H. B. 2307

(By Delegate Manchin)

[Introduced January 12, 2011; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §23-5-16 of the Code of West Virginia, 1931, as amended, relating to workers' compensation claimant attorney fees.

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~~.

~~No attorney's fee in excess of twenty percent of any award granted shall be charged or received by an attorney for a claimant or dependent. In no case shall the fee received by the attorney of such claimant or dependent be in excess of twenty percent of the benefits to be paid during a period of two hundred eight weeks.~~

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

(a) An attorney's fee for benefits secured on behalf of a claimant in excess of twenty percent of the first $50,000 of the amount of the benefits secured, fifteen percent of the next $50,000 of the amount of the benefits secured, and ten percent of the remaining amount of the benefits secured, may not be charged or received by an attorney for a claimant or dependent. If there is a lump-sum settlement, including settlement of indemnity or medical benefits or both, an attorney's fee may not be in excess of the amount permitted by this section.

(b) If a claimant successfully prevails in any proceedings relating to a denial of medical benefits brought before the Insurance Commission as a result of utilization review, arbitration, or mediation, or proceedings, or both, relating to denial of medical benefits before the Office of Judges, Board of Review, or court, there shall additionally be taxed against the

commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, the reasonable costs and reasonable hourly attorney fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commission, arbitrator, mediator, the Ofice of Judges, the Board of Review, or court, whichever enters a final decision on the issue, which shall enter an order within thirty days awarding reasonable attorney fees and reasonable costs of the claimant to be paid by the commission, successor to the commission, other private carrier or self-insured employer which shall be paid as directed. In determining the reasonableness of the attorney fees, the Insurance Commission, arbitrator, mediator, Office of Judges, Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(c) In cases in which the claimant is responsible for the payment of his or her own attorney's fees, these fees are a lien upon compensation payable to the claimant, notwithstanding the provisions of section eighteen, article four of this chapter.

NOTE: The purpose of this bill is to change the way fees are awarded to attorney's in workers' compensation claims.

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