

**CHAPTER 20:06:09**  
**INSURANCE HOLDING COMPANIES**

**Section**

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20:06:09:03	Repealed.
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20:06:09:07	Repealed.
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**20:06:09:11. Definitions.** Terms used in this chapter mean:

(1) "Executive officer," chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title;

(2) ~~"Foreign insurer," an alien insurer except where noted otherwise;~~

(3) "Statement," Forms A, B, C, D, ~~and E,~~ and F; and

(4)(3) "Ultimate controlling person," a person which is not controlled by any other person.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:12. Form filings.** All insurers or persons subject to SDCL chapter 58-5A, except as provided in SDCL 58-5A-20, shall file the following forms with the director:

(1) Form A, statement regarding the acquisition of control of or merger with a domestic insurer, pursuant to SDCL 58-5A-4;

(2) Form B, insurance holding company system annual registration statement, pursuant to SDCL 58-5A-21;

(3) Form C, summary of changes to the previous year's registration statement, pursuant to SDCL 58-5A-21 or ~~Form E~~, changes to the current year's registration statement, pursuant to SDCL 58-5A-24; ~~and~~

(4) Form D, prior notice of a transaction, pursuant to SDCL 58-5A-56;

(5) Form E, pre-acquisition notification, pursuant to SDCL 58-5A-45; and

(6) Form F, enterprise risk report, pursuant to SDCL 58-5A-29.1.

The information required for those statements is set forth in §§ ~~20:06:09:29 to 20:06:09:41~~ 20:06:09:45, inclusive.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-4, 58-5A-21, 58-5A-45, 58-5A-56, 58-5A-29.1, 58-5A-70.

**20:06:09:13. General requirements for Forms A, B, C, D, ~~and E~~, and F.** Forms A, B, C, D, ~~and E~~, and F are intended to be guides in the preparation of the statements filed pursuant to SDCL chapter 58-5A and are not intended to be blank forms which are to be filled in. The filed statements shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers to them are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions are to be omitted. If any item is inapplicable or the answer is in the negative, a statement to that effect must be made unless expressly provided otherwise.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:14. Filing forms with director.** One complete copy of each statement in § 20:06:09:13, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the director electronically, by personal delivery, or mail. The statement must be signed ~~by hand~~. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority must also be filed with the statement.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:16. ~~Size and legibility~~ Preparation of statements and supporting documents.** Statements must be prepared ~~on paper 8 1/2 by 11 inches or 8 1/2 by 14 inches in size and bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits must be clear,~~ electronically. Statements must be easily readable and suitable for ~~photocopying~~ review and reproduction. Debits in credit categories and credits in debit categories must be designated so as to be clearly distinguishable on photocopies. Statements must be in English and monetary values must be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it must be accompanied by a translation into English and any monetary value normally shown in a foreign currency must be converted into United States currency.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:16.01 Filing with the National Association of Insurance Commissioners.** If an applicant requests a hearing on a consolidated basis pursuant to SDCL 58-5A-10.1, in addition to filing the Form A with the director, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners in electronic form.

**Source:**

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:17. Incorporation by reference to Forms A, B, ~~or~~ D, E, or F.** Information required by any item of Forms A, B, ~~or~~ D, E, or F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, ~~or~~ Form D, Form E, or Form F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the director which were filed within the previous three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file must clearly identify the material and must specifically indicate that the material is to be incorporated by reference in answer to the item. Information may not be incorporated by reference in any instance in which incorporation would render the statement incomplete, unclear, or misleading.

If an item requires a summary or outline of the provisions of any document, a brief statement must be made as to the pertinent provisions of the document. In addition to the

statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the director which was filed within the previous three years and may be qualified in its entirety by the reference. If two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one of the documents may be filed with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the filed documents.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:18. Information unknown or unavailable.** ~~The person filing Form A, B, C, D, or E shall file information that is known or reasonably available. Any required information which is unknown and not reasonably available, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of another person not affiliated with the person filing the information, may be omitted subject to the following conditions:~~

~~(1) The person filing shall give the information it possesses or can acquire without unreasonable effort or expense, together with the sources; and~~

~~(2) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.~~ Repealed.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:19. Impracticality of furnishing information.** If the person making the filing finds it impractical to furnish the required information, document, or report at the time it is to be filed, the person ~~may~~ shall file a separate document with the director:

- (1) Identifying the information, document, or report in question;
- (2) Stating why the filing is impractical; and
- (3) Requesting an extension of time for filing the information, document, or report at a specified date.

