

HB 1489

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1 A bill to be entitled
2 An act relating to workers' compensation; amending s.
3 440.105, F.S.; decriminalizing receipt of an attorney's
4 fee that has not been approved by a judge of compensation
5 claims; amending s. 440.20, F.S.; limiting the scope of a
6 judge of compensation claims' authority to approve
7 settlement agreements; revising provisions relating to
8 attorney's fees; amending s. 440.25, F.S.; revising
9 procedures, requirements, and timeframes for mediation,
10 pretrial hearings, and expedited hearings; amending s.
11 440.32, F.S.; revising provisions relating to assessment
12 of penalties for maintaining or continuing a proceeding
13 frivolously; amending s. 440.34, F.S.; revising attorney's
14 fee provisions; requiring judicial approval of certain
15 fees paid by a carrier or employer; deleting a limitation
16 on retainer agreements and provisions relating to approval
17 of certain attorney's fees; specifying that nothing in the
18 chapter shall impair a claimant's right to contract for
19 representation; amending s. 440.45, F.S.; correcting a
20 cross-reference; amending s. 440.491, F.S.; providing that
21 weeks of certain training and education benefits are in
22 addition to the available weeks of temporary total
23 disability benefits for the purpose of benefit
24 calculations; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraph (c) of subsection (3) of section
 29 440.105, Florida Statutes, is amended to read:

30 440.105 Prohibited activities; reports; penalties;
 31 limitations.--

32 (3) Whoever violates any provision of this subsection
 33 commits a misdemeanor of the first degree, punishable as
 34 provided in s. 775.082 or s. 775.083.

35 ~~(c) It is unlawful for any attorney or other person, in~~
 36 ~~his or her individual capacity or in his or her capacity as a~~
 37 ~~public or private employee, or for any firm, corporation,~~
 38 ~~partnership, or association to receive any fee or other~~
 39 ~~consideration or any gratuity from a person on account of~~
 40 ~~services rendered for a person in connection with any~~
 41 ~~proceedings arising under this chapter, unless such fee,~~
 42 ~~consideration, or gratuity is approved by a judge of~~
 43 ~~compensation claims or by the Deputy Chief Judge of Compensation~~
 44 ~~Claims.~~

45 Section 2. Paragraph (c) of subsection (11) of section
 46 440.20, Florida Statutes, is amended to read:

47 440.20 Time for payment of compensation and medical bills;
 48 penalties for late payment.--

49 (11)

50 (c) Notwithstanding s. 440.21(2), when a claimant is
 51 represented by counsel, the claimant may waive all rights to any
 52 and all benefits under this chapter by entering into a
 53 settlement agreement releasing the employer and the carrier from
 54 liability for workers' compensation benefits in exchange for a
 55 lump-sum payment to the claimant. The settlement agreement

56 requires approval by the judge of compensation claims only as to
 57 any child support arrearage ~~the attorney's fees paid to the~~
 58 ~~claimant's attorney by the claimant. The parties need not submit~~
 59 ~~any information or documentation in support of the settlement,~~
 60 ~~except as needed to justify the amount of the attorney's fees.~~
 61 Neither the employer nor the carrier is responsible for any
 62 attorney's fees relating to the settlement and release of claims
 63 under this section, and such attorney's fees shall not be
 64 subject to the provisions of s. 440.34. Payment of the lump-sum
 65 settlement amount must be made within 14 days after the date the
 66 judge of compensation claims mails the order approving payment
 67 from the settlement of a sum, if any, to satisfy a child support
 68 arrearage ~~the attorney's fees. Any order entered by a judge of~~
 69 ~~compensation claims approving the attorney's fees as set out in~~
 70 ~~the settlement under this subsection is not considered to be an~~
 71 ~~award and is not subject to modification or review.~~ The judge of
 72 compensation claims shall report these settlements to the Deputy
 73 Chief Judge in accordance with the requirements set forth in
 74 paragraphs (a) and (b). Settlements entered into under this
 75 subsection are valid and apply to all dates of accident.

