

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

400V0246

## HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1053** - 01/24/2014

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of  
2 insurance rating organizations.

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

4 Section 1. That § 58-24-12 be amended to read as follows:

5 58-24-12. An insurer may satisfy its obligation to make ~~such~~ filings pursuant to this chapter  
6 ~~by becoming:~~

7 (1) Becoming a member of, or a subscriber to, a licensed rating organization ~~which that~~  
8 makes ~~such~~ filings, ~~and by authorizing;~~ and

9 (2) Authorizing the director to accept ~~such~~ filings on its behalf; ~~provided that nothing.~~

10 Nothing contained in this chapter ~~shall~~ may be construed as requiring any insurer to become  
11 a member of or a subscriber to any rating organization.

12 Section 2. That § 58-24-35 be amended to read as follows:

13 58-24-35. A corporation, unincorporated association, partnership, ~~or~~ individual, or any other  
14 legal business entity, whether located within or outside this state, may ~~make application to the~~



1 ~~director~~ apply for a license as a rating organization for such kinds of insurance, or subdivision  
2 or class of risk or a part or combination thereof as are specified in its application and shall file  
3 ~~therewith~~ by providing the following information in its application:

4 (1) A copy of its governing documents, to include its constitution, ~~its~~ articles of  
5 agreement or association, ~~or its~~ certificate of incorporation, ~~and of its~~ bylaws, rules,  
6 and regulations ~~governing the conduct of its business,~~ as applicable;

7 (2) A list of its members and subscribers;

8 (3) The name and address of a resident of this state upon whom notices or orders of the  
9 director or process affecting such rating organization may be served; ~~and~~

10 (4) A statement of its qualifications as a rating organization; and

11 (5) A statement specifying the kind of insurance, or subdivision, class, or part of risk or  
12 combination thereof for which the rating organization intends to be licensed.

13 Section 3. That § 58-24-36 be amended to read as follows:

14 58-24-36. If the director finds that the applicant is competent, trustworthy, and otherwise  
15 qualified to act as a rating organization and that ~~its constitution, articles of agreement or~~  
16 ~~association, or certificate of incorporation, and its bylaws, rules, and regulations governing the~~  
17 ~~conduct of its business~~ the contents of its application conform to the requirements of law, ~~he~~ the  
18 director shall issue a license specifying the kinds of insurance, or subdivisions or classes of risks  
19 or parts or combinations thereof for which the applicant is authorized to act as a rating  
20 organization. ~~Every such~~ Each application shall be granted or denied in whole or in part by the  
21 director within sixty days of the date of its filing with ~~him~~ the director.

22 Section 4. That § 58-24-37 be amended to read as follows:

23 58-24-37. ~~Licenses~~ Each license issued pursuant to § 58-24-36 ~~shall remain~~ remains in effect  
24 for three years unless ~~sooner~~ suspended or revoked by the director. The license fee for ~~said~~

1 ~~license shall be~~ any applicant pursuant to this chapter is twenty-five dollars.

2 Section 5. That § 58-24-38 be amended to read as follows:

3 58-24-38. ~~Licenses~~ Any license issued pursuant to § 58-24-36 may be suspended or revoked  
4 by the director, after hearing upon notice, ~~in the event~~ if the rating organization ceases to meet  
5 ~~the requirements of said section~~ any requirement of this chapter, including the requirements of  
6 initial licensure.

7 Section 6. That § 58-24-39 be amended to read as follows:

8 58-24-39. ~~Every~~ Each rating organization shall notify the director promptly of ~~every~~ any  
9 change in:

10 ~~(1) Its constitution, its articles of agreement or association, or its certificate of~~  
11 ~~incorporation, and its bylaws, rules, and regulations governing the conduct of its~~  
12 ~~business;~~

13 ~~(2) Its list of members and subscribers;~~

14 ~~(3) The name and address of the resident of this state designated by it upon whom~~  
15 ~~notices or orders of the director or process affecting such rating organization may be~~  
16 ~~served~~ information from what was provided in its application pursuant to § 58-24-35.

