

SENATE BILL 394

Introduced by Harp, et al.

2/13 Introduced  
2/13 Referred to Labor & Employment Relations  
2/13 First Reading  
2/18 Hearing  
2/22 Committee Report--Bill Not Passed  
2/22 Adverse Committee Report Rejected  
2/23 Taken from Committee and Placed on  
2nd Reading  
2/23 2nd Reading Passed  
2/24 3rd Reading Passed

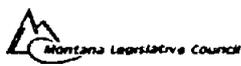
Transmitted to House  
3/01 Referred to Workers' Comp Select  
Committee  
3/01 First Reading  
3/08 Hearing  
3/11 Committee Report--Bill Concurred as Amended  
and Rereferred to Labor & Employment  
Relations  
3/16 Hearing  
3/20 Committee Report--Bill Concurred  
3/25 2nd Reading Concurred  
3/25 3rd Reading Concurred

Returned to Senate with Amendments  
4/05 2nd Reading Amendments Not Concurred  
4/12 Free Conference Committee Appointed  
4/24 Free Conference Committee Report No. 1  
4/24 2nd Reading Free Conference Committee  
Report No. 1 Adopted  
4/24 3rd Reading Free Conference Committee  
Report No. 1 Adopted

1 Senate BILL NO. 394  
 2 INTRODUCED BY HARF Forester  
 3 Benedict Kennedy Smith-Thompson  
 4 Wagner Pea Bos Bronstad Boyd Boyer  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE AMOUNT  
 6 OF ATTORNEY FEES PAYABLE IN WORKERS' COMPENSATION MATTERS;  
 7 AND AMENDING SECTION 39-71-613, MCA."  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 39-71-613, MCA, is amended to read:  
 10 "39-71-613. Regulation of attorneys' attorney fees --  
 11 forfeiture of fee for noncompliance. (1) When an attorney  
 12 represents or acts on behalf of a claimant or any other  
 13 party on any workers' compensation claim, the attorney shall  
 14 submit to the department a contract of employment, on a form  
 15 provided by the department, stating specifically the terms  
 16 of the fee arrangement between the attorney and the  
 17 claimant.  
 18 (2) If a claim has been accepted as compensable by an  
 19 insurer but a controversy exists relating to the amount of  
 20 compensation due, the attorney fee may not be more than 15%  
 21 of any additional benefits obtained, through the attorney's  
 22 efforts, in excess of the amount paid or offered by the  
 23 insurer. The attorney fee may not exceed \$7500. An attorney  
 24 may contract with the claimant to receive less than the  
 25 maximum amount the attorney is entitled to under this

1 subsection.  
 2 (3) On a claim for which initial compensability has  
 3 been denied, the attorney fee may not exceed 15% of any  
 4 benefits obtained, through the attorney's efforts, up to the  
 5 date on which the claim is accepted by the insurer or  
 6 ordered compensable by the workers' compensation court or  
 7 the state supreme court.  
 8 (4) The following benefits may not be considered in  
 9 calculating attorney fees:  
 10 (a) medical and hospital benefits that are received by  
 11 the claimant unless the insurer has denied all liability or  
 12 has denied liability for certain medical and hospital costs  
 13 and the claimant's attorney is successful in obtaining those  
 14 benefits for the claimant;  
 15 (b) benefits that are received by the claimant when the  
 16 attorney has only assisted in filling out initial forms;  
 17 (c) benefits that are received or payable under  
 18 39-71-703 based on the insurer's initial determination of  
 19 the award, whether paid biweekly or pursuant to a  
 20 settlement;  
 21 (d) benefits that are initiated or offered by the  
 22 insurer when supported by documentation in the claimant's  
 23 file and that are not the subject of a dispute between the  
 24 insurer and the claimant; and  
 25 (e) any other benefits that are not obtained by the



1 actual, reasonable, and necessary efforts of the attorney.

2 (5) The fee in subsection (2) does not preclude the use  
 3 of other fee arrangements, including the use of a reasonable  
 4 hourly rate not exceeding \$75 an hour. The total fee may not  
 5 exceed limits established in subsection (2). When an  
 6 alternative fee arrangement is used, the contract of  
 7 employment must specify the terms of the fee arrangement.  
 8 The fee arrangement is subject to approval by the  
 9 department. An attorney may reduce the fee from the fee  
 10 originally established in the fee arrangement without  
 11 department approval.

12 (6) An attorney's fee must be determined by the  
 13 approved fee arrangement and must be paid out of workers'  
 14 compensation funds received by the claimant.

15 (7) In the event that a dispute arises between a  
 16 claimant and an attorney relative to attorney fees, upon the  
 17 request of either the claimant or attorney, or upon notice  
 18 by any person of a violation of this section, the department  
 19 shall review the matter and issue an order resolving the  
 20 dispute pursuant to procedures set forth in the department's  
 21 administrative rules. A fee arrangement must clearly  
 22 identify the rights granted by this subsection.

