of unborrowed surplus, or except in connection with a pension plan  
22 approved by the director for the benefit of the insurer's officers, employees, representatives, or  
23 ~~agents~~ insurance producers. No such stock ~~shall~~ may, however, constitute an asset of the insurer  
24 in any determination of its financial condition.

1 Section 136. That § 58-28-24.2 be amended to read as follows:

2 58-28-24.2. An insurance company or fraternal benefit society shall issue policies in this state  
3 for which an examination period is required in accordance with one of the following methods:

4 (1) If the policy is delivered by an ~~agent~~ insurance producer, a receipt shall be signed by  
5 the policyowner acknowledging delivery of the policy. The receipt shall include the  
6 policy number and the date of the delivery;

7 (2) If the policy is delivered by mail, it shall be sent by registered or certified mail, return  
8 receipt requested, or a certificate of mailing shall be obtained showing the date the  
9 policy was mailed to the policyowner. For policy issuances verified by a certificate of  
10 mailing, it is presumed that the policy is received by the policyowner ten days from  
11 the date of mailing.

12 The receipts and the certificates of mailing described in this section shall be retained by the  
13 insurer or ~~agent~~ insurance producer for three years.

14 Section 137. That § 58-29A-71 be amended to read as follows:

15 58-29A-71. The association ~~shall have the right to~~ may recover from the following persons  
16 the amount of any covered claim paid on behalf of such person pursuant to this chapter:

17 (1) Any insured whose net worth on December thirty-first of the year next preceding the  
18 date the insurer becomes an insolvent insurer exceeds fifty million dollars and whose  
19 liability obligations to other persons, including obligations under workers'  
20 compensation insurance coverages, are satisfied in whole or in part by payments made  
21 under this chapter; and

22 (2) Any person who is an affiliate of the insolvent insurer and whose liability obligations  
23 to other persons are satisfied in whole or in part by payments made under this chapter.

24 The term, affiliate, does not include any ~~agent or broker~~ insurance producer of the

1 insolvent insurer.

2 Section 138. That § 58-29A-104 be amended to read as follows:

3 58-29A-104. It is unfair trade practice for any insurer or ~~agent~~ insurance producer to in any  
4 manner make use of the protection given policyholders by this chapter as a reason for buying  
5 insurance from the insurer or ~~agent~~ insurance producer.

6 Section 139. That § 58-29B-6 be amended to read as follows:

7 58-29B-6. In addition to other grounds for jurisdiction provided by the law of this state, a  
8 court of this state having jurisdiction of the subject matter has jurisdiction over a person served  
9 pursuant to chapter 15-6 or other applicable provisions of law in an action brought by the  
10 receiver of a domestic insurer or an alien insurer domiciled in this state:

- 11 (1) If the person served is obligated to the insurer in any way as an incident to any agency  
12 or brokerage or other arrangement that may exist or has existed between the insurer  
13 and the ~~agent or broker~~ insurance producer or representative of the insurer, in any  
14 action on or incident to the obligation;
- 15 (2) If the person served is a reinsurer who has at any time written a policy of reinsurance  
16 for an insurer against which a rehabilitation or liquidation order is in effect when the  
17 action is commenced, or is an ~~agent or broker~~ insurance producer or representative  
18 of or for the reinsurer, in any action on or incident to the reinsurance contract;
- 19 (3) If the person served is or has been an officer, manager, trustee, organizer, promoter,  
20 or person in a position of comparable authority or influence in an insurer against  
21 which a rehabilitation or liquidation order is in effect when the action is commenced,  
22 in any action resulting from such a relationship with the insurer;
- 23 (4) If the person served is an ~~agent, broker,~~ insurance producer or representative of the  
24 insurer or other person who has at any time written policies of insurance for or has

1 acted in any manner on behalf of an insurer against which a delinquency proceeding  
2 has been instituted, in any action resulting from or incident to such a relationship with  
3 the insurer;

4 (5) If the person served is or was at the time of the institution of the delinquency  
5 proceeding against the insurer holding assets in which the receiver claims an interest  
6 on behalf of the insurer, in any action concerning the assets; or

7 (6) If the person served is obligated to the insurer in any way whatsoever, in any action  
8 or incident to the obligation.

9 Section 140. That § 58-29B-9 be amended to read as follows:

10 58-29B-9. Any officer, manager, director, trustee, owner, employee, representative, or ~~agent~~  
11 insurance producer of any insurer, or any other persons with authority over or in charge of any  
12 segment of the insurer's affairs, shall cooperate with the director in any proceeding under this  
13 chapter or any investigation preliminary to the proceeding. The term, "person", as used in this  
14 section, includes any person who exercises control directly or indirectly over activities of insurer  
15 through any holding company or other affiliate of the insurer. The term, "To cooperate",  
16 ~~includes, but is not limited to,~~ the following:

17 (1) To reply promptly in writing to any inquiry from the director requesting such a reply;  
18 and

19 (2) To make available to the director any books, accounts, documents, or other records  
20 or information or property of or pertaining to the insurer and in ~~his~~ the insurer's  
21 possession, custody, or control.

22 Section 141. That § 58-29B-25 be amended to read as follows:

23 58-29B-25. Upon a filing under § 58-29B-24, the court may issue forthwith, ex parte and  
24 without a hearing, the requested order which shall direct the director to take possession and

1 control of all or a part of the property, books, accounts, documents, and other records of an  
2 insurer, and of the premises occupied by it for transaction of its business, and until further order  
3 of the court enjoin the insurer and its officers, managers, ~~agents~~ representatives, insurance  
4 producers, and employees from disposition of its property and from transaction of its business  
5 except with the written consent of the director. All costs and expenses incurred by the Division  
6 of Insurance, including attorney fees, associated with taking possession of the property, books,  
7 accounts, documents, and other records of the insurer and the business premises are the  
8 responsibility of the insurer and shall be paid from the insurer's funds and assets. The court may  
9 require an accounting of the costs and expenses.

10 Section 142. That § 58-29B-34 be amended to read as follows:

11 58-29B-34. If it appears to the rehabilitator that there has been criminal or tortious conduct,  
12 or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer,  
13 manager, ~~agent, broker~~ representative, insurance producer, employee, or other person, ~~he~~  
14 rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

15 Section 143. That § 58-29B-49 be amended to read as follows:

16 58-29B-49. The liquidator may:

- 17 (1) Appoint a special deputy to act for ~~him~~ the liquidator under this chapter and  
18 determine ~~his~~ reasonable compensation. The special deputy shall have all powers of  
19 the liquidator granted by this section. The special deputy shall serve at the pleasure  
20 of the liquidator;
- 21 (2) Employ employees ~~and agents,~~ representatives, insurance producers, legal counsel,  
22 actuaries, accountants, appraisers, consultants, and such other personnel as the  
23 liquidator may consider necessary to assist in the liquidation;
- 24 (3) Fix the reasonable compensation of employees ~~and agents,~~ representatives, insurance



1 producers, legal counsel, actuaries, accountants, appraisers, and consultants with the  
2 approval of the court;

3 (4) Pay reasonable compensation to persons appointed and defray from the funds or  
4 assets of the insurer all expenses of taking possession of, conserving, conducting,  
5 liquidating, disposing of, or otherwise dealing with the business and property of the  
6 insurer. ~~In the event~~ If that the property of the insurer does not contain sufficient cash  
7 or liquid assets to defray the costs incurred, the director may advance the costs so  
8 incurred out of any appropriation for the maintenance of the Division of Insurance.  
9 Any amounts so advanced for expenses of administration shall be repaid to the  
10 director for the use of the Division of Insurance out of the first available money of the  
11 insurer;

12 (5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths,  
13 examine any person under oath, and compel any person to subscribe to ~~his~~ the  
14 person's testimony after it has been correctly reduced to writing, and, in connection  
15 therewith, require the production of any books, papers, records, or other documents  
16 which ~~he~~ the liquidator considers relevant to the inquiry;

17 (6) Collect all debts and money due and claims belonging to the insurer, wherever  
18 located, and, for this purpose:

19 (a) To institute timely action in other jurisdictions, in order to forestall  
20 garnishment and attachment proceedings against such debts;

21 (b) To do such other acts as are necessary or expedient to collect, conserve, or  
22 protect its assets or property, including the power to sell, compound,  
23 compromise, or assign debts for purposes of collection upon such terms and  
24 condition as ~~he~~ the liquidator deems best; and

- 1 (c) To pursue any creditor's remedies available to enforce ~~his~~ the creditor's claims;
- 2 (7) Conduct public and private sales of the property of the insurer;
- 3 (8) Use assets of the estate of an insurer under a liquidation order to transfer policy
- 4 obligations to a solvent assuming insurer, if the transfer can be arranged without
- 5 prejudice to applicable priorities under § 58-29B-124;
- 6 (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise
- 7 dispose of or deal with, any property of the insurer at its market value or upon such
- 8 terms and conditions as are fair and reasonable. ~~He~~ The liquidator may also execute,
- 9 acknowledge, and deliver any and all deeds, assignments, releases, and other
- 10 instruments necessary or proper to effectuate any sale of property or other transaction
- 11 in connection with liquidation;
- 12 (10) Borrow money on the security of the insurer's assets or without security and to
- 13 execute and deliver all documents necessary to that transaction for the purpose of
- 14 facilitating the liquidation;
- 15 (11) Enter into such contracts as are necessary to carry out the order to liquidate, and
- 16 affirm or disavow any contracts to which the insurer is a party;
- 17 (12) Continue to prosecute and institute in the name of the insurer or in ~~his own~~ the
- 18 liquidator's name any and all suits and other legal proceedings, in this state or
- 19 elsewhere, and abandon the prosecution of claims ~~he~~ the liquidator considers
- 20 unprofitable to pursue further. If the insurer is dissolved under § 58-29B-48, ~~he~~ the
- 21 liquidator may apply to any court in this state or elsewhere for leave to ~~substitute~~
- 22 ~~himself for~~ proceed on behalf of the insurer as plaintiff;
- 23 (13) Prosecute any action which may exist on behalf of the creditors, members,
- 24 policyholders, or shareholders of the insurer against any officer of the insurer, or any

1 other person;

2 (14) Remove any or all records and property of the insurer to the offices of the director or  
3 to such other place as may be convenient for the purposes of efficient and orderly  
4 execution of the liquidation. Guaranty associations and foreign guaranty associations  
5 shall have such reasonable access to the records of the insurer as is necessary for them  
6 to carry out their statutory obligations;

7 (15) Deposit in one or more banks in this state such sums as are required for meeting  
8 current administration expenses and dividend distributions;

9 (16) Invest all sums not currently needed, unless the court orders otherwise;

10 (17) File any necessary documents for record in the office of any register of deeds or  
11 record office in this state or elsewhere where property of the insurer is located;

12 (18) Assert all defenses available to the insurer as against third persons, including statutes  
13 of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by  
14 the insurer after a petition in liquidation has been filed does not bind the liquidator.  
15 If a guaranty association or foreign guaranty association has an obligation to defend  
16 any suit, the liquidator shall give precedence to such obligation and may defend only  
17 in the absence of a defense by such guaranty associations;

18 (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder,  
19 policyholder, or member, including any power to avoid any transfer or lien that may  
20 be given by the general law and that is not included with §§ 58-29B-61 to 58-29B-83,  
21 inclusive;

22 (20) Intervene in any proceeding wherever instituted that might lead to the appointment  
23 of a receiver or trustee, and act as the receiver or trustee if the appointment is offered;

24 (21) Enter into agreements with any receiver or director of any other state relating to the

1 rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in  
2 both states;

3 (22) Exercise all powers ~~now held or hereafter~~ conferred upon receivers by the laws of this  
4 state not inconsistent with the provisions of this chapter;

5 (23) To appoint, with the approval of the court, an advisory committee of policyholders,  
6 claimants, or other creditors including guaranty associations. The committee shall  
7 serve at the pleasure of the director and shall serve without compensation other than  
8 reimbursement for reasonable travel and per diem living expenses. No other  
9 committee of any nature may be appointed by the director or the court in liquidation  
10 proceedings;

11 (24) To audit the books and records of all ~~agents~~ representatives and insurance producers  
12 of the insurer insofar as those records relate to the business activities of the insurer.

13 Section 144. That § 58-29B-51 be amended to read as follows:

14 58-29B-51. Unless the court otherwise directs, the liquidator shall give notice of the  
15 liquidation order as soon as possible but in no event more than ten days from the date of entry  
16 of the order to liquidate:

17 (1) By first class mail or by telegram or telephone to the insurance director of each  
18 jurisdiction in which the insurer is doing business;

19 (2) By first class mail to any guaranty association or foreign guaranty association which  
20 is or may become obligated as a result of the liquidation;

21 (3) By first class mail to any insurance ~~agent~~ producer of the insurer;

22 (4) By first class mail to any person known or reasonably expected to have claims against  
23 the insurer including any policyholder, at ~~his~~ the person's last known address as  
24 indicated by the records of the insurer; and

1 (5) By publication in a newspaper of general circulation in the county in which the insurer  
2 has its principal place of business and in such other locations as the liquidator  
3 considers appropriate.

