



960904

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/25/2009	.	
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	.	

The Committee on Banking and Insurance (Lawson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 440.105, Florida
Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties;
limitations.—

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



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12 (a) It is ~~shall be~~ unlawful for any employer to knowingly
13 fail to update applications for coverage as required by s.
14 440.381(1) and department rules within 7 days after the
15 reporting date for any change in the required information, or to
16 post notice of coverage pursuant to s. 440.40.

17 (b) It is ~~shall be~~ unlawful for any employer to knowingly
18 participate in the creation of the employment relationship in
19 which the employee has used any false, fraudulent, or misleading
20 oral or written statement as evidence of identity.

21 ~~(c) It is unlawful for any attorney or other person, in his
22 or her individual capacity or in his or her capacity as a public
23 or private employee, or for any firm, corporation, partnership,
24 or association to receive any fee or other consideration or any
25 gratuity from a person on account of services rendered for a
26 person in connection with any proceedings arising under this
27 chapter, unless such fee, consideration, or gratuity is approved
28 by a judge of compensation claims or by the Deputy Chief Judge
29 of Compensation Claims.~~

30 Section 2. Paragraph (c) of subsection (11) of section
31 440.20, Florida Statutes, is amended to read:

32 440.20 Time for payment of compensation and medical bills;
33 penalties for late payment.-

34 (11)

35 (c) Notwithstanding s. 440.21(2), when a claimant is
36 represented by counsel, the claimant may waive all rights to any
37 and all benefits under this chapter by entering into a
38 settlement agreement releasing the employer and the carrier from
39 liability for workers' compensation benefits in exchange for a
40 lump-sum payment to the claimant. The ~~settlement agreement~~



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41 ~~requires approval by the judge of compensation claims shall~~
42 ~~enter an order determining what portion, if any, of the~~
43 ~~settlement proceeds must be allocated to satisfy any child~~
44 ~~support arrearage only as to the attorney's fees paid to the~~
45 ~~claimant's attorney by the claimant. The parties need not submit~~
46 ~~any information or documentation in support of the settlement,~~
47 ~~except as needed to justify the amount of the attorney's fees.~~
48 Neither the employer nor the carrier is responsible for any
49 attorney's fees relating to the settlement and release of claims
50 under this section. Attorney's fees related to a settlement or
51 release of claims are not subject to the provisions of s.
52 440.34(1). Unless the parties agree otherwise, payment of the
53 lump-sum settlement amount must be made within 14 days after the
54 date the judge of compensation claims mails the order
55 determining the portion of the settlement proceeds, if any,
56 which must be allocated to satisfy a child support arrearage
57 ~~approving the attorney's fees. Any order entered by a judge of~~
58 ~~compensation claims approving the attorney's fees as set out in~~
59 ~~the settlement under this subsection is not considered to be an~~
60 ~~award and is not subject to modification or review. The judge of~~
61 ~~compensation claims shall report these settlements to the Deputy~~
62 ~~Chief Judge in accordance with the requirements set forth in~~
63 ~~paragraphs (a) and (b). Settlements entered into under this~~
64 ~~subsection are valid and apply to all dates of accident.~~

65 Section 3. Subsection (1), paragraph (b) of subsection (3),
66 and paragraphs (a), (b), and (h) of subsection (4) of section
67 440.25, Florida Statutes, are amended to read:

