

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

841B0773

## SENATE BILL NO. 207

Introduced by: Senators Munson (David) and Halverson and Representative Pederson  
(Gordon)

1 FOR AN ACT ENTITLED, An Act to repeal the subsequent injury fund and to provide for the  
2 administration and reimbursement of any remaining funds.

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

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

6 The administration of the subsequent injury fund by the Division of Insurance and the  
7 reimbursement of complete and valid claims shall continue until all the funds are exhausted.  
8 Priority of payment shall be determined as of the date and time they are determined by the  
9 division to be complete and valid.

10 Section 2. That § 62-4-34 be repealed.

11 ~~62-4-34. If an employee who has previously sustained an injury, or suffers from a preexisting~~  
12 ~~condition, receives a subsequent compensable injury resulting in additional permanent partial or~~  
13 ~~permanent total disability so that the degree or percentage of disability caused by the~~  
14 ~~combination of the subsequent injury and the preexisting injury or condition is substantially~~  
15 ~~greater than that which resulted from the last injury, considered alone, and if the employee is~~

1 ~~entitled to receive compensation on the basis of the combined disabilities, the employer shall pay~~  
2 ~~all medical and hospital expenses and compensation provided by this title. The employer shall be~~  
3 ~~reimbursed from the "subsequent injury fund" for two-thirds of all compensation, medical and~~  
4 ~~hospital expenses paid to or on behalf of the injured employee due to the subsequent injury. If~~  
5 ~~the subsequent compensable injury of the employee results in the death of the employee and it~~  
6 ~~has been determined that the death would not have occurred except for the preexisting disability,~~  
7 ~~the employer shall pay all compensation provided by this title.~~

8 Section 3. That § 62-4-34.1 be repealed.

9 ~~— 62-4-34.1. Any claim against the subsequent injury fund shall be filed with the division of~~  
10 ~~insurance within ninety days from the date of the final decision by the department that a~~  
11 ~~compensable injury exists resulting in additional permanent partial or permanent total disability,~~  
12 ~~or approval by the department of settlement between the parties. No claim may be filed prior to~~  
13 ~~a decision or approval of settlement from the department. The division shall conduct an~~  
14 ~~investigation and make a decision on the claim within thirty days of the filing of a complete claim~~  
15 ~~as set forth in § 62-4-34.4 or within a time agreed upon between the claimant and the~~  
16 ~~department.~~

17 Section 4. That § 62-4-34.2 be repealed.

18 ~~— 62-4-34.2. If the division denies a claim made against the subsequent injury fund, the~~  
19 ~~employer may request a hearing. The hearing shall be conducted by a hearing examiner appointed~~  
20 ~~by the secretary of labor. The attorney general shall represent the subsequent injury fund. The~~  
21 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

22 Section 5. That § 62-4-34.4 be repealed.

23 ~~— 62-4-34.4. A claim is considered complete if it contains records, reports, or any other~~  
24 ~~evidence which shows the following:~~

25 ~~— (1) The claim was filed with the appropriate agency within ninety days from the date a~~

- 1           decision or approval of an agreement is obtained from the department;
- 2   ~~— (2) The final decision or approved agreement from the department finding that the injury~~
- 3           ~~is a subsequent injury and is a compensable injury resulting in additional permanent~~
- 4           ~~partial or permanent total disability;~~
- 5   ~~— (3) The total amount of compensation, medical and hospital expenses, paid to or on~~
- 6           ~~behalf of the employee by the employer if self insured, or the insurance carrier of an~~
- 7           ~~employer;~~
- 8   ~~— (4) Reimbursement requested by specific amount, and the calculations which justify the~~
- 9           ~~amount requested;~~
- 10 ~~— (5) Medical documentation specifically setting forth that the employee incurred any prior~~
- 11           ~~injury, compensable or noncompensable, which caused disability;~~
- 12 ~~— (6) Medical documentation specifically setting forth the degree or percentage of disability~~
- 13           ~~attributable to any prior injury, and the reasons for arriving at those determinations;~~
- 14 ~~— (7) Medical documentation specifically setting forth that the employee incurred a~~
- 15           ~~compensable subsequent injury which caused additional permanent partial or~~
- 16           ~~permanent total disability;~~
- 17 ~~— (8) Medical documentation specifically setting forth the degree or percentage of disability~~
- 18           ~~reasonably attributable to the subsequent injury standing alone, as if no other injury~~
- 19           ~~had occurred, and the reasons for arriving at those determinations;~~
- 20 ~~— (9) Medical documentation specifically setting forth the degree or percentage of disability~~
- 21           ~~attributable to the combined injuries that also establishes that the disability attributable~~
- 22           ~~to the combined injuries is substantially greater than the disability attributable to the~~
- 23           ~~subsequent injury standing alone, as if no other injury had occurred, and the reasons~~
- 24           ~~for arriving at those determinations;~~
- 25 ~~— (10) If the degree or percentage of disability attributable to the combined injuries is greater~~

