

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: H3/13/01 H3/16/01 S3/27/01*

2 83rd General Assembly

A Bill

3 Regular Session, 2001

HOUSE BILL 2521

4

5 By: Representatives French, Hausam, Allison, Bradford, Creekmore, J. Elliott, G. Jeffress, Ledbetter,
6 Lendall, Moore, Prater, Rodgers, Teague, Trammell

7 By: Senators Bisbee, DeLay, Everett, Faris, Argue, Fitch, J. Jeffress, P. Malone, Riggs, Simes, K. Smith,
8 T. Smith, B. Walker, Wilkins, Wilkinson, Horn, Webb

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For An Act To Be Entitled

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*AN ACT TO AMEND THE BURDEN OF PROOF IN
13 ESTABLISHING AN OCCUPATIONAL DISEASE UNDER THE
14 WORKERS' COMPENSATION LAWS; TO AUTHORIZE THE
15 WORKERS' COMPENSATION COMMISSION TO ENACT
16 GUIDELINES REGARDING CARPAL TUNNEL SYNDROME; TO
17 REGULATE HEALTH CARE PROVIDER PAYMENTS WHILE
18 CLAIMS ARE PENDING; TO AMEND THE ADMISSION OF
19 EXPERT TESTIMONY; TO AMEND THE SCHEDULE OF FEES
20 FOR LEGAL SERVICES; AND FOR OTHER PURPOSES.*

21

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Subtitle

23

*AN ACT TO AMEND THE BURDEN OF PROOF IN
24 ESTABLISHING AN OCCUPATIONAL DISEASE UNDER
25 THE WORKERS' COMPENSATION LAWS; AND FOR
26 OTHER PURPOSES.*

27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29

30 SECTION 1. Arkansas Code 11-9-601(e), concerning compensation for
31 occupational diseases, is amended to read as follows:

32 (e)(1)(A) "Occupational disease", as used in this chapter, unless the
33 context otherwise requires, means any disease that results in disability or
34 death and arises out of and in the course of the occupation or employment of
35 the employee, or naturally follows or unavoidably results from an injury as
36 that term is defined in this chapter.

1 (B) However, a causal connection between the occupation or
2 employment and the occupational disease must be established by ~~clear and~~
3 ~~convincing~~ a preponderance of the evidence.

4 (2) No compensation shall be payable for any contagious or
5 infectious disease unless contracted in the course of employment in, or
6 immediate connection with, a hospital or sanitorium in which persons
7 suffering from that disease are cared for or treated.

8 (3) No compensation shall be payable for any ordinary disease of
9 life to which the general public is exposed.

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11 *SECTION 2. Arkansas Code Title 11, Chapter 9, Subchapter 1, is amended*
12 *by adding an additional section to read as follows:*

13 11-9-117. The Workers' Compensation Commission shall be empowered to
14 enact medical diagnostic and treatment guidelines regarding occupational
15 carpal tunnel syndrome, pursuant to its rulemaking authority, upon the joint
16 recommendation of the Arkansas AFL-CIO and the Arkansas State Chamber of
17 Commerce.

18
19 *SECTION 3. Arkansas Code Title 11, Chapter 9, Subchapter 1, is amended*
20 *by adding an additional section to read as follows:*

21 11-9-118. (a) No hospital, physician, or other health care provider
22 shall bill or attempt to collect any fee or any portion of a fee for services
23 rendered to an employee due to a work-related injury or report to any credit
24 reporting agency any failure of the employee to make the payment, when a
25 claim for compensation has been filed under this chapter and the hospital,
26 physician, or health care provider has received actual notice given in
27 writing by the employee or the employee's representative. Actual notice
28 shall be deemed received by the hospital, physician, or health care provider
29 five (5) days after mailing by certified mail by the employee or his
30 representative to the hospital, physician, or health care provider.

31 (b) The notice shall include:

32 (1) The name of the employer;

33 (2) The name of the insurer, if known;

34 (3) The name of the employee receiving the services;

35 (4) The general nature of the injury, if known; and

36 (5) Where a claim has been filed, the claim number, if known.

1 (c) When an injury or bill is found to be noncompensable under this
2 chapter, the hospital, physician, or other health care provider shall be
3 entitled to pursue the employee for any unpaid portion of the fee or other
4 charges for authorized services provided to the employee. Any applicable
5 statute of limitations for an action for the fees or other charges shall be
6 tolled from the time notice is given to the hospital, physician, or other
7 health care provider until a determination of noncompensability in regard to
8 the injury which is the basis of the services is made, or in the event there
9 is an appeal to the Workers' Compensation Commission, the Arkansas Court of
10 Appeals, or the Arkansas Supreme Court, until a final determination of
11 noncompensability is rendered and all appeal deadlines have passed.