76 Section 3. Subsection (1), paragraph (b) of subsection
 77 (3), and paragraphs (a), (b), and (h) of subsection (4) of
 78 section 440.25, Florida Statutes, are amended to read:

79 440.25 Procedures for mediation and hearings.--

80 (1) Not later than 40 ~~Forty~~ days after a petition for
 81 benefits is filed under s. 440.192, the judge of compensation
 82 claims shall schedule a mediation conference and issue an order
 83 notifying ~~notify~~ the interested parties ~~by order~~ that a

84 mediation conference concerning such petition has been scheduled
 85 ~~unless the parties have notified the judge of compensation~~
 86 ~~claims that a private mediation has been held or is scheduled to~~
 87 ~~be held. A mediation, whether private or public, shall be held~~
 88 within 130 days after the filing of the petition. The parties
 89 may substitute a private mediation for the mediation noticed by
 90 the court with 10 days' advance notice to the court, provided
 91 the private mediation occurs within the 130-day period ~~Such~~
 92 ~~order must give the date the mediation conference is to be held.~~
 93 ~~Such order may be served personally upon the interested parties~~
 94 ~~or may be sent to the interested parties by mail.~~ If multiple
 95 petitions are pending, or if additional petitions are filed
 96 prior to the ~~after the scheduling of a mediation,~~ such petitions
 97 shall be consolidated ~~the judge of compensation claims shall~~
 98 ~~consolidate all petitions into~~ the ~~one~~ mediation. A ~~The~~ claimant
 99 ~~or the~~ adjuster of the employer or carrier who resides outside
 100 the district in which the mediation is to be held may, ~~at the~~
 101 ~~mediator's discretion,~~ attend the mediation conference by
 102 telephone or, ~~if agreed to by the parties,~~ other electronic
 103 means. A continuance may be granted upon the agreement of the
 104 parties or if the requesting party demonstrates to the judge of
 105 compensation claims that the reason for requesting the
 106 continuance arises from circumstances beyond the party's
 107 control. Any order granting a continuance must set forth the
 108 date of the rescheduled mediation conference. A mediation
 109 conference may not be used solely for the purpose of mediating
 110 attorney's fees.

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111 (3) Such mediation conference shall be conducted
112 informally and does not require the use of formal rules of
113 evidence or procedure. Any information from the files, reports,
114 case summaries, mediator's notes, or other communications or
115 materials, oral or written, relating to a mediation conference
116 under this section obtained by any person performing mediation
117 duties is privileged and confidential and may not be disclosed
118 without the written consent of all parties to the conference.
119 Any research or evaluation effort directed at assessing the
120 mediation program activities or performance must protect the
121 confidentiality of such information. Each party to a mediation
122 conference has a privilege during and after the conference to
123 refuse to disclose and to prevent another from disclosing
124 communications made during the conference whether or not the
125 contested issues are successfully resolved. This subsection and
126 paragraphs (4) (a) and (b) shall not be construed to prevent or
127 inhibit the discovery or admissibility of any information that
128 is otherwise subject to discovery or that is admissible under
129 applicable law or rule of procedure, except that any conduct or
130 statements made during a mediation conference or in negotiations
131 concerning the conference are inadmissible in any proceeding
132 under this chapter.

133 (b) ~~With respect to any private mediation, if the parties~~
134 ~~agree or~~ If mediators are not available under paragraph (a) ~~or~~
135 ~~pursuant to notice from the judge of compensation claims,~~ to
136 conduct the required mediation within the period specified in
137 this section, the parties shall hold a mediation conference at
138 the carrier's expense within the 130-day period set for

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139 mediation. The mediation conference shall be conducted by a
140 mediator certified under s. 44.106. If the parties do not agree
141 upon a mediator within 10 days after the date of the order, the
142 claimant shall notify the judge in writing and the judge shall
143 appoint a mediator under this paragraph within 7 days. In the
144 event both parties agree, the results of the mediation
145 conference shall be binding and neither party shall have a right
146 to appeal the results. In the event either party refuses to
147 agree to the results of the mediation conference, the results of
148 the mediation conference as well as the testimony, witnesses,
149 and evidence presented at the conference shall not be admissible
150 at any subsequent proceeding on the claim. The mediator shall
151 not be called in to testify or give deposition to resolve any
152 claim for any hearing before the judge of compensation claims.
153 The employer may be represented by an attorney at the mediation
154 conference if the employee is also represented by an attorney at
155 the mediation conference.

