

Workers Compensation Small Claims Procedure

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

Submitted as:
South Dakota
HB 1165 (enrolled version)
Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish a Workers
2 Compensation Small Claims Procedure.”

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4 Section 2. [*Establishing Procedure.*] The [department] shall establish a small claims
5 procedure for medical expense claims [not exceeding eight thousand dollars]. The procedure
6 may only be used for a medical expense claim incurred after the [department] has held a hearing
7 and has adjudicated the underlying injury as compensable or after the [department] has approved
8 an agreement as to compensation or a memorandum of payment for permanent partial disability.

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10 Section 3. [*Rules.*] The [department] shall, by rules promulgated pursuant to [insert
11 citation], provide for the manner in which the disputed claims shall be presented and the forms
12 required from the claimant and from employers.

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14 Section 4. [*Initiating Claims.*] Any claimant pursuant to this Act shall initiate a claim by
15 completing a form provided by the [department].

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17 Section 5. [*Notice.*] The [department] shall send notice to the party claimed against by
18 registered or certified mail, return receipt.

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20 Section 6. [*Counterclaims.*] Any party claimed against may assert any setoff or
21 counterclaim that is within the jurisdiction of the [department].

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23 Section 7. [*Hearings.*] The [department] shall conduct the hearings in accordance with
24 [insert citation]. The department shall expedite any hearing to the extent possible.

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26 Section 8. [*Evidence.*] Any medical record, correspondence, medical bill, and expert
27 report and correspondence is admissible as evidence. Nothing in this Act precludes an employer
28 or insurer from obtaining an examination pursuant to [insert citation].

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30 Section 9. [*Medical Release and Records.*] Upon the request of any party claimed against,
31 the claimant shall provide an executed medical release in a form prescribed by the department,

32 sufficiently in advance of the hearing to allow the party claimed against to obtain such medical
33 records as it deems appropriate. Any party shall disclose to the other party any medical record
34 that is within the party's possession and is relevant to the claim in dispute.
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36 Section 10. [*Appeals.*] Within [fifteen days] after receiving the decision by the
37 [department], any party may appeal the decision to the [secretary of labor]. The [secretary of
38 labor] may on the [secretary's] own motion affirm, modify, or set aside any decision on the basis
39 of the evidence previously submitted in the case or the secretary may direct the taking of
40 additional evidence. The [secretary] shall promptly notify the interested parties of the
41 [secretary's] findings and decision. Any decision of the [secretary] is the final decision of the
42 [department]. Any final decision of the [department] may be appealed as provided in [insert
43 citation].
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45 Section 11. [*Representation.*] Any claimant in any proceeding before the [department]
46 may be represented by counsel or other duly authorized agent, but no such counsel or agent may
47 either charge or receive for such services more than an amount approved by the [department]. An
48 employer or insurer, including a corporate employer or insurer, may be represented before the
49 [department] by counsel, an employee, or a corporate officer.
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51 Section 12. [*Findings.*] Any finding of fact, conclusion of law, decision, or final order
52 made in a small claims proceeding may not be used as evidence in any separate or subsequent
53 action or proceeding between anyone in any tribunal, agency, or court of this state or the United
54 States, regardless of whether the prior action was between the same or related parties or involved
55 the same facts.
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57 Section 13. [*Severability.*] [Insert severability clause.]
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59 Section 14. [*Repealer.*] [Insert repealer clause.]
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61 Section 15. [*Effective Date.*] [Insert effective date.]