4 Section 145. That § 58-29B-53 be amended to read as follows:

5 58-29B-53. Every person who receives notice in the form prescribed in § 58-29B-51 that an  
6 insurer which ~~he~~ the person represents is the subject of a liquidation order shall, within five days  
7 of ~~such~~ the notice, give written notice of the liquidation order by first class mail to the last known  
8 address contained in the ~~agent's~~ insurance producer's records to each policyholder or other  
9 person named in any policy issued through the ~~agent~~ insurance producer by the insurer. A policy  
10 ~~shall be~~ is deemed issued through an ~~agent~~ insurance producer if the ~~agent~~ insurance producer  
11 has a property interest in the expiration of the policy at any time during the life of the policy,  
12 unless the ownership of the expiration of the policy has been transferred to another. The written  
13 notice shall include the name and address of the insurer, the name and address of the ~~agent~~  
14 insurance producer, identification of the policy impaired, and the nature of the impairment  
15 including termination of coverage, as described in § 58-29B-47. Each ~~agent~~ insurance producer  
16 obligated to give notice under this section shall file a report of compliance with the liquidator  
17 within five days of the receipt of the notice from the liquidator.

18 Section 146. That § 58-29B-54 be amended to read as follows:

19 58-29B-54. Any ~~agent~~ insurance producer failing to give notice or file a report of compliance  
20 as required in § 58-29B-53 may be subject to payment of a penalty of not more than one  
21 thousand dollars and may have ~~his~~ the insurance producer's license suspended, which may only  
22 be imposed after a hearing held by the director. The liquidator may waive the duties imposed by  
23 § 58-29B-53 if he determines that other notice to the policyholders of the insurer under  
24 liquidation is adequate.

1 Section 147. That § 58-29B-95 be amended to read as follows:

2 58-29B-95. No ~~agent, broker~~ insurance producer, premium finance company, or any other  
3 person, responsible for the payment of a premium at the time of the declaration of insolvency,  
4 may be held liable for payment of collected or uncollected unearned premiums or for uncollected  
5 earned premiums as shown on the records of the insurer. The liquidator has the right to recover  
6 from ~~such~~ the person any part of an unearned premium that represents commission of ~~such~~ the  
7 person. Credits or setoffs or both may not be allowed to an ~~agent, broker~~ insurance producer,  
8 or premium finance company for any amounts advanced to the insurer by the ~~agent, broker,~~  
9 insurance producer or premium finance company on behalf of, but in the absence of a payment  
10 by, the insured. An insured is obligated to pay any unpaid earned premium due the insurer at the  
11 time of the declaration of insolvency, as shown on the records of the insurer.

12 Section 148. That § 58-29B-144 be amended to read as follows:

13 58-29B-144. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall,  
14 except as to special deposits and security on secured claims under § 58-29B-149, be vested by  
15 operation of law with the title to all of the assets, property, contracts, and rights of action,  
16 agents' balances, and all of the books, accounts, and other records of the insurer located in this  
17 state. The date of vesting shall be the date of the filing of the petition, if that date is specified by  
18 the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of  
19 vesting shall be the date of entry of the order directing possession to be taken. The domiciliary  
20 liquidator may immediately recover balances due from ~~agents~~ insurance producers and obtain  
21 possession of the books, accounts, and other records of the insurer located in this state. ~~He~~ The  
22 domiciliary liquidator also may recover all other assets of the insurer located in this state, subject  
23 to §§ 58-29B-145 to 58-29B-150, inclusive.

24 Section 149. That § 58-29C-39 be amended to read as follows:

1        58-29C-39. There is no liability on the part of and no cause of action of any nature may arise  
2 against any member insurer or its ~~agents~~ insurance producers, representatives, or employees, the  
3 association or its agents or employees, members of the board of directors, or the director or ~~his~~  
4 the director's representatives, for any action or omission by them in the performance of their  
5 powers and duties under this chapter. This immunity extends to the participation in any  
6 organization of one or more other state associations of similar purposes and to any similar  
7 organization and its agents or employees.

8        Section 150. That § 58-29C-41 be amended to read as follows:

9        58-29C-41. No person, including an insurer, ~~agent~~ representative of the insurer, insurance  
10 producer, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the  
11 public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed  
12 before the public, in any newspaper, magazine, or other publication, or in the form of a notice,  
13 circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other  
14 way any advertisement, announcement, or statement, written or oral, which uses the existence  
15 of the insurance guaranty association of this state for the purpose of sales, solicitation, or  
16 inducement to purchase any form of insurance covered by the South Dakota Life and Health  
17 Insurance Guaranty Association Act. ~~Provided that~~ However, this section ~~shall~~ does not apply  
18 to the South Dakota Life and Health Insurance Guaranty Association or any other entity which  
19 does not sell or solicit insurance.

20        Section 151. That § 58-29C-42 be amended to read as follows:

21        58-29C-42. Within one hundred eighty days of July 1, 1989, the association shall prepare a  
22 summary document describing the general purposes and current limitations of the chapter. This  
23 document shall be submitted to the director for approval. Sixty days after receiving approval, no  
24 insurer may deliver a policy or contract described in § 58-29C-3 to a policy or contract holder

1 unless the document is delivered to the policy or contract holder prior to or at the time of  
2 delivery of the policy or contract. The document should also be available upon request by a  
3 policyholder. The distribution, delivery, or contents or interpretation of this document ~~shall~~ does  
4 not mean that either the policy or the contract or the holder thereof would be covered in the  
5 event of the impairment or insolvency of a member insurer. The description document shall be  
6 revised by the association as amendments to the chapter may require. Failure to receive this  
7 document does not give the policyholder, contract holder, certificate holder, or insured any  
8 greater rights than those stated in this chapter. The document prepared under this section shall  
9 contain a clear and conspicuous disclaimer on its face. The director shall promulgate a rule  
10 establishing the form and content of the disclaimer. The disclaimer shall:

- 11 (1) State the name and address of the Life and Health Insurance Guaranty Association  
12 and insurance division;
- 13 (2) Prominently warn the policy or contract holder that the South Dakota Life and Health  
14 Insurance Guaranty Association may not cover the policy or, if coverage is available,  
15 it will be subject to substantial limitation, exclusions, and conditioned on continued  
16 residence in the state;
- 17 (3) State that the insurer and its ~~agents~~ insurance producers are prohibited by law from  
18 using the existence of the Life and Health Insurance Guaranty Association for the  
19 purpose of sales, solicitation, or inducement to purchase any form of insurance;
- 20 (4) Emphasize that the policy or contract holder should not rely on coverage under the  
21 South Dakota Life and Health Insurance Guaranty Association when selecting an  
22 insurer;
- 23 (5) Provide other information as directed by the director.

24 No insurer or ~~agent~~ insurance producer may deliver a policy or contract described in



1 § 58-29C-3 and excluded under § 58-29C-3 from coverage under the provisions of this chapter  
2 unless the insurer or ~~agent~~ insurance producer, prior to or at the time of delivery, gives the policy  
3 or contract holder a separate written notice which clearly and conspicuously discloses that the  
4 policy or contract is not covered by the South Dakota Life and Health Insurance Guaranty  
5 Association. The director shall by rule specify the form and content of the notice.

6 Section 152. That § 58-29D-2 be amended to read as follows:

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

- 12 (1) An employer on behalf of its employees or the employees of one or more subsidiary  
13 or affiliated corporations of such employer;
- 14 (2) A union on behalf of its members;
- 15 (3) An insurer which is authorized to transact insurance in this state with respect to a  
16 policy lawfully issued and delivered in and pursuant to the laws of this state or another  
17 state;
- 18 (4) An ~~agent or broker~~ insurance producer licensed to sell life or health insurance in this  
19 state, whose activities are limited exclusively to the sale of insurance;
- 20 (5) A creditor on behalf of its debtors with respect to insurance covering a debt between  
21 the creditor and its debtors;
- 22 (6) A trust and its trustees, agents and employees acting pursuant to such trust  
23 established in conformity with 29 U.S.C. § 186;
- 24 (7) A trust exempt from taxation under § 501(a) of the Internal Revenue Code, its

1 trustees and employees acting pursuant to such trust, or a custodian and the  
2 custodian's agents or employees acting pursuant to a custodian account which meets  
3 the requirements of § 401(f) of the Internal Revenue Code;

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

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

11 (10) A person who adjusts or settles claims in the normal course of that person's practice  
12 or employment as an attorney at law and who does not collect charges or premiums  
13 in connection with life or health insurance coverage or annuities;

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

15 (12) A person who acts solely as an administrator of one or more bona fide employee  
16 benefit plans established by an employer or an employee organization, or both, for  
17 which the insurance laws of this state are preempted pursuant to the Employee  
18 Retirement Income Security Act of 1974. Such person shall comply with the  
19 requirements of § 58-29D-27;

20 (13) A licensed managing general agency;

21 (14) A licensed reinsurance intermediary; or

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

23 Section 153. That § 58-29D-22 be amended to read as follows:

24 58-29D-22. An administrator shall apply to the director upon a form to be furnished by the

1 director. The application shall include or be accompanied by the following information and  
2 documents:

3 (1) All basic organizational documents of the administrator, including any articles of  
4 incorporation, articles of association, partnership agreement, trade name certificate,  
5 trust agreement, shareholder agreement, and other applicable documents, and all  
6 amendments to such documents;

7 (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of  
8 the administrator;

9 (3) The names, addresses, official positions, and professional qualifications of the  
10 individuals who are responsible for the conduct of affairs of the administrator;  
11 including all members of the board of directors, board of trustees, executive  
12 committee, or other governing board or committee; the principal officers in the case  
13 of a corporation or the partners or members in the case of a partnership or  
14 association; shareholders holding directly or indirectly ten percent or more of the  
15 voting securities of the administrator; and any other person who exercises control or  
16 influence over the affairs of the administrator;

17 (4) Annual financial statements or reports for the two most recent years which prove that  
18 the applicant is solvent and such information as the director may require in order to  
19 review the current financial condition of the applicant;

20 (5) A statement describing the business plan including information on staffing levels and  
21 activities proposed in this state and nationwide. The plan ~~must~~ shall provide details  
22 setting forth the administrator's capability for providing a sufficient number of  
23 experienced and qualified personnel in the areas of claims processing, record keeping,  
24 and underwriting;

1 (6) If the applicant will be managing the solicitation of new or renewal business, proof  
2 that it employs or has contracted with an agent insurance producer licensed by this  
3 state for solicitation and taking of applications. Any applicant ~~must~~ shall provide proof  
4 that it has a license as a life and health insurance agent producer in this state.

5 Any material change in the above information shall be filed with the director within thirty  
6 days. A filing fee of five hundred dollars shall accompany the application.

7 Section 154. That § 58-30-1.1 be amended to read as follows:

8 58-30-1.1. "Excess business" is that portion of a risk which is in excess of the amount that  
9 an insurer then represented by the agent insurance producer will accept.

10 Section 155. That § 58-30-1.2 be amended to read as follows:

11 58-30-1.2. "Rejected business" is a risk that an insurer then represented by the agent  
12 insurance producer has rejected for underwriting reasons, or is willing to accept only on a  
13 substandard basis; but which business will be accepted and issued by another authorized insurer  
14 at a lower rate.

15 Section 156. That § 58-30-6 be amended to read as follows:

16 ~~58-30-6. Each insurer appointing an agent in this state shall file with, and obtain approval~~  
17 ~~from the director for each appointment which shall be in a format prescribed by the director,~~  
18 ~~specifying the kinds of insurance or classifications thereof, as specified in § 58-30-50 or~~  
19 ~~58-30-68, to be transacted by the agent for the insurer, and pay the applicable fee as specified~~  
20 ~~in § 58-2-29.~~

21 ~~—The appointment is effective upon the date it is processed by the Division of Insurance. The~~  
22 ~~director may deny an appointment or withhold processing an appointment for reasons of~~  
23 ~~protection of the public health, welfare, or safety including the following:~~

24 (1) The agent insurance producer to be appointed is not properly licensed; or

1 (2) A notice of hearing from the Division of Insurance seeking revocation or suspension  
2 of the agent insurance producer or insurer has been issued.

3 ~~—The director shall give written notice to the insurer of approval, denial, or delay of an agent  
4 appointment within thirty days of the insurer filing the appointment and shall send a copy of the  
5 notice to the agent. The director shall provide, if applicable, a copy of the notice of hearing to  
6 the insurer.~~

7 Section 157. That § 58-30-8 be amended to read as follows:

8 58-30-8. In terminating an agent insurance producer, corporation, or partnership  
9 appointment, the insurer shall promptly give written notice of the termination of the appointment,  
10 including a statement of the facts and causes of the termination and the effective date of the  
11 cancellation of the agent insurance producer contract if applicable to the director of the Division  
12 of Insurance, and to the agent insurance producer if reasonably possible. The director may  
13 require of the insurer reasonable proof that the insurer has given the notice to the agent insurance  
14 producer.

15 Any statement made on the prescribed form to the director is privileged information and is  
16 not admissible in evidence in any action or proceeding, nor may any agent insurance producer,  
17 agency, partnership, or corporation whose appointment has been terminated sue the insurer or  
18 any of its officers, directors, or employees by reason of the furnishing of the information to the  
19 director. Nothing in this section affects the terms and conditions of any contract between an  
20 insurer and its agents insurance producer, including any provisions chosen by the parties dealing  
21 with the employment of or reasons for termination of agents insurance producers.

