

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

880N0217

## SENATE BILL NO. 139

Introduced by: Senators Katus, Apa, Hanson (Gary), Jerstad, Kloucek, Koetzle, and Napoli  
and Representatives Van Norman, Lucas, and Moore

1 FOR AN ACT ENTITLED, An Act to provide for the imposition of penalties as a result of  
2 specific prohibited conduct with respect to workers' compensation.

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

4 Section 1. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 This Act applies to any person who is an insurer, self-insurer, group self-insurer, political  
7 subdivision of the state, or administrator of state employees' claims. This Act also applies to any  
8 person who is an adjuster or third-party administrator who acts on behalf of an insurer, self-  
9 insurer, group self-insurer, assigned risk plan, South Dakota Insurance Guaranty Association,  
10 political subdivision, or other entity.

11 No person, named above in this section, may:

12 (1) Fail to reply, within thirty calendar days after receipt, to any written communication  
13 about a claim from a claimant, a claimant's representative, or claimant's provider if  
14 that written communication requests a response or requests that some action be taken;

15 (2) Fail, within twenty calendar days, or within a specified period of extension has been



- 1 granted by the department, after receipt of a written request, to commence benefits  
2 or to advise the claimant and the medical provider of the acceptance or denial of the  
3 claim by the insurer;
- 4 (3) Fail to pay or make a denial of medical bills within forty-five days after the receipt  
5 of all information requested from medical providers;
- 6 (4) File a denial of liability for workers' compensation benefits without conducting an  
7 investigation and fail to pay or make a denial of medical bills without evidence of  
8 proof that an investigation of the claim was conducted;
- 9 (5) Fail to regularly pay weekly benefits in a timely manner as prescribed by rules  
10 adopted by the department once weekly benefits have commenced. Failure to  
11 regularly pay weekly benefits means failure to pay an employee on more than three  
12 occasions in any twelve-month period within three business days of when payment  
13 is due;
- 14 (6) Fail to respond to the department within thirty calendar days after receipt of a written  
15 inquiry from the department about a claim;
- 16 (7) Fail to pay compensation, pursuant to an order of the department or court, within  
17 forty-five days from the filing of an order of an award unless the order is under  
18 appeal or a stay is granted by the department or court;
- 19 (8) Advise a claimant not to obtain the services of an attorney or represent that payment  
20 will be delayed if an attorney is retained by the claimant;
- 21 (9) Alter information on a document to be filed with the department;
- 22 (10) Make a false statement or representation for the purpose of reducing, denying, or  
23 terminating benefits or payment of benefits under this chapter to an injured employee  
24 or the injured employee's dependents whether the injury results in death or not.

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

3 The following penalties apply to violations of section 2 of this Act:

- 4 (1) Violations of subdivisions (1), (2), (3), (4), (5), (6), and (9):
  - 5 (a) One to three violations - written warning;
  - 6 (b) Four to ten violations - \$3,000 per fourth or subsequent violation;
  - 7 (c) Eleven or more violations - \$6,000 per eleventh or subsequent violation;
- 8 (2) Violations of subdivisions (7) and (8):
  - 9 (a) One to five violations - \$3,000 per violation;
  - 10 (b) Six or more violations - \$6,000 per sixth or subsequent violation;
- 11 (3) Violation of subdivision (10) is a Class 5 felony.

12 Section 3. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The penalties provided for in section 2 of this Act may be imposed in addition to other  
15 penalties under this chapter which may also apply to the same violation. The penalties provided  
16 for in section 2 of this Act shall be assessed by the department and are payable to the department  
17 for deposit in the state treasury into an assigned risk safety account. Such funds shall be used  
18 only for the administrative enforcement, and assessment of these penalties by the department,  
19 the Division of Insurance, and the Office of the Attorney General.

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

22 A party may object to any penalty assessed pursuant to section 2 of this Act and request a  
23 formal hearing. The hearing shall be conducted in accordance with chapter 1-26.

24 Section 5. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If a party has more than thirty violations within any twelve-month period, in addition to the  
3 penalties assessed pursuant to section 2 of this Act, the department shall refer the matter to the  
4 Department of Revenue and Regulation and Division of Insurance and to the Office of the  
5 Attorney General with recommendation for suspension or revocation of the entity's license to  
6 write workers' compensation insurance, license to administer claims on behalf of a self-insured,  
7 the assigned risk plan, or the South Dakota Insurance Guaranty Association, authority to self-  
8 insure, or license to adjust claims.

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

11 This Act is enforceable only by the Division of Insurance, Department of Revenue and  
12 Regulation, and the Office of the Attorney General. Evidence of violations under this Act are,  
13 however, admissible in any civil action.