

HOUSE BILL NO. 1263

Introduced by

Representative Mahoney

Senator Mutzenberger

1 A BILL for an Act to amend and reenact sections 62-02-08, 65-02-15, subsection 1 of
2 65-05.1-06.1, and section 65-10-03 of the North Dakota Century Code, relating to workers
3 compensation attorney fees.

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

5 **SECTION 1. AMENDMENT.** Section 65-02-08 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau.** The
8 bureau shall adopt rules necessary to carry out this title. All fees on claims for legal, medical,
9 and hospital services rendered under this title to an injured employee must be in accordance
10 with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services
11 must incorporate cost-saving measures and must be submitted to and approved by the
12 committee on administrative rules before submission to the legislative council for publication.
13 The bureau shall establish, by administrative rule, costs payable, maximum costs, a reasonable
14 maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for
15 legal services following constructive denial of a claim, notice of informal decision, or issuance of
16 an administrative order reducing or denying benefits. The bureau shall issue a decision within
17 sixty days of the date when all elements of initial filing or notice of reapplication of claim have
18 been satisfied or a claim for additional benefits over and above benefits previously awarded has
19 been made; constructive denial occurs when the bureau fails to meet this time requirement.
20 Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay
21 an injured employee's attorney's fees and costs from the bureau general fund. ~~Except for an~~
22 ~~initial determination of compensability, an attorney's fee may not exceed twenty percent of the~~
23 ~~amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay an~~
24 ~~attorney's fees and costs when:~~

1 1. ~~The employee has prevailed in binding dispute resolution under section 65-02-20.~~
2 2. ~~The employee has prevailed after an administrative hearing under chapter 28-32.~~
3 ~~An injured employee has prevailed only when an additional benefit, previously denied, is paid.~~
4 ~~An injured employee does not prevail on a remand for further action or proceedings unless that~~
5 ~~employee ultimately receives an additional benefit as a result of the remand. In the case of~~
6 ~~constructive denial, the bureau is only required to pay attorneys' fees incurred from the~~
7 ~~occurrence of the constructive denial until the bureau issues a notice of informal decision or~~
8 ~~administrative order.~~ This section does not prevent an injured employee or an employer from
9 hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or
10 attorney's fees from both the bureau and the employee relative to the same claim. All disputes
11 relating to payment or denial of an attorney's fee or costs must be submitted to the hearing
12 officer or arbitrator for decision, ~~but a hearing officer or arbitrator may not order that the~~
13 ~~maximum fee be exceeded.~~

14 **SECTION 2. AMENDMENT.** Section 65-02-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **65-02-15. Workers' compensation binding arbitration.** A dispute between the
17 bureau and an injured employee must be resolved by arbitration when the dispute concerns an
18 amount no greater than three thousand dollars. If the amount in dispute is greater than three
19 thousand dollars, the dispute may not be resolved through arbitration. The bureau shall adopt
20 rules to establish how the amount of the dispute is determined. The bureau may hire arbitrators
21 based upon criteria the bureau determines relevant, including education, training, and
22 experience. ~~The bureau shall pay an injured employee's attorney's fee only when the~~
23 ~~employee prevails.~~ The bureau shall adopt rules to establish a maximum fee the bureau will
24 pay for an injured employee's attorney. ~~An attorney's fee may not exceed twenty percent of the~~
25 ~~amount awarded.~~ Payment of a disputed amount pursuant to an arbitration award does not
26 establish the bureau's liability for any issue not raised during the arbitration proceeding and
27 does not establish the bureau's liability for any underlying condition. The arbitration process
28 may not be used for determinations of compensability of medical conditions. The bureau
29 retains continuing jurisdiction over the arbitration proceeding under section 65-05-04. An
30 arbitration decision that is not revoked or modified by the bureau under section 65-05-04 is final
31 and not reviewable by any court.

1 **SECTION 3. AMENDMENT.** Subsection 1 of section 65-05.1-06.1 of the 1997
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3 1. Within sixty days of receiving the final vocational consultant's report, the bureau
4 shall issue an administrative order under chapter 28-32 detailing the employee's
5 entitlement to disability and vocational rehabilitation services. The bureau shall
6 adopt by rule an hourly rate to compensate an employee's attorney from the date
7 the bureau notifies the employee to be available for vocational consultation testing
8 under section 65-05.1-02. The bureau may adopt by rule the maximum fees for
9 this representation.

10 **SECTION 4. AMENDMENT.** Section 65-10-03 of the 1997 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **65-10-03. Cost of appeal and attorney's fee fixed by the bureau.** The bureau shall
13 pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney
14 ~~when the employee prevails. The employee has prevailed when any part of the decision of the~~
15 ~~bureau is reversed and the employee receives an additional benefit as a result. An injured~~
16 ~~employee does not prevail on a remand for further action or proceedings unless the injured~~
17 ~~employee ultimately receives an additional benefit.~~ The bureau shall pay the attorney's fee
18 from the bureau general fund. The amount of the attorney's fee must be determined in the
19 same manner as prescribed by the bureau for attorney fees; and the amount of attorney's fee
20 already allowed in administrative proceedings before the bureau must be taken into
21 consideration. The bureau shall establish, pursuant to section 65-02-08, a maximum fee to be
22 paid in an appeal. The maximum fee may be exceeded upon application of the injured
23 employee ~~to the bureau~~ and approval of the court, upon a finding that the claim had clear and
24 substantial merit, and that the legal or factual issues involved in the appeal were unusually
25 complex, ~~but a court may not order that the maximum fee be exceeded.~~ Notwithstanding the
26 foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.