

HB 3069

2013 MAY -1 PM 4: 02

SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2013



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 3069**

(By Delegate(s) Miley, Manchin, Hunt, Poore,  
Sponougle, Skinner, Ellem and Lane)



Passed April 13, 2013

In effect ninety days from passage.

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**H. B. 3069**

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

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**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.

*Danny Wells*  
Chairman, House Committee

Member *Robert Ferguson*  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Suzanne Ray*  
Clerk of the House of Delegates

*Joseph M. Minard*  
Clerk of the Senate

*R. G.*  
Speaker of the House of Delegates

*J. J. K.*  
President of the Senate

The within *is approved* this the *1st*  
day of *May*, 2013.

*Earl Ray Tomblin*  
Governor

**PRESENTED TO THE GOVERNOR**

**MAY - 1 2013**

**Time** 10:27 am