

SENATE BILL NO. 285

INTRODUCED BY L. JENT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT AN INSURER PAY COSTS AND ATTORNEY
5 FEES FOR DENIAL OR TERMINATION OF MEDICAL BENEFITS THAT ARE LATER DETERMINED
6 COMPENSABLE BY THE WORKERS' COMPENSATION COURT; AMENDING SECTIONS 39-71-611 AND
7 39-71-612, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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11 **Section 1.** Section 39-71-611, MCA, is amended to read:
12 **"39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later**
13 **found compensable -- barring of attorney fees under common fund and other doctrines.** (1) The For
14 benefits other than medical benefits, the insurer shall pay reasonable costs and attorney fees as established by
15 the workers' compensation court if:

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

20 (2) A finding of unreasonableness against an insurer made under ~~this section~~ subsection (1) does not
21 constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33,
22 chapter 18.

23 (3) (A) For medical benefits, the insurer shall pay reasonable costs and attorney fees if:
24 ~~(a) the insurer denies liability for a claim for medical benefits or terminates medical benefits and the~~
25 ~~medical benefits are later adjudged compensable by the workers' compensation court; or.~~
26 ~~(b) the insurer denies liability for a claim for medical benefits or terminates medical benefits and the~~
27 ~~insurer subsequently accepts liability for medical benefits.~~

28 (B) THE ATTORNEY FEES AWARDED UNDER THIS SUBSECTION (3) ARE LIMITED TO FEES FOR COMPENSABLE
29 MEDICAL BENEFITS RECEIVED BY THE CLAIMANT AND DENIED BY THE INSURER FOR DATES OF SERVICE FROM THE DATE OF
30 TERMINATION OR DATE OF DENIAL THROUGH THE DATE OF THE COURT'S ORDER. THE FEES MUST BE CALCULATED USING



1 THE HOURLY RATE OR CONTINGENCY PERCENTAGE IN THE ATTORNEY'S CONTRACT OF EMPLOYMENT FILED AND APPROVED
 2 BY THE DEPARTMENT UNDER 39-71-613.

3 (4) An insurer OR CLAIMANT'S ATTORNEY may not seek reimbursement or contribution from a health care
 4 provider OR CLAIMANT for any costs or fees awarded pursuant to this section OR UNDER 39-71-614 FOR MEDICAL
 5 BENEFITS RECEIVED AFTER THE DATE OF THE COURT'S ORDER.

6 ~~(3)~~(5) Attorney fees may be awarded only under the provisions of ~~subsection~~ subsections (1) and (3)
 7 and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

8 (6) For the purposes of ~~subsection~~ SUBSECTIONS (3) AND (4), "medical benefits" means those benefits
 9 furnished pursuant to 39-71-704."

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

12 **"39-71-612. Costs and attorney fees that may be assessed against insurer by workers'**
 13 **compensation judge -- barring of attorney fees under common fund or other doctrines.** (1) If an insurer
 14 pays or submits a written offer of payment of compensation under this chapter but controversy relates to the
 15 amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the
 16 controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer,
 17 reasonable attorney fees and costs as established by the workers' compensation judge if the case has gone to
 18 a hearing may be awarded by the judge in addition to the amount of compensation.

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

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

25 (4) (a) For medical benefits, the insurer shall pay reasonable costs and attorney fees as established and
 26 ordered by the workers' compensation court if:

27 (i) the insurer pays or submits a written offer of payment of medical benefits under Title 39, chapter 71,
 28 but there is controversy related to the amount of benefits due;

29 (ii) the case is brought before the workers' compensation judge for adjudication of the controversy; and

30 (iii) the award granted by the judge is greater than the amount paid or offered by the insurer.