12 (d) This section shall not avoid, modify, or amend any other section
13 or subsection of this chapter including but not limited to the prohibition
14 against "balanced billing" contained in § 11-9-508(d)(3) and any rules and
15 regulations adopted thereunder.

16 (e) An order by the commission, pursuant to this section, shall stay
17 all proceedings for collection.

18
19 SECTION 4. Arkansas Code 11-9-705 is amended by adding an additional
20 subsection to read as follows: is amended to read as follows:

21 (d) Expert testimony shall not be allowed unless it satisfies the
22 requirements of Rule 702 of the Federal Rules of Evidence with annotations
23 and amendments, i. e., Daubert v. Merrell-Dow Pharmaceuticals, Inc., 509 U. S.
24 579 (1993), and Kumbo Tire Co. v. Carmichael, 526 U. S. 137 (1999).

25
26 SECTION 5. Arkansas Code 11-9-715 is amended to read as follows:

27 11-9-715. Fees for legal services.

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

30 (B) ~~The Attorney's fees shall not exceed thirty percent~~
31 ~~(30%) of the first one thousand dollars (\$1,000) of compensation, or part~~
32 ~~thereof, twenty percent (20%) of all sums in excess of one thousand dollars~~
33 ~~(\$1,000), but less than three thousand dollars (\$3,000) of compensation, and~~
34 ~~ten percent (10%) of all sums in excess of three thousand dollars (\$3,000) be~~
35 twenty-five percent (25%) of compensation for indemnity benefits payable to
36 the injured employee or dependents of a deceased employee. Attorney's fees

1 shall not be awarded on medical benefits or services except as provided in
2 subsection (a)(4) of this section.

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

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

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

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

23 (C)(i) Whenever the commission finds a claim has not been
24 controverted but further finds that bona fide legal services have been
25 rendered in respect to the claim, then the commission shall direct the
26 payment of the fees by the injured employee or dependents of a deceased
27 employee out of the compensation awarded.

28 (ii) In determining the amount of fees, when a claim
29 is not controverted, the commission shall use its discretion in awarding an
30 attorney's fee not to exceed twenty-five percent (25%) and in so doing shall
31 take into consideration the nature, length, and complexity of the services
32 performed, and the benefits resulting to the compensation beneficiaries.

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

36 ~~(4) In determining the amount of fees, the commission shall take~~

1 ~~into consideration the nature, length, and complexity of the services~~
2 ~~performed, and the benefits resulting to the compensation beneficiaries.~~

3 (4) Medical providers may voluntarily contract with the attorney
4 for the claimant to recover disputed bills and the attorney may charge a
5 reasonable fee to the medical provider as a cost of collection.

6 (b)(1) In addition to the fees provided in subdivision (a)(1) of this
7 section, if the claimant prevails on appeal, the attorney for the claimant
8 shall be entitled to an additional fee at the full commission and appellate
9 court levels, the additional fee to be paid equally by the employer or
10 carrier and by the injured employee or dependents of a deceased employee, as
11 provided above and set by the commission or appellate court.

12 (2) The maximum fees allowable pursuant to this subsection shall
13 be the sum of ~~two hundred fifty dollars (\$250)~~ five hundred dollars (\$500) on
14 appeals to the full Commission from a decision of the administrative law
15 judge, and the sum of ~~five hundred dollars (\$500)~~ one thousand dollars
16 (\$1,000) on appeals to the Arkansas Court of Appeals or Supreme Court from a
17 decision of the commission.

18 (3) In determining the amount of fees, the commission and the
19 court shall take into consideration the nature, length, and complexity of the
20 services performed, and the benefits resulting to the compensation
21 beneficiary.

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

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

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

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

35 (3) Unless compensability of a claim is controverted by the
36 employer or carrier, fees for legal services by the claimant's attorney with

1 respect to disability for loss of wage earning capacity shall be payable only
2 for amounts awarded at a contested hearing which exceed the amount, if any,
3 which the employer or carrier agreed in writing to accept at the preliminary
4 conference.

5 ~~(e) Fees for legal services rendered by the claimant's attorney with~~
6 ~~respect to medical expenses of a repeated and continuing course of treatment~~
7 ~~controverted by the employer or carrier shall be payable only in connection~~
8 ~~with such controverted expenses incurred during a two-year period beginning~~
9 ~~with the first date on which such expenses were incurred.~~

10 ~~(f)~~(e) The amendments made by this act of 2001 regarding attorney's
11 fees contained in this section shall be effective with respect to benefits
12 payable in connection with disability or death due to injuries occurring on
13 or after ~~July 1, 1986~~ July 1, 2001.

14 /s/ French

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