23 {2}(8) The department may regulate the amount of the  
 24 attorney's fee in any workers' compensation case. In  
 25 regulating the amount of the fee, the department shall

1 consider:

2 (a) the benefits the claimant gained due to the efforts  
 3 of the attorney;

4 (b) the time the attorney was required to spend on the  
 5 case;

6 (c) the complexity of the case; and

7 (d) any other relevant matter the department may  
 8 consider appropriate.

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

-End-

COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

53rd Legislature

LC 1233/01

ADVERSE COMMITTEE REPORT

LC 1233/01

ON MOTION, PRINTED AND  
PLACED ON SECOND READING

1 Sandy BILL NO. 394  
2 INTRODUCED BY HARP Forester  
3 Benedict Kennedy  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE AMOUNT  
5 OF ATTORNEY FEES PAYABLE IN WORKERS' COMPENSATION MATTERS;  
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15 (b) benefits that are received by the claimant when the  
16 attorney has only assisted in filling out initial forms;  
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18 39-71-703 based on the insurer's initial determination of  
19 the award, whether paid biweekly or pursuant to a  
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23 file and that are not the subject of a dispute between the  
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25 (e) any other benefits that are not obtained by the

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2 (5) The fee in subsection (2) does not preclude the use  
 3 of other fee arrangements, including the use of a reasonable  
 4 hourly rate not exceeding \$75 an hour. The total fee may not  
 5 exceed limits established in subsection (2). When an  
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 16 claimant and an attorney relative to attorney fees, upon the  
 17 request of either the claimant or attorney, or upon notice  
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 10 section, a rule adopted under this section, or an order  
 11 fixing an attorney's fee under this section, he the attorney  
 12 shall forfeit the right to any fee which--he that the  
 13 attorney may have collected or been entitled to collect."

-End-

*Senady* BILL NO. 394

INTRODUCED BY *HARE Forester*

*BENEDICT*

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE AMOUNT OF ATTORNEY FEES PAYABLE IN WORKERS' COMPENSATION MATTERS; AND AMENDING SECTION 39-71-613, MCA."

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

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

"39-71-613. Regulation of attorneys' attorney fees -- forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) If a claim has been accepted as compensable by an insurer but a controversy exists relating to the amount of compensation due, the attorney fee may not be more than 15% of any additional benefits obtained, through the attorney's efforts, in excess of the amount paid or offered by the insurer. The attorney fee may not exceed \$7500. An attorney may contract with the claimant to receive less than the maximum amount the attorney is entitled to under this

subsection.

(3) On a claim for which initial compensability has been denied, the attorney fee may not exceed 15% of any benefits obtained, through the attorney's efforts, up to the date on which the claim is accepted by the insurer or ordered compensable by the workers' compensation court or the state supreme court.

(4) The following benefits may not be considered in calculating attorney fees:

(a) medical and hospital benefits that are received by the claimant unless the insurer has denied all liability or has denied liability for certain medical and hospital costs and the claimant's attorney is successful in obtaining those benefits for the claimant;

(b) benefits that are received by the claimant when the attorney has only assisted in filling out initial forms;

(c) benefits that are received or payable under 39-71-703 based on the insurer's initial determination of the award, whether paid biweekly or pursuant to a settlement;

(d) benefits that are initiated or offered by the insurer when supported by documentation in the claimant's file and that are not the subject of a dispute between the insurer and the claimant; and

(e) any other benefits that are not obtained by the



1 actual, reasonable, and necessary efforts of the attorney.

2 (5) The fee in subsection (2) does not preclude the use  
 3 of other fee arrangements, including the use of a reasonable  
 4 hourly rate not exceeding \$75 an hour. The total fee may not  
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 6 alternative fee arrangement is used, the contract of  
 7 employment must specify the terms of the fee arrangement.  
 8 The fee arrangement is subject to approval by the  
 9 department. An attorney may reduce the fee from the fee  
 10 originally established in the fee arrangement without  
 11 department approval.

12 (6) An attorney's fee must be determined by the  
 13 approved fee arrangement and must be paid out of workers'  
 14 compensation funds received by the claimant.

15 (7) In the event that a dispute arises between a  
 16 claimant and an attorney relative to attorney fees, upon the  
 17 request of either the claimant or attorney, or upon notice  
 18 by any person of a violation of this section, the department  
 19 shall review the matter and issue an order resolving the  
 20 dispute pursuant to procedures set forth in the department's  
 21 administrative rules. A fee arrangement must clearly  
 22 identify the rights granted by this subsection.

