

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Zaiser

1 A BILL for an Act to amend and reenact section 65-02-08 and subsections 13 and 14 of section
2 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation attorney's
3 fees.

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

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

7 **65-02-08. Rulemaking power of the organization - Fees prescribed by** 8 **organization.**

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

1 ~~compensability, an~~ An attorney's fee ~~may not exceed twenty percent of the amount~~
2 ~~awarded~~ payable by the organization must be based on an hourly rate, subject to a
3 maximum fee set by administrative rule. The organization shall pay an attorney's
4 fees and costs when:

5 4. ~~The~~ the employee has prevailed in binding dispute resolution under section
6 65-02-20:

7 2. ~~The employee~~ or has prevailed after an administrative hearing under chapter
8 28-32.

9 An injured employee has prevailed only when an additional benefit, previously
10 denied, is paid. An injured employee does not prevail on a remand for further
11 action or proceedings unless that employee ultimately receives an additional
12 benefit as a result of the remand. If an injured employee prevails at the district
13 court or supreme court level, the employee's attorney's fees paid by the
14 organization shall include payment for all qualified fees and costs at the lower level
15 proceedings, regardless of whether the employee prevailed at the lower level
16 proceedings.

17 6. This section does not prevent an injured employee or an employer from hiring or
18 paying an attorney; however, the employee's attorney may not seek or obtain costs
19 or attorney's fees from both the organization and the employee relative to the same
20 claim. All disputes relating to payment or denial of an attorney's fees or costs must
21 be submitted to the hearing officer or arbitrator for decision, but a hearing officer or
22 arbitrator may not order that the maximum fees be exceeded.

23 **SECTION 2. AMENDMENT.** Subsections 13 and 14 of section 65-05-12.2 of the North
24 Dakota Century Code are amended and reenacted as follows:

25 13. An attorney's fees are not payable unless there is a bona fide dispute as to the
26 percentage of the employee's permanent impairment or unless there is a dispute
27 as to the employee's eligibility for an award for permanent partial impairment. An
28 attorney's fees payable in connection with a permanent impairment dispute ~~may~~
29 ~~not exceed twenty percent of the additional amount awarded upon final resolution~~
30 ~~of the dispute~~ must be abased on an hourly rate, subject to the maximum fees
31 established pursuant to section 65-02-08.

1 14. ~~An attorney may not seek or obtain from an employee through a contingent fee~~
2 ~~arrangement, or on a percentage basis, costs or fees payable in connection with~~
3 ~~the award or denial of compensation for permanent impairment. This section does~~
4 ~~not prevent an injured employee or an employer from hiring or paying an attorney;~~
5 ~~however, the employee's attorney may not seek or obtain costs or attorney's fees~~
6 ~~from both the organization and the employee relative to the same claim. A~~
7 permanent impairment award is exempt from the claims of creditors, including an
8 employee's attorney, except as provided by section 65-05-29.