

AN ACT

ENTITLED, An Act to provide reciprocity for the licensing of insurance producers.

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

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

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

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

Terms used in this Act mean:

- (1) "Agent of the insurer," any insurance producer who is compensated directly or indirectly by an insurer and sells, solicits, or negotiates any product of that insurer;
- (2) "Agent of insured," any insurance producer or person who secures compensation from an insured or insurance customer only and receives no compensation directly or indirectly from an insurer for a transaction with that insured or insurance customer;
- (3) "Business entity," a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;
- (4) "Home state," the District of Columbia and any state or territory of the United States in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business and is licensed to act as an insurance producer;
- (5) "Insurance producer," any person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance;
- (6) "Limited line credit insurance," includes credit life, credit disability, credit property, credit

unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance director determines should be designated a form of limited line credit insurance;

- (7) "Limited line credit insurance producer," any person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;
- (8) "Limited lines insurance," those lines of insurance defined in § 58-30-68 or any other line of insurance that the insurance director may deem it necessary to recognize for the purposes of complying with section 23 of this Act;
- (9) "Limited lines producer," any person authorized by the insurance director to sell, solicit, or negotiate limited lines insurance;
- (10) "Negotiate," the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;
- (11) "Sell," to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;
- (12) "Solicit," attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;
- (13) "Terminate," the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

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

follows:

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

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

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

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

- (1) Any officer, director, or employee of an insurer or of an insurance producer, if the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and:
 - (a) The officer's, director's, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;
 - (b) The officer's, director's, or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
 - (c) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers, if the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
- (2) Any person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans, issuing certificates

under plans, or otherwise assisting in administering plans; or who performs administrative services related to mass marketed property and casualty insurance, if no commission is paid to the person for the service;

- (3) Any employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
- (4) Any employee of an insurer or an organization employed by an insurer who is engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation, or negotiation of insurance;
- (5) Any person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;
- (6) Any person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, if that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks

located in that state, except that any contract of insurance applicable to this subdivision shall be countersigned by a licensed resident insurance producer appointed by the insurer as required by § 58-6-62;

- (7) Any salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, if the employee does not sell or solicit insurance or receive a commission;
- (8) Any person engaged in the business of fur storage who delivers to customers certificates or policies providing insurance on specified furs, garments trimmed with fur, or other garments accepted for storage and who collects the premium therefor, if the person receives no commissions for such service; or
- (9) Any person engaged in the sale or issuance by motor vehicle dealers licensed under chapter 32-6B of motor vehicle service contracts, extended service agreements, mechanical breakdown insurance, or insurance of the mechanical condition, or freedom from defective or worn parts or equipment of motor vehicles.

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

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

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

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

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

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

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

A person applying for a resident insurance producer license shall make application to the director on an application form or format as prescribed by the director and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. The director shall consider the use of a uniform application form or format.

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

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

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

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

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

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

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

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

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

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

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

- (1) Life - insurance coverage on human lives including benefits of endowment and annuities and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

- (2) Accident and health or sickness - insurance coverage for sickness, bodily injury, or accidental death and may include benefits in the event of death or dismemberment by accident and for disability income;
- (3) Property - insurance coverage for the direct or consequential loss or damage to property of every kind;
- (4) Casualty - insurance coverage against legal liability, including that for death, injury, or disability, damage to real or personal property, or fidelity and surety bonds;
- (5) Variable life and variable annuity products - insurance coverage provided under variable life insurance contracts and variable annuities;
- (6) Commercial lines - property and casualty insurance coverage sold to businesses including farming, professionals, and other commercial enterprises;
- (7) Personal lines - property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
- (8) Credit - limited line credit insurance;
- (9) Any other line of insurance permitted under state laws or rules.

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

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

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

An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee apply to reinstate the same license without the necessity

of passing a written examination. A penalty in the amount of double the unpaid renewal fee shall be required for any license reinstatement. This section only applies to renewals if the continuing education due date was missed or timely payment of the fee was not made.

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

A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other monetary penalty or sanction imposed for failure to comply with renewal procedures. The director may promulgate rules pursuant to chapter 1-26 for determining what constitutes extenuating circumstances if the director finds that application of this section or the imposition of sanctions would create an unreasonable hardship.

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

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

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

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

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

In order to assist in the performance of the director's duties, the director may contract with

nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees to perform any ministerial functions, including the collection of fees, related to insurance producer licensing that the director and the nongovernmental entity may deem appropriate.

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

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

- (1) The person is currently licensed as a resident insurance producer and in good standing in the person's home state;
- (2) The person has submitted the proper request for licensure and has paid the fees required by § 58-2-29;
- (3) The person has submitted or transmitted to the director the application for licensure that the person submitted to the person's home state or the application required by section 8 of this Act; and
- (4) Except for fees, the person's home state issues nonresident insurance producer licenses to residents of this state on the same basis.

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

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

home state of domicile.

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

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

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

A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

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

Notwithstanding any other provision of this Act, a person licensed as a limited line credit insurance producer or other type of limited lines insurance producer in the person's home state is entitled to receive a nonresident limited lines insurance producer license if eligible pursuant to section 19 of this Act granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purposes of this section, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 12, subdivisions (1) to (7), inclusive, of this Act. The director may issue a resident license for a type of license not specified in this title to a person for insurance activities which do not require licensure in this state provided that another state which that person does insurance business in requires such license.

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

follows:

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

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

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

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

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

The director may by order limit the authority of any temporary licensee in any way determined to be necessary to protect insureds and the public. The director may require the temporary licensee

to be under the supervision of a licensed insurance producer or insurer who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The director may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license does not continue after the owner or the personal representative disposes of the business.

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

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

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or

elsewhere;

- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Using notes or any other reference material to complete an examination for an insurance license;
- (12) Knowingly accepting insurance business from an individual who sells, solicits, or negotiates insurance and is not licensed; or
- (13) Failing to comply with an administrative or court order imposing a child support obligation.

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

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

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

The license of a business entity may be suspended, revoked, refused, or the director may accept

a monetary penalty in accordance with § 58-4-28.1, or any combination thereof, if the director finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the director nor corrected.

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

The director retains the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title 58 against any person who is under investigation for or charged with a violation of this Act or Title 58 even if the person's license or registration has been surrendered or has lapsed by operation of law.

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

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

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

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

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

Renewal or other deferred commissions may be paid to a person for selling, soliciting, or

negotiating insurance in this state if the person was required to be licensed under this Act at the time of the sale, solicitation, or negotiation and was so licensed at that time.