68 440.25 Procedures for mediation and hearings.—

69 (1) No later than 40 ~~Forty~~ days after a petition for



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70 benefits is filed under s. 440.192, the judge of compensation
71 claims shall schedule a mediation conference and issue an order
72 notifying ~~notify~~ the interested parties ~~by order~~ that a
73 mediation conference concerning such petition has been scheduled
74 ~~unless the parties have notified the judge of compensation~~
75 ~~claims that a private mediation has been held or is scheduled to~~
76 ~~be held.~~ A mediation, ~~whether private or public,~~ shall be held
77 within 130 days after the filing of the petition. The parties
78 may substitute a private mediation for the mediation noticed by
79 the court with 10 days' advance notice to the court if such
80 private mediation occurs within the 130-day period. ~~Such order~~
81 ~~must give the date the mediation conference is to be held. Such~~
82 ~~order may be served personally upon the interested parties or~~
83 ~~may be sent to the interested parties by mail.~~ If multiple
84 petitions are pending, or if additional petitions are filed
85 before ~~after the scheduling of a mediation,~~ such petitions shall
86 be consolidated ~~the judge of compensation claims shall~~
87 ~~consolidate all petitions into the~~ one mediation. A ~~The~~ claimant
88 or ~~the~~ adjuster of the employer or carrier who resides outside
89 the district in which the mediation is to be held may, ~~at the~~
90 ~~mediator's discretion,~~ attend the mediation conference by
91 telephone or, ~~if agreed to by the parties,~~ other electronic
92 means. A continuance may be granted upon the agreement of the
93 parties or if the requesting party demonstrates to the judge of
94 compensation claims that the reason for requesting the
95 continuance arises from circumstances beyond the party's
96 control. Any order granting a continuance must set forth the
97 date of the rescheduled mediation conference. A mediation
98 conference may not be used solely for the purpose of mediating



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99 attorney's fees.

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

122 (b) ~~With respect to any private mediation, if the parties~~
123 ~~agree or~~ If mediators are not available under paragraph (a) ~~7~~
124 ~~pursuant to notice from the judge of compensation claims,~~ to
125 conduct the required mediation within the period specified in
126 this section, the parties shall hold a mediation conference at
127 the carrier's expense within the 130-day period set for



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

145 (4) (a) If the parties fail to agree to written submission
146 of pretrial stipulations, the judge of compensation claims shall
147 conduct a ~~live~~ pretrial hearing. The judge of compensation
148 claims shall give the interested parties at least 14 days'
149 advance notice of the pretrial hearing by mail.

150 (b) The final hearing must be held and concluded within 90
151 days after the mediation conference is held, allowing the
152 parties sufficient time to complete discovery. With the consent
153 of all parties, a party i entitled to one continuance of a final
154 hearing if a proper motion for continuance is filed with the
155 judge of compensation claims at least 7 days before the
156 scheduled hearing. All other or additional ~~Except as set forth~~



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157 ~~in this section,~~ continuances may be granted only if the
158 requesting party demonstrates to the judge of compensation
159 claims that the reason for requesting the continuance arises
160 from circumstances beyond the party's control. The written
161 consent of the claimant or employer must be obtained before any
162 request ~~from a claimant's attorney~~ is granted for an additional
163 continuance ~~after the initial continuance has been granted~~. Any
164 order granting a continuance must set forth the date and time of
165 the rescheduled hearing. ~~A continuance may be granted only if~~
166 ~~the requesting party demonstrates to the judge of compensation~~
167 ~~claims that the reason for requesting the continuance arises~~
168 ~~from circumstances beyond the control of the parties~~. The judge
169 of compensation claims shall report any grant of two or more
170 continuances to the Deputy Chief Judge.

171 (h) To further expedite dispute resolution and to enhance
172 the self-executing features of the system, those petitions filed
173 in accordance with s. 440.192 that involve a claim for benefits
174 of \$5,000 or less shall, in the absence of compelling evidence
175 to the contrary, be presumed to be appropriate for expedited
176 resolution under this paragraph; and any other petition claim
177 filed in accordance with s. 440.192, upon the written agreement
178 of both parties and application by either party, may similarly
179 be resolved under this paragraph. A claim in a petition of
180 \$5,000 or less for medical benefits only or a petition for
181 reimbursement for mileage for medical purposes shall, in the
182 absence of compelling evidence to the contrary, be resolved
183 through the expedited dispute resolution process provided in
184 this paragraph. For purposes of expedited resolution pursuant to
185 this paragraph, the Deputy Chief Judge shall make provision by



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186 rule or order for expedited and limited discovery and expedited
187 docketing in such cases. At least 15 days prior to hearing, the
188 parties shall exchange and file with the judge of compensation
189 claims a pretrial outline of all issues, defenses, and witnesses
190 on a form adopted by the Deputy Chief Judge; provided, in no
191 event shall such hearing be held without 15 days' written notice
192 to all parties. No pretrial hearing shall be held and no
193 mediation scheduled unless requested by a party. The judge of
194 compensation claims shall limit the ~~all argument and~~
195 presentation of evidence at the hearing to a maximum of 30
196 minutes per party, ~~and such hearings shall not exceed 30 minutes~~
197 ~~in length~~. Neither party shall be required to be represented by
198 counsel. The employer or carrier may be represented by an
199 adjuster or other qualified representative. The employer or
200 carrier and any witness may appear at such hearing by telephone.
201 The rules of evidence shall be liberally construed in favor of
202 allowing introduction of evidence.