156 (4) (a) If the parties fail to agree to written submission
157 of pretrial stipulations, the judge of compensation claims shall
158 conduct a ~~live~~ pretrial hearing. The judge of compensation
159 claims shall give the interested parties at least 14 days'
160 advance notice of the pretrial hearing by mail.

161 (b) The final hearing must be held and concluded within 90
162 days after the mediation conference is held, allowing the
163 parties sufficient time to complete discovery. With the consent
164 of all parties, a party shall be entitled to one continuance of
165 a final hearing provided a proper motion for continuance is
166 filed with the judge of compensation claims at least 7 days

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167 prior to the scheduled hearing. All other or additional ~~Except~~
168 ~~as set forth in this section,~~ continuances may be granted only
169 if the requesting party demonstrates to the judge of
170 compensation claims that the reason for requesting the
171 continuance arises from circumstances beyond the party's
172 control. The written consent of the claimant or employer must be
173 obtained before any request ~~from a claimant's attorney~~ is
174 granted for an additional continuance ~~after the initial~~
175 ~~continuance has been granted.~~ Any order granting a continuance
176 must set forth the date and time of the rescheduled hearing. A
177 ~~continuance may be granted only if the requesting party~~
178 ~~demonstrates to the judge of compensation claims that the reason~~
179 ~~for requesting the continuance arises from circumstances beyond~~
180 ~~the control of the parties.~~ The judge of compensation claims
181 shall report any grant of two or more continuances to the Deputy
182 Chief Judge.

183 (h) To further expedite dispute resolution and to enhance
184 the self-executing features of the system, those petitions filed
185 in accordance with s. 440.192 that involve a claim for benefits
186 of \$5,000 or less shall, in the absence of compelling evidence
187 to the contrary, be presumed to be appropriate for expedited
188 resolution under this paragraph; and any other petition claim
189 filed in accordance with s. 440.192, upon the written agreement
190 of both parties and application by either party, may similarly
191 be resolved under this paragraph. A claim in a petition of
192 \$5,000 or less for medical benefits only or a petition for
193 reimbursement for mileage for medical purposes shall, in the
194 absence of compelling evidence to the contrary, be resolved

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195 through the expedited dispute resolution process provided in
196 this paragraph. For purposes of expedited resolution pursuant to
197 this paragraph, the Deputy Chief Judge shall make provision by
198 rule or order for expedited and limited discovery and expedited
199 docketing in such cases. At least 15 days prior to hearing, the
200 parties shall exchange and file with the judge of compensation
201 claims a pretrial outline of all issues, defenses, and witnesses
202 on a form adopted by the Deputy Chief Judge; provided, in no
203 event shall such hearing be held without 15 days' written notice
204 to all parties. No pretrial hearing shall be held and no
205 mediation scheduled unless requested by a party. The judge of
206 compensation claims shall limit the ~~all argument and~~
207 presentation of evidence at the hearing to a maximum of 30
208 minutes per party, ~~and such hearings shall not exceed 30 minutes~~
209 ~~in length~~. Neither party shall be required to be represented by
210 counsel. The employer or carrier may be represented by an
211 adjuster or other qualified representative. The employer or
212 carrier and any witness may appear at such hearing by telephone.
213 The rules of evidence shall be liberally construed in favor of
214 allowing introduction of evidence.

