

HOUSE BILL NO. 468

INTRODUCED BY L. JENT

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A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE PROHIBITION AGAINST GRANTING ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE OR OTHER DOCTRINE IN LAW OR EQUITY WHEN ATTORNEY FEES ARE GRANTED TO AN INSURED IN CERTAIN WORKERS' COMPENSATION CASES FOR UNREASONABLE ACTIONS BY AN INSURER; AND AMENDING SECTIONS 39-71-611 AND 39-71-612, MCA."

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

Section 1. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later found compensable --barring of attorney fees under common fund and other doctrines. (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

- (a) the insurer denies liability for a claim for compensation or terminates compensation benefits;
- (b) the claim is later adjudged compensable by the workers' compensation court; and
- (c) in the case of attorney fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

~~(3) Attorney fees may be awarded only under the provisions of subsection (1) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity."~~

Section 2. Section 39-71-612, MCA, is amended to read:

"39-71-612. Costs and attorney fees that may be assessed against insurer by workers' compensation judge --barring of attorney fees under common fund or other doctrines. (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered

1 by the insurer, reasonable attorney fees and costs as established by the workers' compensation judge if the case
2 has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

3 (2) An award of attorney fees under subsection (1) may be made only if it is determined that the actions
4 of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing
5 must be considered a valid offer of payment for the purposes of this section.

6 (3) A finding of unreasonableness against an insurer made under this section does not constitute a
7 finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

8 ~~(4) Attorney fees may be awarded only under the provisions of subsections (1) and (2) and may not be~~
9 ~~awarded under the common fund doctrine or any other action or doctrine in law or equity."~~

10 - END -