

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0260

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1054** - 01/19/2007

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for the independent audit of  
2 insurers.

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

4 Section 1. That chapter 58-43 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of this chapter, the term, indemnification, means an agreement of  
7 indemnity or a release from liability where the intent or effect is to shift or limit in any manner  
8 the potential liability of the person or firm for failure to adhere to applicable auditing or  
9 professional standards, whether or not resulting in part from knowing or other  
10 misrepresentations made by the insurer or its representatives.

11 Section 2. That § 58-43-9 be amended to read as follows:

12 58-43-9. An accountant shall be recognized as qualified as long as ~~he~~ the accountant  
13 conforms to the standards of ~~his~~ the profession, as contained in the Code of Professional Ethics  
14 of the American Institute of Certified Public Accountants and the requirements of chapter ~~36-~~  
15 ~~20A~~ 36-20B and rules promulgated pursuant to that chapter.



Section 3. That chapter 58-43 be amended by adding thereto a NEW SECTION to read as follows:

No person or firm may be recognized as a qualified independent certified public accountant if the person or firm:

- (1) Is not in conformity with the Code of Professional Ethics of the American Institute of CPA's and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
- (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

Section 4. That chapter 58-43 be amended by adding thereto a NEW SECTION to read as follows:

A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, if a delinquency proceeding commenced against the insurer under chapter 58-29B, the mediation or arbitration provisions shall operate at the option of the statutory successor.

Section 5. That § 58-4-47 be amended to read as follows:

58-4-47. The division shall allow for the sharing of otherwise confidential information, administrative or judicial orders, or other action with other state, federal, and international regulatory officials if those officials are statutorily required to maintain its confidentiality. The division shall cooperate and share all information with respect to domestic companies with other state, federal, and international regulators including committees established by the National Association of Insurance Commissioners which may be reviewing and coordinating regulatory oversight and activities. The division shall also cooperate and share information with respect to domestic companies subject to delinquency proceedings. The division may receive

1 documents, materials, or information, including otherwise confidential and privileged  
2 documents, materials, or information from the National Association of Insurance  
3 Commissioners, its affiliates, or subsidiaries and from regulatory and law enforcement officials  
4 of other foreign or domestic jurisdictions. The division shall maintain as confidential or  
5 privileged any document, material, or information received with notice or the understanding that  
6 it is confidential or privileged under the laws of the jurisdiction that is the source of the  
7 document, material, or information. The director may use the documents, materials, or other  
8 information in the furtherance of any regulatory function or legal action brought as a part of the  
9 director's duties.