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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2009	.	
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	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (3) of section
440.105, Florida Statutes, is repealed.

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

440.20 Time for payment of compensation and medical bills;
penalties for late payment.—

(11)

(c) Notwithstanding s. 440.21(2), when a claimant is



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13 represented by counsel, the claimant may waive all rights to any
14 and all benefits under this chapter by entering into a
15 settlement agreement releasing the employer and the carrier from
16 liability for workers' compensation benefits in exchange for a
17 lump-sum payment to the claimant. ~~The settlement agreement~~
18 ~~requires approval by the~~ judge of compensation claims shall
19 enter an order determining what, if any, portion of the
20 settlement proceeds must be allocated to satisfy any child
21 support arrearage only as to the attorney's fees paid to the
22 claimant's attorney by the claimant. The parties need not submit
23 any information or documentation in support of the settlement,
24 except as needed to justify the amount of the attorney's fees.
25 Neither the employer nor the carrier is responsible for any
26 attorney's fees relating to the settlement and release of claims
27 under this section. Attorney's fees related to a settlement and
28 release of claims are not subject to the provisions of s.
29 440.34(1). However, any attorney's fees paid by a claimant may
30 not exceed the amount allowable under the Supreme Court's
31 guidelines governing contingency fee agreements based upon the
32 gross amount of the settlement. Payment of the lump-sum
33 settlement amount must be made within 14 days after the date the
34 judge of compensation claims mails the order determining the
35 portion of the settlement proceeds, if any, that must be
36 allocated to satisfy a child support arrearage ~~approving the~~
37 ~~attorney's fees. Any order entered by a judge of compensation~~
38 ~~claims approving the attorney's fees as set out in the~~
39 ~~settlement under this subsection is not considered to be an~~
40 ~~award and is not subject to modification or review.~~ The judge of
41 compensation claims shall report these settlements to the Deputy



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42 Chief Judge in accordance with the requirements set forth in
43 paragraphs (a) and (b). Settlements entered into under this
44 subsection are valid and apply to all dates of accident.

45 Section 3. Section 440.34, Florida Statutes, is amended to
46 read:

47 440.34 Attorney's fees; costs.—

48 (1) A claimant is responsible for the payment of his or her
49 own attorney's fees, except that he or she is entitled to
50 recover attorney's fees payable by a carrier or employer if:

51 (a) A carrier or employer furnishes benefits claimed in a
52 petition for benefits more than 30 days after the carrier or
53 employer, if self-insured, receives the petition; or

54 (b) The claimant successfully prevails in a proceeding
55 filed under s. 440.24 or s. 440.28.

56
57 The attorney's fees a carrier or employer must pay under this
58 subsection must equal 25 percent of the first \$5,000 of the
59 amount of the benefits secured, 20 percent of the next \$5,000 of
60 the amount of the benefits secured, and 15 percent of the
61 remaining amount of the benefits secured. However, an attorney's
62 fee payable under this subsection may not be less than the fee
63 paid by the employer or carrier to the employer's or carrier's
64 attorneys to defend against the claim.

65 (2) Unless the parties agree otherwise, attorney's fees
66 payable under subsection (1) shall be determined ~~A fee,~~
67 ~~gratuity, or other consideration may not be paid for a claimant~~
68 ~~in connection with any proceedings arising under this chapter,~~
69 ~~unless approved as reasonable by the judge of compensation~~
70 ~~claims or court having jurisdiction over such proceedings. Any~~



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71 ~~attorney's fee approved by a judge of compensation claims for~~
72 ~~benefits secured on behalf of a claimant must equal to 20~~
73 ~~percent of the first \$5,000 of the amount of the benefits~~
74 ~~secured, 15 percent of the next \$5,000 of the amount of the~~
75 ~~benefits secured, 10 percent of the remaining amount of the~~
76 ~~benefits secured to be provided during the first 10 years after~~
77 ~~the date the claim is filed, and 5 percent of the benefits~~
78 ~~secured after 10 years. The judge of compensation claims shall~~
79 ~~not approve a compensation order, a joint stipulation for lump-~~
80 ~~sum settlement, a stipulation or agreement between a claimant~~
81 ~~and his or her attorney, or any other agreement related to~~
82 ~~benefits under this chapter that provides for an attorney's fee~~
83 ~~in excess of the amount permitted by this section. The judge of~~
84 ~~compensation claims is not required to approve any retainer~~
85 ~~agreement between the claimant and his or her attorney. The~~
86 ~~retainer agreement as to fees and costs may not be for~~
87 ~~compensation in excess of the amount allowed under this section.~~

88 (3)~~(2)~~ In awarding a claimant's attorney's fee, the judge
89 of compensation claims shall consider only those benefits
90 secured by the attorney. An attorney is not entitled to
91 attorney's fees for representation in any issue that was ripe,
92 due, and owing and that reasonably could have been addressed,
93 but was not addressed, during the pendency of other issues for
94 the same injury. The amount, statutory basis, and type of
95 benefits obtained through legal representation shall be listed
96 on all attorney's fees awarded by the judge of compensation
97 claims. For purposes of this section, the term "benefits
98 secured" does not include future medical benefits to be provided
99 on any date more than 5 years after the date the claim is filed.