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

An insurer or insurance producer may pay or assign a commission, service fee, brokerage, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would violate § 58-33-14 or 58-33-24.

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

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

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

To appoint an insurance producer or business entity as its agent, the appointing insurer shall file, in a format approved by the director, a notice of appointment within fifteen days from the date the

agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request. The insurer is responsible for the acts of its representatives and insurance producers, including those acts where the insurance producer has solicited, sold, or negotiated insurance on behalf of that insurer prior to the date of appointment.

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

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

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

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

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

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

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

An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the director within thirty days following the effective date of the termination, using a format

prescribed by the director. Upon the written request of the director, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer pursuant to § 58-30-8, such information is confidential.

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

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

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

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

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

Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the director. The insurance producer shall simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the director's file and accompany every

copy of a report distributed or disclosed for any reason about the insurance producer as permitted under section 47 of this Act.

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

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

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

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

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

follows:

The provisions of sections 44 and 45 of this Act do not abrogate or modify any existing statutory or common law privileges or immunities.

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

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

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

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

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

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

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

Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

- (2) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners, its affiliates, or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
- (3) Enter into agreements governing sharing and use of information consistent with this section.

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

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

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

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

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

follows:

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

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

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

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

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

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

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

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

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

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

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

- (1) "Alien insurer," one formed under the laws of any country or jurisdiction other than the United States of America, its states, districts, territories, and commonwealths;
- (2) "Authorized insurer," one authorized, by a subsisting certificate of authority issued by the director, to engage in the insurance business in this state;
- (3) "Certificate of authority," permission granted to an insurer to issue policies or make contracts of insurance in this state;
- (4) "Director," the director of the Division of Insurance;
- (5) "Division," the Division of Insurance of the Department of Commerce and Regulation;
- (6) "Domestic insurer," one formed under the laws of this state;
- (7) "Foreign insurer," one formed under the laws of any jurisdiction other than this state;

- except where distinguished by context, foreign insurer includes an alien insurer;
- (8) "Insurance," a contract whereby one undertakes to indemnify another or to pay or provide a specified or determinable amount or benefit upon determinable contingencies;
 - (9) "Insurance business," includes the transaction of all matters pertaining to a contract of insurance, both before and after the effectuation of that contract, and all matters arising out of that contract or any claim thereunder;
 - (10) "Insurer," every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance;
 - (11) "License," permission granted to an agent or broker to engage in those activities permitted by such persons under this title;
 - (12) "Maintenance agreement," a contract of limited duration that provides for scheduled maintenance only;
 - (13) "Mechanical breakdown insurance," any contract or agreement to perform or indemnify for a specific duration the repair, replacement, or maintenance of property for operational or structural failure due to a defect in materials, workmanship, or normal wear and tear;
 - (14) "Person," an individual, insurer, company, association, organization, Lloyds, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity;
 - (15) "Principal office" or "principal place of business," the office or regional home office from which the business affairs of the insurer are directed and managed;
 - (16) "State," when used in context signifying a jurisdiction other than the State of South Dakota, a state, the District of Columbia, a territory, commonwealth, or possession of the United States of America, or a province of the Dominion of Canada; and
 - (17) "Unauthorized insurer," one which does not hold a subsisting certificate of authority issued

by the director to engage in the insurance business in this state.

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

58-1-3.2. The Division of Insurance may regulate a person, trust, or other entity using direct response or mass market advertising within this state regardless of the source of the direct response or mass marketing advertisement if the advertisement is intended to place insurance within the state.

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

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

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

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

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

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

(1) Certificate of authority of insurer:

(a) Application for original certificate of authority:

For filing application for certificate of authority, articles of incorporation, and other charter documents, bylaws, financial statements, examination reports, power of attorney to the director, and all other documents and filings required in connection

with such application:	\$500.00
(b) Issuance of original certificate of authority	25.00
(c) Annual renewal of certificate of authority	25.00
(d) Reinstatement of certificate of authority	25.00
(e) Amendment or reissuance of certificate of authority	25.00
(f) Annual audit	500.00

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

- (2) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation . . . 10.00
- (3) Filing bylaws or amendments thereto
- (4) Filing annual statement of insurer, other than as part of application for original certificate of authority
- (5) Insurance producers and solicitors:
 - (a) Insurance producer's license, including also disability insurance when written by property, casualty, or surety insurer otherwise represented by the insurance producer:
 - (i) Filing application for original license, and including issuance of license, if issued
 - (ii) Original appointment of insurance producer, each insurer
 - (iii) Annual renewal of appointment, each insurer:
 - Domestic insurer
 - Foreign insurer

(iv)	Temporary license	10.00
(b)	Insurance producer's license, life or health insurance, including both life and disability insurance when so licensed as to the same insurer:	
(i)	Application for original license, including issuance of license, if issued, each insurer	25.00
(ii)	Original appointment of insurance producer, each insurer	10.00
(iii)	Annual renewal of appointment, each insurer:	
Domestic insurer	10.00	
Foreign insurer	10.00	
(iv)	Temporary license	10.00
(c)	Limited license as insurance producer:	
(i)	Motor vehicle physical damage . . . Same as for insurance producer's license	
(ii)	Accident ticket policies, each insurer each year	10.00
(iii)	Baggage ticket policies, each insurer each year	10.00
(iv)	Credit insurance . . . Same as for insurance producer license	
(d)	Examination for license, each examination and each time taken	10.00
(e)	Nonresident insurance producer license:	
(i)	Original license	30.00
(ii)	Appointments, each insurer	20.00
(iii)	Annual renewal of appointments, each insurer	20.00
(f)	Resident insurance producer, original license	25.00
(i)	Annual renewal	25.00
(g)	Corporation or partnership license:	
(i)	Original license	25.00

(ii)	Appointment, each insurer	10.00
(iii)	Annual renewal of appointment, each insurer	10.00
(h)	Nonresident corporation or partnership license:	
(i)	Original license	30.00
(ii)	Appointment, each insurer	20.00
(iii)	Annual renewal of appointment, each insurer	20.00
(6)	Insurance vending machine license, each machine, each year	20.00
(7)	Surplus line broker's license, application for original license including issuance of license, if issued	50.00
(a)	Annual renewal of license	50.00
(8)	Rating bureau, original license	25.00
(a)	Annual renewal of license	35.00
(9)	Examination of rating bureau . . . Same fees as provided in this chapter for examination of foreign insurance companies	
(10)	Farm mutuals:	
(a)	Application for original certificate of authority: For filing application for certificate of authority, articles of incorporation, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued	25.00
(b)	Annual renewal of certificate of authority	10.00
(c)	Filing annual statement	5.00
(11)	Broker's license as attorney in fact of a reciprocal or interinsurance exchange .	20.00
(12)	Miscellaneous services:	
(a)	For a copy of any paper filed in the insurance division, for which another price is	

not set by statute, each page75
(b) Director's sworn certificate, except when on certificates of authority or licenses	10.00
(c) For receiving and forwarding copy of summons or other process served upon the director, as process agent of an insurer or nonresident insurance producer	10.00
(13) Application for continuing education course approval	25.00.

