

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0396

HOUSE BILL NO. 1061

Introduced by: The Committee on State Affairs at the request of the Department of Labor
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the regulation of
2 captive insurance companies.

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

4 Section 1. That § 58-46-1 be amended to read as follows:

5 58-46-1. Terms used in this chapter mean:

- 6 (1) "Affiliated ~~company~~ entity," any entity, in the same corporate system as a ~~pure~~ the
7 captive insurance company, owned or controlled, directly or indirectly, by a parent
8 or subsidiary, or a member organization by virtue of control, operation, or
9 management. In the case of a trust captive insurance company, an affiliated entity of
10 the trust which holds ownership interest in the trust captive insurance company also
11 includes any other trust created by the settlor, the settlor's grandparents or their
12 descendants, the settlor's spouse, or any trust created by any one of the
13 aforementioned persons;
- 14 (2) "Association," any legal association of ~~corporations, limited liability companies, or~~
15 ~~partnerships~~ entities, the members of the organization of which:



- 1 (a) Own, control, or hold with power to vote all of the outstanding voting
2 securities of a group captive insurance company incorporated as a stock
3 insurer or nonprofit corporation; or
- 4 (b) Have complete voting control over group captive insurance company formed
5 as a limited liability company;
- 6 (3) "Captive insurance company," any ~~pure captive insurance company or any group~~
7 ~~captive insurance company~~ licensed under chapter 58-46;
- 8 (4) "Controlled unaffiliated business," any person or entity that is not in the corporate
9 system of a parent and its affiliated ~~companies~~ entities and has an existing contractual
10 relationship for its control, operation, or management with the parent or one of its
11 affiliated ~~companies~~ entities;
- 12 (5) "Director," the director of the Division of Insurance;
- 13 (5A) "Entity," a corporation, business trust, cooperative corporation, estate, trust,
14 partnership, limited liability company, association, joint venture, government,
15 governmental subdivision, agency, or instrumentality, or any other legal or
16 commercial entity;
- 17 (5B) "Governing board," in the case of a corporation, its board of directors; in the case of
18 a member managed limited liability company, its board of members; in the case of
19 a manager managed limited liability company, its board of managers; in the case of
20 a partnership, its general partner; in the case of a business trust or trust, its trustee;
21 and in the case of any other entity not defined, the person in charge of managing its
22 business affairs;
- 23 (6) "Group," any association of ~~corporations, partnerships, or limited liability companies~~
24 entities with substantially similar or related risks, the members of which collectively

1 own, control, or hold with power to vote all of the outstanding voting securities or
2 other ownership interest of a group captive insurance company;

3 (7) "Group captive insurance company," any ~~company~~ entity licensed under this chapter
4 that insures the risks of the member organizations of the group, the risks of the
5 affiliated ~~companies~~ entities of the member organizations, or the risks of the
6 association;

7 (8) "Member organization," any ~~corporation, limited liability company, or partnership~~
8 entity that belongs to an association;

9 (9) "Parent," ~~a corporation, partnership, or individual~~ an entity that directly or indirectly
10 owns, controls, or holds with power to vote ~~more than~~ fifty percent or more of the
11 outstanding voting securities of a pure captive insurance company;

12 (10) "Pure captive insurance company," any ~~company~~ entity licensed under this chapter
13 that insures risks of its parent and affiliated ~~companies~~ entities or a controlled
14 unaffiliated business;

15 (11) "Participant contract," with respect to a sponsored captive insurance company, a
16 contract by which a sponsored captive insurance company insures the risks of one or
17 more participants, and limits the losses of each participant to its pro rata share of the
18 assets of one or more protected cells identified in the participant contract;

19 (12) "Special purpose captive insurance company," a captive insurance company that is
20 licensed under this chapter that does not meet the definition of any other type of
21 captive insurance company defined in this section and it may insure the risks of its
22 parent, unless otherwise approved by the director;

23 (13A) "Participant," any person or entity that is insured by a sponsored captive insurance
24 company, where the losses of the participant are limited through a participant

1 contract to the participant's pro rata share of the assets of one or more protected cells
2 identified in the participant contract;