23 (8) The department may regulate the amount of the  
 24 attorney's fee in any workers' compensation case. In  
 25 regulating the amount of the fee, the department shall

1 consider:

2 (a) the benefits the claimant gained due to the efforts  
 3 of the attorney;

4 (b) the time the attorney was required to spend on the  
 5 case;

6 (c) the complexity of the case; and

7 (d) any other relevant matter the department may  
 8 consider appropriate.

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

-End-

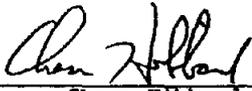
HOUSE SELECT COMMITTEE REPORT

March 11, 1993

Page 1 of 2

March 11, 1993  
Page 2 of 2

Mr. Speaker: We, the select committee on Workers' Compensation recommend that Senate Bill 394 (third reading copy -- blue) do be concurred in as amended, and that the House refer the bill with amendments to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package.

Signed: 

Chase Hibbard, Chair

And that such amendments read:

1. Page 1, line 12.  
Following: "claimant"  
Insert: ", an employer,"
2. Page 1, line 17.  
Strike: "claimant"  
Insert: "party"
3. Page 1, line 18.  
Following: "(2)"  
Insert: "Fees charged by an attorney representing a claimant are limited as provided by subsections (2) through (5)."
4. Page 1, line 23.  
Following: "\$7500"  
Insert: "per claim"
5. Page 3, line 12.  
Following: line 11  
Insert: "(6) Fees charged by an attorney representing a party other than a claimant may not exceed \$75 an hour, subject to a maximum fee of \$7,500 per claim. The fee arrangement is subject to approval by the department."  
Renumber: subsequent subsections
6. Page 3, lines 13 and 14.  
Following: "arrangement" on line 13  
Strike: the remainder of line 13 through "claimant" on line 14.

7. Page 3, line 16.  
Page 3, line 17.  
Strike: "claimant"  
Insert: "party"

8. Page 4, lines 2 and 3.  
Following: "benefits" on line 2  
Strike: the remainder of line 2 through "attorney" on line 3  
Insert: "paid"

Committee Vote:  
Yes 4, No 2.

551247SC.Hpf

HOUSE

SB 394  
551247SC.Hpf

## 1 SENATE BILL NO. 394

2 INTRODUCED BY HARP, FORRESTER, STANG, VAUGHN,  
 3 BENEDICT, HOCKETT, KENNEDY, BRUSKI-MAUS,  
 4 WEEDING, BECK, WAGNER, REA, B. BROWN, QUILICI,  
 5 BRANDEWIE, HERRON, SWYSGOOD, BACHINI, PECK,  
 6 PAVLOVICH, GILBERT, BIRD, FRITZ, TOEWS,  
 7 HERTEL, HAGER, MESAROS, BURNETT, KEATING, GAGE,  
 8 SWIFT, AKLESTAD, KOEHNKE, TVEIT, HARDING, NATHE,  
 9 DEVLIN, HALLIGAN, YELLOWTAIL

10  
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 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

17 "39-71-613. Regulation of attorneys' attorney fees --  
 18 forfeiture of fee for noncompliance. (1) When an attorney  
 19 represents or acts on behalf of a claimant, AN EMPLOYER, or  
 20 any other party on any workers' compensation claim, the  
 21 attorney shall submit to the department a contract of  
 22 employment, on a form provided by the department, stating  
 23 specifically the terms of the fee arrangement between the  
 24 attorney and the claimant PARTY.

25 (2) FEES CHARGED BY AN ATTORNEY REPRESENTING A CLAIMANT

1 ARE LIMITED AS PROVIDED BY SUBSECTIONS (2) THROUGH (5). If a  
 2 claim has been accepted as compensable by an insurer but a  
 3 controversy exists relating to the amount of compensation  
 4 due, the attorney fee may not be more than 15% of any  
 5 additional benefits obtained, through the attorney's  
 6 efforts, in excess of the amount paid or offered by the  
 7 insurer. The attorney fee may not exceed \$7,500 PER CLAIM.  
 8 An attorney may contract with the claimant to receive less  
 9 than the maximum amount the attorney is entitled to under  
 10 this subsection.

11 (3) On a claim for which initial compensability has  
 12 been denied, the attorney fee may not exceed 15% of any  
 13 benefits obtained, through the attorney's efforts, up to the  
 14 date on which the claim is accepted by the insurer or  
 15 ordered compensable by the workers' compensation court or  
 16 the state supreme court.