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

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

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

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

58-3-7. Every person being examined, its officers, employees, insurance producers, and representatives shall produce and make freely available to the director or the director's examiners the accounts, records, documents, files, information, assets, and matters in the director's possession or control relating to the subject of the examination; and shall otherwise facilitate and aid the

examination as far as reasonably possible.

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

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

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

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

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

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

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

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

58-4-28.1. In any case in which the director has the power to deny an application, revoke, refuse

to renew, or suspend the license of any insurance producer, solicitor, or administrator or the certificate of authority of any insurance company or health maintenance organization, the director may permit an applicant or licensee to elect in writing to pay a specified money penalty within a specified time in lieu of a license suspension or other permitted action.

The money penalty may not exceed five thousand dollars for an insurance producer or twenty-five thousand dollars for an insurer, administrator, or health maintenance organization for each offense.

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

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

- (1) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
- (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives money for the purpose of purchasing insurance and converts the money to the person's own benefit or for a purpose not intended or authorized by an insured or prospective insured;
- (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance or of an insured or prospective insured;
- (4) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Division of Insurance;
- (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or other person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an

insurer or other person engaged in the business of insurance;

- (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any insurance producer of an insurer, any statement as part of a claim, in support of a claim, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
- (7) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit, or denial, pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim; or
- (8) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer.

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

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

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

- (1) The Department of Commerce and Regulation and the director of insurance;
- (2) Any governmental agency established to detect and prevent fraud;

- (3) Law enforcement officials;
- (4) The Department of Labor;
- (5) Any insurer or insurance producer;
- (6) The National Association of Insurance Commissioners; and
- (7) Any nonprofit organization established to detect and prevent insurance fraud, if the organization is approved by the director pursuant to rules promulgated by the director under chapter 1-26 setting forth the standards, criteria, and procedures necessary to obtain approval.

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

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

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

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

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

producers in general.

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

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

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

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

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

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

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

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

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

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

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

58-6-1. No person may act as an insurer and no insurer or its insurance producers, attorneys, subscribers, or representatives may directly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director, except as to such transactions as are expressly otherwise provided for in this title. Any violation of this section is a Class 2 misdemeanor.

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

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

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

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

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

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

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

58-6-60. Upon refusal, suspension, or revocation of an insurer's certificate of authority, the

director shall forthwith give notice thereof by registered or certified mail to the insurer and to its insurance producers in this state of record in the director's office.

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

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

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

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

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

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

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

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

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

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

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

58-6-70. If any other state or foreign country imposes any taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions upon South Dakota insurers, or upon the insurance producers or representatives of such insurers, which are, pursuant to the laws of that other state or country, in excess of those directly imposed upon similar insurers, or upon the insurance producers or representatives of such insurers, of that other state or country under the statutes of this state, then, so long as the laws of that other state or country continue in force or are so applied, the director of the Division of Insurance shall impose the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit

requirements, or other material obligations, prohibitions, or restrictions of whatever kind upon the insurers, or upon the insurance producers or representatives of the insurers, of the other state or country doing business or seeking to do business in South Dakota. Any tax, license, or other fee or obligation imposed on South Dakota insurers or their insurance producers or representatives by any first or second class municipality, county, or other political subdivision or agency of the other state or country is considered to be imposed by such state or country within the meaning of this section. The time and period of payment of the retaliatory tax is the same, in all cases, as that of the gross premiums tax provided for in § 10-44-2. No interest charges or credits may be made or allowed for the use or loss of the use of funds due to any difference in the time or period of payment used in this state and the time or period used in a foreign state or country.

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

58-6-76. The director of the Division of Insurance shall cause a summary, condensed from the annual statement of each company to be published three times, at the expense of the company, at legal rates, in a legal newspaper printed and published in each judicial circuit of the state in which the insurance company has a licensed insurance producer. Condensed statements for publication shall be made on blanks furnished by the director, which shall be uniform as to the information conveyed to the public and which, set in nonpareil type, together with the annual certificate of authority of the company, constitute a printed statement uniformly ten inches in length. A printer's affidavit, in duplicate, shall be filed with the director in all cases. The affidavit shall state that the insurance company has paid the newspaper the authorized rate for publishing legal notices, that the full amount named inures to the sole benefit of the publisher or publishers thereof, that no agreement or understanding for the division thereof was made with any person, and that no part thereof was agreed to be paid to any person. Every affidavit of publication shall state in plain terms that the full amount authorized herein was charged and collected for the publication.

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

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

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

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

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

58-6A-5.1. The premium tax imposed by chapter 10-44 and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any member of a purchasing group shall be imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds. The tax may be paid first by such insurance source or the insurance producer for the purchasing group or by the purchasing group or by each member of a purchasing group.

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

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

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

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

- (1) Prohibit the establishment of a purchasing group;
- (2) Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing advantages to a purchasing group or its members based on their loss and expense experience, which coverage is not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
- (3) Prohibit a purchasing group or its members from purchasing insurance on a group basis as described in subdivision (2) of this section;
- (4) Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
- (5) Require that a purchasing group shall have a minimum number of members, common ownership or affiliation, or certain legal form;
- (6) Require that a certain percentage of a purchasing group shall obtain insurance on a group basis;
- (7) Otherwise discriminate against a purchasing group or any of its members; or
- (8) Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance producer residing in this state.

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

58-6A-19.1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is

located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of such state.

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

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

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

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

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

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

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

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

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

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

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

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

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

58-8-3. It is a Class 2 misdemeanor for any person to publish or print in this state in any newspaper, magazine, periodical, circular, letter, pamphlet, or in any other manner, or to publish by radio or television broadcasting in this state, any advertisement or other notice, either directly or indirectly, setting forth the advantages of or soliciting business for any insurer, insurance producer, or other person who has not been authorized to transact insurance business in this state.

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

58-8-4. No person may accept for publication or printing any newspaper, magazine, or other periodical, or for radio or television broadcasting in this state, any advertisement or other notice, either directly or indirectly setting forth the advantages of or soliciting business for any insurer, insurance producer, or other person, unless the publisher holds a certificate to the effect that the insurer, insurance producer, or other person named therein is authorized to transact insurance

business in this state for the current license year. The certificate shall be issued by the director without cost to any person applying therefor.