3 (13B) "Protected cell," a separate and distinct account established and maintained by or on
4 behalf of a sponsored captive insurance company in which assets, including assets
5 invested pursuant to section 26 of this Act, are accounted for and recorded for one
6 or more participants in accordance with the terms of one or more participant contracts
7 to fund the liability of the sponsored captive insurance company assumed on behalf
8 of the participants as set forth in the participant contracts;

9 (14) "Sponsor," a person or entity qualifying as a sponsor under section 24 of this Act;

10 (15) "Sponsored captive insurance company," a captive insurance company that is
11 licensed under this chapter:

12 (a) Of which the minimum capital and surplus required by this chapter is provided
13 by one or more sponsors;

14 (b) That insures the risks of its participants only, through separate participant
15 contracts; and

16 (c) That funds its liability to each participant through one or more protected cells
17 and segregates the assets of each protected cell from the assets of other
18 protected cells and from the assets of the sponsored captive insurance
19 company's general account;

20 (16) "Trust captive insurance company," a captive insurance company whose ownership
21 interest is held in a trust or trusts;

22 (17) "Trust," any trust with a South Dakota jurisdiction provision as set forth in
23 §§ 55-3-40 to 55-3-42, inclusive, and which complies with § 55-3-39.

24 Section 2. That § 58-46-3 be amended to read as follows:

1 58-46-3. No captive insurance company may do any insurance business in this state unless:

2 (1) It first obtains from the director a certificate of authority authorizing it to do
3 insurance business in this state;

4 (2) Its ~~board of directors commits to hold~~ governing board holds at least one meeting
5 each year in this state in which a quorum is physically present;

6 (3) It maintains its principal place of business in this state and keeps at this place
7 complete records of its assets, transactions, and affairs, in accordance with the
8 methods and systems which are customary or suitable as to the kinds of insurance
9 transacted. In lieu thereof or if required by the director, in the director's discretion,
10 the captive insurance company shall appoint a captive manager approved by the
11 director. The captive manager shall maintain the complete records required in this
12 section. The captive manager shall make available all information to the director
13 upon request; and

14 (4) It, and if applicable its captive manager, appoints a resident agent to accept service
15 of process and to otherwise act on its behalf in this state. If the registered agent
16 cannot, with reasonable diligence, be found at the registered office of the captive
17 insurance company or captive manager, the director shall be an agent of the captive
18 insurance company upon whom any process, notice, or demand may be served.

19 ~~— A group captive insurance company shall limit its exposure to loss on any one risk or hazard~~
20 ~~as required by chapter 58-13, unless the risk or hazard is reinsured through an insurance~~
21 ~~company which is licensed or accredited in this state, or unless other safeguards to the group~~
22 ~~captive insurance company's financial solvency and stability are in place and are acceptable to~~
23 ~~the director.~~

24 Section 3. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 A group, sponsored, or special purpose captive insurance company shall limit its exposure
3 to loss on any one risk or hazard to an amount deemed acceptable by the director. The amount
4 shall be determined based on whether the risk or hazard is reinsured through an insurance
5 company that is licensed or accredited in this state, or other safeguards to the group, sponsored,
6 or special purpose captive insurance company's financial solvency and stability are adequate.

7 Section 4. That § 58-46-5 be amended to read as follows:

8 58-46-5. In addition to the information required by § 58-46-4, each applicant captive
9 insurance company shall file with the director evidence of the following:

- 10 (1) The amount and liquidity of its assets relative to the risks to be assumed;
- 11 (2) The adequacy of the expertise, experience, and character of the ~~manager~~
12 management;
- 13 (3) The overall soundness of its plan of operation;
- 14 (4) The adequacy of the loss prevention programs of its parent and affiliated ~~companies~~
15 entities; and
- 16 (5) Such other factors deemed relevant by the director in ascertaining whether the
17 proposed captive insurance company will be able to meet its policy obligations.

18 Section 5. That § 58-46-6 be amended to read as follows:

19 58-46-6. Each captive insurance company shall pay to the director a nonrefundable fee of
20 ~~five hundred~~ two thousand dollars for examining, investigating, and processing its application
21 for certificate of authority. Two or more captive insurance companies under common ownership
22 or control shall pay this fee for each application submitted to the director for a certificate of
23 authority. A sponsored captive insurance company shall pay an additional one thousand dollars
24 for every additional cell. The director may retain legal, financial, and examination services from

1 outside the department. The reasonable cost of the services may be charged against the applicant
2 with notice to the applicant. The provisions of chapter 58-3 apply to examinations,
3 investigations, and processing conducted under the authority of this chapter.