17 (4) The following benefits may not be considered in  
 18 calculating attorney fees:

19 (a) medical and hospital benefits that are received by  
 20 the claimant unless the insurer has denied all liability or  
 21 has denied liability for certain medical and hospital costs  
 22 and the claimant's attorney is successful in obtaining those  
 23 benefits for the claimant;

24 (b) benefits that are received by the claimant when the  
 25 attorney has only assisted in filling out initial forms;

1 (c) benefits that are received or payable under  
 2 39-71-703 based on the insurer's initial determination of  
 3 the award, whether paid biweekly or pursuant to a  
 4 settlement;

5 (d) benefits that are initiated or offered by the  
 6 insurer when supported by documentation in the claimant's  
 7 file and that are not the subject of a dispute between the  
 8 insurer and the claimant; and

9 (e) any other benefits that are not obtained by the  
 10 actual, reasonable, and necessary efforts of the attorney.

11 (5) The fee in subsection (2) does not preclude the use  
 12 of other fee arrangements, including the use of a reasonable  
 13 hourly rate not exceeding \$75 an hour. The total fee may not  
 14 exceed limits established in subsection (2). When an  
 15 alternative fee arrangement is used, the contract of  
 16 employment must specify the terms of the fee arrangement.  
 17 The fee arrangement is subject to approval by the  
 18 department. An attorney may reduce the fee from the fee  
 19 originally established in the fee arrangement without  
 20 department approval.

21 (6) FEES CHARGED BY AN ATTORNEY REPRESENTING A PARTY  
 22 OTHER THAN A CLAIMANT MAY NOT EXCEED \$75 AN HOUR, SUBJECT TO  
 23 A MAXIMUM FEE OF \$7,500 PER CLAIM. THE FEE ARRANGEMENT IS  
 24 SUBJECT TO APPROVAL BY THE DEPARTMENT.

25 {6}{7} An attorney's fee must be determined by the

1 approved fee arrangement and must be paid out of workers'  
 2 compensation funds received by the claimant.

3 {7}{8} In the event that a dispute arises between a  
 4 claimant PARTY and an attorney relative to attorney fees,  
 5 upon the request of either the claimant PARTY or attorney,  
 6 or upon notice by any person of a violation of this section,  
 7 the department shall review the matter and issue an order  
 8 resolving the dispute pursuant to procedures set forth in  
 9 the department's administrative rules. A fee arrangement  
 10 must clearly identify the rights granted by this subsection.

11 {2}{8}{9} The department may regulate the amount of the  
 12 attorney's fee in any workers' compensation case. In  
 13 regulating the amount of the fee, the department shall  
 14 consider:

15 (a) the benefits the claimant gained due to the efforts  
 16 of the attorney PAID;

17 (b) the time the attorney was required to spend on the  
 18 case;

19 (c) the complexity of the case; and

20 (d) any other relevant matter the department may  
 21 consider appropriate.

22 {3}{9}{10} If an attorney violates a provision of this  
 23 section, a rule adopted under this section, or an order  
 24 fixing an attorney's fee under this section, he the attorney  
 25 shall forfeit the right to any fee which--he that the

SB 0394/02

1 attorney may have collected or been entitled to collect."

-End-

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 394, met and considered: Senate Bill No. 394 in its entirety. We recommend that Senate Bill No. 394 (reference copy - salmon) be amended as follows:

1. Title, line 11.  
Strike: "REGULATING"  
Insert: "REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO COLLECT AND REPORT INFORMATION ON"
2. Title, line 12.  
Following: "FEES"  
Insert: "AND LEGAL COSTS"
3. Title, line 13.  
Following: "AND"  
Strike: the remainder of line 13 through "MCA"  
Insert: "PROVIDING AN IMMEDIATE EFFECTIVE DATE"
4. Page 1, line 16 through page 5, line 1.  
Strike: section 1 in its entirety  
Insert: "NEW SECTION. Section 1. Collection of attorney fee and legal cost information -- report. (1) The department shall uniformly collect the information described in subsection (2) as an element of the workers' compensation data base system from all attorneys who represent employees, employers, insurers, and beneficiaries in claims for workers' compensation and occupational disease benefits.  
(2) The department shall uniformly collect detailed information regarding attorney fees, legal costs, and other information relevant to the costs of prosecuting and defending claims for workers' compensation and occupational disease benefits.  
(3) The department shall compile the information described in subsection (2) by the date of accident and by plan number and file the information with the legislature as provided in 5-11-210.

ADOPT

REJECT

891736CC.Sma

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

And that this Free Conference Committee report be adopted.

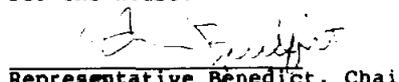
For the Senate:

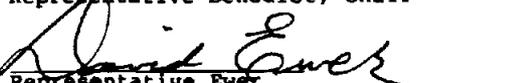
  
Senator Halligan, Chair

  
Senator Bartlett

  
Senator Harp

For the House:

  
Representative Benedict, Chair

  
Representative Ewer

  
Representative Hibbard

  
M. Amd. Coord.  
  
M. Sec. of Senate

**NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 2, and the provisions of Title 39, chapter 71, part 2, apply to [section 1].