Any violation of this section is a Class 2 misdemeanor.

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

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

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

58-11-29. Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder. Any insurance producer or surplus lines broker who knowingly makes any false or fraudulent material statement on a binder, certificate of insurance, or other document offered as proof of insurance is guilty of a Class 1 misdemeanor for each offense.

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

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

- (1) "Automobile collision coverage," includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset;
- (2) "Automobile liability coverage," includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorists' coverage;
- (3) "Automobile physical damage coverage," includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset;

- (4) "Nonpayment of premium," failure of the named insured to discharge when due any of the insured's obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its insurance producer or indirectly under any premium finance plan or extension of credit;
- (5) "Policy," an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
- (a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others; or
 - (b) Any other four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in the occupation, profession, or business of the insured;
- However, §§ 58-11-46 to 58-11-54, inclusive, do not apply (i) to any policy issued under an automobile assigned risk plan, or (ii) to any policy insuring more than four automobiles, or (iii) to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;
- (6) "Renewal" or "to renew," the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. However, any policy with a policy period or term of less than six months shall for the purpose of §§ 58-11-46 to 58-11-54, inclusive, be considered as if written for a policy period or term of six months. Moreover, any policy written for a term longer than one year or any policy with no fixed expiration date, shall for the purpose of §§ 58-11-46 to 58-11-54, inclusive, be considered as if written for successive policy

periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving sixty days' notice of cancellation prior to such anniversary date, and the cancellation is not subject to any other provisions of §§ 58-11-46 to 58-11-54, inclusive.

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

58-11-45.3. If an applicant for such insurance has made a full disclosure to the insurance producer of the insurer in response to the insurance producer's inquiry and the application is tendered with premium, the insurer, if it fails or refuses to issue the policy based upon information other than the insurance producer's recommendation, shall notify the insurance producer and the applicant of the name and location of the person or agency upon which such insurer relied as a basis for its failure or refusal to insure. Any violation of this section is a Class 2 misdemeanor.

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

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

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

58-15-8.1. Every individual life insurance policy issued for delivery in South Dakota on or after July 1, 1982, by an insurance company or fraternal benefit society, shall have a notice printed on or attached to the face page of the policy, stating in substance that the person issued the policy is

permitted to return the policy, with a written request for cancellation within ten days of its actual receipt by the purchaser, and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. If a policyholder or purchaser, pursuant to the notice, returns the policy to the company or fraternal benefit society at its home or branch office or to the insurance producer through whom it was purchased, it is void from the beginning and the parties are in the same position as if no policy had been issued.

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

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

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

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

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

58-15-41. The provisions of §§ 58-15-31 to 58-15-43, inclusive, do not apply to any reinsurance; group insurance; pure endowment; annuity or reversionary annuity contract; term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during

the entire term of the policy; term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in §§ 58-15-35 to 58-15-38, inclusive, and §§ 58-15-43.1 to 58-15-43.11, inclusive, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy; policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in §§ 58-15-33 to 58-15-38, inclusive, and §§ 58-15-43.1 to 58-15-43.11, inclusive, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor policy which is delivered outside this state through an insurance producer or other representative of the company issuing the policy. For purposes of determining the applicability of §§ 58-15-31 to 58-15-43, inclusive, the age at expiry for a joint term life insurance policy is the age at expiry of the oldest life.

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

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

policy of life insurance.

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

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

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

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

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

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

- (1) If the policy is delivered by an insurance producer, a receipt shall be signed by the policyowner acknowledging delivery of the policy. The receipt shall include the policy number and the date of the delivery;
- (2) If the policy is delivered by mail, it shall be sent by registered or certified mail, return

receipt requested, or a certificate of mailing shall be obtained showing the date the policy was mailed to the policyowner. For policy issuances verified by a certificate of mailing, it is presumed that the policy is received by the policyowner ten days from the date of mailing.

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

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

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

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

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

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

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

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

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

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

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

58-17-14. There shall be a provision as follows: "Entire contract; changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy is valid until approved by an executive officer of the insurance company and unless such approval is endorsed or attached to this policy. No insurance producer has authority to change this policy or to waive any of its provisions. Any rider, endorsement, or application which modifies, limits, or excludes coverage under this policy must be signed by you, the insured, to be

valid." This provision applies to any rider, endorsement, or amendment of an application whether attached at the time of the application or after.

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

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

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

58-17-21. There shall be a provision as follows: "Notice of claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at _____ (insert the location of such office as the insurer

may designate for the purpose), or to any authorized insurance producer of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

small employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58-23A-7. There is no liability on the part of, and no cause of action of any nature may arise

against, an insurer reporting pursuant to this chapter or its insurance producers or employees, or the division or its representatives, for any action taken by them pursuant to this chapter.

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

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

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

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

- (1) Good will, trade names, and other like intangible assets;
- (2) Advances to officers, other than policy loans, whether secured or not, and advances to employees, representatives, insurance producers, and other persons on personal security only;
- (3) Stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation, or business unit;
- (4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under this title and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to this title, or which is acquired through foreclosure of chattel mortgages or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

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

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

58-27-61. In addition to investments excluded pursuant to other provisions of this title, no insurer may invest in or lend its funds upon the security of issued shares of its own capital stock except out of unborrowed surplus, or except in connection with a pension plan approved by the director for the benefit of the insurer's officers, employees, representatives, or insurance producers. No such stock may, however, constitute an asset of the insurer in any determination of its financial condition.

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

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

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

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

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

58-29A-71. The association may recover from the following persons the amount of any covered

claim paid on behalf of such person pursuant to this chapter:

- (1) Any insured whose net worth on December thirty-first of the year next preceding the date the insurer becomes an insolvent insurer exceeds fifty million dollars and whose liability obligations to other persons, including obligations under workers' compensation insurance coverages, are satisfied in whole or in part by payments made under this chapter; and
- (2) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter. The term, affiliate, does not include any insurance producer of the insolvent insurer.

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

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

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

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

- (1) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage or other arrangement that may exist or has existed between the insurer and the insurance producer or representative of the insurer, in any action on or incident to the obligation;
- (2) If the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an insurance producer or representative of or for the reinsurer, in any

action on or incident to the reinsurance contract;

- (3) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer;
- (4) If the person served is an insurance producer or representative of the insurer or other person who has at any time written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
- (5) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or
- (6) If the person served is obligated to the insurer in any way whatsoever, in any action or incident to the obligation.