4 Section 6. That § 58-46-7 be amended to read as follows:

5 58-46-7. If the director is satisfied that the documents and statements that the captive
6 insurance company has filed comply with the provisions of this chapter. ~~The,~~ the director shall
7 issue a certificate of authority authorizing it to do insurance business in this state.

8 Section 7. That § 58-46-8 be amended to read as follows:

9 58-46-8. No ~~pure~~ captive insurance company, other than a trust captive insurance company,
10 may be issued a certificate of authority unless it possesses and maintains unimpaired paid-in
11 capital and surplus of ~~one hundred~~ two hundred fifty thousand dollars ~~and surplus of one~~
12 ~~hundred thousand dollars. No group captive insurance company may be issued a certificate of~~
13 ~~authority unless it possesses and maintains unimpaired paid-in capital and surplus of at least two~~
14 ~~hundred fifty thousand dollars but not more than five hundred thousand dollars, the amount of~~
15 ~~which shall be determined at the discretion of the director. A captive insurance company may~~
16 ~~have capital and surplus in excess of five hundred thousand dollars. However, for a group~~
17 ~~captive insurance company, the ratio of premium to surplus may not be more than three to one~~
18 ~~unless the director has provided prior written approval for a different ratio. A sponsored captive~~
19 may include the capital and surplus of its protected cells in calculating its capital and surplus.
20 No trust captive insurance company may be issued a certificate of authority unless it possesses
21 and maintains unimpaired paid-in capital and surplus of one hundred thousand dollars or a
22 greater amount of which shall be determined at the discretion of the director.

23 The initial capital and surplus may be in the form of cash or an irrevocable letter of credit
24 issued by a bank chartered by the State of South Dakota or a member bank of the Federal

1 Reserve System and approved by the director. The director may prescribe additional capital and
2 surplus for ~~either a pure captive insurance company or a group~~ any captive insurance company
3 based upon the type, volume, and nature of insurance business transacted, ~~which capital may~~
4 ~~be in the form of an irrevocable letter of credit issued by a bank chartered by the State of South~~
5 ~~Dakota or a member of the Federal Reserve System and which is approved by the director.~~

6 Section 8. That § 58-46-9 be amended to read as follows:

7 58-46-9. No ~~group~~ captive insurance company may pay a dividend out of, or other
8 distribution with respect to, capital or surplus, in excess of the limitations set forth in § 58-5A-
9 35, without the prior approval of the director. ~~A pure captive insurance company may pay out~~
10 ~~a dividend in excess of the limitations set forth in § 58-5A-35 if notice has been filed with the~~
11 ~~director ten business days prior to the payment of the dividend and the director has not~~
12 ~~disapproved the payment of the dividend during that ten-day time period.~~

13 Section 9. That § 58-46-10 be amended to read as follows:

14 58-46-10. A pure captive insurance company may be incorporated as a stock ~~insurer, as~~
15 corporation, a nonstock corporation, a nonprofit corporation with one or more members, or may
16 be formed as a limited liability company, business trust under chapter 47-14A, or other form of
17 legal entity as approved by the director.

18 A group captive insurance company may be incorporated as a stock ~~insurer or corporation~~
19 or as a nonstock corporation, may be formed as a limited liability company, a business trust, or
20 may be organized as a reciprocal insurer, or other form of legal entity as approved by the
21 director.

22 A special purpose captive insurance company may be incorporated as a stock corporation
23 or as a nonstock corporation, may be formed as a limited liability company, business trust or
24 trust, or may be such other form of legal entity as approved by the director.

1 A trust captive insurance company may be incorporated as a stock corporation or as a
2 nonstock corporation, or may be formed as a limited liability company, or business trust, or
3 other form of legal entity as approved by the director.

4 A sponsored captive insurance company may be incorporated as a stock corporation or as
5 a nonstock corporation, or may be formed as a limited liability company, or business trust, or
6 other form of legal entity as approved by the director.

7 Section 10. That § 58-46-11 be amended to read as follows:

8 58-46-11. A captive insurance company shall have at least three ~~incorporators~~ organizers
9 of whom at least ~~two~~ one shall be ~~residents~~ a resident of this state.

