

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1268
(Representative Berg)
(Senator Mutch)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation. After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. The workers compensation bureau, the department of transportation, the state tax commissioner, the public service commission, the commissioner of insurance, the board of higher education, and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause or upon the request of the entity. Good cause ~~includes~~ means an inadequate level of experience, competence, or ethical standards. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of ~~such the~~ the appointment. ~~An~~ Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, and the state hospital.

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

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall adopt rules necessary to carry out this title. All fees on claims for legal, medical, and hospital services rendered under this title to an injured employee must be in accordance with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule,

costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order ~~under chapter 28-32~~ reducing or denying benefits. The bureau shall issue ~~an administrative order~~ a decision within sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay an injured employee's attorney's fees and costs from the bureau general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay an attorney's fees and costs when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20; ~~or,~~
2. The employee has prevailed after an administrative hearing under chapter 28-32.

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 bureau and the employee relative to the same ~~services claim~~. All disputes relating to payment or denial of an attorney's fee 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 fee be exceeded.

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1268.

House Vote: Yeas 63 Nays 32 Absent 2

Senate Vote: Yeas 30 Nays 16 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State