

## CHAPTER 20:06:42

### ASSOCIATIONS ELIGIBLE FOR GROUP HEALTH INSURANCE

#### Section

20:06:42:01 Eligible associations defined.

20:06:42:01.01 Notification to association members.

20:06:42:02 Credit unions.

**20:06:42:01. Eligible associations defined.** ~~An~~ A bona fide association is a group of persons who have joined for some common purpose or goal. ~~An~~ A bona fide association is eligible for the issuance of group health insurance if all of the following factors are met and filed for approval by the director:

(1) There is a shared or common purpose that is not generally applicable to the population at large;

(2) There is a constitution and by-laws which indicate a legitimate purpose other than the purchase of insurance with at least one substantial business purpose unrelated to obtaining insurance; ~~and~~

(3) The primary method of obtaining new members is not through, or in conjunction with, the solicitation of insurance. However, solicitation of insurance may be one of the methods of obtaining new members;

(4) If the association includes employer members, the following additional requirements apply:

(a) The functions and activities of the association are controlled by its employer members. The association's employer members that participate in the group health plan must control the plan in form and in substance;

(b) Employer members must be in the same trade, industry, line of business, or profession; and

(c) Each employer member has a principal place of business in the same geographic region.

When determining eligibility for the issuance of group health insurance, the division may consider whether the association ever existed independently of an insurance product.

**Source:** 26 SDR 44, effective October 6, 1999; 41 SDR 41, effective September 17, 2014.

**General Authority:** SDCL 58-18-62, 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-3, 58-18-6, 58-18-88.

**20:06:42:01.01. Notification to association members.** Each application for insurance and each policy and certificate issued by an insurer through an association plan with employer members shall contain in ten-point type on the front page the following notice prominently displayed:

NOTICE

This policy is issued through an association. By accepting coverage, you must participate in this plan for a minimum of three years to avoid penalties for early departure.

**Source:**

**General Authority:** SDCL 58-18-62, 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-3, 58-18-6, 58-18-88.

## CHAPTER 20:06:57

### SELF-FUNDED MULTIPLE EMPLOYER TRUSTS

#### Section

- 20:06:57:01 Definitions.
- 20:06:57:02 Authorization.
- 20:06:57:03 Application for authorization.
- 20:06:57:03.01 Waiver for out-of-state association plans.
- 20:06:57:03.02 Coverage eligibility.
- 20:06:57:04 Investigation of application.
- 20:06:57:05 Issuance of authorization.
- 20:06:57:06 Report to director of modification.
- 20:06:57:07 Surplus.
- 20:06:57:08 Reserves and stop-loss coverage.
- 20:06:57:08.01 Multiple employer trust minimum loss ratio.
- 20:06:57:08.02 Multiple employer trust dividends.
- 20:06:57:09 Annual report.
- 20:06:57:10 Contracts by multiple employer trusts.
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- 20:06:57:12 Agreements and management contracts.
- 20:06:57:13 Examination.

- 20:06:57:14 Independent audit.
- 20:06:57:15 Trade practices.
- 20:06:57:16 Insolvency.
- 20:06:57:17 Minimum coverage standards for health policies.
- 20:06:57:18 Applicability of chapter.

**20:06:57:03. Application for authorization.** A person applying for authorization pursuant to SDCL 58-18-88 shall submit a plan of operation with the director. The application and plan of operation shall include the following:

- (1) A business plan including a copy of all contracts or other instruments which the multiple employer trust proposes to make with or sell to its members, a copy of the plan description, and the printed materials to be used in the solicitation of members;
- (2) Copies of all articles, bylaws, agreements, trust documents, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries;
- (3) A current list of all members of the employer group or association sponsoring the multiple employer trust and a description of the relationship among the employers which serves as the basis for the formation of the association or employer group;
- (4) A description of the activities of the association or group of employers on behalf of its members other than the sponsorship of the multiple employer trust;
- (5) Current financial statements of the multiple employer trust which shall include, at a minimum, balance sheets, income statement, cash flow statement, and a detailed listing of assets;
- (6) An actuarial opinion prepared, signed, and dated by a member of the American Academy of Actuaries which states that appropriate loss and loss adjustment reserves have been

established, that adequate premiums are being charged, and that the association multiple employer trust is operating in accordance with sound actuarial principles;

(7) A statement from an authorized representative of the applicant which certifies all of the following:

