

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 3069

(BY DELEGATE(S) MILEY, MANCHIN, HUNT, POORE, SPONAUGLE,
SKINNER, ELLEM AND LANE)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §23-5-16 of the Code of West Virginia, 1931, as amended, relating to providing that attorney fees may be awarded for successful recovery of denied medical benefits in certain workers' compensation 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.

1 (a) An attorney's fee in excess of twenty percent of any
2 award granted may not be charged or received by an attorney for
3 a claimant or dependent. In no case may the fee received by the
4 attorney of the claimant or dependent be in excess of twenty
5 percent of the benefits to be paid during a period of two hundred
6 eight weeks. The interest on disability or dependent benefits as
7 provided in this chapter may not be considered as part of the
8 award in determining the attorney's fee. However, any contract
9 entered into in excess of twenty percent of the benefits to be paid
10 during a period of two hundred eight weeks, as herein provided,
11 is unlawful and unenforceable as contrary to the public policy of
12 this state and any fee charged or received by an attorney in
13 violation thereof is an unlawful practice and renders the attorney
14 subject to disciplinary action.

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

22 (c) Except attorney's fees and costs recoverable pursuant to
23 subsection (c), section twenty-one, article two-c of this chapter,
24 an attorney's fee for successful recovery of denied medical
25 benefits may be charged or received by an attorney, and paid by
26 the private carrier or self-insured employer, for a claimant or
27 dependent under this section. In no event may attorney's fees
28 and costs be awarded pursuant to both this section and
29 subsection (c), section twenty-one, article two-c of this chapter.

30 (1) If a claimant successfully prevails in a proceeding
31 relating to a denial of medical benefits brought before the

32 commission, successor to the commission, other private carrier
33 or self-insured employer, whichever is applicable, as a result of
34 utilization review, arbitration, mediation or other proceedings,
35 or a combination thereof, relating to denial of medical benefits
36 before the Office of Judges, Board of Review or court, there
37 shall additionally be charged against the private carriers or
38 self-insured employers, whichever is applicable, the reasonable
39 costs and reasonable hourly attorney fees of the claimant.
40 Following the successful resolution of the denial in favor of the
41 claimant, a fee petition shall be submitted by the claimant's
42 attorney to the Insurance Commissioner or his or her successors,
43 arbitrators, mediator, the Office of Judges, the Board of Review,
44 or court, whichever enters a final decision on the issue. An
45 attorney representing a claimant must submit a claim for
46 attorney fees and costs within thirty days following a decision in
47 which the claimant prevails and the order becomes final.

48 (2) The Insurance Commissioner or his or her successors,
49 arbitrators, mediator, the Office of Judges, the Board of Review,
50 or court shall enter an order within thirty days awarding
51 reasonable attorney fees not to exceed \$125 per hour and
52 reasonable costs of the claimant to be paid by the private carriers
53 or self-insured employers, whichever is applicable, which shall
54 be paid as directed. In no event may an award of the claimant's
55 attorney's fees under this subsection exceed \$500 per litigated
56 medical issue, not to exceed \$2,500 in a claim.

57 (3) In determining the reasonableness of the attorney fees to
58 be awarded, the Insurance Commission, arbitrator, mediator,
59 Office of Judges, Board of Review, or court shall consider the
60 experience of the attorney, the complexity of the issue, the hours
61 expended, and the contingent nature of the fee.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

