

SENATE BILL NO. 233

INTRODUCED BY

HARP

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ATTORNEY FEES FOR A WORKERS' COMPENSATION CLAIM; LIMITING ATTORNEY FEES; REQUIRING THE RETURN OF ATTORNEY FEES AND COSTS PAID BY AN INSURER TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR DECEPTION; ALLOWING BENEFITS TO BE MODIFIED WHEN THEY WERE OBTAINED BY FRAUD OR DECEPTION; AMENDING SECTIONS 39-71-613 AND 39-71-2909, MCA; AND PROVIDING AN EFFECTIVE DATE."

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 -- return of fee when claimant received benefits through fraud or deception. (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 fees 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 fees may not exceed \$7,500 per claim. An attorney may contract with the claimant to receive less than the maximum amount that the attorney is entitled to under this subsection.

(3) On a claim for which initial compensability has been denied, the attorney fees 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;

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

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

5 (d) any other benefits that are not obtained by the actual, reasonable, and necessary efforts of the
 6 attorney.

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

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

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

20 ~~(2)(8)~~ (8) The department may regulate the amount of the ~~attorney's fee~~ attorney fees in any workers'
 21 compensation case. In regulating the amount of the fee, the department shall consider:

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

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

24 (c) the complexity of the case; and

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

26 ~~(3)(9)~~ (9) If an An attorney who violates a provision of this section, a rule adopted under this section,
 27 or an order fixing an attorney's fee attorney fees under this section, he shall forfeit forfeits the right to any
 28 fee which he may have that the attorney collected or been was entitled to collect.

29 (10) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant
 30 is convicted of having obtained benefits through fraud or deception, the attorney fees and costs awarded

1 for obtaining the benefits must be returned to the insurer by the attorney."

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3 **Section 2.** Section 39-71-2909, MCA, is amended to read:

4 **"39-71-2909. Authority to review, diminish, or increase awards.** The judge may, upon the petition
5 of a claimant or an insurer that the disability of the claimant has changed or that the claimant received
6 benefits through fraud or deception, review, diminish, or increase, in accordance with the law on benefits
7 as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition
8 alleging that the claimant received benefits through fraud or deception must be filed within 2 years after
9 the insurer discovers the fraud or deception."

10

11 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1995.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0233, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that regulates attorney fees for a workers' compensation claim; limits attorney fees; requires the return of attorney fees and cost paid by an insurer to an attorney for a workers' compensation claimant convicted of obtaining benefits through fraud or deception; allowing benefits to be modified when they were obtained by fraud or deception.

ASSUMPTIONS:

1. Changes in attorney fees would redistribute benefit payments between the claimant and their attorney and would not change benefit payments paid by an insurer following resolution of a disputed claim. Attorney fees may only be obtained by claimant's attorney in a workers' compensation award. Attorney fees may only be obtained from an insurer if an insurer's conduct is unreasonable. Attorney fees must be paid out of the workers' compensation funds received by the claimant.
2. Attorneys must return, to the insurer, fees and cost awarded if the claimant is convicted of having obtained benefits through fraud or deception.

FISCAL IMPACT:

SB233 would not change State Fund expenditures for benefits in disputed cases. Miscellaneous revenues may increase by minor amounts to the extent that attorney fees are returned to the State Fund when a claimant is convicted of having obtained benefits through fraud or deception.

Dave Lewis 1-30-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Harp

JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0233, as introduced

SB 233

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5 ~~COMPENSATION CLAIM; LIMITING ATTORNEY FEES;~~ REQUIRING THE RETURN OF ATTORNEY FEES AND
6 COSTS PAID BY AN INSURER TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT
7 CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR DECEPTION; ALLOWING BENEFITS TO BE
8 MODIFIED WHEN THEY WERE OBTAINED BY FRAUD OR DECEPTION; AMENDING SECTIONS 39-71-613
9 AND 39-71-2909, MCA; AND PROVIDING AN EFFECTIVE DATE."

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17 submit to the department a contract of employment, on a form provided by the department, stating
18 specifically the terms of the fee arrangement between the attorney and the claimant.

19 ~~(2) If a claim has been accepted as compensable by an insurer but a controversy exists relating to~~
20 ~~the amount of compensation due, the attorney fees may not be more than 15% of any additional benefits~~
21 ~~obtained, through the attorney's efforts, in excess of the amount paid or offered by the insurer. The~~
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3 **Section 2.** Section 39-71-2909, MCA, is amended to read:

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