The request for extension may be considered granted unless the director denies the request in writing within 60 days after its receipt.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:20. Additional information and exhibits.** In addition to the information expressly required to be included in Forms, A, B, C, D, ~~and~~ E, and F, the person filing the form shall add any information that is necessary to make the required information not misleading. The person filing may also file exhibits in addition to those expressly required by the statement. ~~The additional~~ Any exhibits must be marked to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, ~~or~~ E, or F shall include on the top of the cover page of the form the phrase: "Change No. (insert number) to \_\_\_\_\_ (identify the item changed)" and a date which is the date of the change and not the date of the original filing.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-4, 58-5A-20, 58-5A-21, 58-5A-24, 58-5A-56, 58-5A-29.1, 58-5A-70.

**20:06:09:22. Amendments to Form B.** Amendments to Form B must be filed in the Form B format, reporting only those items which are being amended ~~and which are described in Form E, pursuant to SDCL 58-5A-24.~~ Each amendment must include at the top of the cover page, "Amendment No. (insert number) to Form B for (insert year)" and a date which is the date of the amendment and not the date of the original filing.

An amendment to Form B shall be filed within fifteen days after the end of any month in which there is a material change to the information provided in the annual registration statement.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-20, 58-5A-21, 58-5A-24, 58-5A-70.

**20:06:09:24. Consolidated registrations -- Unauthorized insurers.** With the prior approval of the director, an unauthorized insurer may follow the procedures which could be done by an authorized insurer under § ~~20:06:09:12~~ 20:06:09:23.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:27. Information required of extraordinary dividends or other distributions.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders must include the following:

- (1) The amount of the proposed dividend;

(2) The information required by SDCL 58-5A-35 and 58-5A-36;

(3) A copy of the calculations determining that the proposed dividend is extraordinary which must include the following information:

(a) The amounts, dates, and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and starting on the day after the same day of the same month in the preceding year;

(b) Surplus as regards policyholders, including total capital and surplus as of the last December 31;

(c) Earned surplus, excluding surplus arising from unrealized capital gains or revaluation of assets as of the last December 31;

(d) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the last December 31<sup>st</sup>, including net realized capital gains in an amount not to exceed 20 percent of net unrealized capital gains;

(e) If the insurer is not a life insurer, the net income, ~~including net~~ less realized capital gains in an amount not to exceed 20 percent of net unrealized capital gains for the 12 month period ending the last December 31 and the two preceding calendar years; and

(f) Evidence that the dividends paid to stockholders do not include pro rata distributions of any class of the insurer's own securities;

(4) A balance sheet and statement of income for the period intervening from the last annual statement filed with the director and the end of the month preceding the month in which the request for the dividend approval is submitted; and

(5) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

Each registered insurer must file the information in this section pursuant to SDCL 58-5A-35 and 58-5A-36 with the director within 15 business days following the declaration of a dividend.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-35, 58-5A-36, 58-5A-54, 58-5A-70.

**20:06:09:29. Form A filing.** A Form A must be certified. The information required for a Form A filing includes the following:

- (1) That set forth in SDCL 58-5A-4, 58-5A-5, and 58-5A-6;
- (2) A brief description of how control is to be acquired;
- (3) A chart indicating the interrelationships between the applicant and affiliates of the applicant; the percentage of voting securities of each person owned or controlled by the applicant or by any other person; the legal entity of the applicant or affiliate; the state of domicile of the applicant and each affiliate; and whether the applicant or affiliate is subject to delinquency or reorganization proceedings, what the proceedings are, the court of jurisdiction, and the date begun. If the control of an affiliate is maintained by other than voting securities, the applicant must indicate the basis of the control. No affiliate need be identified if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person affiliated with the applicant;

(4) If the consideration used for acquisition is borrowed, a description of the relationship between the borrower and the lender; the amounts to be borrowed; copies of all agreements, promissory notes, and security arrangements; and an explanation of the criteria used in determining the nature and amount of the consideration;

(5) A list of the financial statements and exhibits that are attached in an appendix;

(6) Any proposed employment, consultation, advisory, lease, or management contracts concerning the insurer and annual reports to the stockholders of the insurer and the applicant for the last two years; and

(7) A description of any plans for declaring any extraordinary dividends, to liquidate the insurer, to sell its assets to or merge it with any person to make any material change in its business operations or corporate structure or management.

