

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0279

HOUSE BILL NO. 1046

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for certain provisions regarding the property
2 casualty unfair claims practices.

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

4 Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

- 7 (1) "Agent," any person, corporation, association, partnership, or other legal entity
8 authorized to represent an insurer with respect to a claim;
- 9 (2) "Beneficiary," the party entitled to receive the proceeds or benefits occurring under
10 the policy in lieu of the insured;
- 11 (3) "Claim file," any retrievable electronic file, paper file, or combination of both;
- 12 (4) "Claimant," an insured or the beneficiary or legal representative of an insured,
13 including a member of the insured's immediate family designated by the insured,
14 making a claim under a policy;
- 15 (5) "Days," calendar days;



- 1 (6) "Documentation," includes all pertinent communications, transactions, notes, work
2 papers, claim forms, bills, and explanation of benefits forms relative to the claim;
- 3 (7) "First party claimant," any person, corporation, association, partnership, or other legal
4 entity asserting a right to payment under an insurance policy or insurance contract
5 arising out of the occurrence of the contingency or loss covered by the policy or
6 contract;
- 7 (8) "Investigation," all activities of an insurer directly or indirectly related to the
8 determination of liabilities under coverages afforded by an insurance policy or
9 insurance contract;
- 10 (9) "Notification of claim," any notification, whether in writing or other means
11 acceptable under the terms of an insurance policy to an insurer or its agent, by a
12 claimant, which reasonably apprises the insurer of the facts pertinent to a claim;
- 13 (10) "Proof of loss," written proofs, such as claim forms, medical bills, medical
14 authorizations, or other reasonable evidence of the claim that is ordinarily required
15 of all insureds or beneficiaries submitting the claims;
- 16 (11) "Reasonable explanation," information sufficient to enable the insured or beneficiary
17 to compare the allowable benefits with policy provisions and determine whether
18 proper payment has been made;
- 19 (12) "Replacement crash part," sheet metal or plastic parts which generally constitute the
20 exterior of a motor vehicle, including inner and outer panels;
- 21 (13) "Written communications," includes all correspondence, regardless of source or type,
22 that is materially related to the handling of the claim.

23 Section 2. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The provisions of sections 3 to 28, inclusive, of this Act, set forth minimum standards for
2 the investigation and disposition of first party property and casualty claims arising under
3 contracts or certificates issued to residents of this state and do not apply to claims involving
4 workers' compensation, fidelity, suretyship or boiler and machinery insurance. Nothing in this
5 Act may be construed to create or imply a private cause of action for violation of this Act.

6 Section 3. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 No insurer may fail to fully disclose to first party claimants all pertinent benefits, coverages,
9 or other provisions of a policy or contract under which a claim is presented. No agent may
10 conceal from first party claimants benefits, coverages, or other provisions of any insurance
11 policy or insurance contract when such benefits, coverages, or other provisions are pertinent to
12 a claim.

13 Section 4. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 No claim may be denied on the basis of failure to exhibit property unless there is
16 documentation of breach of the policy provisions in the claim file. No insurer may deny a claim
17 based upon the failure of a first party claimant to give written notice of loss within a specified
18 time limit unless the written notice is a written policy condition, or claimant's failure to give
19 written notice after being requested to do so is so unreasonable as to constitute a breach of the
20 claimant's duty to cooperate with the insurer.

21 Section 5. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 No insurer may indicate to a first party claimant on a payment draft, check or in any
24 accompanying letter that the payment is final or a release of any claim unless the policy limit

1 has been paid or there has been a compromise settlement agreed to by the first party claimant
2 and the insurer as to coverage and amount payable under the contract.

3 No insurer may issue checks or drafts in partial settlement of a loss or claim under a specific
4 coverage that contains language purporting to release the insurer or its insured from total
5 liability.

6 Section 6. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Every insurer, upon receiving notification of a claim shall promptly acknowledge the receipt
9 of the notice unless payment is made within that period of time. If an acknowledgment is made
10 by means other than writing, an appropriate notation of the acknowledgment shall be made in
11 the claim file of the insurer and dated. Notification given to an agent of an insurer is notification
12 to the insurer.

13 An appropriate reply shall be made promptly on all other pertinent communications from
14 a claimant which reasonably suggest that a response is expected.

15 Every insurer, upon receiving notification of claim, shall promptly provide necessary claim
16 forms, instructions, and reasonable assistance so that first party claimants can comply with the
17 policy conditions and the insurer's reasonable requirements.

18 Section 7. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Upon receipt by the insurer of properly executed proofs of loss, the first party claimant shall
21 be promptly advised of the acceptance or denial of the claim by the insurer. No insurer may deny
22 a claim on the grounds of a specific policy provision, condition, or exclusion unless reference
23 to such provision, condition, or exclusion is included in the denial. The denial shall be given to
24 the claimant in writing and the claim file of the insurer shall contain documentation of the denial

1 as required by § 58-3-7.4.