10 Section 11. That § 58-46-12 be amended to read as follows:

11 58-46-12. At least one of the members of the ~~board of directors~~ governing board of a captive
12 insurance company incorporated in this state shall be a resident of this state.

13 Section 12. That § 58-46-13 be amended to read as follows:

14 58-46-13. Any captive insurance company formed under the provisions of §§ ~~58-46-1 to 58-~~
15 ~~46-26, inclusive, this chapter~~ shall have the privileges and be subject to the provisions of the
16 general corporation ~~law~~ or trust law, as other relevant state law proscribes, as well as the
17 applicable provisions contained in this chapter. In the event of conflict between the provisions
18 of this chapter and those of the general corporation law and ~~the provisions of this chapter~~ trust
19 law, the provisions of this chapter shall control.

20 Section 13. That § 58-46-15 be amended to read as follows:

21 58-46-15. ~~On or before March first of each year, each~~ Each group or sponsored captive
22 insurance company shall submit annually to the director a report of its financial condition
23 pursuant to § 58-6-75, no later than six months after the close of its financial year. The report
24 shall be audited by an independent certified public accountant pursuant to chapter 58-43. Each

1 group or sponsored captive insurance company shall file with its annual report of financial
2 condition an actuarial opinion pursuant to § 58-26-13.1. ~~Each group captive insurance company~~
3 ~~shall submit to the director annual reports of its financial condition pursuant to § 58-6-75.~~ If
4 requested by the director, the group or sponsored captive insurance company shall submit
5 quarterly reports of its financial condition pursuant to § 58-6-75.

6 A pure or trust captive insurance company ~~may submit, in lieu of the annual independent~~
7 ~~audit required by this section, a certification of its financial condition using statutory accounting~~
8 ~~principles verified~~ shall submit annually no later than six months after the close of its financial
9 year to the director a report of its financial condition using statutory accounting principles
10 certified under oath by two of its ~~executive~~ officers. ~~However, a~~ A pure or trust captive
11 insurance company shall provide a report of its financial condition audited by an independent
12 certified public accountant ~~at least every five years~~ pursuant to chapter 58-43 if it has annual
13 direct premiums written of less than two million five hundred thousand dollars. If a pure or trust
14 captive insurance company has two million five hundred thousand dollars or more of annual
15 direct premiums written, it shall provide a report of its financial condition audited by an
16 independent certified public accountant every three years pursuant to chapter 58-43. Following
17 its first year of operation, and in connection with its audited statement of financial condition (or
18 more often if requested by the director), each pure or trust captive insurance company shall file
19 an actuarial opinion pursuant to § 58-26-13.1.

20 No later than six months after the close of its financial year, a special purpose captive
21 insurance company shall submit to the director a report of its financial condition pursuant to
22 § 58-6-75. The report shall be audited by an independent certified public accountant pursuant
23 to chapter 58-43. Following its first year of operation, and every three years thereafter, a special
24 purpose captive insurance company shall file with its annual report of financial condition an

1 actuarial opinion pursuant to § 58-26-13.1. If requested by the director, the special purpose
2 captive insurance company shall submit quarterly reports of its financial condition pursuant to
3 § 58-6-75.

4 Upon request to and approval by the director, a ~~pure~~ captive insurance company may use
5 generally accepted accounting principles in lieu of statutory accounting principles in its
6 certification of its financial condition.

7 Section 14. That § 58-46-16 be amended to read as follows:

8 58-46-16. A pure or trust captive insurance company may make written application for filing
9 the report required by § 58-46-15 on a fiscal year-end that is consistent with the parent
10 company's fiscal year. If an alternative reporting date is granted, the annual report is due ~~sixty~~
11 ~~days~~ six months after ~~the its~~ fiscal year-end.