17 Section 7. That § 58-24-40 be amended to read as follows:

18 58-24-40. Subject to rules and regulations ~~which~~ of the rating organization that have been  
19 approved by the director as reasonable, each rating organization shall permit any insurer; that  
20 is not a member; to be a subscriber to its rating services for any kind of insurance; ~~subdivision;~~  
21 ~~or class of risk or a part or combination thereof for which it is authorized to act as a rating~~  
22 ~~organization licensed.~~ Notice of any proposed changes in such rules and regulations change to  
23 a rule shall be given to ~~subscribers~~ each subscriber. Each rating organization shall furnish its  
24 rating services without discrimination to ~~its members and subscribers~~ each member and

1 subscriber.

2 Section 8. That § 58-24-41 be amended to read as follows:

3 58-24-41. ~~The~~ Any subscriber, member, or insurer may request a hearing held by the director  
4 to determine the reasonableness of any rule or regulation of a rating organization in its  
5 application to ~~subscribers,~~ each subscriber or the refusal of any rating organization to admit an  
6 insurer as a subscriber; ~~The hearing shall, at the request of any subscriber or any such insurer,~~  
7 ~~be reviewed by the director at a hearing~~ be held upon at least ten days' written notice to such  
8 rating organization and to each subscriber or insurer pursuant to chapter 1-26. If the director  
9 finds that ~~such~~ the rule ~~or regulation~~ is unreasonable in its application to subscribers, ~~he~~ or that  
10 an insurer is denied subscription without justification, the director shall order that ~~such~~ the rule  
11 ~~or regulation shall~~ is not be applicable to subscribers or that the insurer is to be admitted as a  
12 subscriber, as applicable.

13 Section 9. That § 58-24-42 be amended to read as follows:

14 58-24-42. ~~If the rating organization fails to grant or reject an insurer's application for~~  
15 ~~subscribership within thirty days after it was made, the insurer may request a review by the~~  
16 ~~director as if the application had been rejected. If, after the hearing held pursuant to § 58-24-41,~~  
17 ~~the director finds that the insurer has been refused admittance to the rating organization as a~~  
18 ~~subscriber without justification, he shall order the rating organization to admit the insurer as a~~  
19 ~~subscriber. If he finds that the action of the rating organization was justified he, the director~~  
20 ~~shall~~ make issue an order affirming its action.

21 Section 10. That § 58-24-44 be amended to read as follows:

22 58-24-44. Any rating organization may provide for the examination of policies, daily  
23 reports, binders, renewal certificates, endorsements, or other evidences of insurance, or the  
24 cancellation thereof, and may make reasonable rules governing their submission. ~~Such rules~~

1 Rules shall contain a provision that ~~in the event if~~ any insurer does not ~~within sixty days~~ furnish  
 2 satisfactory evidence to the rating organization of the correction of any error or omission  
 3 previously called to its attention by the rating organization, ~~it shall be the duty of~~ within sixty  
 4 days, the rating organization ~~to shall~~ notify the director thereof. All information ~~so~~ submitted  
 5 for examination ~~shall be~~ under this section is confidential.

6 Section 11. That § 58-24-45 be amended to read as follows:

7 58-24-45. No rating organization ~~shall~~ may adopt any rule the effect of which would ~~be to~~  
 8 prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed  
 9 or returned by insurers to their policyholders, members, or subscribers.

10 Section 12. That § 58-24-45.1 be amended to read as follows:

11 58-24-45.1. An insurer may market insurance through a group insurance or mass marketing  
 12 plan, franchise, or blanket policy for any line of insurance regulated under this chapter, ~~provided~~  
 13 ~~that the~~ if:

14 (1) The insured group was not formed solely for the purpose of purchasing insurance ~~and~~  
 15 ~~that the~~; and

16 (2) The premium is paid or collected by ~~an~~:

17 (a) An employer, labor union, or the trustee of a fund established by the employer  
 18 or labor union; ~~the~~

19 (b) The trustee of a fund established by two or more employers in the same  
 20 industry, or related industries; ~~two~~

21 (c) Two or more labor unions or an association which ~~has~~ have been in existence  
 22 for one or more years and which ~~has~~ have a constitution and bylaws; or a

23 (d) A wireless telecommunications provider from its customers and the premium  
 24 is for insurance covering wireless telecommunications equipment.

