

Bill No. HB 1837, 2nd Eng.

Amendment No. ____ Barcode 780294

CHAMBER ACTION

Senate

House

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Senator Alexander moved the following amendment:

Senate Amendment

On lines 4499-4597, delete those lines

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 benefits secured ~~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. For purposes of this section, the term "benefits secured" shall reflect the following: Except as provided by this section ~~subsection~~, any attorney's fee approved by a judge of compensation claims for benefits secured for ~~services rendered~~ to a claimant shall be ~~must~~ equal to 20 percent of the first \$5,000 of the amount of the benefits secured, whether ordered or agreed to by the parties, and 15 percent of the ~~next \$5,000~~

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1 ~~of the amount of the benefits secured, 10 percent of the~~
2 ~~remaining amount of the benefits secured to be provided during~~
3 ~~the first 10 years after the date the claim is filed, and 5~~
4 ~~percent of the benefits secured after 10 years. In the~~
5 alternative ~~However~~, the judge of compensation claims may
6 approve an attorney's fee that may not exceed \$2,500, based on
7 a maximum hourly rate of \$150 per hour, if the judge of
8 compensation claims expressly finds that the fee, based upon
9 the total benefits secured, fails to fairly compensate the
10 attorney and the benefits secured are less than \$10,000. In a
11 proceeding in which a carrier or employer denies that an
12 injury occurred for which compensation benefits are payable
13 and the claimant prevails on the issue of compensability, in
14 lieu of an attorney's fee equal to 15 percent of the benefits
15 secured, the judge of compensation claims may award an
16 attorney's fee that may not exceed \$2,500, based on a maximum
17 hourly rate of \$150 per hour, if the judge of compensation
18 claims expressly finds that the attorney's fee, based on the
19 benefits secured, fails to fairly compensate the attorney and
20 ~~shall consider the following factors in each case and may~~
21 ~~increase or decrease the attorney's fee if, in her or his~~
22 ~~judgment, the circumstances of the particular case warrant~~
23 ~~such action. The judge of compensation claims may not approve~~
24 a compensation order, a joint stipulation for a lump-sum
25 settlement, a stipulation or agreement between a claimant and
26 his or her attorney, or any other agreement related to
27 benefits under this chapter which provides for an attorney's
28 fee in excess of the amount permitted by this section. An
29 attorney's fee may not be due and does not begin to accrue for
30 a proceeding on medical issues until the peer review panel has
31 issued its initial adjudication of the issue.†

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

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

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

8 ~~(d) The time limitation imposed by the claimant or the~~
9 ~~circumstances.~~

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

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

13 (2) In awarding a reasonable claimant's attorney's
14 fee, the judge of compensation claims shall consider only
15 those benefits secured by the attorney to the claimant that
16 the attorney is responsible for securing. An attorney is not
17 entitled to attorney's fees for representation in any issue
18 that was ripe, due, and owing and that reasonably could have
19 been addressed during the pendency of other issues for the
20 same injury. The amount, statutory basis, and type of benefits
21 obtained through legal representation shall be listed on all
22 attorney's fees awarded by the judge of compensation claims.
23 For purposes of this section, the term "benefits secured"
24 ~~means benefits obtained as a result of the claimant's~~
25 ~~attorney's legal services rendered in connection with the~~
26 ~~claim for benefits. However, such term does not include future~~
27 ~~medical benefits to be provided on any date more than 5 years~~
28 ~~after the date the claim is filed. If an offer to settle an~~
29 issue pending before a judge of compensation claims is
30 communicated in writing to the claimant or the claimant's
31 attorney at least 30 days prior to the trial date on such

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1 issue, benefits secured shall be only that amount awarded
2 above that specified in the offer to settle. If multiple
3 issues are pending before the judge of compensation claims,
4 the offer of settlement shall address each issue pending, and
5 shall state explicitly whether or not the offer on each issue
6 is severable. The written offer shall also unequivocally state
7 whether or not it includes medical witness fees and expenses,
8 and all other costs associated with the claim.

9 (3) If any party ~~the claimant~~ should prevail in any
10 proceedings before a judge of compensation claims or court,
11 there shall be taxed against the nonprevailing party ~~employer~~
12 the reasonable costs of such proceedings, not to include ~~the~~
13 attorney's fees ~~of the claimant~~. A claimant shall be
14 responsible for the payment of her or his own attorney's fees,
15 except that a claimant shall be entitled to recover a
16 reasonable attorney's fee from a carrier or employer:

17 (a) Against whom she or he successfully asserts a
18 request for reconsideration ~~petition~~ for medical benefits
19 only, if the claimant has not filed or is not entitled to file
20 at such time a claim for disability, permanent impairment,
21 wage-loss, or death benefits, arising out of the same
22 accident;

23 (b) In any case in which the employer or carrier files
24 a response to petition denying benefits with the Office of the
25 Judges of Compensation Claims and the injured person has
26 employed an attorney in the successful prosecution of the
27 petition, subject to the restrictions on proceedings for peer
28 review initial adjudication upon which no fees shall be due;

29 (c) In a proceeding in which a carrier or employer
30 denies that an accident occurred for which compensation
31 benefits are payable, and the claimant prevails on the issue

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1 of compensability; or

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

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5 Regardless of the date benefits were initially requested,
6 attorney's fees shall not attach under this subsection until
7 30 days after the date the carrier or employer, if
8 self-insured, receives the petition. ~~In applying the factors
9 set forth in subsection (1) to cases arising under paragraphs
10 (a), (b), (c), and (d), the judge of compensation claims must
11 only consider only such benefits and the time reasonably spent
12 in obtaining them as were secured for the claimant within the
13 scope of paragraphs (a), (b), (c), and (d).~~

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

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

23 (6) Retainer agreements or contracts of representation
24 may not be submitted to a judge of compensation claims for
25 approval except in conjunction with an appropriate motion for
26 approval of a specific fee following the securing of a
27 specific benefit or benefits. A judge of compensation claims
28 may not prospectively approve a contract of representation
29 prior to the securing of the benefit. A judge of compensation
30 claims may not enter an order approving the contents of a
31 retainer agreement that permits the escrowing of any portion

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1 of the employee's compensation until benefits have been
2 secured.

3 (7) The judge of compensation claims shall not approve
4 a compensation order, a joint stipulation for a lump-sum
5 settlement, a stipulation or agreement between a claimant and
6 his or her attorney, or any other agreement related to
7 benefits under this chapter which provides for an attorney's
8 fee in excess of the amount permitted by this section.

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