

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0277

HOUSE BILL NO. 1031

Introduced by: The Committee on Commerce at the request of the Department of Labor

1 FOR AN ACT ENTITLED, An Act to revise the definition of injury for the purposes of
2 workers' compensation cases.

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

4 Section 1. That § 62-1-1 be amended to read as follows:

5 62-1-1. Terms used in this title, ~~unless the context otherwise plainly requires, shall~~ mean:

- 6 (1) "Annual earnings," the average weekly wages, computed as provided in §§ 62-4-24
7 to 62-4-28, inclusive, multiplied by fifty-two;
- 8 (2) "Ascertainable loss," a loss becomes ascertainable when it becomes apparent that
9 permanent disability and the extent thereof has resulted from an injury and that the
10 injured area will get no better or no worse because of the injury;
- 11 (3) "Average weekly wages," the earnings of the injured employee, computed as
12 provided in §§ 62-4-24 to 62-4-28, inclusive;
- 13 (4) "Department," the Department of Labor created by chapter 1-37;
- 14 (5) "Domestic servant," an employee who performs services in or around a home, which
15 pertain to a house, home, household, lawn, garden, or family. The term includes baby



1 sitters but does not include an independent contractor;

2 (6) "Earnings," the amount of compensation for the number of hours commonly regarded
3 as a day's work for the employment in which the employee was engaged at the time
4 of ~~his~~ the employee's injury. ~~It~~ The term includes payment for all hours worked,
5 including overtime hours at straight-time pay, ~~and~~. The term does not include any
6 sum which the employer has been accustomed to pay the employee to cover any
7 special expense entailed by ~~him~~ the employee by the nature of ~~his~~ the employment;
8 ~~wherever~~. If allowances of any character made to an employee in lieu of wages are
9 specified as a part of the wage contract, ~~they~~ the allowances shall be deemed a part
10 of ~~his~~ the employee's earnings;

11 (7) "Injury" or "personal injury," only injury arising out of and in the course of the
12 employment, ~~and~~. The term does not include a disease in any form except as it results
13 from the injury. An injury is compensable only if it the injury is established by
14 medical evidence, subject to the following conditions:

15 (a) No injury is compensable unless the employment or employment related
16 activities are a major contributing cause of the injury and condition
17 complained of. Proof that employment is a contributing factor to an injury or
18 condition is insufficient to meet the employee's burden of proof; or

19 (b) If the injury combines with a preexisting disease or condition to cause or
20 prolong disability, impairment, or need for treatment, the injury and condition
21 complained of ~~is~~ are compensable if the employment or employment related
22 injury is and remains a major contributing cause of the disability, impairment,
23 or need for treatment. Proof that employment is a contributing factor to an
24 injury or condition is insufficient to meet the employee's burden of proof;

- 1 (c) If the injury combines with a preexisting work related compensable injury,
2 disability, or impairment, the subsequent injury is compensable if the
3 subsequent employment or subsequent employment related activities
4 contributed independently to the disability, impairment, or need for treatment;
- 5 (d) The term, injury, does not include a mental injury arising from emotional,
6 mental, or nonphysical stress or stimuli. A mental injury is compensable only
7 if a compensable physical injury is and remains a major contributing cause of
8 the mental injury, as shown by clear and convincing evidence. A mental injury
9 is any psychological, psychiatric, or emotional condition for which
10 compensation is sought;
- 11 (8) "Temporary disability, total or partial," the time beginning on the date of injury,
12 subject to the limitations set forth in § 62-4-2, and continuing until the employee
13 attains complete recovery or until a specific loss becomes ascertainable, whichever
14 comes first.