1 Section 13. That § 58-24-47 be amended to read as follows:

2 58-24-47. Any member or subscriber to a rating organization may appeal to the director  
3 from the action or decision of ~~such the~~ the rating organization in approving or rejecting any  
4 proposed change in or addition to the filings of ~~such the~~ the rating organization, ~~and the~~. The  
5 director shall, after a hearing held upon not less than ten days' written notice to the appellant and  
6 to ~~such the~~ the rating organization, issue an order approving the action or decision of the rating  
7 organization or, ~~in the event he~~ if the director finds that ~~such the~~ the action or decision was  
8 unreasonable, issue an order directing the rating organization to make an addition to its filings  
9 on behalf of its members and subscribers, in a manner consistent with ~~his~~ the director's findings  
10 within a reasonable time after the issuance of ~~such the~~ the order.

11 Section 14. That § 58-24-48 be amended to read as follows:

12 58-24-48. If ~~such an~~ an appeal under § 58-24-47 is based upon the failure of the rating  
13 organization to make a filing on behalf of ~~such the~~ the member or subscriber, which is based on a  
14 system of expense provisions which differs, in accordance with the right granted in § 58-24-8,  
15 from the system of expense provisions included in a filing made by the rating organization, the  
16 director shall, if ~~he~~ the director grants the appeal, order the rating organization to make the  
17 requested filing for use by the appellant. In deciding ~~such the~~ the appeal the director shall apply the  
18 standards set forth in §§ 58-24-5 to 58-24-9, inclusive.

19 Section 15. That § 58-24-53 be amended to read as follows:

20 58-24-53. ~~Every~~ Each group, association, or other organization of insurers, whether located  
21 within or outside this state, which assists insurers which make their own filings or rating  
22 organizations in rate-making, by the collection and furnishing of loss or expense statistics, or  
23 by the submission of recommendations, but which does not make filings under this chapter shall  
24 be ~~known~~ subject to licensure pursuant to this chapter as an advisory organization.

1 Section 16. That § 58-24-54 be amended to read as follows:

2 58-24-54. ~~Every~~ Each advisory organization shall file with the director:

3 ~~(1) A copy of its constitution, its articles of agreement or association or its certificate of~~  
4 ~~incorporation and of its bylaws, rules, and regulations governing its activities;~~

5 ~~(2) A list of its members;~~

6 ~~(3) The name and address of a resident of this state upon whom notices or orders of the~~  
7 ~~director or process issued at his direction may be served; and~~

8 ~~(4) An~~ the requirements of § 58-24-35 and an agreement that the director may examine  
9 ~~such~~ the advisory organization in accordance with the provisions of § 58-24-59.

10 Section 17. That § 58-24-55 be amended to read as follows:

11 58-24-55. If, ~~after a hearing,~~ the director finds that ~~the furnishing of such~~ an advisory  
12 organization has furnished information or assistance that involves any act or practice which is  
13 unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, ~~he~~ the  
14 director may issue ~~a written~~ an order specifying in what respect such act or practice is unfair or  
15 unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the  
16 discontinuance of such act or practice.

17 Section 18. That § 58-24-56 be amended to read as follows:

18 58-24-56. No insurer ~~which~~ that makes its own filings or any rating organization ~~shall~~ that  
19 submits filings with the division may support its filings by statistics or adopt rate-making  
20 recommendations; furnished to it by an advisory organization which has not complied with § 58-  
21 24-54 or with an order of the director involving ~~such~~ statistics or recommendations issued under  
22 § 58-24-55. If the director finds ~~such~~ an insurer or rating organization to be in violation of this  
23 section ~~he~~ the director may issue an order requiring the discontinuance of ~~such~~ the violation.