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100 ~~In the event an offer to settle an issue pending before a judge~~
101 ~~of compensation claims, including attorney's fees as provided~~
102 ~~for in this section, is communicated in writing to the claimant~~
103 ~~or the claimant's attorney at least 30 days prior to the trial~~
104 ~~date on such issue, for purposes of calculating the amount of~~
105 ~~attorney's fees to be taxed against the employer or carrier, the~~
106 ~~term "benefits secured" shall be deemed to include only that~~
107 ~~amount awarded to the claimant above the amount specified in the~~
108 ~~offer to settle. If multiple issues are pending before the judge~~
109 ~~of compensation claims, said offer of settlement shall address~~
110 ~~each issue pending and shall state explicitly whether or not the~~
111 ~~offer on each issue is severable. The written offer shall also~~
112 ~~unequivocally state whether or not it includes medical witness~~
113 ~~fees and expenses and all other costs associated with the claim.~~

114 ~~(4)(3) If any party should prevail in any proceedings~~
115 ~~before a judge of compensation claims or court, there shall be~~
116 ~~taxed against the nonprevailing party the reasonable costs of~~
117 ~~such proceedings, not to include attorney's fees. A claimant~~
118 ~~shall be responsible for the payment of her or his own~~
119 ~~attorney's fees, except that a claimant shall be entitled to~~
120 ~~recover a reasonable attorney's fee from a carrier or employer:~~

121 ~~(a) Against whom she or he successfully asserts a petition~~
122 ~~for medical benefits only, if the claimant has not filed or is~~
123 ~~not entitled to file at such time a claim for disability,~~
124 ~~permanent impairment, wage loss, or death benefits, arising out~~
125 ~~of the same accident;~~

126 ~~(b) In any case in which the employer or carrier files a~~
127 ~~response to petition denying benefits with the Office of the~~
128 ~~Judges of Compensation Claims and the injured person has~~



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129 ~~employed an attorney in the successful prosecution of the~~
130 ~~petition;~~

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

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

137
138 ~~Regardless of the date benefits were initially requested,~~
139 ~~attorney's fees shall not attach under this subsection until 30~~
140 ~~days after the date the carrier or employer, if self-insured,~~
141 ~~receives the petition.~~

142 ~~(5)(4)~~ In such cases in which the claimant is responsible
143 for the payment of her or his own attorney's fees, such fees are
144 a lien upon compensation payable to the claimant,
145 notwithstanding s. 440.22.

146 ~~(6)(5)~~ If any proceedings are had for review of any claim,
147 award, or compensation order before any court, the court may
148 award the injured employee or dependent an attorney's fee to be
149 paid by the employer or carrier, in its discretion, which shall
150 be paid as the court may direct.

151 ~~(7)(6)~~ A judge of compensation claims may not enter an
152 order approving the contents of a retainer agreement that
153 permits the escrowing of any portion of the employee's
154 compensation until benefits have been secured.

155 (8) Nothing in this chapter impairs the right of a claimant
156 to contract with an attorney for representation in connection
157 with a claim filed under this chapter, except that an attorney



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158 may not recover an attorney's fee from a claimant on benefits
159 secured for which an attorney's fee has been paid by a carrier
160 or employer pursuant to this section.

161 (9) Notwithstanding any provision of law to the contrary,
162 attorney's fees and costs of the prevailing party paid by a
163 carrier to a claimant or a claimant's attorney pursuant to this
164 chapter may not be recouped, directly or indirectly, by any
165 carrier, included in any rate base or rate filing, or used to
166 justify a rate or rate change.

167 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~
168 ~~the judge of compensation claims may approve an alternative~~
169 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
170 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
171 ~~compensation claims expressly finds that the attorney's fee~~
172 ~~amount provided for in subsection (1), based on benefits~~
173 ~~secured, fails to fairly compensate the attorney for disputed~~
174 ~~medical-only claims as provided in paragraph (3) (a) and the~~
175 ~~circumstances of the particular case warrant such action.~~

176 Section 4. This act shall take effect upon becoming a law.

177
178 ===== T I T L E A M E N D M E N T =====

179 And the title is amended as follows:

180 Delete everything before the enacting clause
181 and insert:

182 An act to be entitled
183 An act relating to workers' compensation; repealing s.
184 440.105(3)(c), F.S., relating to the prohibition
185 against a fee, consideration, or gratuity for an
186 attorney or other person for certain services;



187 amending s. 440.20, F.S.; requiring that a judge of
188 compensation claims enter an order determining the
189 portion of settlement proceeds to be allocated to
190 child support arrearages; deleting the requirement
191 that a judge of compensation claims approve the
192 attorney's fees paid by a claimant; deleting the
193 requirement that parties to a settlement submit
194 information or documentation to support the
195 settlement; exempting settlement attorney's fees from
196 certain provisions of state law; limiting the amount
197 of attorney's fees paid by a claimant; requiring
198 payment of a settlement within a specified time after
199 a judge determines the portion of the settlement
200 amount allocated to child support; amending s. 440.34,
201 F.S.; providing that a claimant is responsible for the
202 payment of his or her attorney's fees; providing
203 exceptions; specifying a schedule for the
204 determination of attorney's fees to be paid by a
205 carrier or employer; requiring that a judge of
206 compensation claims determine the amount of attorney's
207 fees unless the parties agree otherwise; deleting
208 certain restrictions on the amount of attorney's fees;
209 deleting requirements relating to offers of
210 settlement; preserving the right of a claimant to
211 contract with an attorney for representation in
212 connection with certain claims; prohibiting the
213 recovery of attorney's fees under certain
214 circumstances; prohibiting the recoupment of certain
215 attorney's fees and costs by a carrier; prohibiting



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216 the inclusion of such fees or costs in any rate base
217 or rate filing and the use of such fees or costs to
218 justify a rate or rate change; providing an effective
219 date.