**Source:** 20 SDR 36, effective September 19, 1993; 25 SDR 13, effective August 9, 1998.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-4, 58-5A-5, 58-5A-6, 58-5A-70.

**Note:** A copy of Form A may be obtained from the Division of Insurance, ~~118 West Capitol Avenue~~ 124 South Euclid Avenue, 2<sup>nd</sup> Floor, Pierre, South Dakota 57501-2000, (605) 773-3563, free of charge.

**20:06:09:29.01. Amendments to Form A.** The applicant must promptly advise the director of any changes in the information furnished on the Form A arising subsequent to the date upon which the information was furnished but prior to the director's disposition of the application.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-70.

**20:06:09:30. Disclosure of background of applicant or persons associated with applicant.** The Form A filing must disclose background information on the applicant or persons associated with the applicant through a biographical affidavit that includes a third party background check by a vendor approved by the director. The information must include the following for individual applicants or persons who are directors, executive officers, or owners of ten percent or more of the voting securities of the applicant if the applicant is not an individual:

- (1) Name and business address;
- (2) Present principal business activity, occupation, or employment, including position and office held, and the name, principal business, and address of any corporation or other organization in which the employment is carried on;
- (3) Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each occupation, position, office, or employment was carried on. If any occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency, indicate that fact, the current status of the license or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection with the license or registration; and
- (4) Excluding minor traffic violations, whether or not the person has been convicted of a crime during the ten years preceding the date of filing and the date, nature of conviction, name and location of court, and the penalty imposed or other disposition of the case.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:31. Filing of financial statements with Form A.** The financial statement when filed with Form A must include, if available, information similar to ~~that in SDCL 58-5A-4(1)(b) covering the period from the end of the person's last fiscal year~~ SDCL 58-5A-4. Financial statements, exhibits, and three-year financial projections of each insurer must be attached to the Form A as an appendix, and list the items attached under the financial statements and exhibits section of Form A.

The financial statements shall include the annual statements of the person identified in § 20:06:09:29(3) for the preceding five fiscal years, or if the applicant and its affiliates and any predecessors thereof have been in existence for less than five years, for such lesser period, and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared individually or may be consolidated if consolidated statements are prepared in the usual course of business, unless the director requires otherwise.

The annual financial statements of the applicant must be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified if they are based on the annual statement of the person filed with the insurance department of the

person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-4, 58-5A-70.

**Cross-References:** Valuation of assets, liabilities, and reserves, SDCL chapter 58-26; Annual statement of financial conditions of insurer, filing with director, form and contents, timeliness of filing, SDCL 58-6-75; Accounting principles, ~~§ 20:37:11:08~~ ARSD article 20:75.

**20:06:09:32. Form B filing.** A Form B must be certified. Information which is not material for purposes of SDCL 58-5A-21 need not be disclosed. The information required for a Form B filing includes the following:

- (1) That set forth in SDCL 58-5A-21;
- (2) That set forth in § 20:06:09:29(3);
- (3) That set forth in § 20:06:09:29(4);
- (4) The name of each insurer registering or being registered and the home office address and principal executive offices of each, the date on which each insurer became part of the holding company system, and the method by which control of each insurer was acquired and is maintained;
- (5) Description of reinsurance agreements;
- (6) A brief description of the following types of proceedings to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any of those persons is or was the subject:
  - (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party to the prosecutions or proceedings; and
  - (b) Proceedings which may have a material effect on the solvency or capital structure of the ultimate holding company, including bankruptcy, receivership, or other corporate reorganizations.

The insurer shall report those actions pending or concluded within the preceding fiscal year. For each action the names of the parties and the name of the court or agency must be given; and

(7) A statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur; and

(8) A Form C filing when summarizing changes to a previous year's registration statement or a ~~Form E filing when~~ statement setting forth changes to a current year's registration statement.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-20, 58-5A-21, 58-5A-23, 58-5A-24, 58-5A-70.

**Note:** A copy of Form B, ~~C, or E~~ may be obtained from the Division of Insurance, 418 ~~West Capitol Avenue~~ 124 South Euclid Avenue, 2<sup>nd</sup> Floor, Pierre, South Dakota 57501-2000. (605) 773-3563, free of charge.

