

**Senate Bill No. 606**

(By Senators Cookman, Tucker, Laird, D. Hall, Carmichael,  
Walters, Plymale and Kessler (Mr. President))

[Introduced March 22, 2013; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §23-5-16 of the Code of West Virginia,  
1931, as amended, relating to access to justice; providing  
that attorney fees may be awarded in workers' compensation  
medical treatment cases; and providing fee limits.

*Be it enacted by the Legislature of West Virginia:*

That §23-5-16 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 5. REVIEW.**

**§23-5-16. Fees of attorney for claimant; unlawful charging or  
receiving of attorney fees.**

(a) ~~No~~ An attorney's fee in excess of twenty percent of any  
award granted ~~shall~~ may not be charged or received by an attorney  
for a claimant or dependent. In no case ~~shall~~ may the fee received  
by the attorney of ~~such~~ the claimant or dependent be in excess of

1 twenty percent of the benefits to be paid during a period of two  
2 hundred eight weeks. The interest on disability or dependent  
3 benefits as provided ~~for~~ in this chapter ~~shall~~ may not be  
4 considered as part of the award in determining ~~any such~~ the  
5 attorney's fee. However, any contract entered into in excess of  
6 twenty percent of the benefits to be paid during a period of two  
7 hundred eight weeks, as herein provided, ~~shall be~~ is unlawful and  
8 unenforceable as contrary to the public policy of this state and  
9 any fee charged or received by an attorney in violation thereof  
10 ~~shall be deemed~~ is an unlawful practice and ~~render~~ renders the  
11 attorney subject to disciplinary action.

12 (b) On a final settlement an attorney may charge a fee not to  
13 exceed twenty percent of the total value of the medical and  
14 indemnity benefits: *Provided*, That this attorney's fee, when  
15 combined with any fees previously charged or received by the  
16 attorney for permanent partial disability or permanent total  
17 disability benefits may not exceed twenty percent of an award of  
18 benefits to be paid during a period of two hundred eight weeks.

19 (c) Except attorney's fees and costs recoverable pursuant to  
20 subsection (c), section twenty-one, article two-c of this chapter,  
21 an attorney's fee for successful recovery of denied medical  
22 benefits may be charged or received by an attorney for a claimant  
23 or dependent under this section. In no event may attorney's fees  
24 and costs be awarded pursuant to both this section and subsection

1 (c), section twenty-one, article two-c of this chapter.

2 (1) If a claimant successfully prevails in a proceeding  
3 relating to a denial of medical benefits brought before the  
4 commission, successor to the commission, other private carrier or  
5 self-insured employer, whichever is applicable, as a result of  
6 utilization review, arbitration, mediation or other proceedings, or  
7 a combination thereof, relating to denial of medical benefits  
8 before the Office of Judges, Board of Review or court, there shall  
9 additionally be charged against the commission, successor to the  
10 commission, other private carriers or self-insured employers,  
11 whichever is applicable, the reasonable costs and reasonable hourly  
12 attorney fees of the claimant. Following the successful resolution  
13 of the denial in favor of the claimant, a fee petition shall be  
14 submitted by the claimant's attorney to the Insurance Commissioner  
15 or his or her successors, arbitrators, mediator, the Office of  
16 Judges, the Board of Review, or court, whichever enters a final  
17 decision on the issue. An attorney representing a claimant must  
18 submit a claim for attorney fees and costs within thirty days  
19 following a decision in which the claimant prevails and the order  
20 becomes final.

21 (2) The Insurance Commissioner or his or her successors,  
22 arbitrators, mediator, the Office of Judges, the Board of Review,  
23 or court shall enter an order within thirty days awarding  
24 reasonable attorney fees not to exceed \$125 per hour and reasonable

1 costs of the claimant to be paid by the commission, successor to  
2 the commission, other private carriers or self-insured employers,  
3 whichever is applicable, which shall be paid as directed. In no  
4 event may an award of the claimant's attorney's fees under this  
5 subsection exceed \$500 per litigated medical issue, not to exceed  
6 \$2,500 in a claim.

7 (3) In determining the reasonableness of the attorney fees to  
8 be awarded, the Insurance Commission, arbitrator, mediator, Office  
9 of Judges, Board of Review, or court shall consider the experience  
10 of the attorney, the complexity of the issue, the hours expended,  
11 and the contingent nature of the fee.

NOTE: The purpose of this bill is to provide that attorney fees may be awarded in certain workers' compensation medical treatment claims. The bill provides that an attorney may be awarded \$125 per hour up to \$500 per medical issue. This is recommended by passage by the Access to Justice Commission of the West Virginia Supreme Court of Appeals.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.