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

58-29B-9. Any officer, manager, director, trustee, owner, employee, representative, or insurance producer of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the director in any proceeding under this chapter or any investigation preliminary to the proceeding. The term, person, as used in this section, includes any person who exercises control directly or indirectly over activities of insurer through any holding company or other affiliate of the insurer. The term, To cooperate, includes the following:

- (1) To reply promptly in writing to any inquiry from the director requesting such a reply; and
- (2) To make available to the director any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in the insurer's possession,

custody, or control.

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

58-29B-25. Upon a filing under § 58-29B-24, the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the director to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, representatives, insurance producers, and employees from disposition of its property and from transaction of its business except with the written consent of the director. All costs and expenses incurred by the Division of Insurance, including attorney fees, associated with taking possession of the property, books, accounts, documents, and other records of the insurer and the business premises are the responsibility of the insurer and shall be paid from the insurer's funds and assets. The court may require an accounting of the costs and expenses.

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

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

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

58-29B-49. The liquidator may:

- (1) Appoint a special deputy to act for the liquidator under this chapter and determine reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
- (2) Employ employees, representatives, insurance producers, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator may

- consider necessary to assist in the liquidation;
- (3) Fix the reasonable compensation of employees, representatives, insurance producers, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;
 - (4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the director may advance the costs so incurred out of any appropriation for the maintenance of the Division of Insurance. Any amounts so advanced for expenses of administration shall be repaid to the director for the use of the Division of Insurance out of the first available money of the insurer;
 - (5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to the person's testimony after it has been correctly reduced to writing, and, in connection therewith, require the production of any books, papers, records, or other documents which the liquidator considers relevant to the inquiry;
 - (6) Collect all debts and money due and claims belonging to the insurer, wherever located, and, for this purpose:
 - (a) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 - (b) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and condition as the liquidator deems best; and

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

such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

- (15) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;
- (16) Invest all sums not currently needed, unless the court orders otherwise;
- (17) File any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;
- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed does not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;
- (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with §§ 58-29B-61 to 58-29B-83, inclusive;
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee if the appointment is offered;
- (21) Enter into agreements with any receiver or director of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

- (22) Exercise all powers conferred upon receivers by the laws of this state not inconsistent with the provisions of this chapter;
- (23) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors including guaranty associations. The committee shall serve at the pleasure of the director and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature may be appointed by the director or the court in liquidation proceedings;
- (24) To audit the books and records of all representatives and insurance producers of the insurer insofar as those records relate to the business activities of the insurer.

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

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

- (1) By first class mail or by telegram or telephone to the insurance director of each jurisdiction in which the insurer is doing business;
- (2) By first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;
- (3) By first class mail to any insurance producer of the insurer;
- (4) By first class mail to any person known or reasonably expected to have claims against the insurer including any policyholder, at the person's last known address as indicated by the records of the insurer; and
- (5) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator considers appropriate.

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

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

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

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

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

58-29B-95. No insurance producer, premium finance company, or any other person, responsible for the payment of a premium at the time of the declaration of insolvency, may be held liable for payment of collected or uncollected unearned premiums or for uncollected earned premiums as shown on the records of the insurer. The liquidator has the right to recover from the person any part of an

unearned premium that represents commission of the person. Credits or setoffs or both may not be allowed to an insurance producer, or premium finance company for any amounts advanced to the insurer by the insurance producer or premium finance company on behalf of, but in the absence of a payment by, the insured. An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

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

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

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

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

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

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

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

58-29C-42. Within one hundred eighty days of July 1, 1989, the association shall prepare a summary document describing the general purposes and current limitations of the chapter. This document shall be submitted to the director for approval. Sixty days after receiving approval, no insurer may deliver a policy or contract described in § 58-29C-3 to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document does not mean that either the policy or the contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the chapter may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this chapter. The document prepared under this section shall contain a clear and conspicuous disclaimer

on its face. The director shall promulgate a rule establishing the form and content of the disclaimer.

The disclaimer shall:

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

No insurer or insurance producer may deliver a policy or contract described in § 58-29C-3 and excluded under § 58-29C-3 from coverage under the provisions of this chapter unless the insurer or insurance producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the South Dakota Life and Health Insurance Guaranty Association. The director shall by rule specify the form and content of the notice.

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

58-29D-2. For the purposes of this chapter, an administrator or third-party administrator or TPA is a person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, or residents of another state

from offices in this state, in connection with life or health insurance coverage or annuities, except any of the following:

- (1) An employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations of such employer;
- (2) A union on behalf of its members;
- (3) An insurer which is authorized to transact insurance in this state with respect to a policy lawfully issued and delivered in and pursuant to the laws of this state or another state;
- (4) An insurance producer licensed to sell life or health insurance in this state, whose activities are limited exclusively to the sale of insurance;
- (5) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- (6) A trust and its trustees, agents and employees acting pursuant to such trust established in conformity with 29 U.S.C. § 186;
- (7) A trust exempt from taxation under § 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of § 401(f) of the Internal Revenue Code;
- (8) A financial institution which is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit premiums to licensed insurance producers or authorized insurers in connection with loan payments;
- (9) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized collection if the company does not adjust or settle claims;
- (10) A person who adjusts or settles claims in the normal course of that person's practice or

employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities;

- (11) An adjuster whose activities are limited to adjustment of claims;
- (12) A person who acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974. Such person shall comply with the requirements of § 58-29D-27;
- (13) A licensed managing general agency;
- (14) A licensed reinsurance intermediary; or
- (15) A person regulated under the Broker Controlled Act.

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

58-29D-22. An administrator shall apply to the director upon a form to be furnished by the director. The application shall include or be accompanied by the following information and documents:

- (1) All basic organizational documents of the administrator, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents, and all amendments to such documents;
- (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the administrator;
- (3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the administrator; including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members

in the case of a partnership or association; shareholders holding directly or indirectly ten percent or more of the voting securities of the administrator; and any other person who exercises control or influence over the affairs of the administrator;

- (4) Annual financial statements or reports for the two most recent years which prove that the applicant is solvent and such information as the director may require in order to review the current financial condition of the applicant;
- (5) A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;
- (6) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an insurance producer licensed by this state for solicitation and taking of applications. Any applicant shall provide proof that it has a license as a life and health insurance producer in this state.

Any material change in the above information shall be filed with the director within thirty days.

A filing fee of five hundred dollars shall accompany the application.

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

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

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

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

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

58-30-6. The director may deny an appointment or withhold processing an appointment for reasons of protection of the public health, welfare, or safety including the following:

- (1) The insurance producer to be appointed is not properly licensed; or
- (2) A notice of hearing from the Division of Insurance seeking revocation or suspension of the insurance producer or insurer has been issued.

