

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Amerman

1 A BILL for an Act to amend and reenact section 65-02-08 of the North Dakota Century Code,
2 relating to payment of attorney's fees by workforce safety and insurance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 65-02-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **65-02-08. Rulemaking power of the organization - Fees prescribed by**
7 **organization.**

8 1. The organization shall adopt rules necessary to carry out this title. All fees on
9 claims for medical and hospital goods and services provided under this title to an
10 injured employee must be in accordance with schedules of fees adopted by the
11 organization. Before the effective date of any adoption of, or change to, a fee
12 schedule, the organization shall hold a public hearing, which is not subject to
13 chapter 28-32. The organization shall establish, by administrative rule, costs
14 payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee
15 to compensate an injured employee's attorney for legal services following issuance
16 of an administrative order reducing or denying benefits. The organization shall
17 issue a decision within sixty days of the date when all elements of initial filing or
18 notice of reapplication of claim have been satisfied or a claim for additional benefits
19 over and above benefits previously awarded has been made. Satisfaction of
20 elements of filing must be defined by administrative rule. The organization shall
21 pay an injured employee's attorney's fees and costs from the organization's
22 general fund. Except for an initial determination of compensability, an attorney's
23 fee may not exceed twenty percent of the amount awarded, subject to a maximum

fee set by administrative rule. The organization shall pay an attorney's fees and costs when:

~~4.~~ a. The employee has prevailed in binding dispute resolution under section 65-02-20.

~~2.~~ b. The employee has prevailed after an administrative hearing under chapter 28-32.

2. An injured employee has prevailed only when an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that employee ultimately receives an additional benefit as a result of the remand. This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or attorney's fees from both the organization and the employee relative to the same claim. All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the hearing officer or arbitrator for decision, but a hearing officer or arbitrator may not order that the maximum fees be exceeded.

3. The organization shall adopt administrative rules regarding payment of attorney's fees and costs for an attorney who contracts with the organization to provide legal services on behalf of the organization in connection with a dispute regarding a claim under this title. The rules must provide that the organization may not pay nor reimburse the contract attorney for any services or costs if the organization does not prevail in the proceeding for which the attorney provided legal services.