

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Minton offered the following:

Amendment (with title amendment)

On page 18, line 5 through page 19, line 6,
remove from the bill: all of said lines

and insert in lieu thereof:

Section 14. Section 440.34, Florida Statutes, is
amended to read:

440.34 Attorney's fees; costs.--

(1) A fee, gratuity, or other consideration may not be
paid for services rendered for a claimant in connection with
any proceedings arising under this chapter, unless approved as
reasonable by the judge of compensation claims or court having
jurisdiction over such proceedings. Except as provided by this
subsection, any attorney's fee approved by a judge of
compensation claims for services rendered to a claimant must
equal to 20 percent of the first \$5,000 of the amount of the
benefits secured, 15 percent of the next \$5,000 of the amount
of the benefits secured, 10 percent of the remaining amount of
the benefits secured to be provided during the first 10 years

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1 after the date the claim is filed, and 5 percent of the
2 benefits secured after 10 years. However, the judge of
3 compensation claims shall consider the following factors in
4 each case and may increase or decrease the attorney's fee if,
5 depending on the amount of recovery, in her or his judgment,
6 the circumstances of the particular case warrant such action:

7 (a) The time and labor required, the novelty and
8 difficulty of the questions involved, and the skill requisite
9 to perform the legal service properly.

10 (b) The fee customarily charged in the locality for
11 similar legal services.

12 (c) The amount involved in the controversy and the
13 benefits resulting to the claimant.

14 (d) The time limitation imposed by the claimant or the
15 circumstances.

16 (e) The experience, reputation, and ability of the
17 lawyer or lawyers performing services.

18 (f) The contingency or certainty of a fee.

19

20 Provided, however, no fee awarded under this section shall be
21 awarded on an hourly basis, but rather on a contingency basis
22 as set forth below.

23 (2) In awarding a reasonable claimant's attorney's
24 fee, the judge of compensation claims shall consider only
25 those benefits to the claimant that the attorney is
26 responsible for securing. The amount, statutory basis, and
27 type of benefits obtained through legal representation shall
28 be listed on all attorney's fees awarded by the judge of
29 compensation claims. For purposes of this section, the term
30 "benefits secured" means benefits obtained as a result of the
31 claimant's attorney's legal services rendered in connection

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1 with the claim for benefits. However, such term does not
2 include future medical benefits to be provided on any date
3 more than 5 years after the date the claim is filed.
4 (3) If the claimant should prevail in any proceedings
5 before a judge of compensation claims or court, there shall be
6 taxed against the employer the reasonable costs of such
7 proceedings, not to include the attorney's fees of the
8 claimant. A claimant shall be responsible for the payment of
9 her or his own attorney's fees, except that a claimant shall
10 be entitled to recover a reasonable attorney's fee from a
11 carrier or employer:
12 (a) Against whom she or he successfully asserts a
13 claim for medical benefits only, if the claimant has not filed
14 or is not entitled to file at such time a claim for
15 disability, permanent impairment, wage-loss, or death
16 benefits, arising out of the same accident; or
17 (b) In any case in which the employer or carrier files
18 a response to petition ~~notice of denial~~ with the division and
19 the injured person has employed an attorney in the successful
20 prosecution of the claim; or
21 (c) In a proceeding in which a carrier or employer
22 denies that an injury occurred for which compensation benefits
23 are payable, and the claimant prevails on the issue of
24 compensability; or
25 (d) In cases where the claimant successfully prevails
26 in proceedings filed under s. 440.24 or s. 440.28.
27
28 In applying the factors set forth in subsection (1) to cases
29 arising under paragraphs (a), (b), (c), and (d), the judge of
30 compensation claims must only consider only such benefits and
31 the time reasonably spent in obtaining them as were secured

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1 for the claimant within the scope of paragraphs (a), (b), (c),
2 and (d).

3 (4) In such cases in which the claimant is responsible
4 for the payment of her or his own attorney's fees, such fees
5 are a lien upon compensation payable to the claimant,
6 notwithstanding s. 440.22.

7 (5) If any proceedings are had for review of any
8 petition claim, award, or compensation order before any court,
9 the court may award the injured employee or dependent an
10 attorney's fee to be paid by the employer or carrier, in its
11 discretion, which shall be paid as the court may direct, when
12 benefits have been awarded to the claimant pursuant to the
13 appeal. In no event shall a fee equal more than \$125.00 per
14 hour.

15 (6) A judge of compensation claims may not enter an
16 order approving the contents of a retainer agreement that
17 permits the escrowing of any portion of the employee's
18 compensation until benefits have been secured.

19 (7) No prejudgment or postjudgment interests shall be
20 included in attorney's fees awarded pursuant to this section.

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23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 On page 2, line 10, after the semicolon,

26

27 insert:

28 revising language with respect to attorney's
29 fees;

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