

AN ACT

ENTITLED, An Act to revise certain provisions regarding insurers' internal audit requirements.

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

Section 1. That § 58-43-1 be amended to read:

58-43-1. Terms used in this chapter mean:

- (1) "Accountant," an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, an accountant is a Canadian-chartered or British-chartered accountant;
- (2) "Affiliate of a person" or "Affiliated with a specific person," a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
- (3) "Audit committee," a committee established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or a group of insurers, if applicable, and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person;
- (4) "Indemnification," an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or the insurer's representatives;

- (5) "Insurer," an authorized insurer as defined in subdivision 58-1-2(2);
- (6) "Group of insurers," those insurers included in the reporting requirements of chapter 58-5A, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting;
- (7) "Internal audit function," any person who provides independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish the organization's objectives by using a systematic, disciplined approach to evaluate and improve the effectiveness of each risk management, control, and governance process;
- (8) "Internal control over financial reporting," a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:
 - (a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
 - (b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
 - (c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements;
- (9) "SEC," the United States Securities and Exchange Commission;
- (10) "Section 404," Section 404 of the Sarbanes-Oxley Act of 2002 in effect as of January 1, 2018;
- (11) "Section 404 report," management's report on internal control over financial reporting as

defined by the SEC and the related attestation report of the independent certified public accountant;

(12) "SOX compliant entity," an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 in effect as of January 1, 2018:

- (a) The preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);
- (b) The audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and
- (c) The internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

Section 2. That § 58-43-16.2 be amended to read:

58-43-16.2. The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.

The audit committee of an insurer or a group of insurers shall be responsible for overseeing the insurer's internal audit function and granting each person performing the function suitable authority and resources to complete the audit committee's responsibilities required by sections 3 to 6, inclusive, of this Act.

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

The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the

insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

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

In order to ensure that an internal auditor remains objective, the internal audit function shall be organizationally independent. The internal audit function may not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who has direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

Section 5. That chapter 58-43 be amended by adding a NEW SECTION to read:

The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

Section 6. That chapter 58-43 be amended by adding a NEW SECTION to read:

If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements provided in sections 3 to 5, inclusive, of this Act, at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

Section 7. That chapter 58-43 be amended by adding a NEW SECTION to read:

An insurer is exempt from the requirements of sections 3 to 6, inclusive, of this Act, if the insurer:

- (1) Has annual direct written and unaffiliated assumed premium, including international

direct and assumed premium but excluding any premium that is reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, and that is less than five hundred million dollars; and

- (2) Is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding any premium that is reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, and that is less than one billion dollars.

If an insurer or group of insurers no longer qualifies for this exemption, it has one year after the year the threshold is exceeded to comply with this Act.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1041

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1041

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