**20:06:09:34. Information on ultimate controlling person.** The following information on the ultimate controlling person in the insurance holding company system must be filed with Form B:

(1) ~~For the directors and executive officers of the ultimate controlling person, the individual's name and address, principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.~~ If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the person's name and address, the person's principal occupation and all offices and positions held during the past five years, and any conviction of a crime other than a minor traffic violation. If the ultimate controlling person is an individual, furnish the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of a crime other than a minor traffic violation;

(2) For the ultimate controlling person in the holding company system, the following information must be furnished:

(a) The name, home office address, and principal executive office address;

(b) The organizational structure of the person, such as corporation, partnership, individual, trust, or other legal entity;

(c) The principal business of the person;

(d) The name and address of any person who holds or owns 10 percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of the class so held or owned; and

(e) If court proceedings involving a reorganization or liquidation are pending, the title and location of the court, the nature of the proceedings, and the date the proceeding began.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-21, 58-5A-70.

**20:06:09:35. Financial statements and exhibits for Form B filing.** Financial statements and exhibits must be attached to a Form B filing as an appendix. The financial statements and exhibits so attached must be listed on Form B.

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, The the financial statements must include the annual financial statement of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year as well as the holding company's most recent financial statement.

If at the time of the initial registration the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed. Similar financial information must be filed for the subsequent period to the extent that such information is available. The financial statements may be prepared individually or may be consolidated if the consolidated statements are prepared in the usual course of business, unless the director requires otherwise.

Financial statements shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the director. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements are an appropriate form and format.

Unless the director permits otherwise, the annual financial statements must be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended and are in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, if they are based on the annual statement of the ~~insurer filed with the insurance department of the insurer's domiciliary state~~ and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with the standards set by the American Institute of Certified Public Accountants for the review of personal financial statements. Personal financial statements must be accompanied by the independent public accountant's standard review report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

Exhibits must include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person and any additional documentation or papers required by Form B or §§ 20:06:09:13 to 20:06:09:16, inclusive, and §§ 20:06:09:18 and 20:06:09:19.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-21, 58-5A-70.

**Cross-References:** Valuation of assets, liabilities, and reserves, SDCL chapter 58-26; Annual statement of financial conditions of insurer, filing with director, form and contents, timeliness of filing, SDCL 58-6-75; Accounting principles, § ~~20:37:11:08~~ ARSD article 20:75.

**20:06:09:36. Form C ~~or Form E~~ filing.** A Form C filing, summary of changes to registration statement, ~~or Form E filing~~ must be certified and must accompany the annual registration statement. The Form C must include the following information:

(1) ~~For Form C, a~~ A brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement; ~~for Form E, a brief description of all material changes or additions to the current year's annual registration statement. The description must provide information needed for evaluation by the director and must include specific references to item numbers and terms in the annual registration statement;~~

(2) ~~For Form C or E, changes~~ Changes to subdivision 20:06:09:29(3). Changes in the percentage of each class of voting securities held by each affiliate need only be included if the changes result in ownership or holdings of 10 percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest;

(3) ~~For Form C or E, changes~~ Changes to SDCL 58-5A-4(2) and 58-5A-22(3) if an individual is made a director, executive officer, or president of the ultimate controlling person or a director or executive officer terminates responsibilities with the ultimate controlling person;

(4) ~~For Form C, the~~ The nature of any changes to a transaction disclosed on the prior year's annual registration statement. If a transaction disclosed on the prior year's annual registration statement has been effectuated, the mode of completion and any flow of funds between affiliates resulting from the transaction must be furnished; and

~~(5) For Form E, the nature of any changes to a transaction disclosed on the current annual registration statement. If a transaction disclosed on the current annual registration statement has been effectuated the mode of completion and any flow of funds between affiliates resulting from the transaction must be furnished;~~

(6) ~~(5) For Form C, the~~ The insurer must furnish a statement that transactions entered into since the filing of the prior year's registration statement, ~~or for Form E, the current registration statement,~~ are not designed to and will not avoid statutory ~~investment~~ threshold amounts and the review of those transactions and amounts.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-20, 58-5A-21, 58-5A-24, 58-5A-70.

**Note:** A copy of Form C may be obtained from the Division of Insurance, 124 South Euclid Avenue, 2<sup>nd</sup> Floor, Pierre, South Dakota 57501. (605) 773-3563, free of charge.

**20:06:09:37. Form D filing.** An insurer required to give notice of a proposed transaction pursuant to SDCL 58-5A-56 shall furnish the required information on Form D. A Form D filing must be certified and must include the following information:

- (1) That set forth in SDCL 58-5A-56; and
- (2) For each party to the transaction:
  - (a) The name, home office address, and principal executive office address;
  - (b) The organizational structure, such as corporation, partnership, individual, trust, or other legal entity;
  - (c) A description of the nature of the parties' business operations;
  - (d) The relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval or by the insurer filing the notice in the affiliated parties;
  - (e) If the transaction is with a nonaffiliate, the name of the affiliate which will receive, in whole or in substantial part, the proceeds of the transaction.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-56, 58-5A-70.