22 Any insurer who fails, neglects, or refuses to promptly supply the information or knowingly  
23 supplies false information pursuant to this section is guilty of a Class 2 misdemeanor.

24 Section 158. That § 58-30-8.1 be amended to read as follows:

1        58-30-8.1. ~~An~~ No insurance company ~~cannot~~ may terminate the agency contract of an  
2 insurance ~~agent~~ producer writing fire and casualty lines of insurance except upon ninety days'  
3 notice in writing given by the company to the ~~agent~~, and the insurance producer. The company  
4 shall, upon a terminated ~~agent's~~ insurance producer's request, extend the coverage of any policy  
5 which has been written by ~~said agent~~ the insurance producer in the company and which expires  
6 or has its anniversary date during ~~said~~ the ninety-day period to the end of the ninety-day period  
7 if the insured pays the premium therefor. The company may terminate an insurance policy on its  
8 anniversary date if ~~said~~ the anniversary date occurs after the expiration of the ninety-day period.

9        Section 159. That § 58-30-8.2 be amended to read as follows:

10        58-30-8.2. The provisions of § 58-30-8.1 ~~shall~~ do not apply to those agency contracts in  
11 which the ~~agent~~ insurance producer agrees to represent exclusively one company or a group of  
12 companies under common management or to the termination of an ~~agent's~~ insurance producer's  
13 contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the  
14 company moneys due to the company after ~~his~~ the insurance producer's receipt of a written  
15 demand therefor, or after revocation of the ~~agent's~~ insurance producer's license by the director.

16        Section 160. That § 58-30-9 be amended to read as follows:

17        58-30-9. Following termination of an agency appointment as to property, casualty, or surety  
18 insurance, and subject to the terms of any agreement between the ~~agent~~ insurance producer and  
19 the insurer, the ~~agent~~ insurance producer may continue to service and receive from the insurer  
20 commissions or other compensation relative to business written by ~~him~~ the insurance producer  
21 during the existence of the appointment, so long as the ~~agent~~ insurance producer is licensed as  
22 an ~~agent~~ insurance producer.

23        Section 161. That § 58-30-10 be amended to read as follows:

24        58-30-10. ~~Section~~ The provisions of § 58-30-9 does do not apply as to ~~insurers~~ any insurer

1 and ~~agent~~ insurance producer between whom the relationship of employer and employee exists.

2 Section 162. That § 58-30-12.1 be amended to read as follows:

3 58-30-12.1. An ~~agent~~ insurance producer licensed for life or health insurance, or both, may  
4 place excess or rejected life or health insurance or annuity risks with any authorized insurer other  
5 than an insurer the ~~agent~~ insurance producer is licensed to represent; but the ~~agent~~ insurance  
6 producer may not receive commissions or other compensation from such other insurer for the  
7 business so placed until after ~~he~~ the insurance producer has been appointed an ~~agent~~ insurance  
8 producer of the insurer in accordance with this title.

9 Section 163. That § 58-30-20 be amended to read as follows:

10 58-30-20. ~~Sections 58-30-12 to 58-30-14, inclusive, shall~~ The provisions of § 58-30-12.1  
11 and sections 3 and 29 to 36, inclusive, of this Act, do not apply to title insurance.

12 Section 164. That § 58-30-23.6 be amended to read as follows:

13 58-30-23.6. For the purposes of ~~§§ 58-30-23.2 to § 58-30-23.7, inclusive, and sections 30~~  
14 and 40 of this Act, the division may access the criminal files of any licensee convicted of a felony  
15 or crime of moral turpitude without any authorization from the licensee. Any law enforcement  
16 agency that possesses criminal records shall provide reasonable access by the division to ~~such~~  
17 the records. The provisions of this section do not affect the division's ability to otherwise  
18 exchange information or cooperate with any law enforcement agency or other authorized agency.

19 Section 165. That § 58-30-27 be amended to read as follows:

20 58-30-27. ~~Whenever~~ If any domestic company is engaged in writing insurance on the lives  
21 or property of the members of the military forces of the United States, and dependents of ~~such~~  
22 the members while stationed outside the continental and territorial limits of the United States,  
23 the director, if otherwise satisfied as to the qualifications of applicants for licenses as ~~agents~~  
24 insurance producers to write ~~said~~ the business outside the continental and territorial limits of the

1 United States, for ~~such~~ the companies, may issue the same type of license to ~~such agents~~ the  
2 insurance producers as to any resident ~~agent~~ insurance producer.

3 Section 166. That § 58-30-29 be amended to read as follows:

4 58-30-29. A No license ~~shall not~~ may be issued in a trade name except to a ~~firm or~~  
5 ~~corporation~~ business entity and upon proof satisfactory to the director that the trade name has  
6 been lawfully registered.

7 Section 167. That § 58-30-33 be amended to read as follows:

8 58-30-33. A ~~licensee firm or corporation~~ licensed business entity shall promptly notify the  
9 director of all changes ~~among its members, directors, and officers, and all other individuals~~  
10 ~~designated in the license~~.

11 Section 168. That § 58-30-52 be amended to read as follows:

12 58-30-52. ~~Sections 58-30-49 and 58-30-50 do not apply to and no~~ No examination is  
13 required of:

14 (1) An applicant for the same kind of license as that which ~~he~~ the applicant has previously  
15 held in this state for at least one year within the five years next preceding the date of  
16 application and who is deemed by the director to be fully qualified and competent;

17 (2) ~~Any applicant whose similar license was suspended within the twelve months next~~  
18 ~~preceding the date of the application if the director waives such examination;~~

19 ~~(3) Any applicant who has previously been licensed under a similar license in another state~~  
20 ~~within six months prior to his application for license in this state, and who files with~~  
21 ~~the director the certificate of the public official having supervision of insurance in the~~  
22 ~~other state as to the applicant's license and conduct in that state if the director waives~~  
23 ~~the examination;~~

24 ~~(4) Transportation ticket agents of common carriers applying for limited license to solicit~~



1 and sell, as incidental to their duties as such transportation ticket agents, only:

2 (a) Personal accident insurance ticket policies; or

3 (b) Insurance of personal effects while being carried as baggage on such common  
4 carriers;

5 ~~(5)~~(3) ~~Resident attorneys~~ Attorneys licensed to practice law in this state;

6 ~~(6)~~(4) ~~Agents~~ Insurance producers outside the United States or its territories;

7 ~~(7)~~(5) ~~Agents~~ Insurance producers applying for a limited license to ~~solicit and sell credit life~~  
8 ~~and health~~ sell, solicit, or negotiate limited line credit or limited line insurance  
9 exclusively;

10 ~~(8)~~(6) Employees of trade associations for the issuance of surety bonds to their association  
11 members only;

12 ~~(9)~~(7) Travel accident agents of motor service clubs;

13 (8) A person who applies for an insurance producer license in this state who was  
14 previously licensed for the same lines of authority in another state. This exemption is  
15 available if the person is currently licensed in that state or if the application is received  
16 within ninety days of the cancellation of the applicant's previous license as long as the  
17 applicant was in good standing in that state and the state's insurance producer  
18 database records, maintained by the National Association of Insurance  
19 Commissioners, its affiliates, or its subsidiaries, indicate that the insurance producer  
20 is or was licensed in good standing for the line of authority requested;

21 (9) A person licensed as an insurance producer in another state who moves to this state  
22 and makes application within ninety days of establishing legal residence to become a  
23 resident licensee pursuant to sections 8 to 11, inclusive, of this Act. An examination  
24 may be required of that person to obtain any line of authority previously held in the

1           prior state unless the director determines otherwise by rule.

2           Section 169. That § 58-30-68 be amended to read as follows:

3           58-30-68. The director may issue to an applicant qualified therefor under this title a limited  
4 ~~agent's~~ lines insurance producer's license as follows:

5           (1)    To transportation ticket-selling agents of common carriers, covering personal accident  
6                insurance under ticket policies;

7           (2)    To transportation ticket-selling agents of common carriers, covering baggage  
8                insurance;

9           (3)    License covering only credit insurance, as such insurance is defined in § 58-9-20, and  
10            no individual so licensed may during the same period hold a license as an ~~agent~~  
11            insurance producer as to any other or additional kind of insurance;

12           (4)    Travel accident ~~agents~~ insurance producers of motor service clubs.

13           Section 170. That § 58-30-74 be amended to read as follows:

14           58-30-74. All licenses and appointments issued under this title shall continue in force until  
15            expired, suspended, revoked, or otherwise terminated, but subject to renewal by payment to the  
16            director annually on or before April thirtieth of the applicable fee as stated in § 58-2-29 upon  
17            notice by the director. Any request for renewal of a ~~broker or~~ surplus line broker license shall  
18            be made by the licensee.

19           Section 171. That § 58-30-74.1 be amended to read as follows:

20           58-30-74.1. Any ~~agent's~~ insurance producer's appointment not terminated prior to April first  
21            of each year is subject to an annual renewal fee as stated in § 58-2-29. The appointing insurer  
22            shall pay the renewal fee.

23           Section 172. That § 58-30-84 be amended to read as follows:

24           58-30-84. An ~~agent~~ insurance producer licensed as to ~~health~~ limited lines insurance or limited

1 lines credit insurance may solicit applications for and issue policies of personal travel accident  
2 insurance by means of mechanical vending machines and kiosks supervised by ~~him~~ the insurance  
3 producer and placed at airports, railroad stations, bus stations, and similar places where  
4 transportation tickets are sold to the traveling public, if the director finds:

5 (1) That the policy to be so sold provides reasonable coverage and benefits, is reasonably  
6 suited for sale and issuance through vending machines, and that use of such a machine  
7 therefor in a particular proposed location would be of material convenience to the  
8 public;

9 (2) That the type of vending machine and kiosk proposed to be used is reasonably suitable  
10 and practical for the purpose;

11 (3) That reasonable means are provided for informing the prospective purchaser of any  
12 such policy of the coverage and restrictions of the policy; and

13 (4) That reasonable means are provided for refund to the applicants of money inserted in  
14 defective machines and for which no insurance, or a less amount than paid for, is  
15 actually received.

16 Section 173. That § 58-30-88 be amended to read as follows:

17 58-30-88. All premiums or return premiums received by an ~~agent~~ insurance producer shall  
18 be trust funds received by the licensee in a fiduciary capacity, and the ~~agent~~ insurance producer  
19 or soliciting ~~agent~~ insurance producer shall account for and pay the same to the insured, insurer,  
20 or ~~agent~~ insurance producer entitled thereto.

21 Section 174. That § 58-30-90 be amended to read as follows:

22 58-30-90. If an ~~agent~~ insurance producer establishes a separate account in which to deposit  
23 trust funds in order to avoid a commingling of trust funds with ~~his~~ the insurance producer's own  
24 funds, ~~he~~ the insurance producer may deposit and commingle in such account all such funds but

1 the amount of such funds held for each respective other person must be reasonably ascertainable  
2 from the records and accounts of the ~~agent~~ insurance producer.

3 Section 175. That § 58-30-91 be amended to read as follows:

4 58-30-91. The ~~agent~~ insurance producer shall keep at ~~his~~ the insurance producer's place of  
5 business records pertaining to transactions under ~~his~~ the insurance producer's license and the  
6 licenses of ~~his~~ the insurance producer's soliciting ~~agents~~ insurance producers, for a period of at  
7 least ~~three~~ five years after completion of such transactions. Such records shall show, as to each  
8 policy, the name and address of the insured, the form, number, and term of the policy, the general  
9 subject of the insurance, and the general nature of the coverage. Nothing in this section ~~shall~~  
10 ~~preclude~~ precludes an ~~agent~~ insurance producer who receives compensation substantially in the  
11 form of a salary from sending such records to the home or regional office of the insurer in lieu  
12 of maintaining such records in this state.

13 ~~Violation~~ Any violation of this section is a Class 2 misdemeanor.

14 Section 176. That § 58-30-95 be amended to read as follows:

15 58-30-95. Each licensed nonresident ~~agent~~ insurance producer shall appoint the director as  
16 ~~his~~ the insurance producer's attorney to receive service of legal process issued against the agent  
17 in this state upon causes of action arising within this state out of transactions under the license.

18 Section 177. That § 58-30-96 be amended to read as follows:

19 58-30-96. The appointment required by § 58-30-95 ~~shall be~~ is irrevocable for as long as there  
20 could be any cause of action against the ~~agent~~ insurance producer arising out of ~~his~~ the insurance  
21 producer's insurance transactions in or with respect to this state.

22 Section 178. That § 58-30-97 be amended to read as follows:

23 58-30-97. Duplicate copies of legal process against the ~~agent~~ insurance producer shall be  
24 served on the director by registered or certified mail. At the time of service the plaintiff shall pay

1 the director the fee set forth in subdivision 58-2-29(12)(c), which is taxable as costs in the action.

2 Section 179. That § 58-30-98 be amended to read as follows:

3 58-30-98. Upon receiving such service, the director shall send one of the copies of the  
4 process, by registered or certified mail with return receipt requested, to the defendant ~~agent~~  
5 insurance producer at ~~his~~ the insurance producer's last address of record with the director.