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

1        58-24-58. If, after a hearing, the director finds that any activity or practice of any ~~such~~ group;  
2 ~~association, or other organization~~ identified in § 58-24-57 is unfair or unreasonable or otherwise  
3 inconsistent with the provisions of this chapter, ~~he~~ the director may issue ~~a written~~ an order  
4 specifying in what respect ~~such~~ the activity or practice is unfair or unreasonable or otherwise  
5 inconsistent with the provisions of this chapter and requiring the discontinuance of ~~such~~ the  
6 activity or practice.

7        Section 20. That § 58-24-59 be amended to read as follows:

8        58-24-59. ~~The~~ As often as the director deems necessary, the director shall, ~~at least once~~  
9 ~~every five years, make or cause to be made an examination of~~ examine each rating organization  
10 licensed in this state as provided in §§ 58-24-35 to 58-24-39, inclusive, ~~and he may, as often as~~  
11 ~~he may deem it expedient, make or cause to be made an examination of~~ each advisory  
12 organization referred to in § 58-24-53, ~~and of~~ each group, association, or other organization  
13 referred to in § 58-24-57. The cost of any ~~such~~ examination shall be paid by the rating  
14 organization, advisory organization, or group, association or other organization examined. The  
15 officers, manager, agents, and employees of ~~such~~ the rating organization, advisory organization,  
16 or group, association, or other organization may be examined at any time under oath and shall  
17 exhibit all books, records, accounts, documents, or agreements governing its method of  
18 operation. In lieu of ~~any such examination~~ the above, the director may accept the report of an  
19 examination made by the insurance supervisory official of another state. No rating organization  
20 examined may be reimbursed from the examination fund.

21        Section 21. That § 58-24-61 be amended to read as follows:

22        58-24-61. The director may, if ~~he~~ the director finds that any person or organization has  
23 violated any provision of this chapter, ~~impose~~ issue an order which imposes a penalty of not  
24 more than fifty five hundred dollars for each ~~such~~ violation, but if ~~he~~ the director finds ~~such~~ a



1 violation to be willful ~~he~~ the director may impose a penalty of not more than five ~~hundred~~  
2 thousand dollars for each ~~such~~ violation. ~~Such~~ The penalties may be in addition to any other  
3 penalty provided by law or order of the director issued pursuant to this chapter.

4 Section 22. That § 58-24-62 be amended to read as follows:

5 58-24-62. The director may suspend the license of any rating organization or insurer ~~which~~  
6 that fails to comply with an order of the director ~~within the time limited by such order, or any~~  
7 ~~extension thereof which the director may grant. The director shall not suspend the license of any~~  
8 ~~rating organization or insurer for failure to comply with an order until~~ after the time prescribed  
9 for an appeal therefrom has expired or if ~~an appeal has been taken, until such~~ the order has been  
10 affirmed on appeal. The director may determine when a suspension of license ~~shall become~~  
11 becomes effective ~~and it shall remain. Any suspension remains~~ in effect for the period fixed by  
12 ~~him, unless he modifies or rescinds such suspension~~ the director, or until the order upon which  
13 ~~such~~ the suspension is based is modified, rescinded, or reversed.

14 Section 23. That § 58-24-64 be amended to read as follows:

15 58-24-64. Any insurer or rating organization aggrieved by any order or decision of the  
16 director made without a hearing, may, within thirty days after notice of the order to the insurer  
17 or organization, make written request to the director for a hearing thereon. The director shall  
18 ~~hear such party or parties~~ issue a notice of hearing pursuant to chapter 1-26 within twenty days  
19 after receipt of ~~such~~ a request and shall give not less than ten days' written notice of the time and  
20 place of the hearing. Within a reasonable time after ~~such~~ the hearing the director shall affirm,  
21 reverse, or modify ~~his~~ the director's previous action, specifying ~~his~~ the reasons therefor. Pending  
22 ~~such~~ the hearing and decision thereon the director may suspend or postpone the effective date  
23 of ~~his~~ the director's previous action.