

SENATE BILL 384

Introduced by Harp

2/10	Introduced
2/10	Referred to Labor & Employment Relations
2/14	Hearing
2/17	Committee Report--Bill Not Passed as Amended
2/17	Adverse Committee Report Adopted

1 Senate BILL NO. 384  
2 INTRODUCED BY HARP  
3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE FEE AN  
6 ATTORNEY MAY CHARGE A CLAIMANT IN A WORKERS' COMPENSATION  
7 CASE; ESTABLISHING CRITERIA FOR DETERMINATION OF THE FEE;  
8 AMENDING SECTION 39-71-613, MCA; AND PROVIDING AN IMMEDIATE  
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 39-71-613, MCA, is amended to read:

13 "39-71-613. Regulation of attorneys'-fees attorney fee  
14 -- forfeiture of fee for noncompliance. (1) When an attorney  
15 represents or acts on behalf of a claimant or any other  
16 party on any workers' compensation claim, the attorney  
17 shall, within 30 days of undertaking representation of the  
18 claimant, submit to the division a contract of employment,  
19 on a form provided by the division, stating specifically the  
20 terms of the fee arrangement between the attorney and the  
21 claimant. An attorney substituting for another attorney  
22 previously representing a claimant shall submit a new  
23 contract conforming with this section within 30 days of  
24 undertaking representation of the claimant. The contract of  
25 employment must be signed by the claimant and the attorney

1 and be approved by the division to be effective.

2 (2) The administrator of the division may, in his  
3 discretion, regulate the amount of the attorney's attorney  
4 fee in any charged to a claimant by his attorney for  
5 obtaining payment, settlement, or award of workers'  
6 compensation case- benefits, even though the contract of  
7 employment fully complies with this section or a rule  
8 adopted under this section. In regulating the amount of the  
9 fee, the administrator shall consider:

10 (a) the benefits the claimant gained due to the efforts  
11 of the attorney;

12 ~~(b)--the--time--the--attorney--was--required--to--spend--on--the~~  
13 ~~case;~~

14 ~~(c)--the--complexity--of--the--case;--and~~

15 (b) the anticipated time and labor required to perform  
16 the legal service properly;

17 (c) the novelty and difficulty of legal issues involved  
18 in the matter;

19 (d) the fees customarily charged for similar legal  
20 services;

21 (e) the possible total recovery if successful;

22 (f) the time limitations imposed by the client or  
23 circumstances of the case;

24 (g) the nature and length of the attorney-client  
25 relationship;

(h) the experience, skill, and reputation of the attorney;

(i) the ability of the client to pay for the legal services rendered;

(j) the risk of no recovery;

(k) the market value of the attorney's services at the time and place involved; and

(d)(1) any other relevant matter the administrator may consider appropriate.

(3) Notwithstanding subsection (2), the fee charged to the claimant by his attorney may not exceed the following amounts:

(a) on a contingent percentage arrangement, a fee based on the benefits obtained by the claimant due to the efforts of the attorney but not exceeding the following rates:

(i) 20% on the first \$10,000 of benefits;

(ii) 15% on the next \$20,000 of benefits; and

(iii) 10% on the balance of benefits obtained;

(b) on an hourly arrangement, a fee based on a reasonable rate not exceeding \$75 an hour, but the total fee charged may not exceed the rates set forth in subsection (3)(a).

(4) A fee collected pursuant to subsection (3) may not exceed \$15,000.

(5) The following benefits may not be considered as a

basis for calculation of attorney fees:

(a) the amount of medical and hospital benefits received by the claimant unless the insurer has denied all liability, including medical and hospital benefits, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining these benefits for the claimant;

(b) benefits received by the claimant with the assistance of the attorney only in filling out initial claim forms;

(c) any undisputed portion of impairment benefits received by the claimant, based on an impairment rating;

(d) benefits initiated or offered by the insurer when the initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant; and

(e) any other benefits not obtained due to the actual, reasonable, and necessary efforts of the attorney.

(6) An attorney may not attempt to alter his contract of employment with a claimant to obtain a greater fee after he has entered into the attorney-client relationship. However, an attorney is not prohibited from charging a fee less than that agreed to in the contract.

(7) If a dispute arises between a claimant and an attorney regarding attorney fees in a workers' compensation

1 claim, upon request of either the claimant or his attorney  
 2 or upon notice by either party to the division of a  
 3 violation of this section or a rule adopted under this  
 4 section, the division shall review the matter and issue an  
 5 order resolving the dispute. The fee contract must clearly  
 6 identify the rights granted by this section.

7 ~~(3)~~(8) If an attorney violates a provision of this  
 8 section, a rule adopted under this section, or an order  
 9 fixing an attorney's attorney fee under this section, he  
 10 shall forfeit the right to any fee which that he may have  
 11 collected or been entitled to collect."

12 NEW SECTION. Section 2. Extension of authority. Any  
 13 existing authority to make rules on the subject of the  
 14 provisions of [this act] is extended to the provisions of  
 15 [this act].

16 NEW SECTION. Section 3. Applicability. The legislature  
 17 finds that the contract of employment between claimant and  
 18 attorney is a relationship significantly different from the  
 19 contract of employment between the claimant and employer  
 20 that includes the right to workers' compensation benefits.  
 21 Therefore, the usual rule of law establishing entitlement to  
 22 workers' compensation benefits based on the date of injury  
 23 does not apply to the contract of employment between a  
 24 claimant and his attorney. [This act] applies to all  
 25 contracts of employment between a claimant and his attorney

1 entered into on or after [the effective date of this act].

2 NEW SECTION. Section 4. Effective date. [This act] is  
 3 effective on passage and approval.

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