

FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding certification of financial good standing of utilities.

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

Section 1. That § 62-5-11 be amended as follows:

62-5-11. Irrevocable letter of credit defined. As used in § § 62-5-10 to ~~62-5-17~~, 62-5-16, inclusive, an irrevocable letter of credit shall be accepted only if it is clean, irrevocable, and contains an evergreen clause.

(1) "Clean" means a letter of credit that is not conditioned on the delivery of any other documents or materials.

(2) "Irrevocable" means a letter of credit that cannot be modified or revoked without the consent of the beneficiary, once the beneficiary is established.

(3) "Evergreen clause" means one which specifically states that expiration of a letter of credit will not take place without a sixty-day notice by the issuer. If prior notice of expiration is not given by the issuer, the letter of credit is automatically extended for one year.

A clean irrevocable letter of credit shall be accepted only if it is in the form prescribed by § § 62-5-10 to ~~62-5-17~~, 62-5-16, inclusive, and is issued by a financial institution that is authorized to engage in banking in any of the fifty states or under the laws of the United States and whose business is substantially confined to banking, and which has a long-term debt rating by a recognized national rating agency of investment grade or better. If no long-term debt rating is available, the financial institution shall have the equivalent investment grade financial characteristics.

Section 2. That § 62-5-15 be amended as follows:

62-5-15. Perfected security interest in deposit--Release of security interest. Upon the secretary sending a request to renew, request to post, or request to increase a security deposit to the maximum amount permitted by §§ 62-5-10 to ~~62-5-17~~, 62-5-16, inclusive, a perfected security interest is created in the private self-insured's assets in favor of the secretary to the extent of any then unsecured portion of the self-insured's incurred liabilities for workers' compensation claims. That perfected security interest is transferred to any cash or securities thereafter posted by the private self-insured with the state treasurer or other financial institution and is released only upon either of the following:

(1) The acceptance by the secretary of a surety bond, certificate of deposit, or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation; or

(2) The return of cash or securities by the secretary.

The private self-insured employer loses all right and title in and any right to control all assets or obligations posted or placed on deposit as security. In the event of a declaration of bankruptcy or insolvency by a court of competent jurisdiction the secretary may liquidate the deposit for application to the self-insured employer's incurred liability.

Section 3. That § 62-5-17 be repealed:

~~62-5-17. — Public utilities—Certificate of financial good standing. That any employer seeking permission to be a self insurer, or seeking renewal of its permission to be a self insurer who is a public utility as defined in chapter 49-34A or as a telecommunications company as defined in § 49-31-1, who is subject to rate base or price regulation by the South Dakota Public Utilities Commission may furnish to the department, on a form required by the department, a certificate of financial good standing issued by the South Dakota Public Utilities Commission. The certificate when approved by the secretary shall be deemed to constitute compliance by the employer with the requirements of the department relating to self insurers.~~