12 Section 15. That § 58-46-18 be amended to read as follows:

13 58-46-18. The certificate of authority of a captive insurance company to do insurance
14 business in this state may be suspended or revoked by the director for any of the following
15 reasons:

- 16 (1) Insolvency or impairment of capital or surplus;
- 17 (2) Failure to meet the requirements of § 58-46-8;
- 18 (3) Refusal or failure to submit an annual report, as required by § 58-46-15, or any other
19 report or statement required by law or by lawful order of the director;
- 20 (4) Failure to comply with the provisions of its own ~~articles of incorporation~~
21 organizational documents or bylaws;
- 22 (5) Failure to submit to examination or any legal obligation relative thereto, as required
23 by § 58-46-17;
- 24 (6) Use of methods that, although not otherwise specifically prohibited by law,

1 nevertheless render its operation detrimental or its condition unsound with respect
2 to the public or to its policyholders;

3 (7) Failure otherwise to comply with the laws of this state.

4 If the director finds, upon examination, hearing, or other evidence, that any captive
5 insurance company has ~~committed~~ violated any of ~~the acts specified in this section~~ these
6 provisions, its certificate of authority may be suspended or revoked if it is deemed to be in the
7 best interest of the public and the policyholders of such captive insurance company,
8 notwithstanding any other provisions of this chapter.

9 Section 16. That § 58-46-19 be amended to read as follows:

10 58-46-19. No pure or trust captive insurance company is subject to any restrictions on
11 allowable investments. However, the director may prohibit or limit any investment that threatens
12 the solvency or liquidity of any such company.

13 Unless the director has provided written approval of a different requirement or limitation,
14 group, sponsored and special purpose captive insurance companies shall comply with the
15 investment requirements and limitations applicable to other insurance companies pursuant to
16 chapter 58-27.

17 Section 17. That § 58-46-20 be amended to read as follows:

18 58-46-20. A pure or trust captive insurance company may make a loan to its parent or
19 affiliated ~~companies~~ entities. No loan to its parent or affiliated ~~companies~~ entities may be made
20 without prior written approval of the director. A group, sponsored, or special purpose captive
21 insurance company may make a loan to its group or members of its group if prior written
22 approval by the director has been provided. The approval shall be evidenced by a note in a form
23 approved by the director.

24 Section 18. That § 58-46-21 be amended to read as follows:

1 58-46-21. Any captive insurance company may take credit for reserves on risks or portions
 2 of risks ceded to reinsurers complying with provisions of chapter 58-14 or 58-46. Prior approval
 3 of the director shall be required for ceding or taking credit for reserves on risks or portions of
 4 risks ceded to reinsurers not complying with chapter 58-14 or 58-46.

5 Section 19. That § 58-46-23 be amended to read as follows:

6 58-46-23. No captive insurance company may join or contribute financially to any plan,
 7 pool, association, or guaranty or insolvency fund in this state. No captive insurance company
 8 or its parent or affiliated ~~companies~~ entities may receive any benefit from any such plan, pool,
 9 association, or guaranty or insolvency fund for claims arising out of the operations of the captive
 10 insurance company.

11 Section 20. That § 58-46-23.1 be amended to read as follows:

12 58-46-23.1. A pure captive insurance company may enter into any arrangement to provide
 13 risk management services to ~~an~~ a controlled unaffiliated ~~controlled~~ business or an unaffiliated
 14 business but may not accept any insurance risk from an unaffiliated business. ~~A pure or group~~
 15 ~~captive insurance company may not insure:~~

- 16 ~~— (1) — Any life or health risk;~~
- 17 ~~— (2) — Any personal lines property casualty risk; or~~
- 18 ~~— (3) — The risk other than that of itself or its affiliates~~ A trust captive insurance company
 19 may enter into any arrangement to provide risk management services to an affiliated
 20 entity and may accept insurance risk from an affiliated entity.

21 Section 21. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
 22 follows:

23 A captive insurance company may not insure:

- 24 (1) Any life or health risk; or

1 (2) Any personal lines property casualty risk.

