

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1268

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to amend and reenact sections 54-12-08, 65-02-08, and 65-10-03 of the
2 North Dakota Century Code, relating to revocation of an appointment of a special assistant
3 attorney general and to payment of attorney's fees paid for representing workers' compensation
4 claimants.

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

6 **SECTION 1. AMENDMENT.** Section 54-12-08 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **54-12-08. Assistant and special assistant attorneys general - Appointment -**
9 **Revocation - Compensation.** After consultation with the head of the state department or
10 institution or with the state board, commission, committee, or agency affected, the attorney
11 general may appoint assistant or special assistant attorneys general to represent the state
12 board, commission, committee, or agency. A state officer, head of any state department,
13 whether elected or appointed, or state department, board, commission, committee, or agency
14 may not employ legal counsel, and no person may act as legal counsel in any matter, action, or
15 proceeding in which the state or any state department, board, commission, committee, or
16 agency is interested or is a party, except upon written appointment by the attorney general.
17 The workers compensation bureau, the department of transportation, the state tax
18 commissioner, the public service commission, the commissioner of insurance, the board of
19 higher education, and the securities commissioner may employ attorneys to represent them.
20 These entities shall pay the salaries and expenses of the attorneys they employ within the limits
21 of legislative appropriations. The attorneys that represent these entities must be special
22 assistant attorneys general appointed by the attorney general pursuant to this section. Absent
23 good cause, the attorney general shall appoint as special assistant attorneys general licensed
24 attorneys selected by these entities. The attorney general may revoke the appointment only for

1 good cause or upon the request of the entity. Good cause ~~includes~~ means an inadequate level
2 of experience, competence, or ethical standards. The powers conferred upon special assistant
3 attorneys general are the same as are exercised by the regular assistant attorneys general,
4 unless the powers are limited specifically by the terms of ~~such~~ the appointment. ~~An~~ Except as
5 otherwise provided by this section, an appointment is revocable at the pleasure of the attorney
6 general. The appointment may be made with or without compensation, and when
7 compensation is allowed by the attorney general for services performed, the compensation
8 must be paid out of the funds appropriated therefor. The attorney general may require payment
9 for legal services rendered by any assistant or special assistant attorney general to any state
10 official, board, department, agency, or commission and those entities shall make the required
11 payment to the attorney general. Moneys received by the attorney general in payment for legal
12 services rendered must be deposited into the attorney general's operating fund. General fund
13 moneys may not be utilized for the payment of legal services provided by the attorneys
14 employed by the attorney general, except for those payments required of the department of
15 human services, state department of health, and the state hospital.

16 **SECTION 2. AMENDMENT.** Section 65-02-08 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau.** The
19 bureau shall adopt rules necessary to carry out this title. All fees on claims for legal, medical,
20 and hospital services rendered under this title to an injured employee must be in accordance
21 with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services
22 must incorporate cost-saving measures and must be submitted to and approved by the
23 committee on administrative rules before submission to the legislative council for publication.
24 The bureau shall establish, by administrative rule, costs payable, maximum costs, a reasonable
25 maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for
26 legal services following issuance of an administrative order ~~under chapter 28-32~~ reducing or
27 denying benefits. The bureau shall issue ~~an administrative order~~ a decision within sixty days of
28 the date when all elements of initial filing or notice of reapplication of claim have been satisfied
29 or a claim for additional benefits over and above benefits previously awarded has been made.
30 Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay
31 an injured employee's attorney's fees and costs from the bureau general fund. Except for an

1 initial determination of compensability, an attorney's fee may not exceed twenty percent of the
2 amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay
3 an attorney's fees and costs when:

4 1. The employee has prevailed in binding dispute resolution under section 65-02-20;
5 ~~or.~~

6 2. The employee has prevailed after an administrative hearing under chapter 28-32.
7 An injured employee has prevailed only when an additional benefit, previously denied, is paid.
8 An injured employee does not prevail on a remand for further action or proceedings unless that
9 employee ultimately receives an additional benefit as a result of the remand. This section does
10 not prevent an injured employee or an employer from hiring or paying an attorney; however, the
11 employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and
12 the employee relative to the same ~~services claim~~. All disputes relating to payment or denial of
13 an attorney's fee or costs must be submitted to the hearing officer or arbitrator for decision, but
14 a hearing officer or arbitrator may not order that the maximum fee be exceeded.

15 **SECTION 3. AMENDMENT.** Section 65-10-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **65-10-03. Cost of appeal and attorney's fee fixed by the bureau.** The bureau shall
18 pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney
19 when the employee prevails. The employee ~~is deemed to have~~ has prevailed when any part of
20 the decision of the bureau is reversed ~~or the claim is remanded to the bureau for further~~
21 ~~administrative proceedings and the employee receives an additional benefit as a result.~~ An
22 injured employee does not prevail on a remand for further action or proceedings unless the
23 injured employee ultimately receives an additional benefit. The bureau shall pay the attorney's
24 fee from the bureau general fund. The amount of the attorney's fee must be determined in the
25 same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee
26 already allowed in administrative proceedings before the bureau must be taken into
27 consideration. The bureau shall establish, pursuant to section 65-02-08, a maximum fee to be
28 paid in an appeal. The maximum fee may be exceeded upon application of the injured
29 employee ~~and approval of the court to the bureau~~, upon a finding that the claim had clear and
30 substantial merit, and that the legal or factual issues involved in the appeal were unusually

- 1 complex, but a court may not order that the maximum fee be exceeded. Notwithstanding the
- 2 foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.