

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Gelber offered the following:

Amendment

Remove line(s) 4546-4658, and insert:

Section 26. Subsections (1) 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 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

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28 benefits secured to be provided during the first 10 years after
29 the date the claim is filed, and 5 percent of the benefits
30 secured after 10 years. However, the judge of compensation
31 claims shall consider the following factors in each case in
32 which an hourly fee may be awarded as provided in subsection (3)
33 and may increase or decrease the attorney's fee if, in her or
34 his judgment, the circumstances of the particular case warrant
35 such action:

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

39 (b) The fee customarily charged in the locality for
40 similar legal services.

41 (c) The amount involved in the controversy and the
42 benefits resulting to the claimant.

43 (d) The time limitation imposed by the claimant or the
44 circumstances.

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

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

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

55 (a) Against whom she or he successfully asserts a petition
56 for medical benefits only, which may be increased by an

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57 additional attorney's fee not to exceed \$5,000 based on a
58 reasonable hourly rate ~~if the claimant has not filed or is not~~
59 ~~entitled to file at such time a claim for disability, permanent~~
60 ~~impairment, wage loss, or death benefits, arising out of the~~
61 ~~same accident;~~

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

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

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

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

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