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

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

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

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

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

58-30-8.1. No insurance company may terminate the agency contract of an insurance producer writing fire and casualty lines of insurance except upon ninety days' notice in writing given by the

company to the insurance producer. The company shall, upon a terminated insurance producer's request, extend the coverage of any policy which has been written by the insurance producer in the company and which expires or has its anniversary date during the ninety-day period to the end of the ninety-day period if the insured pays the premium therefor. The company may terminate an insurance policy on its anniversary date if the anniversary date occurs after the expiration of the ninety-day period.

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

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

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

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

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

58-30-10. The provisions of § 58-30-9 do not apply as to any insurer and insurance producer between whom the relationship of employer and employee exists.

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

58-30-12.1. An insurance producer licensed for life or health insurance, or both, may place excess

or rejected life or health insurance or annuity risks with any authorized insurer other than an insurer the insurance producer is licensed to represent; but the insurance producer may not receive commissions or other compensation from such other insurer for the business so placed until after the insurance producer has been appointed an insurance producer of the insurer in accordance with this title.

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

58-30-20. The provisions of § 58-30-12.1 and sections 3 and 29 to 36, inclusive, of this Act, do not apply to title insurance.

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

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

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

58-30-27. If any domestic company is engaged in writing insurance on the lives or property of the members of the military forces of the United States, and dependents of the members while stationed outside the continental and territorial limits of the United States, the director, if otherwise satisfied as to the qualifications of applicants for licenses as insurance producers to write the business outside the continental and territorial limits of the United States, for the companies, may issue the same type of license to the insurance producers as to any resident insurance producer.

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

58-30-29. No license may be issued in a trade name except to a business entity and upon proof

satisfactory to the director that the trade name has been lawfully registered.

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

58-30-33. A licensed business entity shall promptly notify the director of all changes.

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

58-30-52. No examination is required of:

- (1) An applicant for the same kind of license as that which the applicant has previously held in this state for at least one year within the five years next preceding the date of application and who is deemed by the director to be fully qualified and competent;
- (2) Transportation ticket agents of common carriers applying for limited license to solicit and sell, as incidental to their duties as such transportation ticket agents, only:
 - (a) Personal accident insurance ticket policies; or
 - (b) Insurance of personal effects while being carried as baggage on such common carriers;
- (3) Attorneys licensed to practice law in this state;
- (4) Insurance producers outside the United States or its territories;
- (5) Insurance producers applying for a limited license to sell, solicit, or negotiate limited line credit or limited line insurance exclusively;
- (6) Employees of trade associations for the issuance of surety bonds to their association members only;
- (7) Travel accident agents of motor service clubs;
- (8) A person who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state. This exemption is available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license as long as the applicant was in good

standing in that state and the state's insurance producer database records, maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested;

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

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

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

- (1) To transportation ticket-selling agents of common carriers, covering personal accident insurance under ticket policies;
- (2) To transportation ticket-selling agents of common carriers, covering baggage insurance;
- (3) License covering only credit insurance, as such insurance is defined in § 58-9-20, and no individual so licensed may during the same period hold a license as an insurance producer as to any other or additional kind of insurance;
- (4) Travel accident insurance producers of motor service clubs.

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

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

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

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

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

58-30-84. An insurance producer licensed as to limited lines insurance or limited lines credit insurance may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines and kiosks supervised by the insurance producer and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold to the traveling public, if the director finds:

- (1) That the policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine therefor in a particular proposed location would be of material convenience to the public;
- (2) That the type of vending machine and kiosk proposed to be used is reasonably suitable and practical for the purpose;
- (3) That reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and
- (4) That reasonable means are provided for refund to the applicants of money inserted in defective machines and for which no insurance, or a less amount than paid for, is actually received.

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

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

thereto.

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

58-30-90. If an insurance producer establishes a separate account in which to deposit trust funds in order to avoid a commingling of trust funds with the insurance producer's own funds, the insurance producer may deposit and commingle in such account all such funds but the amount of such funds held for each respective other person must be reasonably ascertainable from the records and accounts of the insurance producer.

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

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

Any violation of this section is a Class 2 misdemeanor.

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

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

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

58-30-96. The appointment required by § 58-30-95 is irrevocable for as long as there could be any cause of action against the insurance producer arising out of the insurance producer's insurance

transactions in or with respect to this state.

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

58-30-97. Duplicate copies of legal process against the insurance producer shall be served on the director by registered or certified mail. At the time of service the plaintiff shall pay the director the fee set forth in subdivision 58-2-29(12)(c), which is taxable as costs in the action.

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

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

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

58-30-99. The director shall keep a record of the day when served with all such legal process.

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

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

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

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

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

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

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

58-30-112. All licenses, although issued and delivered as to the licensee insurance producer or

surplus lines broker, shall, at all times, be the property of the State of South Dakota. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the director either by personal delivery or by mail.

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

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

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

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

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

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

- (2) Any licensee who holds only a crop hail qualification shall obtain a minimum of four credit hours certified for that line; and
- (3) Any licensee of a mutual insurer incorporated under chapter 58-35 shall obtain a minimum of six credit hours certified for those lines which the insurer is authorized to write.

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

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

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

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

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

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

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

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

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

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

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

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

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

done business;

- (2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification;
- (3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent;
- (4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent;
- (5) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the director. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the director may request;
- (6) An insurer shall review its books and records each quarter to determine if any insurance producer is a managing general agent as defined in § 58-30-124. If the insurer determines that an insurance producer has become a managing general agent, the insurer shall promptly notify the insurance producer and the director within thirty days of the determination. The insurer and an insurance producer shall fully comply with the provisions of §§ 58-30-124 to 58-30-139, inclusive, within thirty days of notification to the director; and
- (7) An insurer may not appoint to its board of directors an officer, director, employee,

insurance producer, or controlling shareholder of its managing general agents. This subdivision does not apply to relationships governed by chapters 58-5A and 58-44.

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

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

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

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

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

58-32-5. The provisions of this chapter do not apply, except as to § 58-32-43, to the following insurances if so placed by licensed insurance producers or surplus line brokers of this state:

- (1) Ocean marine and foreign trade insurances;
- (2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;
- (3) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations;
- (4) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft

operated in commercial interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

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

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

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

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

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

58-32-7. Any individual who is licensed in this state as an insurance producer and who is determined by the director to be competent and trustworthy with respect to the handling of surplus lines may be licensed as a surplus line broker.

