

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2048

Introduced by

Legislative Management

(Workers' Compensation Review Committee)

1 A BILL for an Act to amend and reenact sections 65-02-08 and 65-10-03 of the North Dakota  
2 Century Code, relating to workers' compensation attorney's fees and costs; and to provide for  
3 application.

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 - Timeliness for issuance of decision**  
8 **- Fees prescribed by organization - Attorney's fees and costs.**

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

- 1       3.   a.   By administrative rule, the organization shall establish costs payable, maximum  
2               costs, a reasonable maximum hourly rate, and a maximum fee to compensate an  
3               injured employee's attorney for legal services following issuance of an  
4               administrative or judicial order reducing or denying benefits.
- 5       b.   Except for an initial determination of compensability, an attorney's fee may not  
6               exceed twenty percent of the amount awarded, subject to a maximum fee set by  
7               administrative rule. The amount of the attorney's fees must be determined in the  
8               same manner as prescribed by the organization for attorney's fees. The total  
9               amount of attorney fees paid by the organization may not exceed the fee cap  
10              established for the highest appellate level at which the injured employee prevails.
- 11       c.   The organization shall pay an attorney's fees and costs when:
- 12       1.   ~~The~~ if the injured employee has prevailed in binding dispute resolution under section  
13              65-02-20:
- 14       2. ~~The~~ the injured employee has prevailed after an administrative hearing under chapter  
15              28-32, or the injured employee prevailed at the district or supreme court as  
16              provided for under section 65-10-03. The organization shall pay the attorney's  
17              fees and costs at the time the injured employee prevails. The organization may  
18              not condition payment of attorney's fees and costs upon the injured employee  
19              prevailing upon any future appeal.
- 20       d.   An injured employee ~~has prevailed only when~~ does not prevail unless an  
21              additional benefit, previously denied, is paid. An injured employee does not  
22              prevail on a remand for further action or proceedings unless that injured  
23              employee ultimately receives an additional benefit as a result of the remand.
- 24       e.   Notwithstanding the requirement under subdivision d that an additional benefit be  
25              paid or received, an injured employee who prevails at the administrative or  
26              district court level is eligible for attorney's fees and costs for prevailing at that  
27              level, regardless of whether the organization ultimately prevails upon the  
28              organization's appeal of an administrative or district court order.
- 29       f.   This ~~section~~ subsection does not prevent an injured employee or an employer  
30              from hiring or paying an attorney; ~~however, the employee's attorney may not seek~~

1                   ~~or obtain costs or attorney's fees from both the organization and the employee~~  
2                   ~~relative to the same claim.~~

3           g. All disputes relating to payment or denial of an attorney's fees or costs must be  
4           submitted to the court, hearing officer, or arbitrator for decision, but a court,  
5           hearing officer, or arbitrator may not order that the maximum fees be exceeded.

6           h. The organization shall pay an injured employee's attorney's fees and costs from  
7           the organization's general fund. The organization is liable for its costs on appeal if  
8           the decision of the organization is affirmed.

9           **SECTION 2. AMENDMENT.** Section 65-10-03 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11           **65-10-03. Cost of appeal and attorney's fees fixed by the organization.**

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

27           **SECTION 3. APPLICATION.** This Act applies to administrative and judicial appeal decisions  
28          issued on and after the effective date of this Act.