**Note:** A copy of Form D may be obtained from the Division of Insurance, ~~418 West Capitol Avenue~~ 124 South Euclid Avenue, 2<sup>nd</sup> Floor, Pierre, South Dakota 57501-2000, (605) 773-3563, free of charge.

**20:06:09:37.01. Cost sharing services and management services reported on Form D.**  
Agreements for cost sharing services and management services shall at a minimum and as applicable:

- (1) Identify the person providing services and the nature of the services;
- (2) Set forth the methods to allocate costs;

(3) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;

(4) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(5) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(6) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(7) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(8) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(9) Include standards for termination of the agreement with and without cause;

(10) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(11) Specify that, if the insurer is placed in receivership or seized by the director under SDCL chapter 58-29B:

(a) All of the rights of the insurer under the agreement extend to the receiver or director; and,

(b) All books and records will immediately be made available to the receiver or the director, and shall be turned over to the receiver or director immediately upon the receiver or the director's request;

(12) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to SDCL chapter 58-29B; and

(13) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the director under SDCL chapter 58-29B, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-56, 58-5A-70.

**20:06:09:38. Description of transactions for Form D filing.** The person filing the Form D must furnish the following information for each transaction for which notice is being given:

- (1) A statement as to whether notice is being given under SDCL 58-5A-56;
- (2) A statement of the nature of the transaction;
- (3) The proposed effective date of the transaction;
- (4) A statement of how the transaction meets the standards of SDCL 58-5A-32(1);

(5) A brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment and whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice;

~~(5)~~(6) A description of the terms of any securities being received and a description of any other agreements relating to the transaction, such as contracts or agreements for services, consulting agreements, and the like;

~~(6)~~(7) If the transaction involves other than cash, a description of the consideration, its costs, and its fair market value, together with an explanation of the basis for evaluation;

~~(7)~~(8) If the transaction involves a loan, extension of credit, or a guarantee, a description of the maximum amount which the insurer will be obligated to make available under the loan, extension of credit, or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest;

~~(8)~~(9) If the transaction involves an investment, guarantee, or other arrangement, the time period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees, or arrangements and a brief statement of the effect of the transaction on the insurer's surplus; and

~~(9)~~(10) The information required by SDCL 58-5A-56.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than, in the case of non-life insurers, the lesser of three percent of the insurer's admitted assets or 25% of the surplus as regards policyholders, or in the case of life insurers, three percent of the insurer's admitted assets, each as of December 31<sup>st</sup> of the previous year.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-56, 58-5A-70.

**20:06:09:40. Form D -- Reinsurance transactions.** If the transaction is a reinsurance agreement or a modification to a reinsurance agreement as described by SDCL 58-5A-56(3)(b) or a reinsurance pooling agreement or modification as described by SDCL 58-5A-56(3)(a), the person making a Form D filing must furnish a description of the known or estimated amount of

liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. The person must also furnish a brief description of the consideration involved in the transaction and a brief statement of the effect of the transaction on the insurer's surplus.

No notice need be given for reinsurance agreements or modifications to them if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification is less than five percent of the insurer's surplus as regards policyholders as of the last December 31. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-70.

**20:06:09:41. Form D -- Management agreements, ~~and~~ service agreements, and cost-sharing agreements.** The person making the Form D filing must provide the following information for management and service agreements and for cost-sharing arrangements:

(1) For management and service agreements:

(a) A brief description of the managerial responsibilities or the services to be performed;

(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made;

(2) For cost-sharing arrangements:

(a) A brief description of the purpose of the agreement;

(b) A description of the period of time during which the agreement is to be in effect;

(c) A brief description of each party's expenses or costs covered by the agreement; ~~and~~

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;

(e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

(f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on cost or market. If market based, rationale for using market instead of cost, including justification for the company's determination that amounts to fair and reasonable; and

(g) A statement regarding compliance with the National Association of Insurance Commissioner Accounting Practices and Procedure Manual regarding expense allocation as adopted by § 20:06:25:01.