6 Section 180. That § 58-30-99 be amended to read as follows:

7 58-30-99. The director shall keep a record of the day ~~and hour of service upon him of~~ when  
8 served with all such legal process.

9 Section 181. That § 58-30-100 be amended to read as follows:

10 58-30-100. In addition to the qualifications and requirements therefor referred to in  
11 §§ 58-30-95 to 58-30-99, inclusive, the issuance of a nonresident ~~agent's~~ insurance producer's  
12 license is subject to the conditions set forth in §§ 58-30-101 ~~to 58-30-105, inclusive~~ and 58-30-  
13 104.

14 Section 182. That § 58-30-104 be amended to read as follows:

15 58-30-104. All policies covering South Dakota risks placed by a licensee as nonresident  
16 ~~agent~~ insurance producer are subject to the countersignature law.

17 Section 183. That § 58-30-110 be amended to read as follows:

18 58-30-110. Upon suspension, revocation, or refusal to renew any license, the director shall  
19 notify the licensee thereof and give like notice to the insurers represented in case of an ~~agent's~~  
20 insurance producer's license.

21 Section 184. That § 58-30-112 be amended to read as follows:

22 58-30-112. All licenses, although issued and delivered as to the licensee ~~agent, broker,~~  
23 insurance producer or surplus lines broker, shall, at all times, be the property of the State of  
24 South Dakota. Upon any expiration, termination, suspension, or revocation of the license, the

1 licensee or other person having possession or custody of the license shall forthwith deliver it to  
2 the director either by personal delivery or by mail.

3 Section 185. That § 58-30-114 be amended to read as follows:

4 58-30-114. Terms, as used in §§ 58-30-114 to 58-30-121, inclusive, mean:

- 5 (1) "Director," the director of the Division of Insurance;
- 6 (2) "Instructor," any individual who teaches, lectures, or otherwise instructs an insurance  
7 education offering;
- 8 (3) "Licensee," any individual who is licensed by the Division of Insurance as a resident  
9 ~~agent or broker~~ insurance producer;
- 10 (4) "Sponsor," any person, offering or providing insurance education or related activity;  
11 and
- 12 (5) "Two-year period," twenty-four months commencing on April 1, 1986, and each  
13 succeeding twenty-four month period. The twenty-four month period ending on  
14 March 31, 2000, is extended through April 30, 2000. Each succeeding twenty-four  
15 month period thereafter shall commence on May first.

16 Section 186. That § 58-30-116 be amended to read as follows:

17 58-30-116. In each two-year period, each licensee shall furnish evidence to the director of  
18 the Division of Insurance that ~~he~~ the licensee has satisfactorily completed the following  
19 continuing education requirements:

- 20 (1) Any licensee who holds a property casualty life, accident/health, or variable contract  
21 qualification shall obtain a minimum of ten continuing education credit hours in  
22 courses certified for each such classification. However, no more than twenty hours  
23 of continuing education may be required of any licensee holding multiple ~~agent~~  
24 insurance producer licenses;

1 (2) Any licensee who holds only a crop hail qualification shall obtain a minimum of four  
2 credit hours certified for that line; and

3 (3) Any licensee of a mutual insurer incorporated under chapter 58-35 shall obtain a  
4 minimum of six credit hours certified for those lines which the insurer is authorized  
5 to write.

6 Section 187. That § 58-30-117 be amended to read as follows:

7 58-30-117. The director of the Division of Insurance, may promulgate, pursuant to chapter  
8 1-26, rules as are necessary for effective administration of continuing education for insurance  
9 ~~agents~~ producers. The rules may include provisions concerning continuing education  
10 requirements, exemptions, programs, courses, sponsors, definitions, extensions, fees and funding,  
11 instructors, applications, advertising, and administration.

12 Section 188. That § 58-30-121 be amended to read as follows:

13 58-30-121. The Division of Insurance shall charge each licensee an additional fee of ten  
14 dollars upon renewal of ~~his~~ the license. The fee shall be deposited in a separate account, entitled  
15 the South Dakota insurance ~~agent and broker~~ producer's continuing education fund, as funding  
16 for the administration of the continuing education program. The director may withhold or not  
17 renew the license of any licensee who fails to tender timely payment of the fee.

18 Section 189. That § 58-30-126 be amended to read as follows:

19 58-30-126. No person may act in the capacity of a managing general agent with respect to  
20 risks located in this state for an insurer licensed in this state unless the person is a licensed ~~agent~~  
21 insurance producer in this state. No person may act in the capacity of a managing general agent  
22 representing an insurer domiciled in this state with respect to risks located outside this state  
23 unless the person is licensed as an ~~agent~~ insurance producer in this state. The license may be a  
24 nonresident license.

1       The director may require the managing general agent to obtain a bond or an errors and  
2 omissions policy in an amount acceptable to the director for the protection of the insurer.

3       Section 190. That § 58-30-130 be amended to read as follows:

4       58-30-130. A managing general agent may not:

- 5       (1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing  
6       general agent may bind facultative reinsurance contracts pursuant to obligatory  
7       facultative agreements if the contract with the insurer contains reinsurance  
8       underwriting guidelines including, for both reinsurance assumed and ceded, a list of  
9       reinsurers with which automatic agreements are in effect, the coverages and amounts  
10       or percentages that may be reinsured and commission schedules;
- 11       (2) Commit the insurer to participate in insurance or reinsurance syndicates;
- 12       (3) Appoint any ~~agent~~ insurance producer without assuring that the ~~agent~~ insurance  
13       producer is lawfully licensed to transact the type of insurance for which ~~he~~ the  
14       insurance producer is appointed;
- 15       (4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over  
16       a specified amount, net of reinsurance, which may not exceed one percent of the  
17       insurer's policyholder's surplus as of December thirty-first of the last completed  
18       calendar year;
- 19       (5) Collect any payment from a reinsurer or commit the insurer to any claim settlement  
20       with a reinsurer, without prior approval of the insurer. If prior approval is given, a  
21       report shall be promptly forwarded to the insurer;
- 22       (6) Permit its subagent to serve on the insurer's board of directors;
- 23       (7) Jointly employ an individual who is employed with the insurer; or
- 24       (8) Appoint a submanaging general agent.



1 Section 191. That § 58-30-131 be amended to read as follows:

2 58-30-131. The insurer has the following duties:

3 (1) The insurer shall review and have on file an annual independent financial examination  
4 done by a person acceptable to the director, of each managing general agent with  
5 which it has done business;

6 (2) If a managing general agent establishes loss reserves, the insurer shall annually obtain  
7 the opinion of an actuary attesting to the adequacy of loss reserves established for  
8 losses incurred and outstanding on business produced by the managing general agent.  
9 This is in addition to any other required loss reserve certification;

10 (3) The insurer shall at least semiannually conduct an on-site review of the underwriting  
11 and claims processing operations of the managing general agent;

12 (4) Binding authority for all reinsurance contracts or participation in insurance or  
13 reinsurance syndicates shall rest with an officer of the insurer, who may not be  
14 affiliated with the managing general agent;

15 (5) Within thirty days of entering into or termination of a contract with a managing  
16 general agent, the insurer shall provide written notification of the appointment or  
17 termination to the director. Notices of appointment of a managing general agent shall  
18 include a statement of duties which the applicant is expected to perform on behalf of  
19 the insurer, the lines of insurance for which the applicant is to be authorized to act,  
20 and any other information the director may request;

21 (6) An insurer shall review its books and records each quarter to determine if any ~~agent~~  
22 insurance producer is a managing general agent as defined in § 58-30-124. ~~When~~ If  
23 the insurer determines that an ~~agent~~ insurance producer has become a managing  
24 general agent, the insurer shall promptly notify the ~~agent~~ insurance producer and the

1 director within thirty days of the determination. The insurer and an agent insurance  
2 producer shall fully comply with the provisions of §§ 58-30-124 to 58-30-139,  
3 inclusive, within thirty days of notification to the director; and

4 (7) An insurer may not appoint to its board of directors an officer, director, employee,  
5 agent insurance producer, or controlling shareholder of its managing general agents.

6 This subdivision does not apply to relationships governed by chapters 58-5A and  
7 58-44.

8 Section 192. That § 58-30-140 be amended to read as follows:

9 58-30-140. No agent insurance producer may obtain a loan from an existing or former client,  
10 other than a lending institution authorized by state or federal law, unless there is a written  
11 contract establishing the terms for repayment of the loan and the contract is filed with the  
12 division within thirty days of its effective date. This section does not apply to any loans  
13 transacted between an agent insurance producer and that agent's insurance producer's spouse,  
14 parents, children, aunts, uncles, or grandparents.

15 Section 193. That § 58-32-1 be amended to read as follows:

16 58-32-1. It is declared that the purposes of this chapter are to provide orderly access for the  
17 insuring public of South Dakota to insurers not authorized to transact insurance in this state,  
18 through licensed surplus line brokers ~~resident~~ in South Dakota for insurance coverages not  
19 procurable from authorized insurers; to protect such authorized insurers, which must meet  
20 certain standards as to policy forms and rates, from unwarranted competition by unauthorized  
21 insurers who, in the absence of this chapter, would not be subject to similar requirements; and  
22 for other purposes as set forth in this chapter.

23 Section 194. That § 58-32-5 be amended to read as follows:

24 58-32-5. The provisions of this chapter ~~shall~~ do not apply, except as to § 58-32-43, to the

1 following insurances ~~when~~ if so placed by licensed ~~agents~~ insurance producers or surplus line  
2 brokers of this state:

- 3 (1) Ocean marine and foreign trade insurances;
- 4 (2) Insurance on subjects located, resident, or to be performed wholly outside of this  
5 state, or on vehicles or aircraft owned and principally garaged outside this state;
- 6 (3) Insurance on operations of railroads engaged in transportation in interstate commerce  
7 and their property used in such operations;
- 8 (4) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft  
9 operated in commercial interstate flight, or cargo of such aircraft, or against liability,  
10 other than workers' compensation and employer's liability, arising out of the  
11 ownership, maintenance, or use of such aircraft.

12 Section 195. That § 58-32-6 be amended to read as follows:

13 58-32-6. ~~Except when~~ Unless performed by a licensed surplus line broker, the following acts  
14 are Class 2 misdemeanors ~~when~~ if done in this state:

- 15 (1) Acting as ~~agent~~ insurance producer for a nonadmitted insurer in the transaction of  
16 insurance business in this state;
- 17 (2) In any manner advertising a nonadmitted insurer in this state;
- 18 (3) In any other manner aiding a nonadmitted insurer to transact insurance business in this  
19 state.

20 In addition to any penalty provided for commission of misdemeanors, a person violating any  
21 provision of this section shall forfeit to this state the sum of five hundred dollars, together with  
22 one hundred dollars for each month or fraction thereof during which ~~he~~ the person continues  
23 such violation.

24 Section 196. That § 58-32-7 be amended to read as follows:

1        58-32-7. Any individual who is licensed in this state as a ~~special or resident general lines~~  
2 ~~agent~~ an insurance producer and who is ~~deemed~~ determined by the director to be competent and  
3 trustworthy with respect to the handling of surplus lines, ~~and who maintains an office at a~~  
4 ~~designated location in this state~~, may be licensed as a surplus line broker.

5        Section 197. That § 58-32-11 be amended to read as follows:

6        58-32-11. The director may suspend or revoke any surplus line broker's license:

- 7        (1) If the broker fails to file his annual statement or to remit the tax as required by this  
8 chapter; or
- 9        (2) If the broker fails to ~~maintain an office in this state~~, or to keep the records, or to allow  
10 the director to examine his records as required by this chapter, ~~or if he removes his~~  
11 ~~records from the state~~; or
- 12        (3) If the broker knowingly or negligently places a surplus line coverage in an insurer that  
13 is in unsound financial condition in violation of § 58-32-25; or
- 14        (4) For any other cause for which a general lines agent's license may be suspended or  
15 revoked.

16        Section 198. That § 58-32-15 be amended to read as follows:

17        58-32-15. A licensed surplus line broker may accept and place surplus line business for any  
18 ~~agent~~ insurance producer licensed in this state for the kind of insurance involved, and may  
19 compensate the ~~agent~~ insurance producer for it.

20        Section 199. That § 58-32-43 be amended to read as follows:

21        58-32-43. Licensed ~~agents~~ insurance producers and brokers placing any insurance  
22 enumerated in subdivisions 58-32-5(1) to (4), inclusive, with an authorized insurer shall keep a  
23 record of each such coverage in detail as required of surplus line insurance under this chapter.  
24 The record shall be preserved for not less than five years from the effective date of the insurance

1 and shall be kept available in this state for examination by the director. The broker shall furnish  
2 to the director at ~~his~~ the directors request and on forms furnished by the director a report of all  
3 such coverages so placed in a designated calendar year. ~~Violation~~ Any violation of this section  
4 is a Class 2 misdemeanor.

5 Section 200. That § 58-33-11 be amended to read as follows:

6 58-33-11. No person ~~shall~~ may issue or deliver or permit its ~~agents~~ insurance producers,  
7 officers, or employees to issue or deliver, agency company stock or other capital stock, or  
8 benefit certificates or shares in any common law corporation, or any advisory board contract or  
9 other similar contract of any kind promising returns and profits as an inducement to insurance.  
10 ~~Violation~~ Any violation of this section is a Class 2 misdemeanor.