2 If there is a reasonable basis supported by specific information available for review by the
3 division that the first party claimant has fraudulently caused or contributed to the loss, the
4 insurer is relieved from the requirements of this section. However, the claimant shall be advised
5 of the acceptance or denial of the claim within a reasonable time for full investigation after
6 receipt by the insurer of a properly executed proof of loss.

7 Section 8. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 If the insurer needs more time to determine whether a first party claim should be accepted
10 or denied, the insurer shall so promptly notify the first party claimant after receipt of the proofs
11 of loss, giving the reasons more time is needed. If the investigation remains incomplete, the
12 insurer shall send to the claimant a letter setting forth the reasons additional time is needed for
13 investigation at reasonable intervals until such time as it is completed.

14 If there is a reasonable basis supported by specific information available for review by the
15 division for suspecting that the first party claimant has fraudulently caused or contributed to the
16 loss, the insurer is relieved from the requirements of this section. However, the claimant shall
17 be advised of the acceptance or denial of the claim by the insurer within a reasonable time for
18 full investigation after receipt by the insurer of a properly executed proof of loss.

19 No insurer may fail to settle first party claims on the basis that responsibility for payment
20 should be assumed by others except as may otherwise be provided by policy provisions.

21 Section 9. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 No insurer may continue negotiations for settlement of a claim directly with a claimant who
24 is not legally represented, if the claimant's rights may be affected by a statute of limitations,

1 unless the insurer has given the claimant written notice of the limitation. Notice shall be given
2 to first party claimants at least thirty days before the date on which the time limit may expire.

3 Section 10. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The insurer shall affirm or deny liability on claims within a reasonable time and shall
6 promptly tender payment after affirmation of liability, if the amount of the claim is determined
7 and not in dispute. In claims where multiple coverages are involved, payments which are not
8 in dispute and where the payee is known shall be made promptly.

9 Section 11. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 No insurer may request or require any insured to submit to a polygraph examination.

12 Section 12. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If, after an insurer denies a claim, the claimant objects to the rejection, the insurer shall
15 notify the claimant in writing that the claimant may have the matter reviewed by the division
16 and provide the address and phone number of the division.

17 Section 13. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 If the insurance policy provides for the adjustment and settlement of first party automobile
20 total losses on the basis of actual cash value or replacement with another of like kind and
21 quality, one of the methods provided in section 14 to 18, inclusive, of this Act shall apply.

22 Section 14. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 The insurer may elect to offer a replacement automobile that is at least comparable in that

1 it shall be by the same manufacturer, same or newer year, similar body style, similar options and
2 mileage as the insured vehicle and in as good or better overall condition and available for
3 inspection at a licensed dealer within a reasonable distance of the insured's residence. The
4 insurer shall pay all applicable taxes, license fees, and other fees incident to transfer of evidence
5 of ownership of the automobile paid, at no cost other than any deductible provided in the policy.
6 The offer and any rejection thereof shall be documented in the claim file.

7 Section 15. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
8 follows.

9 The insurer may elect a cash settlement based upon the actual cost, less any deductible
10 provided in the policy, to purchase a comparable automobile including all applicable taxes,
11 license fees, and other fees incident to transfer of evidence of ownership of a comparable
12 automobile. Such cost may be derived from:

- 13 (1) The cost of two or more comparable automobiles in the local market area if
14 comparable automobiles are available or were available within the last ninety days
15 to consumers in the local market area;
- 16 (2) The cost of two or more comparable automobiles in areas proximate to the local
17 market area, including the closest major metropolitan areas within or without the
18 state, that are available or were available within the last ninety days to consumers if
19 comparable automobiles are not available in the local market area;
- 20 (3) One of two or more quotations obtained by the insurer from two or more licensed
21 dealers located within the local market area if the cost of comparable automobiles are
22 not available pursuant to subdivisions (1) and (2); or
- 23 (4) Any source for determining statistically valid fair market values that meet all of the
24 following criteria:

- 1 (a) The source shall give primary consideration to the values of vehicles in the
2 local market area and may consider data on vehicles outside the area;
- 3 (b) The source's database shall produce values for at least eighty-five percent of
4 all makes and models for the last fifteen model years taking into account the
5 values of all major options for such vehicles; and
- 6 (c) The source shall produce fair market values based on current data available
7 from the area surrounding the location where the insured vehicle was
8 principally garaged or a necessary expansion of parameters (such as time and
9 area) to assure statistical validity.

10 Section 16. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If the insurer is notified within thirty-five days of the receipt of the claim draft that the
13 insured cannot purchase a comparable vehicle for the market value, the company shall reopen
14 its claim file and the following procedures shall apply:

- 15 (1) The company may locate a comparable vehicle by the same manufacturer, same year,
16 similar body style and similar options and price range for the insured for the market
17 value determined by the company at the time of settlement. Any such vehicle must
18 be available through licensed dealers;
- 19 (2) The company shall either pay the insured the difference between the market value
20 before applicable deductions and the cost of the comparable vehicle of like kind and
21 quality which the insured has located, or negotiate and effect the purchase of this
22 vehicle for the insured;
- 23 (3) The company may elect to offer a replacement in accordance with the provisions set
24 forth in section 14 of this Act; or

1 (4) The company may conclude the loss settlement as provided for under the appraisal
2 section of the insurance contract in force at the time of loss.

