

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

556N0049

## SENATE BILL NO. 141

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

1 FOR AN ACT ENTITLED, An Act to provide for the award of attorney's fees for the refusal  
2 or delay of insurers and self insured employers in the payment of workers' compensation or  
3 medical payments.

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

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

7 If an employer or insurer refuses payment of compensation or medical payments subject to  
8 an award, or if an employer or insurer neglects to pay compensation for thirty days after injury  
9 or neglects to pay medical payments subject to such award after ten days' notice has been given  
10 of the obligation for medical payments, and proceedings are held before the department,  
11 reasonable attorney's fees shall be allowed the claimant by the department in all cases when the  
12 employee receives an award. Attorney's fees allowed may not be deducted from the amounts  
13 ordered to be paid for medical services. If the employer files an application for review before  
14 the department from an award and fails to obtain any reduction in the amount of such award,  
15 the department shall allow the claimant reasonable attorney's fees to be taxed as costs against



1 the employer for such review, and the circuit court or the Supreme Court on appeal shall in like  
2 manner allow the claimant a reasonable sum as attorney's fees for the proceedings in the circuit  
3 court or Supreme Court. If the claimant files an application for review before the department  
4 from an order of a judge of the department denying an award and later obtains an award, or if  
5 the claimant files an application for a review before the circuit court from an award of a judge  
6 of the department when the amount of compensation is due is disputed and obtains an increase  
7 in the amount of such award, the circuit court shall allow the claimant a reasonable attorney's  
8 fee to be taxed as costs against the insurer or employer for such review, and the circuit court or  
9 Supreme Court shall in like manner allow the claimant a reasonable sum as attorney's fees for  
10 the proceedings in the circuit court or Supreme Court. Reasonable attorney's fees allowed  
11 pursuant to this section may not affect or diminish the amount of the award.

12 When attorney's fees are allowed pursuant to this section, there shall further be assessed  
13 against the insurer or employer an amount of interest on the final award obtained, computed  
14 from the date compensation was payable, as provided in § 62-4-10, until the date payment is  
15 made by the employer, at the rate equal to the rate of interest allowed per annum under category  
16 C in § 58-3-16. Interest applies only to those weekly compensation benefits awarded which have  
17 accrued as of the date payment is made by the insurer or employer. If the insurer or employer  
18 pays or tenders payment of compensation, the amount of compensation due is disputed, and the  
19 award obtained is greater than the amount paid or tendered by the insurer or employer, the  
20 assessment of interest shall be determined solely upon the difference between the amount  
21 awarded and the amount tendered or paid.