

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

400V0421

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1054** - 02/24/2014

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

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

1 FOR AN ACT ENTITLED, An Act to establish consumer protection standards regarding certain
2 insurance claim practices and to provide for certain penalties.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Director," the director of the South Dakota Division of Insurance;

6 (2) "Insured," the party named on a policy or certificate as the individual with legal rights
7 to the benefits provided by the policy;

8 (3) "Insurer," a person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal
9 benefit society, and any other legal entity engaged in the business of insurance,
10 including claim agents, brokers, adjusters, and third party administrators. The term
11 also includes medical service plans, hospital service plans, health maintenance
12 organizations, prepaid limited health care service plans, dental plans, and optometric
13 plans. This term does not include any insurance producer licensed pursuant to chapter
14 58-30, unless an insurance producer is directly involved in the adjudication of claims;



1 (4) "Person," a natural or artificial entity, including individuals, partnerships,
2 associations, trusts, or corporations;

3 (5) "Policy," or "certificate," a contract of insurance, indemnity, medical, health, or
4 hospital service, or annuity issued. The term does not include contracts of workers'
5 compensation, fidelity, suretyship, or boiler and machinery insurance.

6 Section 2. The provisions of this Act set forth standards for claim investigation and
7 disposition of claims arising under policies or certificates of insurance issued to residents of
8 South Dakota. It does not apply to claims involving workers' compensation, fidelity, suretyship,
9 or boiler and machinery insurance. Nothing in this Act may be construed to create or imply a
10 private cause of action for violation of this Act. No disposition under the provisions of this Act
11 or any rule promulgated thereto may be used as evidence in any civil litigation. Nothing herein
12 alters the rules of evidence as contained in title 19.

13 Section 3. Any act by an insurer, if committed in violation of this section, is an unfair claims
14 practice if:

15 (1) It is committed flagrantly and in conscious disregard of the provisions of this Act or
16 any rule promulgated pursuant to this Act; or

17 (2) It is committed with such frequency to indicate a general business practice to engage
18 in that type of conduct.

19 For any act defined in section 4 of this Act, the director shall provide notice and an
20 opportunity to correct the violation pursuant to § 58-33-68 if the act was inadvertent. Any act
21 that is committed flagrantly or in conscious disregard of the provisions of this Act are not
22 subject to the procedures required under § 58-33-68.

23 Section 4. Any of the following acts by an insurer, if committed in violation of section 3 of
24 this Act, is an unfair claims practice:

- 1 (1) Knowingly misrepresents to a claimant or an insured a relevant fact or policy
2 provision relating to coverages at issue;
- 3 (2) Fails to acknowledge with reasonable promptness pertinent communications with
4 respect to claims arising under its policies;
- 5 (3) Fails to adopt and implement reasonable standards to promptly complete claim
6 investigations and settlement of claims arising under its policies;
- 7 (4) Fails to make a good faith attempt to effectuate prompt, fair, and equitable settlement
8 of claims submitted in which liability coverage, and causation of claims have become
9 reasonably clear;
- 10 (5) Compels an insured or beneficiary to institute a suit to recover an amount due under
11 its policies by offering substantially less than the amount ultimately recovered in a
12 suit brought by the insured or beneficiary;
- 13 (6) Refuses to pay claims without conducting a reasonable claim investigation;
- 14 (7) Fails to affirm or deny coverage of claims within a reasonable time after having
15 completed a claim investigation related to the claim;
- 16 (8) Attempts to settle a claim for less than the amount that a reasonable person would
17 believe the insured or beneficiary is entitled by reference to written or printed
18 advertising material accompanying or made part of an application;
- 19 (9) Attempts to settle a claim on the basis of an application that was materially altered
20 without notice to, or knowledge or consent of, the insured;
- 21 (10) Makes a claim payment to an insured or beneficiary without indicating the coverage
22 under which each payment is being made;
- 23 (11) Unreasonably delays a claim investigation or payment of a claim by requiring both
24 a formal proof of loss form and subsequent verification that would result in

1 duplication of information and verification appearing in the formal proof of loss
2 form;

3 (12) Fails, in the case of a claim denial or offer of compromise settlement, to promptly
4 provide a reasonable and accurate explanation of the basis for such action; or

5 (13) Fails to provide forms necessary to present a claim within fifteen days of a request
6 with reasonable explanations regarding their use.

7 Section 5. If the director has reasonable cause to believe that an insurer doing business in
8 this state is engaging in an unfair claims practice and that a proceeding in respect thereto is in
9 the public interest, the director may issue and serve upon the insurer a notice of hearing, which
10 shall set a hearing date not less than thirty days from the date of the notice. The hearing shall
11 be conducted pursuant to chapter 1-26. Prior to conducting a public hearing pursuant to this
12 section against an insurer regulated by chapter 58-35, the director shall attempt to resolve the
13 alleged unfair claims practice with the insurer.

14 Section 6. If, after the hearing, the director finds an insurer has engaged in an unfair claims
15 practice, the director shall reduce the findings to writing and shall issue and serve the insurer
16 a copy of the findings and an order requiring the insurer to cease and desist from engaging in
17 the act or practice. The secretary of Labor and Regulation may order either or both of the
18 following:

19 (1) The insurer to pay a monetary penalty of not more than one thousand dollars for each
20 violation but not to exceed an aggregate penalty of one hundred thousand dollars,
21 unless the violation was committed flagrantly and in conscious disregard of this Act,
22 in which case the penalty may not be more than twenty-five thousand dollars for each
23 violation, but not to exceed an aggregate penalty of two hundred fifty thousand
24 dollars; and

1 (2) Suspension or revocation of the insurer's license if the insurer knew or reasonably
2 should have known it was in violation of this Act.

3 This section only applies to violations of this Act. Any penalty imposed pursuant to this
4 section is the sole and exclusive remedy for any act or violation brought by the director under
5 this Act.

6 The director shall consider the size, the amount of surplus, and the premium volume of the
7 insurer when determining a penalty pursuant to this section.

8 Section 7. The director may promulgate rules, pursuant to chapter 1-26, to carry out the
9 purposes of this Act. In promulgating rules, the director shall consider the impact of the rule on
10 the cost and availability of insurance in this state and the degree of protection that the rule will
11 have for the insurance buying public in this state. The rules are limited to the following areas:

- 12 (1) Definition of terms; and
13 (2) Record keeping.