3 Section 17. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The company is not required to take action under sections 15 and 16 of this Act if its
6 documentation to the insured at the time of settlement included written notification of the
7 availability and location of a specified and comparable vehicle of the same manufacturer, same
8 year, similar body style, and similar options in as good or better condition as the total loss
9 vehicle which could have been purchased for the market value determined by the company
10 before applicable deductions. The documentation shall include the vehicle identification
11 number.

12 Section 18. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If a first party automobile total loss is settled on a basis which deviates from the methods
15 described in this section, the deviation shall be supported by documentation giving particulars
16 of the automobile condition. Any deductions from the cost, including deduction for salvage,
17 shall be measurable, discernible, itemized, and specified as to dollar amount and shall be
18 appropriate in amount. The basis for the settlement shall be fully explained to the first party
19 claimant.

20 Section 19. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 No insurer may require a claimant to travel an unreasonable distance either to inspect a
23 replacement automobile, to obtain a repair estimate, or to have the automobile repaired at a
24 specific repair shop.

1 Section 20. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Each insurer shall, upon the claimant's request, include the first party claimant's deductible,
4 if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis
5 with the first party claimant, unless the deductible amount has been otherwise recovered. No
6 deduction for expenses may be made from the deductible recovery unless an outside attorney
7 is retained to collect the recovery. The deduction may then be for only a pro rata share of the
8 allocated loss adjustment expense.

9 Section 21. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 If partial losses are settled on the basis of a written estimate prepared by or for the insurer,
12 the insurer shall supply the insured with a copy of the estimate upon which the settlement is
13 based. The estimate prepared by or for the insurer shall be reasonable, in accordance with
14 applicable policy provisions, and of an amount which will allow for repairs to be made in a
15 workmanlike manner. If the insured subsequently claims, based upon a written estimate which
16 the insured obtains, that necessary repairs will exceed the written estimate prepared by or for
17 the insurer, the insurer shall pay the difference between the written estimate and a higher
18 estimate obtained by the insured, or promptly provide the insured with the name of at least one
19 repair shop that will make the repairs for the amount of the written estimate. If the insurer
20 designates only one or two such repairers, the insurer shall assure that the repairs are performed
21 in a workmanlike manner. The insurer shall maintain documentation of all such
22 communications.

23 Section 22. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 If the amount claimed is reduced because of betterment or depreciation all information for
2 the reduction shall be contained in the claim file. The deductions shall be itemized and specified
3 as to dollar amount and shall be appropriate for the amount of deductions.

4 Section 23. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If the insurer recommends or offers the repair be done at a specific repair shop for
7 automobile repairs, the insurer shall cause the damaged automobile to be restored to its
8 condition prior to the loss at no additional cost to the claimant other than as stated in the policy
9 and within a reasonable period of time.

10 Section 24. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The insurer shall provide reasonable notice to an insured prior to termination of payment for
13 automobile storage charges and documentation of the denial as required by § 58-3-7.4. The
14 insurer shall provide reasonable time for the insured to remove the vehicle from storage prior
15 to the termination of payment. Unless the insurer has provided an insured with the name of a
16 specific towing company prior to the insured's use of another towing company, the insurer shall
17 pay all reasonable towing charges irrespective of the towing company used by the insured.

18 Section 25. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Betterment deductions are allowable only if the deductions:

- 21 (1) Reflect a measurable decrease in market value attributable to the poorer condition of,
22 or prior damage to, the vehicle; and
- 23 (2) Reflect the general overall condition of the vehicle, considering its age, for either or
24 both of the following:

- 1 (a) The wear and tear or rust, limited to no more than a deduction of one thousand
- 2 dollars;
- 3 (b) Missing parts, limited to no more of a deduction than the replacement costs of
- 4 the part or parts.

5 Section 26. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any deductions set forth in section 25 of this Act shall be measurable, itemized, specified
8 as to dollar amount and documented in the claim file.

9 Section 27. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 No insurer may require the insured or claimant to supply parts for replacement.

12 Section 28. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 All replacement crash parts shall be identified and be of the same quality as the original part.
15 All replacement crash parts, which are subject to this Act and manufactured after the effective
16 date of this Act, shall carry sufficient permanent non-removable identification so as to identify
17 its manufacturer. The identification shall be accessible to the extent possible after installation.

18 No insurer may require the use of replacement crash parts in the repair of an automobile
19 unless the replacement crash part is at least equal in kind and quality to the original part in terms
20 of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall
21 consider the cost of any modifications which may become necessary when making the repair.