215 Section 4. Subsection (2) of section 440.32, Florida
216 Statutes, is amended to read:

217 440.32 Cost in proceedings brought without reasonable
218 ground.--

219 (2) If the judge of compensation claims or any court
220 having jurisdiction of proceedings in respect to any claims or
221 defense under this section determines that the proceedings were
222 maintained or continued frivolously, the cost of the

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223 proceedings, including reasonable attorney's fees, shall be
224 assessed against the offending party or attorney. ~~If a penalty~~
225 ~~is assessed under this subsection, a copy of the order assessing~~
226 ~~the penalty must be forwarded to the appropriate grievance~~
227 ~~committee acting under the jurisdiction of the Supreme Court.~~
228 Penalties, fees, and costs awarded against an attorney under
229 this provision may not be recouped from the party.

230 Section 5. Section 440.34, Florida Statutes, is amended to
231 read:

232 440.34 Attorney's fees; costs.--

233 (1) A claimant shall be responsible for the payment of her
234 or his own attorney's fees, except that she or he shall be
235 entitled to recover an attorney's fee payable by a carrier or
236 employer in any proceeding in which:

237 (a) The claimant employed an attorney in the successful
238 prosecution of a petition for benefits seeking temporary,
239 impairment, or permanent disability benefits or medical
240 benefits;

241 (b) The carrier or employer denied that an accident for
242 which compensation benefits are payable under this chapter
243 occurred, and the claimant prevailed on the issue of
244 compensability; or

245 (c) The claimant successfully prevailed in a proceeding
246 filed under s. 440.24 or s. 440.28.

247
248 Regardless of the date benefits are initially requested, an
249 employer's or carrier's liability for attorney's fees under this
250 subsection shall not attach until 30 days after the date the

251 carrier or employer, if self-insured, receives the petition for
 252 benefits. If a carrier or employer furnishes the benefits
 253 claimed in a petition for benefits more than 30 days, but within
 254 90 days, after the filing of the petition for benefits, the
 255 attorney's fees a carrier or employer is obligated to pay under
 256 this subsection shall be equal to 25 percent of the value of the
 257 benefits secured. If a carrier or employer furnishes or is
 258 ordered to furnish the benefits claimed in a petition for
 259 benefits more than 90 days after the filing of the petition, the
 260 attorney's fees a carrier or employer is obligated to pay under
 261 this subsection shall be a reasonable attorney's fee as
 262 determined by the judge of compensation claims.

263 (2) A fee, gratuity, or other consideration may not be
 264 paid by a carrier or employer for a claimant pursuant to
 265 subsection (1) in connection with any proceedings arising under
 266 this chapter, unless approved as reasonable by the judge of
 267 compensation claims or court having jurisdiction over such
 268 proceedings. ~~Any attorney's fee approved by a judge of~~
 269 ~~compensation claims for benefits secured on behalf of a claimant~~
 270 ~~must equal to 20 percent of the first \$5,000 of the amount of~~
 271 ~~the benefits secured, 15 percent of the next \$5,000 of the~~
 272 ~~amount of the benefits secured, 10 percent of the remaining~~
 273 ~~amount of the benefits secured to be provided during the first~~
 274 ~~10 years after the date the claim is filed, and 5 percent of the~~
 275 ~~benefits secured after 10 years. The judge of compensation~~
 276 ~~claims shall not approve a compensation order, a joint~~
 277 ~~stipulation for lump sum settlement, a stipulation or agreement~~
 278 ~~between a claimant and his or her attorney, or any other~~

279 ~~agreement related to benefits under this chapter that provides~~
280 ~~for an attorney's fee in excess of the amount permitted by this~~
281 ~~section. The judge of compensation claims is not required to~~
282 ~~approve any retainer agreement between the claimant and his or~~
283 ~~her attorney. The retainer agreement as to fees and costs may~~
284 ~~not be for compensation in excess of the amount allowed under~~
285 ~~this section.~~

