

COMMITTEE SUBSTITUTE

FOR

H. B. 3069

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

(Originating in the Committee on Finance)

[March 29, 2013]

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

16 (b) On a final settlement an attorney may charge a fee not to
17 exceed twenty percent of the total value of the medical and
18 indemnity benefits: *Provided*, That this attorney's fee, when

19 combined with any fees previously charged or received by the
20 attorney for permanent partial disability or permanent total
21 disability benefits may not exceed twenty percent of an award of
22 benefits to be paid during a period of two hundred eight weeks.

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

31 (1) If a claimant successfully prevails in a proceeding
32 relating to a denial of medical benefits brought before the
33 commission, successor to the commission, other private carrier
34 or self-insured employer, whichever is applicable, as a result of
35 utilization review, arbitration, mediation or other proceedings,
36 or a combination thereof, relating to denial of medical benefits
37 before the Office of Judges, Board of Review or court, there
38 shall additionally be charged against the private carriers or

39 self-insured employers, whichever is applicable, the reasonable
40 costs and reasonable hourly attorney fees of the claimant.
41 Following the successful resolution of the denial in favor of the
42 claimant, a fee petition shall be submitted by the claimant's
43 attorney to the Insurance Commissioner or his or her successors,
44 arbitrators, mediator, the Office of Judges, the Board of Review,
45 or court, whichever enters a final decision on the issue. An
46 attorney representing a claimant must submit a claim for
47 attorney fees and costs within thirty days following a decision in
48 which the claimant prevails and the order becomes final.

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

58 (3) In determining the reasonableness of the attorney fees to
59 be awarded, the Insurance Commission, arbitrator, mediator,

60 Office of Judges, Board of Review, or court shall consider the
61 experience of the attorney, the complexity of the issue, the hours
62 expended, and the contingent nature of the fee.