(a) The multiple employer trust is administered by an authorized insurer or an authorized third-party administrator;

(b) The multiple employer trust is eligible for authorization pursuant to SDCL 58-18-88 and ~~58-18B-59~~;

(c) The association or group of employers sponsoring the multiple employer trust is engaged in substantial activity for its members other than sponsorship of an employer benefit plan; and

(d) The association is a nonprofit entity organized and authorized to do business under applicable South Dakota law;

(8) A statement from an authorized representative of the applicant which certifies that the applicable provisions of SDCL ~~58-18-88~~ chapter 58-18, ARSD chapter 20:06:42, and this chapter have been met;

(9) A statement from the applicant that, to the best of its knowledge and belief, the multiple employer trust is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(10) A description of the mechanism approved by the director to ensure that claims will be paid in the event that a member of the multiple employer trust is unable to comply with the multiple employer trust's contribution requirements;

(11) A copy of the most recent Form M-1 filed by the multiple employer trust with the U.S. Department of Labor, Pension and Welfare Benefits Administration, if applicable; and

(12) Any additional information requested by the director.

**Source:** 40 SDR 102, effective December 3, 2013.

**General Authority:** SDCL 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-88, 58-18-89, ~~58-18B-59~~.

**20:06:57:03.01. Waiver for out-of-state association plans.** In addition to the information required by 20:06:57:03, an association not formed in South Dakota which is seeking a waiver must include the following information in its application:

(1) A narrative statement describing the association's activities and the reasons a waiver is in the best interests of the public and should be granted;

(2) A certification attesting that the association is in full compliance with the laws of all the states where the association does business, including, where applicable, copies of all licenses or other approvals to operate in those states;

(3) A certification attesting that the association and all health plans sponsored by the association are in full compliance with the laws of all states where the association does business;

and

(4) Any further information requested by the director.

**Source:**

**General Authority:** SDCL 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-3, 58-18-6, 58-18-88.

**20:06:57:03.02. Coverage eligibility.** Multiple employer trusts must be sponsored by associations meeting the requirements of § 20:06:42:01 to provide coverage to members.

**Source:**

**General Authority:** SDCL 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-3, 58-18-6, 58-18-88.

**20:06:57:08. Reserves and stop-loss coverage.**

(1) A multiple employer trust shall have at all times aggregate excess stop-loss coverage providing the multiple employer trust with coverage for risks in this state with an attachment point which is not greater than:

(a) 120 percent of actuarially projected losses on a calendar-year basis; or

(b) Five percent of annual expected claims for purposes of this section and shall provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this section as determined by sound actuarial principles;

(2) A multiple employer trust shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles;

(3) A multiple employer trust shall set premiums to fund at least 100 percent of the multiple employer trust's actuarially projected losses plus all other costs of the multiple employer trust;

(4) All coverage obtained pursuant to this section shall contain a provision allowing for at least 90 days' notice to the director upon cancellation or nonrenewal of the contract;

(5) No contract or policy of per occurrence or aggregate excess insurance may be recognized in considering the ability of an applicant to fulfill its financial obligations under this section, unless such contract or policy is issued by a company that is:

(a) Licensed to transact business in this state; or

(b) Authorized to do business in this state as ~~an accredited~~ a reinsurer in one of the permitted methods regarding credit for reinsurance as provided in Chapter 58-14.

**Source:** 40 SDR 102, effective December 3, 2013.

**General Authority:** SDCL 58-14-17, 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-88, 58-18-89.

**20:06:57:08.01. Multiple employer trust minimum loss ratio.** A multiple employer trust that does not utilize community rating for its membership must maintain a minimum loss ratio (MLR) of eighty-five percent. MLR shall be calculated as follows:

(Claims + Claims Adjustment Expenses) / (Contributions - Applicable Taxes & Fees)

**Source:**

**General Authority:** SDCL 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-3, 58-18-6, 58-18-88.

**20:06:57:08.02. Multiple employer trust dividends.** A multiple employer trust may provide dividends to employer members in the same manner as domestic insurers.

