

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0278

## HOUSE BILL NO. 1032

Introduced by: The Committee on Commerce at the request of the Department of Labor

1 FOR AN ACT ENTITLED, An Act to revise certain reimbursement and subrogation provisions  
2 regarding workers' compensation claims.

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

4 Section 1. That § 62-1-1.3 be amended to read as follows:

5 62-1-1.3. If an employer denies coverage of a claim on the basis that the injury is not  
6 compensable under this title due to the provisions of subsection 62-1-1(7)(a), (b), or (c), such  
7 injury is presumed to be nonwork related for other insurance purposes, and any other insurer  
8 covering bodily injury or disease of the injured employee shall pay according to the policy  
9 provisions. If coverage is denied by an insurer without a full explanation of the basis in the  
10 insurance policy in relation to the facts or applicable law for denial, the director of the Division  
11 of Insurance may determine ~~such~~ the denial to be an unfair practice under chapter 58-33. If it  
12 is later determined that the injury is compensable under this title, the employer shall  
13 immediately reimburse the parties not liable for all payments made, including interest at the  
14 category B rate specified in § 54-3-16, as follows:

15 (1) If medical expenses have been denied by the employer, paid by a health plan, insurer,



1 or an individual, and the expenses are later determined to be compensable, the  
2 employer shall satisfy the employer's obligation of payment of the medical expenses  
3 by paying the expenses directly to the health plan, insurer, or individual to the extent  
4 of the health plan's, insurer's or individual's payment, but not to exceed the amount  
5 payable under the medical fee schedule or any other contractual discount  
6 arrangements. A medical provider shall reimburse the employee for medical expense  
7 payments received from the employee for expenses determined to be compensable  
8 under this title;

9 (2) If the medical expenses were not paid by a health plan, insurer, or individual, the  
10 employer shall satisfy the employer's obligation of payment of the medical expenses  
11 by paying the expenses directly to the medical providers concerned under the medical  
12 fee schedule or any other contractual discount arrangements; and

13 (3) If disability benefits have been paid by a health insurer and benefits are later  
14 determined to be compensable, the employer shall satisfy the employer's obligation  
15 by paying the health insurer directly, to the extent of that health insurer's disability  
16 payments, but not to exceed the amount of disability benefits payable under this  
17 chapter. Any payments made to the health insurer pursuant to this subdivision shall  
18 be considered as an offset against the total obligation of the employer.