1 than the sum total of the degree or percentage of disability attributable to any prior  
2 injury standing alone and the subsequent injury standing alone, supporting medical  
3 documentation, including vocational rehabilitative evaluations and reports, if  
4 applicable; and

5 ~~—(11) Any other information deemed pertinent by the Division of Insurance during the~~  
6 ~~course of its continuing investigation of the merits of a claim.~~

7 ~~An incomplete claim is considered filed if filed within the ninety-day statute of limitations~~  
8 ~~established in § 62-4-34.1, but the thirty days for completion of the investigation of the claim~~  
9 ~~does not begin to run until the claim is complete.~~

10 Section 6. That § 62-4-34.5 be repealed.

11 ~~—62-4-34.5. All claim reimbursements, costs and expenses, including attorney fees and~~  
12 ~~employee salaries incurred exclusively for defending and administering the subsequent injury~~  
13 ~~fund, shall be paid from the fund. All claim reimbursements from the subsequent injury fund are~~  
14 ~~continuously appropriated.~~

15 Section 7. That § 62-4-34.6 be repealed.

16 ~~—62-4-34.6. No governmental entity located within the state which elects to exercise the~~  
17 ~~exemption from the insurance or security requirements specified in § 62-5-6 is eligible for~~  
18 ~~participation in the subsequent injury fund for the purpose of assessment and reimbursement.~~

19 Section 8. That § 62-4-35 be repealed.

20 ~~—62-4-35. In case of the death of an employee covered by this title, if no person is entitled to~~  
21 ~~compensation, the employer, or if insured, the employer's insurance carrier, shall pay to the~~  
22 ~~Division of Insurance the sum of five hundred dollars to be deposited in the subsequent injury~~  
23 ~~fund. The Division of Insurance shall assess each insurance carrier of every employer, or every~~  
24 ~~employer, if self-insured, an amount equal to four percent of all workers' compensation, including~~  
25 ~~medical, hospital, and indemnity expenses, paid to or on behalf of an injured employee during~~

1 the calendar year next preceding the due date of the payments, which shall be deposited in the  
2 subsequent injury fund. The assessment shall be made at any time the fund falls below two  
3 hundred thousand dollars. The payment shall be made immediately upon notification to the  
4 carrier or self-insured by the division. Each insurance carrier of every employer, or every  
5 employer, if self-insured, shall be required to participate in the subsequent injury fund and pay  
6 assessments except as provided in § 62-4-34.6. Failure of an insurance carrier of an employer,  
7 or an employer, if self-insured, to respond within twenty days of receipt to a notice of assessment  
8 from the Division of Insurance shall, unless good cause is shown, have the effect of making that  
9 insurance carrier of an employer or a self-insured employer ineligible for reimbursement from the  
10 subsequent injury fund for any subsequent injury incurred or claim made from the date the  
11 assessment is made for a period of one year subsequent to the date the assessment is actually  
12 paid. Failure of an insurance carrier of an employer, or an employer, if self-insured, to pay an  
13 assessment other than for good cause shown, shall also be grounds for administrative action to  
14 be taken by the division or department against an insurance carrier of an employer or an  
15 employer, if self-insured, concerning their status and authority to continue being authorized  
16 insurance carriers or self-insured employers in the State of South Dakota.

17 Section 9. That § 62-4-36.1 be repealed.

18 — 62-4-36.1. The Division of Insurance shall serve as administrator of the subsequent injury  
19 fund.

20 Section 10. That § 62-4-36.2 be repealed.

21 — 62-4-36.2. If the Division of Insurance determines that administrative action is necessary  
22 against the continued authorization of the status and authority of an insurance carrier of an  
23 employer for failure to pay an assessment other than for good cause shown, the division shall  
24 commence administrative action pursuant to the provisions of Title 58 and chapter 1-26.

25 Section 11. That § 62-4-36.3 be repealed.

1 ~~62-4-36.3. If the Division of Insurance determines that administrative action is necessary~~  
2 ~~against the continued authorization of the status and authority of a self-insured employer for~~  
3 ~~failure to pay an assessment other than for good cause shown, and that self-insured employer has~~  
4 ~~been issued a certificate of exemption by the Department of Labor pursuant to § 62-5-5, the~~  
5 ~~division shall commence administrative action by petitioning the department for a hearing. The~~  
6 ~~hearing shall be conducted by a hearing examiner appointed by the secretary of labor. The~~  
7 ~~attorney general or counsel for the division shall represent the subsequent injury fund. The~~  
8 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~