11 Section 201. That § 58-33-15 be amended to read as follows:

12 58-33-15. No insurer ~~shall~~ may, directly or indirectly through its ~~agents~~ insurance producers  
13 or representatives, participate in any plan to offer or effect any kind or kinds of life insurance,  
14 health insurance, property insurance, casualty insurance, surety insurance, or annuities in this  
15 state as an inducement to, or in combination with, the purchase by the public of any goods,  
16 securities, commodities, services, or subscriptions to periodicals, except upon the payment of a  
17 bona fide premium by the insured. ~~Violation~~ Any violation of this section is a Class 2  
18 misdemeanor.

19 Section 202. That § 58-33-24 be amended to read as follows:

20 58-33-24. No insurer or any employee or representative thereof, and no ~~agent or broker~~ shall  
21 insurance producer may pay, allow, or give, or offer to pay, allow or give, directly or indirectly,  
22 as an inducement to insurance, or after insurance has been effected, any rebate, discount,  
23 abatement, credit, or reduction of the premium named in the policy of insurance, or any special  
24 favor or advantage in the dividends or other benefits to accrue thereon, or any valuable

1 consideration or inducement whatever, not specified in the policy, except to the extent provided  
2 for in an applicable filing with the director as provided by law. ~~Violation~~ Any violation of this  
3 section is a Class 2 misdemeanor.

4 Section 203. That § 58-33-27 be amended to read as follows:

5 58-33-27. Nothing in §§ 58-33-24 to 58-33-26, inclusive, ~~shall be construed as prohibiting~~  
6 prohibits the payment of commissions or other compensation to duly licensed ~~agents or brokers~~  
7 insurance producers, or ~~as prohibiting~~ prohibits any insurer from allowing or returning to its  
8 participating policyholders, members or subscribers, lawful dividends, savings or unabsorbed  
9 premium deposits.

10 Section 204. That § 58-33-31 be amended to read as follows:

11 58-33-31. No person ~~shall~~ may require as a condition precedent to loaning money upon the  
12 security of any real or personal property, or to the renewal or extension of any loan or mortgage,  
13 or to the selling of any property under contract, that the owner of the property to whom the  
14 money is to be loaned, or the vendee of the property being sold, shall place, continue, or renew  
15 any policy of insurance covering or to cover such property or covering any liability relating to  
16 such property or the use thereof, through a particular insurance ~~agent~~ producer or in a particular  
17 insurer or type of insurer or ~~broker~~; ~~except, that~~ insurance producer. However, this provision  
18 ~~shall~~ does not prevent the reasonable exercise by any ~~such~~ the lender or vendor of the right to  
19 approve or disapprove of the insurer selected to underwrite the insurance on a reasonably  
20 nondiscriminatory basis. ~~Violation~~ Any violation of this section is a Class 2 misdemeanor.

21 Section 205. That § 58-33-36 be amended to read as follows:

22 58-33-36. No person ~~shall~~ may willfully collect as premium or charge for insurance any sum  
23 in excess of or less than the premium or charge applicable to such insurance, and as specified in  
24 the policy in accordance with the applicable classifications and rates as filed with and approved

1 by the director; or, in cases where classifications, premiums, or rates are not required by this title  
 2 to be so filed and approved, such premiums and charges ~~shall~~ may not be in excess of or less than  
 3 those specified in the policy and as fixed by the insurer. ~~Violation~~ Any violation of this section  
 4 is a Class 2 misdemeanor. This section ~~shall~~ does not be deemed to prohibit the charging and  
 5 collection, by surplus line ~~agents~~ brokers licensed under chapter 58-32, of the amount of  
 6 applicable state and federal taxes in addition to the premium required by the insurer. Nor ~~shall~~  
 7 does it be deemed to prohibit the charging and collection, by a life insurer, of amounts actually  
 8 to be expended for medical examination of an applicant for life insurance or for reinstatement of  
 9 a life insurance policy.

10 Section 206. That § 58-33-59 be amended to read as follows:

11 58-33-59. Terms, used in this section and §§ 58-33-60 to 58-33-65, inclusive, mean:

- 12 (1) "Cancellation," termination by the insurer of insurance coverage in whole or in part  
 13 during the policy term. A policy with no fixed expiration date is considered a policy  
 14 period or term of one year;
- 15 (2) "Insurance," includes those policies of insurance defined in §§ 58-9-5 to 58-9-27,  
 16 inclusive;
- 17 (3) "Nonpayment of premium," the failure of the named insured to discharge any  
 18 obligation in connection with the payment of premiums on policies of insurance  
 19 subject to this section and §§ 58-33-60 to 58-33-65, inclusive, whether such payments  
 20 are directly payable to the insurer or its ~~agent~~ insurance producer or indirectly payable  
 21 under a premium finance plan or extension of credit.

22 Section 207. That § 58-33-64 be amended to read as follows:

23 58-33-64. Except for knowingly supplying false information, there is no liability on the part  
 24 of and no cause of action arises against the following persons for any communication giving

1 notice of or specifying the reasons for a cancellation or for any statement made in connection  
2 with an attempt to discover or verify the existence of conditions that would provide grounds for  
3 cancellation of coverage under the provisions of §§ 58-33-59 to 58-33-65, inclusive:

- 4 (1) The director of the Division of Insurance;
- 5 (2) Any insurer or its authorized representatives, ~~agents~~ insurance producers, or  
6 employees;
- 7 (3) Any licensed insurance ~~agent or broker~~ producer; or
- 8 (4) Any person furnishing information to an insurer as to reasons for a cancellation.

9 Section 208. That § 58-33-72 be amended to read as follows:

10 58-33-72. No insurance company and no ~~agent~~ insurance producer or adjuster for such  
11 insurance company, that issues or renews in this state any policy of insurance covering, in whole  
12 or in part, any motor vehicle, may require or recommend that any person insured under that  
13 policy use a particular company or location for the providing of automobile glass replacement  
14 or repair services or products insured in whole or in part by that policy.

15 No such insurance company, ~~agent~~ insurance producer, or adjuster may engage in any act  
16 or practice of intimidation, coercion, threat, incentive, or inducement for or against any such  
17 insured person to use a particular company or location to provide such services or products.

18 Section 209. That § 58-33-73 be amended to read as follows:

19 58-33-73. Nothing in § 58-33-72 prohibits any such insurance company, ~~agent~~ insurance  
20 producer, or adjuster from providing to such insured person or entity a list that includes the  
21 names of automobile glass companies or locations, if all of the listed companies or locations are  
22 reasonably close and convenient to the insured person and if none of the listed companies or  
23 locations is affiliated with another in any way, with which arrangements may have been made in  
24 advance with respect to prices or other aspects of the furnishing of the automobile glass services



1 or products. However, no insurance company, ~~agent~~ insurance producer, or adjuster may  
2 require, recommend, urge, or encourage use of the listed automobile glass companies or  
3 locations. If a list is provided, the insurance company, agent, or adjuster, shall make oral and  
4 written disclosure at the time of any claim reimbursable in whole or in part under the insurance  
5 policy, to the insured person that any nonlisted automobile glass company or location may be  
6 used at the insured person's sole discretion and that the insurance company will fully and  
7 promptly pay for the cost of the automobile glass replacement or repair services or products, less  
8 only any applicable deductible amount payable according to the terms of the insurance policy by  
9 the insured person, at no less than the lowest prevailing market price in the local area for  
10 similarly-situated automobile glass companies or locations providing comparable automobile  
11 glass replacement or repair services or products without taking into consideration any special  
12 arrangements offered by the listed automobile glass companies or locations. If the insured person  
13 elects to use a nonlisted automobile glass company or location, the insurance company may not  
14 impose any obligations or requirements upon the insured person, including the obtaining of  
15 written estimates, not required if the insured person elects to use a listed automobile glass  
16 company or location.

17 Section 210. That § 58-33-74 be amended to read as follows:

18 58-33-74. Nothing in this chapter prohibits a licensed insurer or its officers or employees or  
19 an ~~agent or broker~~ insurance producer from giving to insureds, prospective insureds, or others  
20 for advertising purposes or promotional programs, any article of merchandise having an invoice  
21 value of not more than twenty-five dollars.

22 Section 211. That § 58-33A-2 be amended to read as follows:

23 58-33A-2. The purpose of this chapter is to establish guidelines and permissible and  
24 impermissible standards of conduct in the solicitation of and advertising of life and health

1 insurance in a manner which:

- 2 (1) Prevents unfair, deceptive, and misleading advertising;
- 3 (2) Is conducive to accurate presentation and description to the insurance-buying public  
4 through the advertising media and material used by insurance ~~agents~~ insurance  
5 producers and companies;
- 6 (3) Provides for the full disclosure of the benefits, limitations, and exclusions of policies  
7 sold;
- 8 (4) Sets forth minimum standards and guidelines to assure a full and truthful disclosure  
9 to the public of all material and relevant information in the advertising of life insurance  
10 policies and annuity contracts;
- 11 (5) Requires insurers to deliver to purchasers of life insurance information which will  
12 improve the buyer's ability to select the most appropriate plan of life insurance for the  
13 buyer's needs;
- 14 (6) Improves the buyer's understanding of the basic features of the policy which has been  
15 purchased or which is under consideration;
- 16 (7) Improves the ability of the buyer to evaluate the relative costs of similar plans of life  
17 insurance;
- 18 (8) Provides reasonable standardization and simplification of terms and coverages of  
19 health insurance policies and subscriber contracts of nonprofit hospital, medical, and  
20 dental service associations to facilitate public understanding and comparison;
- 21 (9) Eliminates provisions contained in health insurance policies and subscriber contracts  
22 of nonprofit hospital, medical, and dental service associations which may be  
23 misleading or unreasonably confusing in connection either with the purchase of such  
24 coverages or with the settlement of claims; and

1 (10) Provides for full disclosure in the sale of life or health coverages.

2 Section 212. That § 58-33A-3 be amended to read as follows:

3 58-33A-3. For the purposes of this chapter, the term, advertisement, includes:

4 (1) Any printed and published material, audio visual material, and descriptive literature  
5 of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts,  
6 billboards, and similar displays;

7 (2) Any descriptive literature and sales aids of all kinds issued by an insurer, ~~agent,~~  
8 representative of the insurer, insurance producer, broker, or solicitor for presentation  
9 to members of the insurance-buying public, including circulars, leaflets, booklets,  
10 depictions, illustrations, Internet communications, form letters, and lead-generating  
11 devices of all kinds;

12 (3) Any prepared sales talks, presentations, and material for use by ~~agents, brokers,~~  
13 representatives of the insurer, insurance producers, and solicitors whether prepared  
14 by the insurer or the ~~agent, broker,~~ representative of the insurer, insurance producer,  
15 or solicitor; and

16 (4) Any advertising material included with a policy if the policy is delivered and material  
17 is used in the solicitation of renewals and reinstatements.

18 Section 213. That § 58-33A-4 be amended to read as follows:

19 58-33A-4. For the purposes of this chapter, the term, advertisement, does not include:

20 (1) Any material to be used solely for the training and education of an insurer's  
21 employees, ~~agents, or brokers~~ representatives, or insurance producers;

22 (2) Any material used in-house by insurers;

23 (3) Any communications within an insurer's own organization not intended for  
24 dissemination to the public;

- 1       (4) Any individual communications of a personal nature with current policyholders other  
2           than material urging such policyholders to increase or expand coverages;
- 3       (5) Any correspondence between a prospective group or blanket policyholder and an  
4           insurer in the course of negotiating a group or blanket contract;
- 5       (6) Any court-approved material ordered by a court to be disseminated to policyholders;  
6           or
- 7       (7) Any general announcement from a group or blanket policyholder to eligible  
8           individuals on an employment or membership list that a contract or program has been  
9           written or arranged if the announcement clearly indicates that it is preliminary to the  
10          issuance of a booklet and the announcement does not describe the benefits under the  
11          contract or program or describe advantages as to the purchase of the contract or  
12          program.

13       Section 214. That § 58-33A-5 be amended to read as follows:

14       58-33A-5. In order to provide for full and fair disclosure in the sale of health insurance  
15       policies or subscriber contracts of a nonprofit hospital, medical, or dental service association, no  
16       such policy or contract may be delivered or issued for delivery in this state unless the outline of  
17       coverage described in § 58-33A-6 either accompanies the policy or is delivered to the applicant  
18       at the time application is made and an acknowledgment of receipt or certificate of delivery of  
19       such outline is provided the insurer. If the policy has been sold through an ~~agent~~ insurance  
20       producer, the outline of coverage shall be delivered at the time of application. If the policy is  
21       issued on a basis other than that applied for, the outline of coverage properly describing the  
22       policy or contract shall accompany the policy or contract.