**Source:** 20 SDR 36, effective September 19, 1993.

**General Authority:** SDCL 58-5A-70.

**Law Implemented:** SDCL 58-5A-56, 58-5A-70.

**20:06:09:42. Pre-acquisition notification.** If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to SDCL 58-5A-3, that person shall file a pre-acquisition notification form, Form E. Additionally, if a non-

domiciliary insurer licensed to do business in this state is proposing a merger or acquisition, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of SDCL 58-5A-47. In addition to the information required by Form E, the director may hire a consultant for expert opinion as to the competitive impact of the proposed acquisition.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-45, 58-5A-48, 58-5A-70.

**20:06:09:43. Form E filing.** The pre-acquisition notification form, Form E, shall state the names and addresses of the persons who are providing notice of their involvement in a pending acquisition or change in corporate control. The Form E shall state the names and addresses of affiliated persons, and describe their affiliations. The Form E shall state the nature and purpose of the proposed merger or acquisition, and state the nature of the business performed by each persons identified.

A Form E filing must state specifically what market and market share in each relevant insurance market each person identified in Form E currently enjoy in this state. Provide historical market and market share data for each person identified in Form E for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in SDCL chapter 58-5A. If the proposed acquisition or merger violates competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in this state. For purposes of this section, market means direct written

insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-45, 58-5A-48, 58-5A-70.

Note: A copy of Form E may be obtained from the Division of Insurance, 124 South Euclid Avenue, 2<sup>nd</sup> Floor, Pierre, South Dakota 57501. (605) 773-3563, free of charge.

**20:06:09:44. Enterprise risk report.** The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to SDCL 58-5A-29.1 shall furnish the required information on Form F by July 1<sup>st</sup> of each year.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-29.1, 58-5A-70.

Note: A copy of Form F may be obtained from the Division of Insurance, 124 South Euclid Avenue, 2<sup>nd</sup> Floor, Pierre, South Dakota 57501. (605) 773-3563, free of charge.

**20:06:09:45. Form F filing.** The registrant, to the best of the registrant's knowledge and belief, must provide information regarding the following areas that could produce enterprise risk as defined in SDCL 58-5A-1(2A), unless the information is disclosed in the insurance holding company system annual registration statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

(1) Any material developments regarding strategy, internal audit findings, compliance, or risk management affecting the insurance holding company system;

(2) Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;

(3) Any changes of shareholders of the insurance holding company system exceeding ten percent or more of voting securities;

(4) Developments in various investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system;

(5) Business plan of the insurance holding company system and summarized strategies for next twelve months;

(6) Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

(7) Identification of insurance holding company system capital resources and material distribution patterns;

(8) Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system, including both the rating score and outlook;

(9) Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

(10) Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The registrant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the registrant includes specific references to

those areas listed above for which the form provides responsive information. If the registrant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the registrant or applicant includes specific references to those areas listed above for which the financial statement provides responsive information.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-29.1, 58-5A-70.

**20:06:09:46. Obligation to report.** If the registrant has not disclosed any information pursuant to § 20:06:09:45, a statement shall be included affirming that, to the best of the registrant's knowledge and belief, the registrant has not identified enterprise risk subject to disclosure pursuant to § 20:06:09:45.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-29.1, 58-5A-70.

**20:06:09:47. Confidentiality.** All materials submitted pursuant to this chapter are subject to the confidentiality provisions of SDCL chapter 58-5A.

Source:

General Authority: SDCL 58-5A-70.

Law Implemented: SDCL 58-5A-70.

## CHAPTER 20:06:39

### INDIVIDUAL PLANS

#### Section

- 20:06:39:01 Dual eligibility.
- 20:06:39:02 Creditable coverage and preexisting waiting periods for newborn and adopted children.
- 20:06:39:03 Permissible rating factors.
- 20:06:39:04 Repealed.
- 20:06:39:04.01 Certificates required upon loss of coverage.
- 20:06:39:05 Standards for determinations on length of preexisting waiting periods.
- 20:06:39:06 Repealed.
- 20:06:39:06.01 Student health plans -- Bona fide association plans.
- 20:06:39:07 Requirements for breaks in coverage when applying for a new policy.
- 20:06:39:08 Repealed.
- 20:06:39:08.01 Active marketing required.
- 20:06:39:09 Prohibited practices.
- 20:06:39:10 Prohibited compensation arrangements.
- 20:06:39:11 Repealed.
- 20:06:39:12 Repealed.
- 20:06:39:13 Repealed.
- 20:06:39:14 Repealed.
- 20:06:39:15 Repealed.
- 20:06:39:16 Repealed.
- 20:06:39:17 Repealed.

