

Issue #1: The South Dakota State Bar has proposed the Council recommend amending SDCL 62-7-10, changing the period for an employee to report a workers compensation claim from three working days to seven working days. This proposal is the first half of a compromise, with Issue #2 being the second half (changing the notice period is acknowledged to favor employees, whereas Issue #2 favors employers and insurers). The Bar has asked the Council to accept or reject the Issue #1 and #2 proposals together. The Council recommended the Bar's proposal for Issue #1 in 2011; it was submitted as part of HB 1054 in the 2012 Legislative Session, but defeated in committee.

Issue #2: The second half of the Bar's proposal is for the Council to recommend amending SDCL 62-1-1.1, broadening the definition of "medical practitioner" to include physicians not licensed in South Dakota. Attorneys representing insurers feel limiting independent medical examinations to South Dakota-licensed physicians unfairly limits access to medical examiners, especially as to experts in unusual conditions. The Council did not recommend the Bar's proposal for Issue #2 in 2011; it was submitted as part of the defeated legislative bill HB 1054.

Issue #3: The Bar has also proposed, as in 2011, for the Council to recommend amending SDCL 62-1-1.3 to allow other insurance to cover claims when workers compensation denies for reasons for any reason. (Current law only allows the claim to be covered by other insurance when workers compensation denies for lack of work-relatedness.) The Council recommended the Bar's proposal for Issue #3 in 2011; it was submitted as part of the defeated legislative bill HB 1054.

Issue #4: An email was provided to the Council from an employee who was injured in 1993, and would therefore be limited to the disability benefit rate calculated then for any subsequent disability claims. The employee has proposed the benefit rate be adjusted based on changes to the state minimum wage or a similar formula.

Issue #5: An employee provided a letter to the Council, and also testified, that asserted he lost time from work intermittently over several years due to his injury, but did not receive disability benefits because he did not meet the lost-time seven day waiting period found at SDCL 62-4-2. The employee has proposed the Council recommend the waiting period be shortened.

Issue #6: The employee in Issue #5 also raised the issue that his insurer was slow in paying his medical costs. The employee has proposed the Council recommend insurers be required to pay medical costs more quickly.

Issue #7: SDCL 62-1-1.2 requires permanent impairment (the basis for permanent partial disability benefits) to be measured using the AMA's 4th edition of the Guides to Impairment. The Council has been asked to recommend the 6th edition of the Guides be used. (correspondence attached)