23       Section 215. That § 58-33A-7 be amended to read as follows:

24       58-33A-7. The director may promulgate rules pursuant to chapter 1-26 to establish specific

1 standards consistent with § 58-33A-2. The rules may include standards of full and fair disclosure,  
2 that set forth the manner, content, and required disclosure. Except for conversion policies issued  
3 pursuant to a contractual conversion privilege under a group, the rules may apply to the sale of  
4 individual and group health insurance subject to this chapter and shall be in addition to and in  
5 accordance with applicable laws of this state. The rules may include:

- 6 (1) Terms of renewability;
- 7 (2) Initial and subsequent conditions of eligibility;
- 8 (3) Nonduplication of coverage provisions;
- 9 (4) Coverage of dependents;
- 10 (5) Preexisting conditions;
- 11 (6) Termination of insurance;
- 12 (7) Probationary periods;
- 13 (8) Limitations, exceptions, and reductions;
- 14 (9) Elimination periods;
- 15 (10) Requirements for replacement;
- 16 (11) Recurrent conditions;
- 17 (12) Prohibitions on the use of terms, information, phrases, or implied affiliations in  
18 advertising;
- 19 (13) Prominence, form, and style of any advertisement;
- 20 (14) Information to be disclosed on advertising or solicitation materials;
- 21 (15) Use of testimonials;
- 22 (16) Special offers or enrollment periods;
- 23 (17) Coverage comparisons;
- 24 (18) Identification of insurers, representatives of the insurers and agents insurance

1           producers;

2           (19) Prearrangements or preneed funeral contracts; and

3           (20) The definition of terms including the following: hospital, accident, sickness, injury,  
4           physician, accidental means, total disability, partial disability, nervous disorder,  
5           guaranteed renewable and noncancellable.

6           Section 216. That § 58-35-57 be amended to read as follows:

7           58-35-57. The following chapters and sections of this title apply to farm mutual insurers to  
8           the extent not inconsistent with the express provisions of this chapter and the reasonable  
9           implications of the express provisions:

10          (1) Chapter 58-1. Definitions and General Provisions;

11          (2) Chapter 58-2. Division of Insurance;

12          (3) Chapter 58-3. Examination of Insurers, ~~Brokers and Agents~~ and Insurance Producers;

13          (4) Chapter 58-4. Enforcement Powers and Proceedings (except § 58-4-7);

14          (5) Sections 58-5-134 to 58-5-140, inclusive. Organization and General Powers of  
15          Insurers;

16          (6) Chapter 58-10. Insurable Interest;

17          (7) Chapter 58-11. Form and Contents of Insurance Policies;

18          (8) Chapter 58-12. Insurance Claims and Benefits (except § 58-12-3);

19          (9) Chapter 58-33. Unfair Trade Practices;

20          (10) Chapter 58-30. Insurance ~~Brokers, Agents and Solicitors~~ Producers;

21          (11) Chapter 58-29B. Insurers Supervision and Rehabilitation.

22          Section 217. That § 58-37A-8 be amended to read as follows:

23          58-37A-8. The officers and members of the supreme governing body or any subordinate body  
24          of a society are not personally liable for any benefits provided by a society.

1 Any person may be indemnified and reimbursed by any society for expenses reasonably  
2 incurred by, and liabilities imposed upon, the person in connection with or arising out of any  
3 action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat  
4 thereof, in which the person may be involved because the person was a director, officer,  
5 employee, or agent insurance producer of the society or of any firm, corporation, or organization  
6 which the person served in any capacity at the request of the society. No person may be  
7 indemnified or reimbursed in relation to any matter in any action, suit, or proceeding if the person  
8 is finally adjudged to be guilty of a breach of a duty as a director, officer, employee, or agent  
9 insurance producer of the society or in relation to any matter in any action, suit, or proceeding,  
10 or threat thereof, which is the subject of a compromise settlement; unless in either case the  
11 person acted in good faith for a purpose the person reasonably believed to be in or not opposed  
12 to the best interests of the society and, in a criminal action or proceeding, had no reasonable  
13 cause to believe that the person's conduct was unlawful. The determination whether the conduct  
14 of the person met the standard required in order to justify indemnification and reimbursement in  
15 relation to any matter described in the preceding sentence may only be made by the supreme  
16 governing body or board of directors by a majority vote of a quorum consisting of persons who  
17 were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The  
18 termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon  
19 a plea of no contest, as to the person does not create a conclusive presumption that the person  
20 did not meet the standard of conduct required to justify indemnification and reimbursement. The  
21 right of indemnification and reimbursement is not exclusive of other rights to which a person may  
22 be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and  
23 administrators.

24 A society may purchase and maintain insurance on behalf of any person who is or was a

1 director, officer, employee, or agent insurance producer of the society, or who is or was serving  
2 at the request of the society as a director, officer, employee, or agent insurance producer of any  
3 other firm, corporation, or organization against any liability asserted against the person and  
4 incurred by the person in any capacity or arising out of the person's status as such, whether or  
5 not the society would have the power to indemnify the person against the liability under this  
6 section.

7 No director, officer, employee, member, or volunteer of a society serving without  
8 compensation is liable, and no cause of action may be brought, for damages resulting from the  
9 exercise of judgment or discretion in connection with the duties or responsibilities of the person  
10 for the society unless the act or omission involved willful or wanton misconduct.

11 Section 218. That § 58-37A-33 be amended to read as follows:

12 58-37A-33. Any agent insurance producer of a society shall be licensed in accordance with  
13 the provisions of chapter 58-30 regulating the licensing, revocation, suspension, or termination  
14 of license of resident and nonresident agents insurance producers.

15 ~~— No examination or license is required of any regular salaried officer, employee, or member~~  
16 ~~of a licensed society who devotes substantially all of his services to activities other than the~~  
17 ~~solicitation of fraternal insurance contracts from the public and who receives for the solicitation~~  
18 ~~of these contracts no commission or other compensation directly dependent upon the amount~~  
19 ~~of business obtained.~~

20 ~~— Any person who in the preceding calendar year has solicited and procured life insurance~~  
21 ~~contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars~~  
22 ~~or, in the case of any other kind of insurance which the society may write, on the persons of~~  
23 ~~more than twenty-five individuals and who has received a commission or other compensation~~  
24 ~~therefor, shall be licensed as an agent in accordance with this section.~~



1 Section 219. That § 58-37A-34 be amended to read as follows:

2 58-37A-34. Any society and ~~agent~~ insurance producer authorized to do business in this state  
3 is subject to the provisions of chapter 58-33 relating to unfair trade practices. However, nothing  
4 in these provisions may be construed as applying to or affecting the right of any society to  
5 determine its eligibility requirements for membership or be construed as applying to or affecting  
6 the offering of benefits exclusively to members or persons eligible for membership in the society  
7 by a subsidiary corporation or affiliated organization of the society.

8 Section 220. That § 58-38-18 be amended to read as follows:

9 58-38-18. The director may investigate and examine the books and records of any medical  
10 and surgical plan corporation, and may summon and examine under oath its officers, ~~agents~~  
11 representatives, insurance producers, employees, or other persons in relation to the affairs,  
12 transactions, and conditions of the corporation.

13 The director shall conduct an examination of each corporation at least every five years  
14 pursuant to chapter 58-3, and the cost of the regular or other special examinations shall be borne  
15 by the corporation.

16 Section 221. That § 58-38-19 be amended to read as follows:

17 58-38-19. ~~A~~ Any medical and surgical plan corporation is exempt from all provisions of the  
18 insurance laws of this state other than in this chapter. However, the corporation is subject to the  
19 provisions of this title on matters of hearings, appeals, mergers, dissolutions, licensure of ~~agents~~  
20 insurance producers, and procedures on such matters. The corporation is also subject to  
21 §§ 58-4-39 to 58-4-42, inclusive; 58-6-75; 58-17-17, and 58-17-19 for nongroup policies only;  
22 §§ 58-17-54; 58-17-56; 58-30-124 to 58-30-139, inclusive; and to the fees and taxation as  
23 insurers covered by this title; and to chapters 58-3, 58-5A, 58-14, 58-18B, 58-26, 58-27,  
24 58-29B, 58-29D, 58-33, 58-43, and 58-44.

1 Section 222. That § 58-39-15 be amended to read as follows:

2 58-39-15. The director may investigate and examine the books and records of any dental  
3 service corporation, and may summon and examine under oath its officers, ~~agents~~  
4 representatives, insurance producers, employees, or other persons in relation to the affairs,  
5 transactions, and conditions of the corporation.

6 The director shall conduct an examination of each corporation at least every five years  
7 pursuant to chapter 58-3, and the cost of the regular or other special examinations shall be borne  
8 by the corporation.

9 Section 223. That § 58-39-16 be amended to read as follows:

10 58-39-16. ~~A~~ Any dental service corporation is exempt from all provisions of the insurance  
11 laws of this state other than this chapter. However, the corporation is subject to the provisions  
12 of this title on matters of hearings, appeals, mergers, dissolutions, licensure of ~~agents~~ insurance  
13 producers, and procedures on such matters. The corporation is also subject to fees and taxation  
14 as insurers covered by this title, and to chapter 58-33.

15 Section 224. That § 58-40-17 be amended to read as follows:

16 58-40-17. The director may investigate and examine the books and records of any hospital  
17 service plan corporation, and may summon and examine under oath its officers, ~~agents~~  
18 representatives, insurance producers, employees, or other persons in relation to the affairs,  
19 transactions, and conditions of the corporation.

20 The director shall conduct an examination of each corporation at least every five years  
21 pursuant to chapter 58-3, and the cost of the regular or other special examinations shall be borne  
22 by the corporation.

23 Section 225. That § 58-40-18 be amended to read as follows:

24 58-40-18. A hospital service plan corporation is exempt from all provisions of the insurance

1 laws of this state other than in this chapter. However, the corporation is subject to the provisions  
2 of this title on matters of hearings, appeals, mergers, dissolutions, licensure of ~~agents~~ insurance  
3 producers, and procedures on such matters. The corporation is also subject to §§ 58-4-39 to  
4 58-4-42, inclusive; 58-6-75; 58-17-17 and 58-17-19, for nongroup policies only; §§ 58-30-124  
5 to 58-30-139, inclusive; to the fees and taxation as insurers covered by this title; and to chapters  
6 58-3, 58-5A, 58-14, 58-18B, 58-26, 58-27, 58-29B, 58-29D, 58-33, 58-43, and 58-44.

7 Section 226. That § 58-41-26 be amended to read as follows:

8 58-41-26. ~~A~~ Any health maintenance organization is exempt from all provisions of the  
9 insurance laws of this state other than this chapter, ~~except such.~~ However, the corporation is  
10 subject to the provisions of this title on matters and procedures of mergers and licensure of  
11 ~~agents~~ insurance producers. The corporation is also subject to fees and taxation as insurers under  
12 § 58-2-29 and chapter 10-44. The corporation is also subject to §§ 58-17-53 and 58-17-54 ~~when~~  
13 if entering into a contract after July 1, 1990, with the State of South Dakota, counties, school  
14 districts, municipalities, and any other unit of state government using public funds. The state,  
15 however, may not collect premium taxes for insurance written on individuals residing outside this  
16 state or property located outside this state if no comparable tax is paid by the direct writing  
17 health maintenance organization to any appropriate taxing authority.

18 Section 227. That § 58-41-72 be amended to read as follows:

19 58-41-72. For the purpose of examinations, the director and the secretary ~~shall have the~~  
20 ~~power to~~ may administer oaths to and examine the officers and ~~agents~~ insurance producers of  
21 the health maintenance organization and the principals of such providers concerning their  
22 business, and to issue subpoenas.

23 Section 228. That § 58-30-5 be repealed.

24 ~~58-30-5. This chapter shall not apply to any company or association doing business on the~~

1 ~~interinsurance or reciprocal plan on which no commissions are paid except to the home office~~  
2 ~~manager or attorney in fact of such company or association, or to a person employed by an~~  
3 ~~insurance agent or insurer solely for the performance of clerical, stenographic, or similar office~~  
4 ~~duties who incidentally handles insurance applications and receives premiums if his compensation~~  
5 ~~is not related to the volume of such applications, insurance, or premiums, or to persons engaged~~  
6 ~~in the business of fur storage who deliver to their customers certificates or policies providing~~  
7 ~~insurance on specified furs, garments trimmed with fur, or other garments accepted for storage~~  
8 ~~and who collect the premium therefor, if they receive no compensation for such service.~~

9 Section 229. That § 58-30-5.1 be repealed.

10 ~~—58-30-5.1. The provisions of this chapter shall not apply to the sale or issuance by motor~~  
11 ~~vehicle dealers licensed under chapter 32-6B of motor vehicle service contracts, extended service~~  
12 ~~agreements, mechanical breakdown insurance, automobile guaranty insurance, or insurance of~~  
13 ~~the mechanical condition, or freedom from defective or worn parts or equipment of motor~~  
14 ~~vehicles.~~

15 Section 230. That § 58-30-12 be repealed.

16 ~~—58-30-12. An agent shall place insurance only in an insurer with which the agent holds a~~  
17 ~~subsisting appointment as agent pursuant to this chapter. An appointment is not required to~~  
18 ~~solicit, provide a quote, or make a presentation to a prospective insured. An appointment is~~  
19 ~~required to be in place when the agent takes an application for insurance. Violation of this~~  
20 ~~section is a Class 2 misdemeanor.~~

21 Section 231. That § 58-30-13 be repealed.

22 ~~—58-30-13. Except as provided in §§ 58-30-15 to 58-30-20, inclusive, no insurer shall~~  
23 ~~compensate for services performed in the solicitation, procurement, or effectuation of insurance~~  
24 ~~on subjects of insurance located or to be performed in this state, any person not licensed~~

1 pursuant to this chapter as the agent of such insurer, or as a nonresident agent, at the time of the  
2 transaction out of which entitlement to such compensation arose. Violation of this section is a  
3 Class 2 misdemeanor.