**Source:**

**General Authority:** SDCL 58-18-79, 58-18-89.

**Law Implemented:** SDCL 58-18-3, 58-18-6, 58-18-88.



**20:06:57:10. Contracts by multiple employer trusts.** All contracts issued by a multiple employer trust shall comply with the following:

(1) Each multiple employer trust application for insurance and each policy and certificate issued by a multiple employer trust shall contain in ten-point type on the front page the following notice prominently displayed:

NOTICE

This policy is issued by a multiple employer trust. Multiple employer trusts are not subject to all of the insurance laws and regulations of South Dakota. This policy is not covered by the South Dakota Life and Health Insurance Guaranty Association in the event of plan failure. Your participation in this plan makes you subject to assessments for health plan costs. By accepting coverage, you must participate in this plan for a minimum of three years to avoid penalties for early departure.

(2) A multiple employer trust must offer on a guarantee-issue basis health benefits to all individuals who qualify as members or enrollees of the association;

(3) A multiple employer trust may offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, or disability benefits;

(4) All contracts or policies issued by a multiple employer trust shall ~~conform~~:

(a) Conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996, including guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage; and

(b) Comply with all coverage mandates that are applicable to group health insurance under this title.

**Source:** 40 SDR 102, effective December 3, 2013.

**General Authority:** SDCL 58-18-89.

**Law Implemented:** SDCL ch 58-15, 58-18-88, 58-18-89.

**20:06:57:16. Insolvency.** The provisions of SDCL chapter 58-29B apply to multiple employer trusts which are considered insurers for purposes of that chapter. ~~Multiple employer trusts are subject to SDCL chapter 58-29C, including the assessment provided therein.~~

**Source:** 40 SDR 102, effective December 3, 2013.

**General Authority:** SDCL 58-18-89.

**Law Implemented:** SDCL 58-18-88, 58-18-89, ch 58-29B, ~~ch 58-29C.~~

## CHAPTER 20:08:07

### NOTICE FILINGS FOR COVERED SECURITIES AND REGISTRATION EXEMPTIONS

#### Section

- 20:08:07:01 Notice filing for open-end investment companies.
- 20:08:07:02 Notice filing for closed-end investment companies.
- 20:08:07:03 Notice filing for unit investment trusts.
- 20:08:07:03.01 Notice filing for face-amount certificate company.
- 20:08:07:03.02 Notice filing for Rule 504, ~~505,~~ and 506 Reg. D offerings.

20:08:07:04	Repealed.
20:08:07:05	Repealed.
20:08:07:06	Repealed.
20:08:07:07	Repealed.
20:08:07:08	Repealed.
20:08:07:09	Repealed.
20:08:07:10	Repealed.
20:08:07:11	Repealed.
20:08:07:12	Repealed.
20:08:07:13	Nonprofit corporations.
20:08:07:14	Repealed.
20:08:07:15	Repealed.
20:08:07:16	Repealed.
20:08:07:17	Foreign cooperatives.
20:08:07:18	Repealed.
20:08:07:19	Repealed.
20:08:07:20	Unsolicited orders.
20:08:07:21	Real estate and mortgage-backed securities.
20:08:07:22	Repealed.
20:08:07:23	Sales to existing security holders/standby commissions.
20:08:07:24	Limited offerings general rules.
20:08:07:25	Intrastate limited offering transactional exemption.
20:08:07:26	Repealed.

20:08:07:27 Testing-the-waters exemption.

20:08:07:28 Repealed.

20:08:07:29 Model accredited investor exemption.

20:08:07:30 Manual exemption.

20:08:07:31 Viatical settlements.

20:08:07:32 Canadian-United States cross-border trading exemption.

20:08:07:33 Church extension fund securities.

20:08:07:34 Solicitation of interest.

20:08:07:35 Merger and consolidation.

20:08:07:36 Designated foreign jurisdiction.

20:08:07:37 Twenty-five purchasers exempt transaction.

20:08:07:38 Entities for economic development.

20:08:07:39 Isolated non-issuer exemption.

20:08:07:40 Request for transactional exemption pursuant to a fairness determination.

20:08:07:41 Notice filing requirement for federal crowdfunding offerings.

20:08:07:42 Notice filing requirement for Regulation A - Tier 2 offering.

Appendix A Statement of Issuer Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix B Report of Sales Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix C Consent to Service of Process Form U-2, repealed, 37 SDR 112, effective December 9, 2010.

Appendix D Form D, repealed, 37 SDR 112, effective December 9, 2010.

Appendix E Solicitation of Interest Form, repealed, 37 SDR 112, effective December 9, 2010.

