

AN ACT

ENTITLED, An Act to revise certain provisions regarding association health plans.

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

Section 1. That § 58-18-3 be amended to read:

58-18-3. Group health insurance may be under a policy issued to a bona fide association of employers, including a labor union, that has a constitution and bylaws and that has been organized and is maintained in good faith with at least one substantial business purpose unrelated to obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. For the purposes of this section, the term, employees, may include retired employees, and the term, employers, includes working owners without employees who qualify as both an employer and employee.

Section 2. That chapter 58-18 be amended by adding a NEW SECTION to read:

A group health insurance policy may not be issued to an association under §§ 58-18-3 and 58-18-4 that is formed, owned, or controlled by any of the following, other than to the extent the entities participate in the group or association in their capacity as employer members of the group or association:

- (1) A health insurance issuer;
- (2) A subsidiary or affiliate of a health insurance issuer;
- (3) A health care organization or network provider that is part of the health care delivery system; or
- (4) An insurance producer, broker, or consultant.

Section 3. That chapter 58-18 be amended by adding a NEW SECTION to read:

An employer member that participates in an association under §§ 58-18-3 and 58-18-4 shall participate in the association plan for a period of not less than three consecutive calendar years. Any

contract issued to an association shall contain reasonable enforcement provisions including reasonable fees or assessments for early departure or for enrollment in another multiple employer plan during the early departure date.

Section 4. That chapter 58-18 be amended by adding a NEW SECTION to read:

An association plan based in this state or any other state shall follow all applicable South Dakota laws and administrative rules if the association plan covers South Dakota residents.

Section 5. That chapter 58-18 be amended by adding a NEW SECTION to read:

A health insurer offering a fully insured health benefit plan through an association shall:

- (1) Guarantee acceptance of all eligible individuals under the employer members' association or fully insured multiple employer arrangement and, if coverage is offered to spouses and dependents, to all of the spouses and dependents;
- (2) Provide a bronze health plan that has an actuarial value of sixty percent;
- (3) Comply with all applicable state mandates; and
- (4) Have premium rates that meet a minimum loss ratio of eighty-five percent.

Section 6. That § 58-18-88 be amended to read:

58-18-88. A self-funded multiple employer trust, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that is sponsored by an association, may be authorized by the director if the multiple employer trust meets all of the following conditions:

- (1) The multiple employer trust is administered by an authorized insurer or a licensed or registered third-party administrator;
- (2) The multiple employer trust is sponsored and maintained by a bona fide association of employers eligible to procure coverage under §§ 58-18-3 and 58-18-4;
- (3) The association sponsoring the multiple employer trust is established by employers in a

homogenous trade, industry, line of business, or profession with commonality of interest.

The association has a constitution or bylaws, and is organized under the laws of South Dakota;

- (4) The association sponsoring the multiple employer trust has a substantial business purpose other than sponsorship of an employer welfare benefit plan;
- (5) The association sponsoring the multiple employer trust is a nonprofit entity organized under applicable South Dakota law;
- (6) The multiple employer trust's board of trustees shall assess participating employers in an amount necessary to remedy deficiencies at any time the assets and stop loss insurance policies of the multiple employer trust are insufficient to:
  - (a) Pay claims made against the multiple employer trust;
  - (b) Discharge liabilities and obligations relating to health benefit plan claims; or
  - (c) Maintain adequate reserves and surpluses;
- (7) The multiple employer trust:
  - (a) Meets the capital and surplus requirements of § 58-6-23;
  - (b) Meets the risk based capital requirements of § 58-4-48;
  - (c) Is subject to the hazardous financial condition requirements of §§ 58-4-39 to 58-4-42, inclusive;
  - (d) Invests its assets pursuant to the requirements of chapters 58-26 and 58-27;
  - (e) Is subject to chapter 58-3 on the same basis as insurers;
  - (f) Is subject to the insurers supervision, rehabilitation, and liquidation provisions of chapter 58-29B;
  - (g) Maintains a minimum loss ratio of eighty-five percent or be community rated; and
  - (h) Complies with all coverage mandates that are applicable to group health insurance

under this title;

- (8) Each sponsoring association is comprised of and controlled by employer members, consists of five hundred or more covered employees, and has been in existence for a period of three continuous years;
- (9) Any solicitation or sales materials to prospective members discloses the provisions regarding fees and assessments for participation in the multiple employer trust; and
- (10) The director, after consideration of the impact on the insurance-buying public, determines that the arrangement is in the best interests of the public.

Section 7. That chapter 58-18 be amended by adding a NEW SECTION to read:

An association not formed in this state may request a waiver of subdivisions 58-18-88(3) and (5) regarding organization in South Dakota to sponsor a multiple employer trust in this state if the association provides sufficient evidence a waiver is in the best interests of the insurance-buying public. An association not formed in this state shall be in full compliance with the laws of all states where the association does business.

Section 8. That § 58-18-90 be amended to read:

58-18-90. Except as otherwise provided in this chapter, an authorized multiple employer trust may not be determined to be or considered to be an insurance company or association of any kind or character under this title, or subject to the provisions of §§ 58-8-6 to 58-8-19, inclusive.

Section 9. That § 58-18-91 be amended to read:

58-18-91. A multiple employer trust authorized under this chapter may have its authorization suspended or revoked by the director for violating any applicable provision of this title. The director may take action in lieu of suspension or revocation as though the trust were an insurer as provided by § 58-4-28.1.

Section 10. That § 58-18-93 be amended to read:

58-18-93. No agent may sell, solicit, or negotiate a self-funded multiple employer trust authorized under this chapter unless the agent is licensed to sell life and health insurance pursuant to chapter 58-30.

Section 11. That § 58-18-94 be amended to read:

58-18-94. The provisions of this chapter regarding multiple employer trusts do not apply to any single employer self-funded plan as preempted by Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144 or any arrangement exempted pursuant to § 1-24-17. An authorized self-funded multiple employer trust may include as participating employers both small employers and large employers.

Section 12. That § 58-18B-59 be repealed.

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I certify that the attached Act
originated in the
SENATE as Bill No. 37

\_\_\_\_\_  
Secretary of the Senate
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 37  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_ ,
20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor
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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

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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