4 Section 232. That § 58-30-14 be repealed.

5 ~~58-30-14. Except as otherwise expressly provided by this title, it shall be a Class 2~~  
6 ~~misdemeanor for any person directly or indirectly in the State of South Dakota to do any of the~~  
7 ~~following unless licensed as to the type of insurance involved pursuant to the provisions of this~~  
8 ~~title:~~

9 ~~(1) Be, act as, or advertise or hold himself out to be, an agent or solicitor; or~~

10 ~~(2) For fee, commission, or compensation, solicit or negotiate for insurance on behalf of~~  
11 ~~the insurable interests of any person other than himself; or~~

12 ~~(3) Engage or hold himself out as engaging in the business of analyzing or abstracting~~  
13 ~~insurance policies or of counseling or advising or giving opinions, other than as a~~  
14 ~~licensed attorney at law, relative to insurance or insurance contracts, for fee,~~  
15 ~~commission, or other compensation, other than as a salaried bona fide full-time~~  
16 ~~employee so counseling and advising his employer relative to the insurance interests~~  
17 ~~of the employer and of the subsidiaries or business affiliates of the employer; or~~

18 ~~(4) Receive or transmit applications for suretyship, or receive for delivery surety~~  
19 ~~insurance contracts founded on applications forwarded from this state, or otherwise~~  
20 ~~procure suretyship to be effected by a surety insurer upon the bonds of persons in this~~  
21 ~~state, or upon bonds given to persons in this state.~~

22 Section 233. That § 58-30-15 be repealed.

23 ~~58-30-15. Sections 58-30-12 to 58-30-14, inclusive, shall not apply to salaried home office~~  
24 ~~or branch office employees of insurers, or salaried employees in the offices of general agents,~~

1 who perform administrative, clerical, or technical services in such offices and who do not solicit  
2 insurance business from insureds or prospective insureds.

3 Section 234. That § 58-30-16 be repealed.

4 ~~—58-30-16. Sections 58-30-12 to 58-30-14, inclusive, shall not apply to the salaried employees~~  
5 ~~in the office of a general lines agent, which employees devote full time to clerical and~~  
6 ~~administrative services, with incidental taking of insurance applications and receiving premiums~~  
7 ~~in the office of the agent, if the employee does not receive any commissions on such applications~~  
8 ~~and his compensation is not varied by the volume of such applications, insurance, or premiums.~~

9 Section 235. That § 58-30-17 be repealed.

10 ~~—58-30-17. Sections 58-30-12 to 58-30-14, inclusive, shall not apply to service representatives~~  
11 ~~i.e., officers and traveling representatives, compensated by salary only, of insurers or of general~~  
12 ~~agents who work with or through resident general lines agents in the solicitation, negotiation,~~  
13 ~~or effectuation of insurance.~~

14 Section 236. That § 58-30-18 be repealed.

15 ~~—58-30-18. Sections 58-30-12 to 58-30-14, inclusive, shall not apply to officers and regular~~  
16 ~~representatives, compensated by salary only, of special lines insurers which do not solicit~~  
17 ~~insurance from the general public and do not use resident agents generally in the solicitation of~~  
18 ~~insurance business.~~

19 Section 237. That § 58-30-19 be repealed.

20 ~~—58-30-19. Sections 58-30-12 to 58-30-14, inclusive, shall not apply to officers and regular~~  
21 ~~salaried representatives of domestic reciprocal insurers writing only workers' compensation~~  
22 ~~coverages for employers commonly known as self-insurers.~~

23 Section 238. That § 58-30-21 be repealed.

24 ~~—58-30-21. For the protection of the people of this state, the director shall not issue, continue,~~

1 or permit to exist any agent's license except in compliance with this chapter, or as to any person  
2 not qualified therefor as provided by §§ 58-30-22 to 58-30-28, inclusive.

3 Section 239. That § 58-30-22 be repealed.

4 ~~— 58-30-22. Except as provided in §§ 58-30-29 to 58-30-32, inclusive, an individual licensed  
5 as an agent must be an adult natural person:~~

6 Section 240. That § 58-30-23 be repealed.

7 ~~— 58-30-23. Any individual licensed as an agent shall be trustworthy, of good character and  
8 reputation as to morals, integrity, and financial responsibility, and may not have been convicted  
9 of, or have pled guilty or nolo contendere to, a felony or of any crime involving moral turpitude.  
10 The director of the Division of Insurance may waive the restriction relating to conviction of, or  
11 plea of guilty or nolo contendere to, a felony or crime involving moral turpitude upon  
12 determining, pursuant to § 58-30-23.1, that the individual has been sufficiently rehabilitated:~~

13 Section 241. That § 58-30-23.1 be repealed.

14 ~~— 58-30-23.1. The director of the Division of Insurance may deny a license to an individual  
15 because of prior conviction of an offense if it is determined that the person has not been  
16 sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve  
17 the public as an insurance agent or broker. The director shall consider the following in  
18 determining sufficient rehabilitation:~~

- 19 ~~— (1) — The nature of the offense and whether it has a direct bearing upon the qualifications,  
20 functions, or duties of an insurance agent or broker prescribed under this chapter;  
21 — (2) — Information pertaining to the degree of rehabilitation of the convicted person; and  
22 — (3) — The time elapsed since the conviction or release without a subsequent conviction:~~

23 Section 242. That § 58-30-23.2 be repealed.

24 ~~— 58-30-23.2. Any person, owner, or officer of an entity licensed pursuant to chapter 58-30~~

1 is subject to the provisions of §§ ~~58-30-23.2 to 58-30-23.7.~~

2 Section 243. That § 58-30-23.3 be repealed.

3 ~~—58-30-23.3. Any person licensed pursuant to chapter 58-30 or any owner or officer of an~~  
4 ~~entity licensed pursuant to chapter 58-30, who is convicted of a felony or a crime of moral~~  
5 ~~turpitude, shall report the conviction to the division within thirty days of the date of the~~  
6 ~~conviction. The report shall include either a copy of the judgment of conviction or provide~~  
7 ~~sufficient information so as to enable the division to obtain a copy.~~

8 Section 244. That § 58-30-23.4 be repealed.

9 ~~—58-30-23.4. Any person required to report pursuant to §§ 58-30-23.2 to 58-30-23.7,~~  
10 ~~inclusive, shall notify the division within thirty days of the effective date of any enforcement~~  
11 ~~action taken with respect to that person's license by any other state insurance regulatory~~  
12 ~~authority. Enforcement actions include fines, suspensions, cease and desist orders, revocations,~~  
13 ~~and surrenders of license or a settlement entered into with the regulatory authority.~~

14 Section 245. That § 58-30-23.5 be repealed.

15 ~~—58-30-23.5. The division may revoke the license of any person failing to notify the division~~  
16 ~~as required by §§ 58-30-23.2 to 58-30-23.7, inclusive, or impose a lesser penalty if there are~~  
17 ~~mitigating factors which warrant a lesser penalty.~~

18 Section 246. That § 58-30-25 be repealed.

19 ~~—58-30-25. An individual licensed as a resident or nonresident agent must be competent with~~  
20 ~~respect to the business to be transacted under the license applied for, and must pass to the~~  
21 ~~director's satisfaction any written examination required under this chapter to test such~~  
22 ~~competency. However, if an agent has been engaged in the insurance business as a licensed agent~~  
23 ~~in the same kind of insurance in another state within the next preceding six months, examinations~~  
24 ~~may be waived if there is in existence between the agent's previous state of residence and the~~



1 ~~State of South Dakota a binding reciprocal agreement.~~

2 Section 247. That § 58-30-28 be repealed.

3 ~~—58-30-28. An individual licensed as an agent must intend in good faith to engage actively in~~  
4 ~~the insurance business under the license with respect to the general public, and not use or intend~~  
5 ~~to use the license principally for the purpose of writing controlled business as defined in~~  
6 ~~§ 58-30-37.~~

7 Section 248. That § 58-30-32 be repealed.

8 ~~—58-30-32. A firm or corporation shall be licensed only as an agent or broker and must be~~  
9 ~~licensed if one of its principal functions is the transaction of insurance or if it receives any~~  
10 ~~commission or other compensation dependent upon the placement of insurance. Each individual~~  
11 ~~transacting insurance for the firm or corporation under such license, or at least one individual in~~  
12 ~~each office or place where insurance is transacted, shall be appointed by the insurer or insurers~~  
13 ~~which appointed the firm or corporation and shall be individually licensed.~~

14 Section 249. That § 58-30-36 be repealed.

15 ~~—58-30-36. The purpose of a license issued under this chapter to an agent as defined in~~  
16 ~~§ 58-30-1 is to authorize and enable the licensee actively and in good faith to engage in the~~  
17 ~~insurance business as an agent to the general public, and to facilitate the public supervision of~~  
18 ~~such activities in the public interest. A license may not be issued to enable a licensee to receive~~  
19 ~~a rebate of premium in the form of "commission" or other compensation as an "agent," or to~~  
20 ~~enable the licensee to receive commissions or other compensation based upon insurance solicited~~  
21 ~~or procured by or through him upon his own interests or those of other persons with whom he~~  
22 ~~is closely associated in capacities other than as insurance agent.~~

23 Section 250. That § 58-30-37 be repealed.

24 ~~—58-30-37. The director shall not grant, renew, continue, or permit to exist any license as such~~

1 agent as to any applicant therefor or licensee thereunder if he finds that the license has been or  
2 is being or will probably be used by the applicant or licensee principally for the purpose of  
3 writing "controlled business," that is, insurance written on his own interests or those of his family  
4 or of his employer.

5 Section 251. That § 58-30-38 be repealed.

6 ~~—58-30-38. Such a license shall be deemed to have been, or intended to be, used principally~~  
7 ~~for the purpose of writing controlled business if the director finds that during any twelve months'~~  
8 ~~period the aggregate premiums accruing or to accrue from such controlled business have~~  
9 ~~exceeded or probably will exceed the aggregate premiums accruing or to accrue on other~~  
10 ~~business written or probably to be written by such applicant or licensee during the same period.~~

11 Section 252. That § 58-30-39 be repealed.

12 ~~—58-30-39. Sections 58-30-36 to 58-30-38, inclusive, shall not be deemed to prohibit the~~  
13 ~~licensing as to motor vehicle physical damage casualty, credit life and health insurance only of~~  
14 ~~any individual employed by or associated with a motor vehicle sales or financing agency, with~~  
15 ~~respect to insurance of the interest of such agency in a motor vehicle sold or financed by or~~  
16 ~~through it.~~

17 Section 253. That § 58-30-40 be repealed.

18 ~~—58-30-40. Sections 58-30-36 to 58-30-38, inclusive, shall not apply as to the interest of a real~~  
19 ~~estate mortgagee in or as to insurance covering such interest, or in the real estate subject to such~~  
20 ~~mortgage.~~

21 Section 254. That § 58-30-41 be repealed.

22 ~~—58-30-41. Application for license shall be made to the director by the applicant, and be signed~~  
23 ~~and sworn to by the applicant before a notary public or other person authorized by law to take~~  
24 ~~acknowledgments.~~

1 Section 255. That § 58-30-42 be repealed.

2 ~~—58-30-42. The director shall designate and prepare forms for application for license which~~  
3 ~~shall require full answers to such questions as may reasonably be necessary to determine the~~  
4 ~~applicant's identity, residence, personal history, business record, experience and training in~~  
5 ~~insurance, purpose for which the license is to be used and other facts as required by the director~~  
6 ~~to determine whether the applicant meets the applicable qualifications for the license applied for.~~

7 Section 256. That § 58-30-43 be repealed.

8 ~~—58-30-43. No applicant for license under this chapter shall willfully withhold or misrepresent~~  
9 ~~any fact or information called for in the application form. Violation of this section is a Class 2~~  
10 ~~misdemeanor.~~

11 Section 257. That § 58-30-44 be repealed.

12 ~~—58-30-44. The application for an agent's license shall be accompanied by a written~~  
13 ~~appointment of the applicant as an agent by an authorized insurer, subject to the issuance of the~~  
14 ~~license.~~

15 Section 258. That § 58-30-47 be repealed.

16 ~~—58-30-47. Each application shall be accompanied by the applicable license fee and~~  
17 ~~appointment of agent fee. If an examination is required under § 58-30-49, the examination fees~~  
18 ~~required by § 58-2-29 shall be paid at the time the examination is written.~~

19 Section 259. That § 58-30-49 be repealed.

20 ~~—58-30-49. After completing and filing the application for license as required under~~  
21 ~~§§ 58-30-41 to 58-30-47, inclusive, the director of the Division of Insurance shall subject each~~  
22 ~~applicant, unless exempted therefrom, to a personal written examination as to his competence~~  
23 ~~to act as an agent. However, if an agent has been engaged as a licensed agent in the same kind~~  
24 ~~of insurance in another state within the previous six months, the examination may be waived if~~

1 a binding reciprocal agreement is in existence between the agent's previous state of residence and  
2 the State of South Dakota.