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

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

- (1) If the broker fails to file his annual statement or to remit the tax as required by this chapter;
or
- (2) If the broker fails to keep records, or to allow the director to examine his records as required by this chapter; or

- (3) If the broker knowingly or negligently places a surplus line coverage in an insurer that is in unsound financial condition in violation of § 58-32-25; or
- (4) For any other cause for which a general lines agent's license may be suspended or revoked.

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

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

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

58-32-43. Licensed insurance producers and brokers placing any insurance enumerated in subdivisions 58-32-5(1) to (4), inclusive, with an authorized insurer shall keep a record of each such coverage in detail as required of surplus line insurance under this chapter. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state for examination by the director. The broker shall furnish to the director at the directors request and on forms furnished by the director a report of all such coverages so placed in a designated calendar year. Any violation of this section is a Class 2 misdemeanor.

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

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

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

58-33-15. No insurer may, directly or indirectly through its insurance producers or representatives, participate in any plan to offer or effect any kind or kinds of life insurance, health

insurance, property insurance, casualty insurance, surety insurance, or annuities in this state as an inducement to, or in combination with, the purchase by the public of any goods, securities, commodities, services, or subscriptions to periodicals, except upon the payment of a bona fide premium by the insured. Any violation of this section is a Class 2 misdemeanor.

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

58-33-24. No insurer or any employee or representative thereof, and no insurance producer may pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in the policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy, except to the extent provided for in an applicable filing with the director as provided by law. Any violation of this section is a Class 2 misdemeanor.

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

58-33-27. Nothing in §§ 58-33-24 to 58-33-26, inclusive, prohibits the payment of commissions or other compensation to duly licensed insurance producers, or prohibits any insurer from allowing or returning to its participating policyholders, members or subscribers, lawful dividends, savings or unabsorbed premium deposits.

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

58-33-31. No person may require as a condition precedent to loaning money upon the security of any real or personal property, or to the renewal or extension of any loan or mortgage, or to the selling of any property under contract, that the owner of the property to whom the money is to be loaned, or the vendee of the property being sold, shall place, continue, or renew any policy of insurance covering or to cover such property or covering any liability relating to such property or the use thereof, through a particular insurance producer or in a particular insurer or type of insurer or

insurance producer. However, this provision does not prevent the reasonable exercise by any the lender or vendor of the right to approve or disapprove of the insurer selected to underwrite the insurance on a reasonably nondiscriminatory basis. Any violation of this section is a Class 2 misdemeanor.

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

58-33-36. No person may willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, and as specified in the policy in accordance with the applicable classifications and rates as filed with and approved by the director; or, in cases where classifications, premiums, or rates are not required by this title to be so filed and approved, such premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. Any violation of this section is a Class 2 misdemeanor. This section does not prohibit the charging and collection, by surplus line brokers licensed under chapter 58-32, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. Nor does it prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

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

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

- (1) "Cancellation," termination by the insurer of insurance coverage in whole or in part during the policy term. A policy with no fixed expiration date is considered a policy period or term of one year;
- (2) "Insurance," includes those policies of insurance defined in §§ 58-9-5 to 58-9-27, inclusive;
- (3) "Nonpayment of premium," the failure of the named insured to discharge any obligation

in connection with the payment of premiums on policies of insurance subject to this section and §§ 58-33-60 to 58-33-65, inclusive, whether such payments are directly payable to the insurer or its insurance producer or indirectly payable under a premium finance plan or extension of credit.

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

58-33-64. Except for knowingly supplying false information, there is no liability on the part of and no cause of action arises against the following persons for any communication giving notice of or specifying the reasons for a cancellation or for any statement made in connection with an attempt to discover or verify the existence of conditions that would provide grounds for cancellation of coverage under the provisions of §§ 58-33-59 to 58-33-65, inclusive:

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

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

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

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

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

58-33-73. Nothing in § 58-33-72 prohibits any such insurance company, insurance producer, or adjuster from providing to such insured person or entity a list that includes the names of automobile glass companies or locations, if all of the listed companies or locations are reasonably close and convenient to the insured person and if none of the listed companies or locations is affiliated with another in any way, with which arrangements may have been made in advance with respect to prices or other aspects of the furnishing of the automobile glass services or products. However, no insurance company, insurance producer, or adjuster may require, recommend, urge, or encourage use of the listed automobile glass companies or locations. If a list is provided, the insurance company, agent, or adjuster, shall make oral and written disclosure at the time of any claim reimbursable in whole or in part under the insurance policy, to the insured person that any nonlisted automobile glass company or location may be used at the insured person's sole discretion and that the insurance company will fully and promptly pay for the cost of the automobile glass replacement or repair services or products, less only any applicable deductible amount payable according to the terms of the insurance policy by the insured person, at no less than the lowest prevailing market price in the local area for similarly-situated automobile glass companies or locations providing comparable automobile glass replacement or repair services or products without taking into consideration any special arrangements offered by the listed automobile glass companies or locations. If the insured person elects to use a nonlisted automobile glass company or location, the insurance company may not impose any obligations or requirements upon the insured person, including the obtaining of written estimates, not required if the insured person elects to use a listed automobile glass company or location.

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

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

twenty-five dollars.

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

58-33A-2. The purpose of this chapter is to establish guidelines and permissible and impermissible standards of conduct in the solicitation of and advertising of life and health insurance in a manner which:

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

unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and

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

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

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

- (1) Any printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, and similar displays;
- (2) Any descriptive literature and sales aids of all kinds issued by an insurer, representative of the insurer, insurance producer, or solicitor for presentation to members of the insurance-buying public, including circulars, leaflets, booklets, depictions, illustrations, Internet communications, form letters, and lead-generating devices of all kinds;
- (3) Any prepared sales talks, presentations, and material for use by representatives of the insurer, insurance producers, and solicitors whether prepared by the insurer or the representative of the insurer, insurance producer, or solicitor; and
- (4) Any advertising material included with a policy if the policy is delivered and material is used in the solicitation of renewals and reinstatements.

