

The Florida Senate
HOUSE MESSAGE SUMMARY

Prepared By: The Professional Staff of the Banking and Insurance Committee

[2009h0903.hms]

BILL: CS/HB 903
INTRODUCER: General Government Policy and Representative Flores
SUBJECT: Attorney's Fees/Workers' Compensation
DATE: April 30, 2009

I. Amendments Contained in Message:

Senate Amendment 1—383074 (body with title)

II. Summary of Amendments Contained in Message:

Senate Amendment 1 is a delete-all amendment, which revises the claimant's attorney fee provisions by increasing the fees through exempting lump sum settlements from the contingency fee schedule, increasing the fee schedule for the remaining claims, providing exceptions, and exempting claims involving first responder from the fee schedule and allowing hourly fees for such cases.

Specifically, the amendment exempts attorney's fees related to lump sum settlements from being awarded pursuant to the current contingency fee schedule mandated under s. 440.34, F.S. Instead, an attorney's fee, which is paid by the claimant, would be calculated pursuant to Florida Bar Rule 4-1.5, resulting in a fee of up to 40 percent of the claimant's award.

The amendment provides that the fee awards paid by employers and carriers in all other cases for the claimant's attorney are to be calculated based on the following schedule:

- 25 percent of the first \$5,000 of the amount of benefits secured,
- 20 percent of the next \$5,000 of the amount of benefits secured, and
- 15 percent of the remaining amount of the benefits secured.

However, the proposed fee schedule does not cap a claimant attorney's fee. The amendment provides that the fees for the claimant's attorney may be increased up to the fee paid by the employer or carrier to the employer's or carrier's attorney if it is determined that the employer or carrier engaged in bad faith denial of benefits, unreasonably delayed furnishing benefits, or unreasonably continued or increased litigation expense.

The current statutory fee schedule provides the following fees based on benefits secured:

- 20 percent of the first \$5,000,
- 15 percent of the next \$5,000,
- 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and
- 5 percent of the benefits secured after 10 years.

The amendment specifies that, “unless the parties agree otherwise,” claimant attorney’s fees shall be determined by the judge of compensation claims. The bill repeals s. 440.105(3)(c), F.S., which currently prohibits a person from receiving a fee, consideration, or gratuity for services rendered in a workers’ compensation proceeding without the approval of a judge of compensation claims. The amendment also provides that nothing in this chapter can impair the ability of the claimant to contract with an attorney for representation in connection with a claim filed under this chapter. It may be unclear, based upon these elements of the amendment, under what conditions and to what extent, if any, the judge of compensation claims will continue to have a role in approval of fees.

The amendment prohibits a carrier from recouping through the ratemaking process claimant attorney fees the carrier has paid.

The amendment also increases attorney fees for attorneys representing first responders in certain types of cases involving exposure to a toxic substance or occupational disease. In these types of cases, the attorney fee would not be subject to the contingency fee schedule under ch. 440, F.S.; instead, attorneys would be awarded fees based on certain factors delineated in the amendment; this would permit hourly fees.