

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 47

4
5 By: Senator J. Jeffress
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For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR THE RECOVERY OF ATTORNEY'S
10 FEES FOR MEDICAL TREATMENT IN CERTAIN WORKERS'
11 COMPENSATION CASES; TO AMEND A PORTION OF
12 ARKANSAS CODE WHICH RESULTED FROM INITIATED ACT 4
13 OF 1948; AND FOR OTHER PURPOSES
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Subtitle

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16 TO PROVIDE FOR THE RECOVERY OF
17 ATTORNEY'S FEES FOR MEDICAL TREATMENT IN
18 CERTAIN WORKERS' COMPENSATION CASES AND
19 TO AMEND A PORTION OF ARKANSAS CODE
20 WHICH RESULTED FROM INITIATED ACT 4 OF
21 1948.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 11-9-715, concerning the award of attorney
27 fees in workers' compensation cases and derived from Initiated Act 4 of 1948,
28 is amended to read as follows:

29 11-9-715. Fees for legal services.

30 (a)(1)(A) Fees for legal services rendered in respect of a claim shall
31 not be valid unless approved by the Workers' Compensation Commission.

32 (B) Attorney's fees shall be twenty-five percent (25%) of
33 compensation for indemnity benefits payable to the injured employee or
34 dependents of a deceased employee. Attorney's fees shall not be awarded on
35 medical benefits or services except as provided in subdivision (a)(4) of this
36 section.



(2)(A) Whenever the commission finds that a claim against the Treasurer of State, as custodian of the Second Injury Trust Fund or as custodian of the Death and Permanent Total Disability Trust Fund, has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid from the fund, in addition to compensation awarded, and the fees shall be allowed only on the amount of compensation controverted and awarded from the fund.

(B) To the extent that attorney's fees are awarded for recovering compensation for medical services or benefits under subdivision (a)(4)(A) of this section and the commission finds that the claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant by the employer or carrier in addition to compensation awarded.

~~(B)(C)~~(i) In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (1/2) by the employer or carrier in addition to compensation awarded; and one-half (1/2) by the injured employee or dependents of a deceased employee out of compensation payable to them.

~~(ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.~~

~~(iii) However, the (ii)~~ The commission shall not find that a claim has been controverted if the claimant or his or her representative has withheld from the respondent during the period of time allotted for the respondent to determine its position any medical information in his or her possession which substantiates the claim.

~~(C)(D)~~(i) Whenever the commission finds that a claim has not been controverted but further finds that bona fide legal services have been rendered in respect to the claim, then the commission shall direct the payment of the fees by the:

(a) injured Injured employee or dependents of a deceased employee out of the compensation awarded for indemnity benefits;
or

(b) Employer or carrier to the extent of compensation awarded for medical benefits or services.

(ii) In determining the amount of fees when a claim

1 is not controverted, the commission shall use its discretion in awarding an
2 attorney's fee not to exceed twenty-five percent (25%) and in so doing shall
3 take into consideration the nature, length, and complexity of the services
4 performed and the benefits resulting to the compensation beneficiaries.

5 (3) In any case where attorney's fees are allowed by the
6 commission, the limitations expressed in the first sentence herein shall
7 apply.

8 (4)(A) Attorney's fees shall be twenty-five percent (25%) of
9 compensation for medical benefits and services payable to or for the benefit
10 of the injured employee or dependents of a deceased employee if the recovery
11 for indemnity benefits is:

12 (1) Five thousand dollars (\$5,000) or less; or

13 (2) Less than twenty percent (20%) of the total
14 recovery.

15 (B) Medical providers may voluntarily contract with the
16 attorney for the claimant to recover disputed bills, and the attorney may
17 charge a reasonable fee to the medical provider as a cost of collection.

18 (b)(1) If the claimant prevails on appeal, the attorney for the
19 claimant shall be entitled to an additional fee at the full commission and
20 appellate court levels in addition to the fees provided in subdivision (a)(1)
21 of this section, the additional fee to be paid equally by the employer or
22 carrier and by the injured employee or dependents of a deceased employee, as
23 ~~provided above and~~ set by the commission or appellate court.

24 (2) The maximum fees allowable pursuant to this subsection shall
25 be the sum of five hundred dollars (\$500) on appeals to the full commission
26 from a decision of the administrative law judge and the sum of one thousand
27 dollars (\$1,000) on appeals to the Court of Appeals or Supreme Court from a
28 decision of the commission.

29 (3) In determining the amount of fees, the commission and the
30 court shall take into consideration the nature, length, and complexity of the
31 services performed and the benefits resulting to the compensation
32 beneficiary.

33 (c)(1) The fee for legal services rendered by the claimant's attorney
34 in connection with a change of physician requested by the injured employee,
35 controverted by the employer or carrier and awarded by the commission, shall
36 be two hundred dollars (\$200).

(2) No additional fee shall be payable with respect to uncontroverted charges incurred in connection with treatment by the new physician.

(d)(1) No fees for legal services rendered by the claimant's attorney with respect to the preliminary conference procedure shall be awarded by the commission.

(2) However, the claimant's attorney or other representative may charge a reasonable fee to the claimant for representation in connection with the conference.

(3) Unless compensability of a claim is controverted by the employer or carrier, fees for legal services by the claimant's attorney with respect to disability for loss of wage-earning capacity shall be payable only for amounts awarded at a contested hearing which exceed the amount, if any, which the employer or carrier agreed in writing to accept at the preliminary conference.

(e) The amendments made by this act of 2001 regarding attorney's fees contained in this section shall be effective with respect to benefits payable in connection with disability or death due to injuries occurring on or after July 1, 2001.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that injured workers with high medical bills but little missed time from work are effectively denied legal representation because attorney's fees are not authorized for the recovery of medical benefits in workers' compensation cases; and that this act will stimulate the representation of injured workers by permitting the recovery of attorney's fees in limited instances in which the recovery of indemnity benefits is small compared to the injured worker's medical expenses. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is

overridden, the date the last house overrides the veto.

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