

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3069**

4 (By Delegates Miley, Manchin, Hunt, Poore, Sponaugle, Skinner,
5 Ellem and Lane)

6 (Originating in the Committee on Finance)

7 [March 29, 2013]

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10 A BILL to amend and reenact §23-5-16 of the Code of West Virginia,
11 1931, as amended, relating to providing that attorney fees may
12 be awarded for successful recovery of denied medical benefits
13 in certain workers' compensation cases; and providing fee
14 limits.

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

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

18 **ARTICLE 5. REVIEW.**

19 **§23-5-16. Fees of attorney for claimant; unlawful charging or**
20 **receiving of attorney fees.**

21 (a) ~~No~~ An attorney's fee in excess of twenty percent of any
22 award granted ~~shall~~ may not be charged or received by an attorney
23 for a claimant or dependent. In no case ~~shall~~ may the fee received
24 by the attorney of ~~such~~ the claimant or dependent be in excess of
25 twenty percent of the benefits to be paid during a period of two
26 hundred eight weeks. The interest on disability or dependent

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

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

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

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

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

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

26 (3) In determining the reasonableness of the attorney fees to

1 be awarded, the Insurance Commission, arbitrator, mediator, Office
2 of Judges, Board of Review, or court shall consider the experience
3 of the attorney, the complexity of the issue, the hours expended,
4 and the contingent nature of the fee.