286 (3)~~(2)~~ In awarding a claimant's attorney's fee, the judge
287 of compensation claims shall consider only those benefits
288 secured by the attorney. An attorney is not entitled to
289 attorney's fees for representation in any issue that was ripe,
290 due, and owing and that reasonably could have been addressed,
291 but was not addressed, during the pendency of other issues for
292 the same injury. The amount, statutory basis, and type of
293 benefits obtained through legal representation shall be listed
294 on all attorney's fees awarded by the judge of compensation
295 claims. For purposes of this section, the term "benefits
296 secured" does not include future medical benefits to be provided
297 on any date more than 5 years after the date the claim is filed.
298 ~~In the event an offer to settle an issue pending before a judge~~
299 ~~of compensation claims, including attorney's fees as provided~~
300 ~~for in this section, is communicated in writing to the claimant~~
301 ~~or the claimant's attorney at least 30 days prior to the trial~~
302 ~~date on such issue, for purposes of calculating the amount of~~
303 ~~attorney's fees to be taxed against the employer or carrier, the~~
304 ~~term "benefits secured" shall be deemed to include only that~~
305 ~~amount awarded to the claimant above the amount specified in the~~
306 ~~offer to settle. If multiple issues are pending before the judge~~

307 ~~of compensation claims, said offer of settlement shall address~~
 308 ~~each issue pending and shall state explicitly whether or not the~~
 309 ~~offer on each issue is severable. The written offer shall also~~
 310 ~~unequivocally state whether or not it includes medical witness~~
 311 ~~fees and expenses and all other costs associated with the claim.~~

312 (4)~~(3)~~ If any party should prevail in any proceedings
 313 before a judge of compensation claims or court, there shall be
 314 taxed against the nonprevailing party the reasonable costs of
 315 such proceedings, not to include attorney's fees. ~~A claimant~~
 316 ~~shall be responsible for the payment of her or his own~~
 317 ~~attorney's fees, except that a claimant shall be entitled to~~
 318 ~~recover a reasonable attorney's fee from a carrier or employer:~~

319 ~~(a) Against whom she or he successfully asserts a petition~~
 320 ~~for medical benefits only, if the claimant has not filed or is~~
 321 ~~not entitled to file at such time a claim for disability,~~
 322 ~~permanent impairment, wage-loss, or death benefits, arising out~~
 323 ~~of the same accident;~~

324 ~~(b) In any case in which the employer or carrier files a~~
 325 ~~response to petition denying benefits with the Office of the~~
 326 ~~Judges of Compensation Claims and the injured person has~~
 327 ~~employed an attorney in the successful prosecution of the~~
 328 ~~petition;~~

329 ~~(c) In a proceeding in which a carrier or employer denies~~
 330 ~~that an accident occurred for which compensation benefits are~~
 331 ~~payable, and the claimant prevails on the issue of~~
 332 ~~compensability; or~~

333 ~~(d) In cases where the claimant successfully prevails in~~
 334 ~~proceedings filed under s. 440.24 or s. 440.28.~~

335
336 ~~Regardless of the date benefits were initially requested,~~
337 ~~attorney's fees shall not attach under this subsection until 30~~
338 ~~days after the date the carrier or employer, if self-insured,~~
339 ~~receives the petition.~~

340 (5)~~(4)~~ In such cases in which the claimant is responsible
341 for the payment of her or his own attorney's fees, such fees are
342 a lien upon compensation payable to the claimant,
343 notwithstanding s. 440.22.

344 (6)~~(5)~~ If any proceedings are had for review of any claim,
345 award, or compensation order before any court, the court may
346 award the injured employee or dependent an attorney's fee to be
347 paid by the employer or carrier, in its discretion, which shall
348 be paid as the court may direct.

349 (7)~~(6)~~ A judge of compensation claims may not enter an
350 order approving the contents of a retainer agreement that
351 permits the escrowing of any portion of the employee's
352 compensation until benefits have been secured.

353 (8) Nothing in this chapter shall impair the right of a
354 claimant to contract with an attorney for representation in
355 connection with a claim under this chapter.