20:06:39:18 Repealed.

20:06:39:19 Guaranteed issue -- Effective date of coverage.

20:06:39:20 Guaranteed issue -- Tolling of 63-day time frame.

20:06:39:20.01 Repealed.

20:06:39:20.02 Repealed.

20:06:39:20.03 Repealed.

20:06:39:20.04 Repealed.

20:06:39:20.05 Effective date of guaranteed issue plan.

20:06:39:20.06 Repealed.

20:06:39:21 Definition of ordinarily prudent person in preexisting condition clauses.

20:06:39:22 Fair market standards for carriers.

20:06:39:23 Group applicability to individual market.

20:06:39:24 Repealed.

20:06:39:25 Repealed.

20:06:39:26 Repealed.

20:06:39:27 Repealed.

20:06:39:28 Repealed.

20:06:39:29 Repealed.

20:06:39:30 Usual, customary, and reasonable charges for standard and basic plans.

20:06:39:31 Repealed.

20:06:39:32 Contract of more than six months -- Defined.

20:06:39:33 Repealed.

20:06:39:34 Repealed.

20:06:39:34.01 Disclosure requirements.

20:06:39:35 Policy not subject to group requirements.

20:06:39:36 Medically necessary leave of absence defined.

20:06:39:37 Dependent coverage.

20:06:39:38 Notification.

20:06:39:39 Continued application in case of changed coverage.

20:06:39:40 Effective date.

20:06:39:41 Creditable coverage -- Children's Health Insurance Program.

20:06:39:42 Association health insurance plans subject to individual market rating requirements.

20:06:39:43 Definitions.

20:06:39:44 Prohibition on genetic information in setting premium rates.

20:06:39:45 Limitation on requesting or requiring genetic testing.

20:06:39:46 Exceptions to requiring genetic testing.

20:06:39:47 Research exception.

20:06:39:48 Prohibitions on collection of genetic information for underwriting purposes.

20:06:39:49 Medical appropriateness.

20:06:39:50 Collection of genetic information prior to or in connection with enrollment.

20:06:39:51 Incidental collection exception.

20:06:39:52 Prohibition on genetic information as a condition of eligibility.

20:06:39:53 Prohibition on genetic information as preexisting condition.

20:06:39:54 Medicare supplemental health insurance.

20:06:39:55 Applicability to excepted benefits.

20:06:39:56 Effective date.

20:06:39:57	Guaranteed availability of coverage in the individual market.
20:06:39:58	Denial of coverage.
20:06:39:59	Open enrollment.
20:06:39:60	Initial open enrollment period.
20:06:39:61	Annual open enrollment period.
20:06:39:62	Special enrollment period effective dates.
20:06:39:63	Coverage issued outside open enrollment.
20:06:39:64	Enrollment in catastrophic plans.
20:06:39:65	Student health insurance coverage.
20:06:39:66	Clinical trial.
20:06:39:67	Nonrenewal of coverage.
20:06:39:68	Discontinuing a particular product.
20:06:39:69	Discontinuing all coverage.
20:06:39:70	Special enrollment periods for marriage, birth, and adoption.
20:06:39:71	Special enrollment triggers.
20:06:39:72	Preexisting condition exclusion and waiting period prohibited.
20:06:39:73	Health insurance issuer defined.
20:06:39:74	Applicability.
Appendix A	<del>Example of Certificate of Individual Health Insurance Coverage Repealed.</del>
Appendix B	Notice of Research Exception.

**20:06:39:04.01. Certificates required upon loss of coverage (effective January 1, 2014).** A health insurance issuer must ~~automatically~~ provide a certificate of creditable coverage or simply certify that the individual has creditable coverage to any individual losing coverage upon requests by or on behalf of an individual. At any time within 24 months after coverage ceases, a health insurance issuer must also provide additional certificates ~~pursuant to~~ or certifications upon requests by or on behalf of an individual. Each certificate or certification must be provided in a reasonable and prompt fashion. A separate fee may not be charged for the provision of a certificate or certification, but the cost of this service may be factored into the policy premium.

