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LEGISLATIVE ACTION

Senate

House

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03/06/2012 03:45 PM

Senator Diaz de la Portilla moved the following:

1 **Senate Substitute for Amendment (807620) (with title**
2 **amendment)**

3
4 Delete lines 1236 - 1240

5 and insert:

6 ~~ATTORNEY'S~~ FEES.—

7 (a) With respect to any dispute under the provisions of ss.
8 627.730-627.7405 between the insured and the insurer, or between
9 an assignee of an insured's rights and the insurer, the
10 provisions of ss. ~~s.~~ 627.428 and 768.79 shall apply, except as
11 provided in subsections (10) and (15), and except that any
12 attorney fees recovered must:

- 13 1. Comply with prevailing professional standards;



517230

14 2. Ensure that the attorney fees for work performed by an
15 attorney does not duplicate work performed by a paralegal or
16 legal assistant; and

17 3. Not overstate or inflate the number of hours reasonably
18 necessary for a case of comparable skill or complexity.

19 (b) Notwithstanding s. 627.428 and this subsection, it
20 shall be presumed that any attorney fees awarded under ss.
21 627.730-627.7405 are calculated without regard to a contingency
22 risk multiplier. This presumption may be overcome only if the
23 court makes findings of fact based upon competent evidence in
24 the record which establishes that:

25 1. The party requesting the multiplier would have faced
26 substantial difficulties finding competent counsel to pursue the
27 case in the relevant market but for the consideration of a fee
28 multiplier;

29 2. Consideration of a fee multiplier was a necessary
30 incentive to obtain competent counsel to pursue the case;

31 3. The claim would not be economically feasible to hire an
32 attorney on a noncontingent, fixed-fee basis;

33 4. The attorney was unable to mitigate the risk of
34 nonpayment of attorney fees in any other way; and

35 5. The use of a multiplier is justified based on factors
36 such as the amount of risk undertaken by the attorney at the
37 outset of the case, the results obtained, and the type of fee
38 arrangement between the attorney and client.

39 (c) Paragraph (b) does not apply to a case where class
40 action status has been sought or granted, and a contingency risk
41 multiplier may be applied in such cases notwithstanding
42 paragraph (b).



517230

43 (d) Upon the request of either party, a judge must make
44 written findings, substantiated by evidence presented at trial
45 or any hearings associated with the trial, that an award of
46 attorney fees complies with this subsection.

47
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Between lines 75 and 76

51 insert:

52 providing criteria for the award of attorney fees;
53 providing a presumption regarding the use of a
54 contingency risk multiplier;