2 Section 22. That § 58-46-24 be amended to read as follows:

3 58-46-24. Each captive insurance company shall pay to the Division of Insurance ~~a tax of~~
4 ~~one-quarter percent~~ an annual supervision fee of the greater of five thousand dollars or eight
5 one-hundredths of one percent on gross premiums, less return premiums, for insurance written
6 on all risks or property resident, situated, or located within this state, and on risks and property
7 situated elsewhere upon which no premium tax or fee is otherwise paid during the year ending
8 on the preceding December thirty-first. A sponsored captive company shall pay for each
9 protected cell an additional annual supervision fee of the greater of five hundred dollars or eight
10 hundredths of one percent on gross premiums, less return premiums, for insurance written on
11 all risks or property resident, situated, or located within this state, and on risks and property
12 situated elsewhere upon which no premium tax or fee is otherwise paid during the year ending
13 on the preceding December thirty-first. The ~~tax~~ annual supervision fee shall be due and payable
14 on or before March first of each year. If the aggregate ~~taxes~~ annual supervision fees to be paid
15 by a captive insurance company calculated under this section amount to less than five thousand
16 dollars in any year, such captive insurance company shall pay a ~~tax~~ an annual supervision fee
17 of five thousand dollars for the year. The aggregate annual supervision fees calculated under this
18 section may not equal more than fifty thousand dollars.

19 Section 23. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 A sponsored captive insurance company may establish and maintain one or more protected
22 cells to insure risks of one or more participants, subject to the following conditions:

23 (1) The owner of a sponsored captive insurance company is limited to its participants and
24 sponsors;

- 1 (2) The assets of each protected cell shall be held in a separate account or fund and
2 accounted for separately on the books and records of the sponsored captive insurance
3 company to reflect the financial condition and results of operations of such protected
4 cell, net income or loss of such protected cell, dividends or other distributions to
5 participants of such protected cell, and such other factors regarding such protected
6 cell as may be provided in the applicable participant contract or required by the
7 director;
- 8 (3) The assets of a protected cell are not chargeable or accessible for the liabilities of any
9 other protected cell, unless that cell is specifically reinsuring the risk or a portion of
10 the risk in another cell or, unless otherwise agreed in the applicable participant
11 contract, of the sponsored captive insurance company generally;
- 12 (4) No sale, exchange, transfer of assets, dividend or other distribution, may be made
13 with respect to a protected cell by such sponsored captive insurance company without
14 the consent of the participants of each affected protected cell;
- 15 (5) No sale, exchange, or transfer of assets, or other distribution (other than a payment
16 or dividend to a participant or sponsor in accordance with the applicable participant
17 contract, resulting in no less than one hundred five percent of capital to expected
18 losses in any particular plan year), may be made with respect to a protected cell to a
19 sponsor or a participant without the director's approval;
- 20 (6) Each sponsored captive insurance company shall annually file with the director such
21 financial reports as the director may require, which shall include accounting
22 statements detailing the financial experience of each protected cell;
- 23 (7) Each sponsored captive insurance company shall notify the director in writing
24 promptly and in any event within ten business days of any protected cell that is

1 insolvent or otherwise unable to meet its claim or expense obligations. The director
2 may suspend or revoke the certificate of authority of the sponsored captive insurance
3 company for failure to comply with this subdivision, and may suspend or revoke the
4 sponsored captive insurance company's ability to maintain the protected cell if the
5 cell is insolvent or otherwise unable to meet its claim or expense obligations;

6 (8) No participant contract may take effect without the director's prior written approval,
7 and the addition of each new protected cell and withdrawal of any participant or
8 termination of any existing protected cell shall constitute a change in the plan of
9 operation of the sponsored captive insurance company requiring the director's prior
10 written approval; and

11 (9) The business written by a sponsored captive insurance company, with respect to each
12 protected cell, shall be:

13 (a) Fronted by an insurance company licensed under the laws of this state or any
14 other state;

15 (b) Reinsured by a reinsurer authorized or approved by this state or any other
16 state;

17 (c) Secured by a trust fund in this state for the benefit of policyholders and
18 claimants or funded by an irrevocable letter of credit or other arrangement that
19 is acceptable to the director. The amount of security provided may be no less
20 than the reserves associated with those liabilities which are neither fronted nor
21 reinsured, including reserves for losses, allocated loss adjustment expenses,
22 incurred but not reported losses and unearned premiums for business written
23 through such protected cell. The director may require the sponsored captive
24 insurance company to increase the funding of any security arrangement

1 established under this subdivision. If the form of security is a letter of credit,
2 the letter of credit shall be established, issued, or confirmed by a financial
3 institution chartered by or licensed or otherwise authorized to do banking
4 business in this state, or by any other financial institution approved by the
5 director. A trust fund maintained pursuant to this subdivision shall be
6 established in a form and upon such terms approved by the director; or

7 (d) Any combination of these.

