

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 Reg Bos Brown
 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 HARR Forester
3 Benedict Kennedy Long Thompson Wright Boyd
4 Wagoner Reg Bos Brown Carlson Conrad Heron
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 10 section, a rule adopted under this section, or an order
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 12 shall forfeit the right to any fee which--he that the
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-End-

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2 INTRODUCED BY HARF Forester Stacy Wright
3 BENEDICT Kennedy Thompson Wright Wright
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE AMOUNT Bird
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 5 case;

6 (c) the complexity of the case; and

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

9 (9) If an attorney violates a provision of this
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 11 fixing an attorney's fee under this section, he the attorney
 12 shall forfeit the right to any fee which--he that the
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-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

SENATE BILL NO. 394

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

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, AN EMPLOYER, 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 PARTY.

(2) FEES CHARGED BY AN ATTORNEY REPRESENTING A CLAIMANT

ARE LIMITED AS PROVIDED BY SUBSECTIONS (2) THROUGH (5). 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 \$7,500 PER CLAIM.
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
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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 actual, reasonable, and necessary efforts of the attorney.

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

(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.

(6)(7) An attorney's fee must be determined by the

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

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

(2)(8)(9) The department may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the department shall consider:

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

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

(c) the complexity of the case; and

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

(3)(9)(10) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing an attorney's fee under this section, he the attorney 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-

Page 1 of 2

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.

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].

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

ADOPT

REJECT

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F.C.C.R. # 1
SB 394
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