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

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

- (1) Any material to be used solely for the training and education of an insurer's employees, representatives, or insurance producers;
- (2) Any material used in-house by insurers;
- (3) Any communications within an insurer's own organization not intended for dissemination to the public;

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

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

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

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

58-33A-7. The director may promulgate rules pursuant to chapter 1-26 to establish specific standards consistent with § 58-33A-2. The rules may include standards of full and fair disclosure, that set forth the manner, content, and required disclosure. Except for conversion policies issued pursuant

to a contractual conversion privilege under a group, the rules may apply to the sale of individual and group health insurance subject to this chapter and shall be in addition to and in accordance with applicable laws of this state. The rules may include:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage provisions;
- (4) Coverage of dependents;
- (5) Preexisting conditions;
- (6) Termination of insurance;
- (7) Probationary periods;
- (8) Limitations, exceptions, and reductions;
- (9) Elimination periods;
- (10) Requirements for replacement;
- (11) Recurrent conditions;
- (12) Prohibitions on the use of terms, information, phrases, or implied affiliations in advertising;
- (13) Prominence, form, and style of any advertisement;
- (14) Information to be disclosed on advertising or solicitation materials;
- (15) Use of testimonials;
- (16) Special offers or enrollment periods;
- (17) Coverage comparisons;
- (18) Identification of insurers, representatives of the insurers and insurance producers;
- (19) Prearrangements or preneed funeral contracts; and
- (20) The definition of terms including the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed

renewable and noncancellable.

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

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

- (1) Chapter 58-1. Definitions and General Provisions;
- (2) Chapter 58-2. Division of Insurance;
- (3) Chapter 58-3. Examination of Insurers and Insurance Producers;
- (4) Chapter 58-4. Enforcement Powers and Proceedings (except § 58-4-7);
- (5) Sections 58-5-134 to 58-5-140, inclusive. Organization and General Powers of Insurers;
- (6) Chapter 58-10. Insurable Interest;
- (7) Chapter 58-11. Form and Contents of Insurance Policies;
- (8) Chapter 58-12. Insurance Claims and Benefits (except § 58-12-3);
- (9) Chapter 58-33. Unfair Trade Practices;
- (10) Chapter 58-30. Insurance Producers;
- (11) Chapter 58-29B. Insurers Supervision and Rehabilitation.

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

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

Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, the person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved because the person was a director, officer, employee, or insurance producer of the society or of any firm, corporation, or organization which the person served in any capacity

at the request of the society. No person may be indemnified or reimbursed in relation to any matter in any action, suit, or proceeding if the person is finally adjudged to be guilty of a breach of a duty as a director, officer, employee, or insurance producer of the society or in relation to any matter in any action, suit, or proceeding, or threat thereof, which is the subject of a compromise settlement; unless in either case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, had no reasonable cause to believe that the person's conduct was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in the preceding sentence may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to the person does not create a conclusive presumption that the person did not meet the standard of conduct required to justify indemnification and reimbursement. The right of indemnification and reimbursement is not exclusive of other rights to which a person may be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and administrators.

A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or insurance producer of the society, or who is or was serving at the request of the society as a director, officer, employee, or insurance producer of any other firm, corporation, or organization against any liability asserted against the person and incurred by the person in any capacity or arising out of the person's status as such, whether or not the society would have the power to indemnify the person against the liability under this section.

No director, officer, employee, member, or volunteer of a society serving without compensation is liable, and no cause of action may be brought, for damages resulting from the exercise of judgment

or discretion in connection with the duties or responsibilities of the person for the society unless the act or omission involved willful or wanton misconduct.

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

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

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

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

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

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

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

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

58-38-19. Any medical and surgical plan corporation is exempt from all provisions of the insurance laws of this state other than in this chapter. However, the corporation is subject to the

provisions of this title on matters of hearings, appeals, mergers, dissolutions, licensure of insurance producers, and procedures on such matters. The corporation is also subject to §§ 58-4-39 to 58-4-42, inclusive; 58-6-75; 58-17-17, and 58-17-19 for nongroup policies only; §§ 58-17-54; 58-17-56; 58-30-124 to 58-30-139, inclusive; and to the fees and taxation as insurers covered by this title; and to chapters 58-3, 58-5A, 58-14, 58-18B, 58-26, 58-27, 58-29B, 58-29D, 58-33, 58-43, and 58-44.

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

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

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

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

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

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

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

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

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

58-40-18. A hospital service plan corporation is exempt from all provisions of the insurance laws of this state other than in this chapter. However, the corporation is subject to the provisions of this title on matters of hearings, appeals, mergers, dissolutions, licensure of insurance producers, and procedures on such matters. The corporation is also subject to §§ 58-4-39 to 58-4-42, inclusive; 58-6-75; 58-17-17 and 58-17-19, for nongroup policies only; §§ 58-30-124 to 58-30-139, inclusive; to the fees and taxation as insurers covered by this title; and to chapters 58-3, 58-5A, 58-14, 58-18B, 58-26, 58-27, 58-29B, 58-29D, 58-33, 58-43, and 58-44.

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

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

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

58-41-72. For the purpose of examinations, the director and the secretary may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the

principals of such providers concerning their business, and to issue subpoenas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 243. That § 58-30-23.3 be repealed.

Section 244. That § 58-30-23.4 be repealed.

Section 245. That § 58-30-23.5 be repealed.

Section 246. That § 58-30-25 be repealed.

Section 247. That § 58-30-28 be repealed.

Section 248. That § 58-30-32 be repealed.

Section 249. That § 58-30-36 be repealed.

Section 250. That § 58-30-37 be repealed.

Section 251. That § 58-30-38 be repealed.

Section 252. That § 58-30-39 be repealed.

Section 253. That § 58-30-40 be repealed.

Section 254. That § 58-30-41 be repealed.

Section 255. That § 58-30-42 be repealed.

Section 256. That § 58-30-43 be repealed.

Section 257. That § 58-30-44 be repealed.

Section 258. That § 58-30-47 be repealed.

Section 259. That § 58-30-49 be repealed.

Section 260. That § 58-30-50 be repealed.

Section 261. That § 58-30-53 be repealed.

Section 262. That § 58-30-55 be repealed.

Section 263. That § 58-30-57 be repealed.

Section 264. That § 58-30-59 be repealed.

Section 265. That § 58-30-61 be repealed.

Section 266. That § 58-30-62 be repealed.

Section 267. That § 58-30-71.1 be repealed.

Section 268. That § 58-30-75 be repealed.

Section 269. That § 58-30-76 be repealed.

Section 270. That § 58-30-77 be repealed.

Section 271. That § 58-30-79 be repealed.

Section 272. That § 58-30-80 be repealed.

Section 273. That § 58-30-85 be repealed.

Section 274. That § 58-30-86 be repealed.

Section 275. That § 58-30-87 be repealed.

Section 276. That § 58-30-94 be repealed.

Section 277. That § 58-30-101 be repealed.

Section 278. That § 58-30-103 be repealed.

Section 279. That § 58-30-105 be repealed.

Section 280. That § 58-30-106 be repealed.

Section 281. That § 58-30-107 be repealed.

An Act to provide reciprocity for the licensing of insurance producers.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 44

Secretary of the Senate

=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 44

File No. _____

Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State