Appendix F Model Accredited Investor Form, repealed, 37 SDR 112, effective December 9, 2010.

**20:08:07:03.02. Notice filing for Rule 504, ~~505~~, and 506 Reg. D offerings.**

(1) Rule 504 ~~and 505~~.

A. Securities offered and sold pursuant to 17 C.F.R. § 230.504 ~~and 17 C.F.R. § 230.505~~ are exempt from SDCL 47-31B-301. In order to qualify for this exemption, there must be full compliance with 17 C.F.R. § 230.504 ~~or 17 C.F.R. § 230.505~~.

B. Disqualification. The exemption under subsection (1)(A) is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

1. Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the U.S. Securities and Exchange Commission;

2. Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminary, or permanently restraining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

C. Subsection (1)(B) does not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

(2) Filing required for Rule 504 ~~and 505~~. An issuer offering a security pursuant to Rule 504 ~~or 505~~ must file with the division, no later than 15 days after the first sale of such security in this state, the following:

- a. A manually or electronically signed copy of the Form D; and
- b. The filing fee as set forth in SDCL 47-31B-203.

(3) Notice filing Rule 506. An issuer offering a security pursuant to 17 C.F.R. § 230.506 must file with the division, no later than 15 days after the first sale of such security in this state, the following:

- a. A manually or electronically signed copy of the Form D;
- b. The filing fee as set forth in SDCL 47-31B-302(c); and
- c. Payment of the late fee pursuant to SDCL 47-31B-302(c) does not prevent any civil liability or regulatory action from being taken based on a violation of SDCL 47-31B-301.

(4) Amendments. During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate for filings made pursuant to subsections (2) and (3) of this rule.

**Source:** 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010.

**General Authority:** SDCL 47-31B-203, 47-31B-302(c), 47-31B-605(a)(1), 47-31B-605(a)(3), 47-31B-605(b).

**Law Implemented:** SDCL 47-31B-103, 47-31B-203, 47-31B-302(c).

**20:08:07:40. Request for Transactional Exemption Pursuant to a Fairness Determination.**

(1) Any person seeking the director's approval, pursuant to SDCL § 47-31B-202(9), of the fairness of the terms and conditions of the issuance and delivery of securities in exchange for outstanding securities, claims, or property interests, shall make application with the director as described in paragraph (2) below. The director may in his sole discretion reject any application. The director will only consider an application for a proposed exchange transaction where five percent (5%) or more of the persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under SDCL § 47-31B-202(9) are persons who are South Dakota residents, and:

(a) The applicant is a domestic business entity formed, organized, or incorporated under the laws of South Dakota; or

(b) The applicant is a business entity whose headquarters or principal place of business is located in South Dakota;

(2) The application and all accompanying documents shall be type-written and submitted to the director in triplicate. The application shall be signed and dated by the applicant or by a person authorized to act in the applicant's behalf. The application shall request that the director conduct a hearing pursuant to SDCL § 47-31B-202(9) and shall contain the following information:

(a) The full legal name, state of formation, organization or incorporation, and principal office address of any person proposing to issue securities or deliver other consideration in the proposed exchange;



(b) A description of the proposed transaction, including but not limited to all parties to the transaction, all major lines of business engaged in by such parties, expected benefits of the transaction, a chronological description of the transaction to date, a projected timetable and description of all events necessary to consummate the transaction, all legal and financial advisors providing advice to any party to the transaction, all identification of any persons providing any valuation or fairness opinions to any party with respect to the securities or other consideration to be issued or exchanged in the proposed transaction;

(c) A description of the securities or other consideration to be issued or delivered in the proposed exchange;

(d) A description of the bona fide securities, claims or property interests for which the securities or other consideration referred to in paragraph (2)(c) are to be exchanged, including the full legal name, state of formation, organization or incorporation, and principal office address of the issuer of any such bona fide securities;

(e) A brief statement of the terms and conditions under which the securities or other consideration referred to in paragraph (2)(c) will be issued and exchanged or delivered and exchanged for the bona fide securities, claims or property interests;

(f) A list of the full legal names, addresses, and percentage interest owned of all persons to whom the securities will be issued or other consideration delivered in the exchange. If some or all of such persons are to receive the securities or other consideration by virtue of their ownership of shares of stock in a corporation, the applicant may comply with this requirement by submitting a list which shows the shareholders of the corporation and the number of shares and

percentage of total shares held by each shareholder as of a date not more than 30 days prior to the filing of the application;

