

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

.  
.
.

Representatives Seiler, Gelber, Ross, Goodlette, Ritter, Brown, and Berfield offered the following:

**Amendment**

Remove line(s) 4500-4617, and insert:

Section 26. Subsections (1), (2), and (3) of section 440.34, Florida Statutes, are 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 benefits secured on behalf of ~~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

Amendment No. (for drafter's use only)

28 next \$5,000 of the amount of the benefits secured, 10 percent of  
29 the remaining amount of the benefits secured to be provided  
30 during the first 10 years after the date the claim is filed, and  
31 5 percent of the benefits secured after 10 years. The judge of  
32 compensation claims shall not approve a compensation order, a  
33 joint stipulation for lump-sum settlement, a stipulation or  
34 agreement between a claimant and his or her attorney, or any  
35 other agreement related to benefits under this chapter that  
36 provides for an attorney's fee in excess of the amount permitted  
37 by this section. The judge of compensation claims is not  
38 required to approve any retainer agreement between the claimant  
39 and his or her attorney. The retainer agreement as to fees and  
40 costs may not be for compensation in excess of the amount  
41 allowed under this section. However, The judge of compensation  
42 claims shall consider the following factors in each case and may  
43 increase or decrease the attorney's fee if, in her or his  
44 judgment, the circumstances of the particular case warrant such  
45 action:

46 (a) ~~The time and labor required, the novelty and~~  
47 ~~difficulty of the questions involved, and the skill requisite to~~  
48 ~~perform the legal service properly.~~

49 (b) ~~The fee customarily charged in the locality for~~  
50 ~~similar legal services.~~

51 (c) ~~The amount involved in the controversy and the~~  
52 ~~benefits resulting to the claimant.~~

53 (d) ~~The time limitation imposed by the claimant or the~~  
54 ~~circumstances.~~

55 (e) ~~The experience, reputation, and ability of the lawyer~~  
56 ~~or lawyers performing services.~~

278423

Amendment No. (for drafter's use only)

57 ~~(f) The contingency or certainty of a fee.~~

58 (2) In awarding a reasonable claimant's attorney's fee,  
59 the judge of compensation claims shall consider only those  
60 benefits secured by ~~to the claimant that~~ the attorney is  
61 ~~responsible for securing~~. The amount, statutory basis, and type  
62 of benefits obtained through legal representation shall be  
63 listed on all attorney's fees awarded by the judge of  
64 compensation claims. For purposes of this section, the term  
65 "benefits secured" ~~means benefits obtained as a result of the~~  
66 ~~claimant's attorney's legal services rendered in connection with~~  
67 ~~the claim for benefits~~. However, such term does not include  
68 future medical benefits to be provided on any date more than 5  
69 years after the date the claim is filed. In the event an offer  
70 to settle an issue pending before a judge of compensation claims  
71 is communicated in writing to the claimant or the claimant's  
72 attorney at least 30 days prior to the trial date on such issue,  
73 benefits secured shall be only that amount awarded above that  
74 specified in the offer to settle. If multiple issues are pending  
75 before the judge of compensation claims, said offer of  
76 settlement shall address each issue pending and shall state  
77 explicitly whether or not the offer on each issue is severable.  
78 The written offer shall also unequivocally state whether or not  
79 it includes medical witness fees and expenses and all other  
80 costs associated with the claim.

81 (3) If any party ~~the claimant~~ should prevail in any  
82 proceedings before a judge of compensation claims or court,  
83 there shall be taxed against the nonprevailing party ~~employer~~  
84 the reasonable costs of such proceedings, not to include ~~the~~  
85 attorney's fees ~~of the claimant~~. A claimant shall be

278423

Amendment No. (for drafter's use only)

86 responsible for the payment of her or his own attorney's fees,  
87 except that a claimant shall be entitled to recover a reasonable  
88 attorney's fee from a carrier or employer:

89 (a) Against whom she or he successfully asserts a petition  
90 for medical benefits only, if the claimant has not filed or is  
91 not entitled to file at such time a claim for disability,  
92 permanent impairment, wage-loss, or death benefits, arising out  
93 of the same accident;

94 (b) In any case in which the employer or carrier files a  
95 response to petition denying benefits with the Office of the  
96 Judges of Compensation Claims and the injured person has  
97 employed an attorney in the successful prosecution of the  
98 petition;

99 (c) In a proceeding in which a carrier or employer denies  
100 that an accident occurred for which compensation benefits are  
101 payable, and the claimant prevails on the issue of  
102 compensability; or

103 (d) In cases where the claimant successfully prevails in  
104 proceedings filed under s. 440.24 or s. 440.28.

105  
106 Regardless of the date benefits were initially requested,  
107 attorney's fees shall not attach under this subsection until 30  
108 days after the date the carrier or employer, if self-insured,  
109 receives the petition. ~~In applying the factors set forth in~~  
110 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~  
111 ~~and (d), the judge of compensation claims must only consider~~  
112 ~~only such benefits and the time reasonably spent in obtaining~~  
113 ~~them as were secured for the claimant within the scope of~~  
114 ~~paragraphs (a), (b), (c), and (d).~~

278423