

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Seiler offered the following:

Amendment

Remove line(s) 4487-4585, and insert:

Section 26. 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 benefits secured on behalf of services rendered to a claimant may not exceed 18 ~~must equal to 20~~ percent of the first \$5,000 of the amount of the benefits secured, 13 ~~15~~ percent of the next \$5,000 of the amount of the

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28 benefits secured, ~~8~~ 10 percent of the remaining amount of the
29 benefits secured to be provided during the first 10 years after
30 the date the claim is filed, and 5 percent of the benefits
31 secured after 10 years. The judge of compensation claims shall
32 not approve a compensation order, a joint stipulation for lump-
33 sum settlement, a stipulation or agreement between a claimant
34 and his or her attorney, or any other agreement related to
35 benefits under this chapter that provides for an attorney's fee
36 in excess of the amount permitted by this section. The judge of
37 compensation claims is not required to approve any retainer
38 agreement between the claimant and his or her attorney. The
39 retainer agreement as to fees and costs may not be for
40 compensation in excess of the amount allowed under this section.

41 ~~However, The judge of compensation claims shall consider the~~
42 ~~following factors in each case and may increase or decrease the~~
43 ~~attorney's fee if, in her or his judgment, the circumstances of~~
44 ~~the particular case warrant such action:~~

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

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

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

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

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

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

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

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

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86 claimant shall be entitled to recover a reasonable attorney's
87 fee from a carrier or employer:

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

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

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

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

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

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

118 (5) If any proceedings are had for review of any claim,
119 award, or compensation order before any court, the court may
120 award the injured employee or dependent an attorney's fee to be
121 paid by the employer or carrier, in its discretion, which shall
122 be paid as the court may direct.

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

127 (7) If an employer or carrier incurs defense fees that
128 exceed the fee payable to an injured worker's attorney that
129 would be calculated by the formulas set forth in this section,
130 the fee limitations set forth in paragraphs (3)(a) and (b) shall
131 not apply and the fee shall be calculated based on factors in
132 this section.