8 Section 24. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 A sponsor of a sponsored captive insurance company shall be any entity approved by the
11 director. A risk retention group may not be a sponsor of a sponsored captive insurance company,
12 and a risk retention group may be a participant of a sponsored captive insurance company only
13 to the extent that it is the sole participant of one or more protected cells.

14 Section 25. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Any entity may be a participant in any sponsored captive insurance company. A sponsor may
17 be a participant in a sponsored captive insurance company. A participant need not be an owner
18 of the sponsored captive insurance company or any affiliate thereof.

19 Except as otherwise approved by the director, a participant may insure through a sponsored
20 captive insurance company only its own risks and the risks of its affiliates who are participants.

21 Section 26. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Notwithstanding the provisions of section 23 of this Act, a sponsored captive insurance
24 company may combine the assets of two or more protected cells for purposes of investing those

1 assets. Such a combination of assets may not be construed as defeating the segregation of assets
2 for purposes of section 23 of this Act, or for accounting or other purposes. A sponsored captive
3 insurance company shall comply with investment requirements as may be approved by the
4 director upon application by a sponsored captive insurance company.

5 Section 27. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The director shall prescribe the form for making an application and any application
8 submitted shall contain such information as required. The applicant may, with approval of the
9 director, designate confidential information.

10 All information the director generates in making an investigation or examination of a captive
11 insurance company is confidential. All confidential information is the property of the division
12 but shall be furnished to the captive insurance company for its confidential use. Under no
13 circumstances may a captive insurance company disclose a report or any supporting
14 documentation to anyone, other than directors and officers of the captive insurance company or
15 anyone acting in a fiduciary capacity for the captive insurance company, without written
16 permission from the director.

17 The director shall give ten days' prior written notice of intent to disclose confidential
18 information to the affected captive insurance company. Any captive insurance company which
19 receives a notice may object to the disclosure of the confidential information and shall be
20 afforded the right to a hearing in accordance with the provisions of chapter 1-26. If a captive
21 insurance company requests a hearing, the director may not reveal confidential information prior
22 to the conclusion of the hearing and a ruling. Disclosure of confidential information shall be
23 made only to formal regulatory bodies which clearly have a need for the confidential
24 information. Prior to dissemination of any confidential information, the director shall require

1 a written agreement not to reveal the confidential information by the party receiving the
2 confidential information. In no event may the director disclose confidential information to the
3 general public, any competitor, or any potential competitor of a captive insurance company, or
4 its parents or affiliates.

5 The submission of any information to the division in the course of any application,
6 investigation, or examination shall not be construed as waiving, destroying, or otherwise
7 affecting any privilege any person may claim with respect to the information under South
8 Dakota law or federal law.

9 For the purposes of this chapter, confidential information includes the names of
10 stockholders, membership interest holders, or owners, ownership information, capital
11 contributions, addresses, business affiliations, state and director findings through any
12 examination or inquiry of any kind, and any information required to be reported or filed with
13 the director.

14 The provisions of this section do not apply to the disclosure of information by the director
15 in connection with the institution and prosecution of an action against a captive insurance
16 company under this chapter. Disclosure of confidential information may be made only to formal
17 governmental regulatory bodies which have a need for the confidential information.

18 Section 28. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The director may promulgate rules pursuant to chapter 1-26 to further the provisions of this
21 chapter. The rules may include:

- 22 (1) Definition of terms;
- 23 (2) Requirements for doing business;
- 24 (3) Application requirements and procedures;

- 1 (4) Conditions for receiving a certificate of authority;
- 2 (5) Criteria for suspending or revoking a certificate of authority;
- 3 (6) Organizational structure;
- 4 (7) Financial condition;
- 5 (8) Pooling and sharing risks; and
- 6 (9) Notice requirements.

7 Section 29. That § 58-3-3.4 be amended to read as follows:

8 58-3-3.4. The provisions of §§ 58-3-3.1 to 58-3-3.3, inclusive, 58-3-7.4, and 58-3-11 do not
9 apply to farm mutual insurers subject to chapter 58-35 and captive insurance companies subject
10 to chapter 58-46 unless the farm mutual or captive insurance company wrote premiums in
11 excess of one million dollars in the prior calendar year.