

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

562M0393

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1165 - 01/30/2006

Introduced by: Representatives Rave, Cutler, Deadrick, Gillespie, Haley, Michels, Murschel,
and O'Brien and Senators Gray, Bogue, Knudson, Koetzle, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to establish a workers compensation small claims
2 procedure.

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

4 Section 1. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The department shall establish a small claims procedure for medical expense claims not
7 exceeding eight thousand dollars. The procedure may only be used for a medical expense claim
8 incurred after the department has held a hearing and has adjudicated the underlying injury as
9 compensable or after the department has approved an agreement as to compensation or a
10 memorandum of payment for permanent partial disability.

11 Section 2. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The department shall, by rules promulgated pursuant to chapter 1-26, provide for the
14 manner in which the disputed claims shall be presented and the forms required from the
15 claimant and from employers.



1 Section 3. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Any claimant pursuant to this Act shall initiate a claim by completing a form provided by
4 the department.

5 Section 4. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The department shall send notice to the party claimed against by registered or certified mail,
8 return receipt.

9 Section 5. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any party claimed against may assert any setoff or counterclaim that is within the
12 jurisdiction of the department.

13 Section 6. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The department shall conduct the hearings in accordance with chapter 1-26. The department
16 shall expedite any hearing to the extent possible.

17 Section 7. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Any medical record, correspondence, medical bill, and expert report and correspondence is
20 admissible as evidence. Nothing in this Act precludes an employer or insurer from obtaining an
21 examination pursuant to § 62-7-1.

22 Section 8. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Upon the request of any party claimed against, the claimant shall provide an executed

1 medical release in a form prescribed by the department, sufficiently in advance of the hearing
2 to allow the party claimed against to obtain such medical records as it deems appropriate. Any
3 party shall disclose to the other party any medical record that is within the party's possession and
4 is relevant to the claim in dispute.

5 Section 9. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Within fifteen days after receiving the decision by the department, any party may appeal the
8 decision to the secretary of labor. The secretary of labor may on the secretary's own motion
9 affirm, modify, or set aside any decision on the basis of the evidence previously submitted in
10 the case or the secretary may direct the taking of additional evidence. The secretary shall
11 promptly notify the interested parties of the secretary's findings and decision. Any decision of
12 the secretary is the final decision of the department. Any final decision of the department may
13 be appealed as provided in chapter 1-26.

14 Section 10. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Any claimant in any proceeding before the department may be represented by counsel or
17 other duly authorized agent, but no such counsel or agent may either charge or receive for such
18 services more than an amount approved by the department. An employer or insurer, including
19 a corporate employer or insurer, may be represented before the department by counsel, an
20 employee, or a corporate officer.

21 Section 11. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Any finding of fact, conclusion of law, decision, or final order made in a small claims
24 proceeding may not be used as evidence in any separate or subsequent action or proceeding

- 1 between anyone in any tribunal, agency, or court of this state or the United States, regardless of
- 2 whether the prior action was between the same or related parties or involved the same facts.