3 Section 260. That § 58-30-50 be repealed.

4 ~~58-30-50. Examination of an applicant for an agent's license shall cover all of the kinds of~~  
5 ~~insurance for which the applicant has applied to be licensed, as constituted by any one or more~~  
6 ~~of the following classifications:~~

7 ~~(1) Life insurance and annuity contracts;~~

8 ~~(2) Health insurance;~~

9 ~~(3) Vehicle insurance;~~

10 ~~(4) Property insurance;~~

11 ~~(5) Marine and transportation insurance;~~

12 ~~(6) Casualty insurance.~~

13 Section 261. That § 58-30-53 be repealed.

14 ~~58-30-53. Each examination for license as agent or solicitor shall be of such scope as the~~  
15 ~~director deems reasonably necessary to test the applicant's competence, his knowledge of the~~  
16 ~~kinds of insurance, policies, and transactions to be handled under the license applied for, of the~~  
17 ~~duties and responsibilities of such a licensee, and the pertinent provisions of the laws of this state.~~

18 Section 262. That § 58-30-55 be repealed.

19 ~~58-30-55. The director shall make any examination required under §§ 58-30-49 and 58-30-50~~  
20 ~~available to applicants from time to time within reasonable frequency, and at places in this state~~  
21 ~~reasonably accessible to such applicants. The director shall make each such examination available~~  
22 ~~at his offices at Pierre on at least one day of each week.~~

23 Section 263. That § 58-30-57 be repealed.

24 ~~58-30-57. The director shall give, conduct, and grade all examinations in a fair and impartial~~

1 manner, and without unfair discrimination as between individuals examined, and shall advise each  
2 applicant of the results of his examination within thirty days after the same has been taken.

3 Section 264. That § 58-30-59 be repealed.

4 ~~—58-30-59. If after completion of application for a license and the taking and passing of any~~  
5 ~~examination required under this chapter the director finds that the applicant has fully met the~~  
6 ~~requirements therefor, the director shall issue the license to the applicant; otherwise, the director~~  
7 ~~shall refuse to issue the license and shall promptly notify the applicant and the appointing insurer~~  
8 ~~of such refusal, stating the grounds thereof.~~

9 Section 265. That § 58-30-61 be repealed.

10 ~~—58-30-61. The license shall state the name and address of the licensee, date of issue, general~~  
11 ~~conditions relative to expiration or termination, the kind or kinds of insurance covered by the~~  
12 ~~license as classified in § 58-30-50, and except as provided in §§ 58-30-68 and 58-30-69, and~~  
13 ~~such other conditions of the license as the director deems proper for inclusion in the license~~  
14 ~~certificate.~~

15 Section 266. That § 58-30-62 be repealed.

16 ~~—58-30-62. The license of an agent shall not specify the name of any particular insurer by~~  
17 ~~which the licensee is appointed as agent, and the licensee may represent as such agent under the~~  
18 ~~one license as many insurers as may appoint him therefor in accordance with this chapter.~~

19 Section 267. That § 58-30-71.1 be repealed.

20 ~~—58-30-71.1. The director may issue an agent's or broker's temporary license for a term of~~  
21 ~~three months:~~

22 ~~—(1) If a licensed agent or broker has died or become disabled, and in the director's opinion~~  
23 ~~a temporary license is necessary for the orderly continuation of the business of the~~  
24 ~~agent or broker, a temporary agent's or broker's license may be issued to the agent's~~

1 or broker's spouse, administrator, executor, guardian, or other legal representative;  
2 or

3 ~~—(2)— If the secretary of a farm mutual insurer, who is licensed as an agent, terminates~~  
4 ~~employment with the farm mutual insurer for any reason, the successor, as secretary,~~  
5 ~~may be issued a temporary agent's license; or~~

6 ~~—(3)— If the licensed agent or broker enters active service in the armed forces of the United~~  
7 ~~States, a temporary agent's or broker's license may be issued to the designee of the~~  
8 ~~licensed agent or broker for the continuation of the business of the agent or broker~~  
9 ~~with his existing insureds.~~

10 ~~— Under subdivisions (1) and (2), the director may extend a temporary agent's or broker's~~  
11 ~~license for one additional term of three months. Under subdivision (3), the director may renew~~  
12 ~~a temporary license for additional three month terms as may be necessary for the continuation~~  
13 ~~of the business of the agent or broker.~~

14 ~~— The director may decline to issue a temporary agent's or broker's license based on the~~  
15 ~~standards set forth in § 58-30-21. In addition, the director may limit the scope of any temporary~~  
16 ~~license. In limiting a temporary license, the director may consider the agent's business, the~~  
17 ~~qualifications of the temporary licensee, and any other applicable factors.~~

18 Section 268. That § 58-30-75 be repealed.

19 ~~— 58-30-75. As a condition to or in connection with the renewal of any license, the director~~  
20 ~~may require the licensee to file with him information relative to use made of the license during~~  
21 ~~the preceding calendar year, and whether the license has been used principally for the writing of~~  
22 ~~controlled business, as defined in § 58-30-37.~~

23 Section 269. That § 58-30-76 be repealed.

24 ~~— 58-30-76. Any license which is not renewed as provided in § 58-30-74 shall be deemed to~~

1 ~~have expired at midnight on such April thirtieth. Request for renewal of any such license or~~  
2 ~~payment of the renewal fee therefor which is received by the director after such April thirtieth~~  
3 ~~and prior to the next following July thirty-first may be accepted and effectuated by the director~~  
4 ~~if accompanied by a fee of one and one-half times the amount otherwise required.~~

5 Section 270. That § 58-30-77 be repealed.

6 ~~—58-30-77. The license of an agent, other than under a limited license pursuant to § 58-30-68,~~  
7 ~~shall continue in force as long as there is in effect as to the agent, as shown by the director's~~  
8 ~~records, an appointment or appointments as agent of authorized insurers covering collectively~~  
9 ~~all of the kinds of insurance or classifications thereof included in the agent's license. Upon~~  
10 ~~termination of all of the licensee's agency appointments as to a particular kind of insurance or~~  
11 ~~classification thereof and failure to replace the appointment within one hundred eighty days~~  
12 ~~thereafter, the licensee's license as agent shall automatically thereupon expire and terminate as~~  
13 ~~to such kind of insurance or classification and the licensee shall promptly deliver his license to~~  
14 ~~the director for reissuance, without fee or charge, as to the kinds of insurance or classifications~~  
15 ~~thereof, if any, covered by the licensee's remaining agency appointments. Upon termination of~~  
16 ~~all of the licensee's agency appointments, the license shall forthwith terminate.~~

17 Section 271. That § 58-30-79 be repealed.

18 ~~—58-30-79. Every resident agent shall maintain in this state a place of business accessible to~~  
19 ~~the public. A place of business is that place where a licensee principally conducts transactions~~  
20 ~~under his license. Nothing in this section prohibits the maintenance of a place of business in the~~  
21 ~~licensee's place of residence in this state. The license of the licensee is available for inspection by~~  
22 ~~the public at all times. Records in the Division of Insurance are based on the resident address of~~  
23 ~~the licensee, and the licensee shall promptly notify the director of the Division of Insurance of~~  
24 ~~any change of address.~~

1 Section 272. That § 58-30-80 be repealed.

2 ~~—58-30-80. The licenses of the licensee shall be conspicuously displayed in the place of~~  
3 ~~business described in § 58-30-79 in a part thereof customarily open to the public.~~

4 Section 273. That § 58-30-85 be repealed.

5 ~~—58-30-85. As to each such machine, the director shall issue to the agent a special vending~~  
6 ~~machine license. The license shall specify the name and address of the insurer and agent, the~~  
7 ~~name of the policy to be so sold, the serial number of the machine, and the place where the~~  
8 ~~machine is to be operated. The license shall be subject to annual renewal, to expiration,~~  
9 ~~suspension, or revocation coincidentally with that of the agent. The director shall also revoke the~~  
10 ~~license as to any machine as to which he finds that the conditions upon which the machine was~~  
11 ~~licensed, as referred to in § 58-30-84, no longer exist. The license fee shall be as stated in~~  
12 ~~§ 58-2-29, for each license year or part thereof for each respective vending machine. Proof of~~  
13 ~~the existence of a subsisting license shall be displayed on or about each machine as the director~~  
14 ~~may require.~~

15 Section 274. That § 58-30-86 be repealed.

16 ~~—58-30-86. No agent or soliciting agent may directly or indirectly share his commissions or~~  
17 ~~other compensation received or to be received by him on account of a transaction under his~~  
18 ~~license with any person not also licensed under this chapter as to the same kind or kinds of~~  
19 ~~insurance involved in such transactions. Violation of this section is a Class 2 misdemeanor. This~~  
20 ~~provision does not affect payment of the regular salaries due employees of the licensee, or use~~  
21 ~~of funds for family or personal purposes. Further, this provision does not prohibit distribution~~  
22 ~~of profits of an insurance agency to the legitimate owners or stockholders thereof.~~

23 Section 275. That § 58-30-87 be repealed.

24 ~~—58-30-87. Section 58-30-86 does not apply to those transactions with surplus lines brokers~~



1 ~~which are lawful under § 58-32-15.~~

2 Section 276. That § 58-30-94 be repealed.

3 ~~—58-30-94. Subject to §§ 58-30-100 to 58-30-105, inclusive, the director may upon written~~  
4 ~~application made to him and payment of the license fee required under § 58-2-29, issue a license~~  
5 ~~as a nonresident agent to an individual otherwise qualified for a general lines agent's license~~  
6 ~~under this chapter except as to residence in this state and the taking and passing of an~~  
7 ~~examination in this state, if under the laws of the state of his residence similar licenses are~~  
8 ~~granted to residents of this state.~~

9 Section 277. That § 58-30-101 be repealed.

10 ~~—58-30-101. A licensee as nonresident agent shall at all times be qualified for and hold in the~~  
11 ~~state of his domicile the license of that state as a resident insurance agent or broker covering all~~  
12 ~~the kinds of insurance covered or to be covered under the South Dakota nonresident license. A~~  
13 ~~hearing is not necessary in order to revoke or suspend a nonresident agent's license in this state~~  
14 ~~if that agent's license is revoked or suspended in his state of domicile.~~

15 ~~—Each nonresident agent shall submit a letter of certification not more than ninety days old~~  
16 ~~from the Division of Insurance in the agent's state of domicile upon renewal of his license in this~~  
17 ~~state. The Division of Insurance shall charge each nonresident licensee a fee of twenty-five~~  
18 ~~dollars upon renewal of his license. The director of insurance may withhold or not renew the~~  
19 ~~license of any nonresident licensee who does not submit the letter of certification or who fails~~  
20 ~~to tender timely payment of the fee.~~

21 Section 278. That § 58-30-103 be repealed.

22 ~~—58-30-103. A licensee as nonresident agent shall not enter the State of South Dakota and~~  
23 ~~solicit insurance business, inspect risks, or otherwise conduct business in this state unless similar~~  
24 ~~privileges in the state of the licensee's domicile are granted to residents of South Dakota holding~~

1 ~~nonresident licenses issued by such other state.~~

2 Section 279. That § 58-30-105 be repealed.

3 ~~—58-30-105. The license of a nonresident agent is not transferable.~~

4 Section 280. That § 58-30-106 be repealed.

5 ~~—58-30-106. The director may suspend for not more than twelve months, or may revoke or~~  
6 ~~refuse to continue any license issued under this chapter, or any surplus lines broker's license if,~~  
7 ~~after hearing held on not less than twenty days' advance notice of such hearing and of the charges~~  
8 ~~against the licensee given to the licensee and to the insurers represented by such licensee or to~~  
9 ~~the appointing agent of a soliciting agent, he finds that as to the licensee any one of the following~~  
10 ~~causes exists:~~

11 ~~—(1)— Any cause for which issuance of the license could have been refused had it then~~  
12 ~~existed and been known to the director;~~

13 ~~—(2)— Obtaining or attempting to obtain any such license through fraud or through willful~~  
14 ~~misrepresentations or misstatements as to any material matter;~~

15 ~~—(3)— Violation of or noncompliance with an applicable provision of this title, or for willful~~  
16 ~~violation of any lawful rule, regulation, or order of the director;~~

17 ~~—(4)— Misappropriation or conversion to his own use, or illegal withholding, of moneys or~~  
18 ~~property belonging to policyholders, or insurers, or beneficiaries, or others and~~  
19 ~~received in conduct of business under the license;~~

20 ~~—(5)— Conviction, by final judgment, of a crime involving moral turpitude;~~

21 ~~—(6)— For material misrepresentation of the terms of any insurance contract or proposed~~  
22 ~~insurance contract; or~~

23 ~~—(7)— If in the conduct of his affairs under the license the licensee has used fraudulent or~~  
24 ~~dishonest practices, or has shown himself to be incompetent or untrustworthy.~~

1 Section 281. That § 58-30-107 be repealed.

2 ~~—58-30-107. The license of a firm or corporation may be suspended, revoked, or refused for~~  
3 ~~any of the causes enumerated in § 58-30-106 as relate to any individual designated in the license~~  
4 ~~to exercise its powers.~~