(g) A statement setting forth the distinct number of and percentage total of all persons named on the list to be provided pursuant to paragraph (2)(f) who are residents of South Dakota;

(h) A statement setting forth proposed findings of fact which the applicant requests that the director find and incorporate in the director's written decision with respect to the application;

(i) A statement as to whether the applicant intends to rely on the exemption from federal securities registration provided for in section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. §77c(a)(10);

(j) Any additional information which the applicant desires the director to consider. The director may require the applicant to submit other information in addition to the information required by this rule. The director may also waive or modify the requirements of this rule by allowing the applicant to submit less information than this rule would otherwise require;

(3) The application shall be accompanied by the following documents:

(a) All written agreements, and accompanying appendices, exhibits and attachments, governing the proposed transaction;

(b) All press releases or other media announcements regarding the proposed transaction disseminated by any party to the proposed transaction;

(c) A draft copy of the notice of the requested hearing to be held by the director in connection with the application that the applicant plans to mail to all persons to whom the applicant proposes to issue securities or to deliver other consideration in the proposed transaction;

(d) An audited balance sheet, prepared in accordance with generally accepted accounting principles applicable in the United States ("US GAAP"), as of the close of the most recent fiscal year, and, in the case of a proposed rollup transaction, a pro forma balance sheet, as of the close of most recent fiscal year, disclosing the effect of the transaction, in each case, of any person whose securities will be issued or exchanged in the proposed transaction;

(e) An audited income statement, prepared in accordance with US GAAP, for the most recent fiscal year, and, in the case of a proposed rollup transaction, a pro forma income statement, as of the close of most recent fiscal year, disclosing the effect of the transaction, in each case, of any person whose securities will be issued or exchanged in the proposed transaction;

(f) All valuation or fairness opinions identified in paragraph (2)(c), including all materials supporting any parties' valuation of the securities or other consideration to be issued or exchanged in the proposed transaction;

(g) Any other documents which the applicant desires the director to consider. The director may require the applicant to submit other documents in addition to the documents required by this rule. The director may also waive or modify the requirements of this rule by

allowing the applicant to submit fewer documents other than those which this rule would otherwise require;

(h) A non-refundable filing fee of five hundred dollars (\$500.00);

(i) A written undertaking to pay, upon receipt of an invoice from the director, the fees and costs required by paragraph (4)(d) of this rule;

(j) A completed and notarized Form U-2, Uniform Consent to Service of Process;

(4) The procedure following application is as follows:

(a) The director may inform the applicant of any deficiencies in the application or of any additional information or documents required and may require the applicant to amend or resubmit the application prior to setting a date for the hearing;

(b) The director, in his sole discretion, may retain an independent valuation consultant to review all of the materials submitted ~~in paragraph (2)(f) of~~ under this rule;

(c) Upon the filing of an application complying with the provisions of this rule, correction of any deficiencies and amendment of the application as necessary, and receipt of all materials requested by the director, the director will, within a reasonable period of time, inform the applicant of the date, hour, and place of the hearing;

(d) Upon the director's issuance of a notice of hearing pursuant to SDCL 1-26-17, the applicant shall remit to the director a non-refundable fairness proceeding fee of seven thousand five hundred dollars (\$7,500.00) and shall reimburse the director for all costs incurred by the

director in connection with the fairness proceeding, including any costs in connection with the retention of any independent valuation consultant;

(e) The applicant shall mail by United States mail, postage prepaid, notice of the hearing to all persons to whom it is proposed to issue securities or to deliver the other consideration in such exchange, not less than ~~14~~ 21 days prior to the hearing. The applicant shall provide to the director, on or before the date of the hearing, a certification that the notice of hearing has been so mailed;

(f) An evidentiary hearing shall be held by the director pursuant to chapter 1-26 and SDCL 47-31B-604;

(g) The applicant has the burden of proving the applicability of its claim for exemption under SDCL 47-31-B-202(9);

(h) Within a reasonable period of time after the hearing, the director shall issue an order either granting or denying approval of the terms of conditions of the proposed transaction.

**Source:** 42 SDR 51, effective October 13, 2015; 44 SDR 99, effective December 11, 2017.

**General Authority:** SDCL 47-31B-605(a).

**Law Implemented:** SDCL 47-31B-103, 47-31B-202(9).