356 ~~(7) If an attorney's fee is owed under paragraph (3)(a),~~
357 ~~the judge of compensation claims may approve an alternative~~
358 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
359 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
360 ~~compensation claims expressly finds that the attorney's fee~~
361 ~~amount provided for in subsection (1), based on benefits~~
362 ~~secured, fails to fairly compensate the attorney for disputed~~

363 ~~medical only claims as provided in paragraph (3) (a) and the~~
 364 ~~circumstances of the particular case warrant such action.~~

365 Section 6. Paragraph (c) of subsection (2) of section
 366 440.45, Florida Statutes, is amended to read:

367 440.45 Office of the Judges of Compensation Claims.--

368 (2)

369 (c) Each judge of compensation claims shall be appointed
 370 for a term of 4 years, but during the term of office may be
 371 removed by the Governor for cause. Prior to the expiration of a
 372 judge's term of office, the statewide nominating commission
 373 shall review the judge's conduct and determine whether the
 374 judge's performance is satisfactory. Effective July 1, 2002, in
 375 determining whether a judge's performance is satisfactory, the
 376 commission shall consider the extent to which the judge has met
 377 the requirements of this chapter, including, but not limited to,
 378 the requirements of ss. 440.25(1) and (4) (a)-(e), 440.34 (3) ~~(2)~~,
 379 and 440.442. If the judge's performance is deemed satisfactory,
 380 the commission shall report its finding to the Governor no later
 381 than 6 months prior to the expiration of the judge's term of
 382 office. The Governor shall review the commission's report and
 383 may reappoint the judge for an additional 4-year term. If the
 384 Governor does not reappoint the judge, the Governor shall inform
 385 the commission. The judge shall remain in office until the
 386 Governor has appointed a successor judge in accordance with
 387 paragraphs (a) and (b). If a vacancy occurs during a judge's
 388 unexpired term, the statewide nominating commission does not
 389 find the judge's performance is satisfactory, or the Governor
 390 does not reappoint the judge, the Governor shall appoint a

391 successor judge for a term of 4 years in accordance with
 392 paragraph (b).

393 Section 7. Paragraph (b) of subsection (6) of section
 394 440.491, Florida Statutes, is amended to read:

395 440.491 Reemployment of injured workers; rehabilitation.--

396 (6) TRAINING AND EDUCATION.--

397 (b) When an employee who has attained maximum medical
 398 improvement is unable to earn at least 80 percent of the
 399 compensation rate and requires training and education to obtain
 400 suitable gainful employment, the employer or carrier shall pay
 401 the employee additional training and education temporary total
 402 compensation benefits while the employee receives such training
 403 and education for a period not to exceed 26 weeks, which period
 404 may be extended for an additional 26 weeks or less, if such
 405 extended period is determined to be necessary and proper by a
 406 judge of compensation claims. The benefits provided under this
 407 paragraph shall be calculated in the same manner as temporary
 408 total disability benefits under s. 440.15(2) and shall ~~not~~ be in
 409 addition to the 104 weeks as specified in s. 440.15(2). However,
 410 a carrier or employer is not precluded from voluntarily paying
 411 additional temporary total disability compensation beyond that
 412 period. If an employee requires temporary residence at or near a
 413 facility or an institution providing training and education
 414 which is located more than 50 miles away from the employee's
 415 customary residence, the reasonable cost of board, lodging, or
 416 travel must be borne by the department from the Workers'
 417 Compensation Administration Trust Fund established by s. 440.50.
 418 An employee who refuses to accept training and education that is

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419 | recommended by the vocational evaluator and considered necessary
420 | by the department will forfeit any additional training and
421 | education benefits and any additional payment for lost wages
422 | under this chapter. The department shall adopt rules to
423 | implement this section, which shall include requirements placed
424 | upon the carrier to notify the injured employee of the
425 | availability of training and education benefits as specified in
426 | this chapter. The department shall also include information
427 | regarding the eligibility for training and education benefits in
428 | informational materials specified in ss. 440.207 and 440.40.

429 | Section 8. This act shall take effect July 1, 2009.