~~After July 1, 1998, a health insurance issuer must provide certificates as required in this section for dependents as well as the individual to whom the coverage was issued. Before July 1, 1998, a health insurance issuer may satisfy the requirement for certificates identifying coverage for dependents by providing the name of the policyholder and specifying that family coverage is in force. Before July 1, 1998, if the health insurance issuer is requested to provide a certificate for a dependent, the health insurance issuer must make reasonable efforts to obtain and provide the name of the dependent.~~

If a health insurance issuer provides coverage in connection with another type of creditable coverage, the health insurance issuer must provide a certificate or certification as required by this section. ~~A health insurance issuer may, for an individual with at least 12 months of creditable coverage without a break in coverage exceeding 63 days, simply certify that the individual has 12 months of creditable coverage.~~

**Source:** 39 SDR 203, adopted June 10, 2013, effective January 1, 2014.

**General Authority:** SDCL 58-17-87(2).

**Law Implemented:** SDCL 58-11-1, 58-17-85, 58-17-87, 58-33-36.

**20:06:40:03.01. Certificates required upon losing coverage.** A health insurance issuer must ~~automatically~~ provide a certificate or simply certify that the individual has creditable coverage to any individual losing coverage or qualifying for continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C.S. § 1163, as in effect July 1, 1997, or SDCL chapter 58-18 upon requests by or on behalf of an individual. At any time within 24 months after coverage ceases, a health insurance issuer must also provide additional certificates ~~pursuant to~~ or certifications upon requests by or on behalf of an individual. Each certificate or certification must be provided in a reasonable and prompt fashion. A separate fee may not be charged for the provision of a certificate or certification, but the cost of this service may be factored into the policy premium.

~~After July 1, 1998, a health insurance issuer must provide certificates as required in this section for dependents as well as the individual to whom the coverage was issued. Before July 1, 1998, a health insurance issuer may satisfy the requirement for certificates identifying coverage for dependents by providing the name of the policyholder and specifying that family coverage is in force. Before July 1, 1998, if the health insurance issuer is requested to provide a certificate for a dependent, the health insurance issuer must make reasonable efforts to obtain and provide the name of the dependent.~~

If a health insurance issuer provides coverage in connection with another type of creditable coverage, the health insurance issuer must provide a certificate or certification as

required by this section. ~~A health insurance issuer may, for an individual with at least 12 months of creditable coverage without a break in coverage exceeding 63 days, simply certify that the individual has 12 months of creditable coverage.~~

**Source:** 39 SDR 203, adopted June 10, 2013, effective January 1, 2014.

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

**Law Implemented:** SDCL 58-11-1, 58-18-44, 58-18-45, 58-18-48, 58-18-79, 58-33-36.

DEPARTMENT OF LABOR AND REGULATION

DIVISION OF INSURANCE

EXAMPLE OF CERTIFICATE OF INDIVIDUAL HEALTH INSURANCE COVERAGE

Chapter 20:06:39

APPENDIX A

SEE: § 20:06:39:04

Repealed.

**Source:** 24 SDR 35, effective September 29, 1997; 39 SDR 203, effective June 10, 2013.

**~~CERTIFICATE OF INDIVIDUAL HEALTH INSURANCE COVERAGE~~**

~~**IMPORTANT** This certificate provides evidence of your health coverage. You may need to furnish this certificate if you become eligible under a group health plan that excludes coverage for medical conditions you have before you enroll, if medical advice, diagnosis, care, or treatment is recommended or received for the condition during the 6 months before you enroll in the new plan. If you become covered under another group health plan, check with the plan administrator to see if you need to provide this certificate. You may also need this certificate to establish your right to buy coverage for yourself or your family.~~

~~1. Date of this certificate: \_\_\_\_\_.~~

~~2. Name of policyholder: \_\_\_\_\_.~~

~~3. Identification number of policyholder: \_\_\_\_\_.~~

~~4. Name of any dependents to whom this certificate applies: \_\_\_\_\_~~

~~\_\_\_\_\_.~~

~~5. Name, address, and telephone number of issuer responsible for providing this certificate:~~

~~\_\_\_\_\_~~

~~\_\_\_\_\_~~

~~\_\_\_\_\_~~

~~-~~

6. For further information, call: \_\_\_\_\_.

~~7. If all individual(s) identified in items 2 and 4 have at least 18 months of creditable coverage (disregarding periods of coverage before a 63-day break), check here \_\_\_ and skip items 8 and 9.~~

~~8. Date coverage began: \_\_\_\_\_.~~

~~9. Date that a substantially completed application was received from the policyholder:  
\_\_\_\_\_~~

~~10. Date coverage ended: \_\_\_\_\_ (or check here if coverage is continuing as of the date of this certificate: \_\_\_\_\_).~~

~~**Note:** Separate certificates will be furnished if information is not identical for the policyholder and each dependent. Repealed.~~