

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2059
(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to create and enact two new sections to chapter 65-02 of the North Dakota Century Code, relating to workforce safety and insurance payment of an injured employee's attorney's fees for a case review or settlement proposal; to provide for a report to the legislative assembly; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Attorney's fees for legal review in preparation for rehearing of an administrative order.

1. The organization shall pay an injured employee's attorney for the fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by the organization under section 65-01-16 and chapter 28-32. The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08. To be eligible for payment of attorney's fees and costs under this section, before consulting the attorney the injured employee must first receive a certificate of completion from the office of independent review, and the attorney consultation must take place after the certificate of completion is issued but before the rehearing is conducted.
2. Payment of attorney's fees and costs under this section is limited as follows:
 - a. An injured employee may consult with one attorney per administrative order;
 - b. The payment amount for attorney's fees may not exceed a total of five hundred dollars per injured employee, per administrative order;
 - c. The payment amount for costs may not exceed a total of one hundred fifty dollars per injured employee, per administrative order;
 - d. The attorney must be licensed to practice law in North Dakota and must be in good standing; and
 - e. The organization may deny fees and costs the organization determines to be excessive or frivolous.
3. To obtain payment under this section, an attorney shall submit to the organization a fee statement. The fee statement must be signed by the attorney and must include:
 - a. The name of the injured employee;
 - b. The workforce safety and insurance claim number;
 - c. The date of the billing statement;
 - d. A summary of the basic legal issue;

- e. The date of each service or charge being billed;
 - f. An itemization and a reasonable description of the legal work performed for each service or charge;
 - g. The time and amount billed for each item; and
 - h. The total time and amounts billed.
4. Under this section, the organization shall reimburse the following costs:
- a. Actual postage, if postage exceeds three dollars per parcel;
 - b. Actual toll charges for long-distance telephone calls;
 - c. Copying charges at eight cents per page;
 - d. Mileage and other expenses for reasonable and necessary travel, including per diem, all of which are to be paid in the amounts paid state officials as provided under sections 44-08-04 and 54-06-09; and
 - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars.
5. Under this section, the organization may not reimburse the following costs:
- a. Express mail;
 - b. Additional copies of transcripts;
 - c. Costs incurred to obtain medical records;
 - d. Copy charges for documents provided by the organization; and
 - e. Costs for typing and clerical or office services.

SECTION 2. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Attorney's fees for legal review of proposed settlement. The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 1 of this Act apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 1 of this Act. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal.

SECTION 3. REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY. Workforce safety and insurance shall report the number of injured employees per year that were eligible for payment of attorney's fees and costs under section 1 of this Act to the senate and house industry, business and labor standing committees during the sixty-second legislative assembly.

SECTION 4. APPLICATION. Section 1 of this Act applies to injured employees who have received a certificate of completion from the office of independent review on or after the effective date of this Act. Section 2 of this Act applies to settlement proposals offered on or after the effective date of this Act.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2059.

Senate Vote: Yeas 45 Nays 1 Absent 1

House Vote: Yeas 87 Nays 1 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State