

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Gelber offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 4489-4585, and insert:

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 after the date the claim is filed, and 5 percent of the benefits

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28 secured after 10 years. However, the judge of compensation  
29 claims shall consider the following factors in each case in  
30 which an hourly fee may be awarded as provided in subsection (3)  
31 and may increase ~~or decrease~~ the attorney's fee if, in her or  
32 his judgment, the circumstances of the particular case warrant  
33 such action:

34 (a) The time and labor required, the novelty and  
35 difficulty of the questions involved, and the skill requisite to  
36 perform the legal service properly.

37 (b) The fee customarily charged in the locality for  
38 similar legal services.

39 (c) The amount involved in the controversy and the  
40 benefits resulting to the claimant.

41 (d) The time limitation imposed by the claimant or the  
42 circumstances.

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

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

46 (3) If the claimant should prevail in any proceedings  
47 before a judge of compensation claims or court, there shall be  
48 taxed against the employer the reasonable costs of such  
49 proceedings, not to include ~~the~~ attorney's fees of the claimant.  
50 A claimant shall be responsible for the payment of her or his  
51 own attorney's fees, except that a claimant shall be entitled to  
52 recover a reasonable attorney's fee from a carrier or employer:

53 (a) Against whom she or he successfully asserts a petition  
54 for medical benefits only, which may be increased by an  
55 additional attorney's fee not to exceed \$5,000 based on a  
56 reasonable hourly rate ~~if the claimant has not filed or is not~~

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57 ~~entitled to file at such time a claim for disability, permanent~~  
58 ~~impairment, wage-loss, or death benefits, arising out of the~~  
59 ~~same accident;~~

60 (b) In any case in which the employer or carrier files a  
61 response to petition denying benefits with the Office of the  
62 Judges of Compensation Claims and the injured person has  
63 employed an attorney in the successful prosecution of the  
64 petition, which may be increased by an additional attorney's fee  
65 not to exceed \$5,000 based on a reasonable hourly rate;

66 (c) In a proceeding in which a carrier or employer denies  
67 that an accident occurred for which compensation benefits are  
68 payable, and the claimant prevails on the issue of  
69 compensability, which is the greater of the amount provided in  
70 subsection (1) or, upon showing to the judge of compensation  
71 claims, an attorney's fee not to exceed \$20,000; or

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

74  
75 Regardless of the date benefits were initially requested,  
76 attorney's fees shall not attach under this subsection until 30  
77 days after the date the carrier or employer, if self-insured,  
78 receives the petition. In applying the factors set forth in  
79 subsection (1) to cases arising under paragraphs (a), (b), (c),  
80 and (d), the judge of compensation claims must only consider  
81 only such benefits and the time reasonably spent in obtaining  
82 them as were secured for the claimant within the scope of  
83 paragraphs (a), (b), (c), and (d).

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86 ===== D I R E C T O R Y A M E N D M E N T =====

87 Remove line(s) , and insert:

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

91 Remove line(s) 80-82, and insert:

92 procedures for mediation and hearings; amending s. 440.38, F.S.;

93 providing