

H. B. 3069

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

(By Request of the Supreme Court of Appeals)

[Introduced March 22, 2013; referred to the
Committee on the Judiciary then 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
twenty percent of the benefits to be paid during a period of two

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

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

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

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

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

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

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