203 Section 4.—Section 440.34, Florida Statutes, is amended to
204 read:

205 440.34 Attorney's fees; costs.—

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

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

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

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215 The attorney's fees that a carrier or employer is obligated to
216 pay under this subsection shall equal 25 percent of the value of
217 the benefits secured.

218 (2) Unless the parties agree, such attorney's fees payable
219 under pursuant to subsection (1) shall be determined by A fee,
220 gratuity, or other consideration may not be paid for a claimant
221 in connection with any proceedings arising under this chapter,
222 unless approved as reasonable by the judge of compensation
223 claims or court having jurisdiction over such proceedings. Any
224 attorney's fee approved by a judge of compensation claims for
225 benefits secured on behalf of a claimant must equal to 20
226 percent of the first \$5,000 of the amount of the benefits
227 secured, 15 percent of the next \$5,000 of the amount of the
228 benefits secured, 10 percent of the remaining amount of the
229 benefits secured to be provided during the first 10 years after
230 the date the claim is filed, and 5 percent of the benefits
231 secured after 10 years. The judge of compensation claims shall
232 not approve a compensation order, a joint stipulation for lump-
233 sum settlement, a stipulation or agreement between a claimant
234 and his or her attorney, or any other agreement related to
235 benefits under this chapter that provides for an attorney's fee
236 in excess of the amount permitted by this section. The judge of
237 compensation claims is not required to approve any retainer
238 agreement between the claimant and his or her attorney. The
239 retainer agreement as to fees and costs may not be for
240 compensation in excess of the amount allowed under this section.

241 (3)-(2) In awarding a claimant's attorney's fee, the judge
242 of compensation claims shall consider only those benefits
243 secured by the attorney. An attorney is not entitled to



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244 attorney's fees for representation in any issue that was ripe,
245 due, and owing and that reasonably could have been addressed,
246 but was not addressed, during the pendency of other issues for
247 the same injury. The amount, statutory basis, and type of
248 benefits obtained through legal representation shall be listed
249 on all attorney's fees awarded by the judge of compensation
250 claims. For purposes of this section, the term "benefits
251 secured" does not include future medical benefits to be provided
252 on any date more than 5 years after the date the claim is filed.
253 ~~In the event an offer to settle an issue pending before a judge~~
254 ~~of compensation claims, including attorney's fees as provided~~
255 ~~for in this section, is communicated in writing to the claimant~~
256 ~~or the claimant's attorney at least 30 days prior to the trial~~
257 ~~date on such issue, for purposes of calculating the amount of~~
258 ~~attorney's fees to be taxed against the employer or carrier, the~~
259 ~~term "benefits secured" shall be deemed to include only that~~
260 ~~amount awarded to the claimant above the amount specified in the~~
261 ~~offer to settle. If multiple issues are pending before the judge~~
262 ~~of compensation claims, said offer of settlement shall address~~
263 ~~each issue pending and shall state explicitly whether or not the~~
264 ~~offer on each issue is severable. The written offer shall also~~
265 ~~unequivocally state whether or not it includes medical witness~~
266 ~~fees and expenses and all other costs associated with the claim.~~

267 (4)~~(3)~~ If any party should prevail in any proceedings
268 before a judge of compensation claims or court, there shall be
269 taxed against the nonprevailing party the reasonable costs of
270 such proceedings, not to include attorney's fees. ~~A claimant~~
271 ~~shall be responsible for the payment of her or his own~~
272 ~~attorney's fees, except that a claimant shall be entitled to~~



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273 ~~recover a reasonable attorney's fee from a carrier or employer:~~

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

279 ~~(b) In any case in which the employer or carrier files a~~
280 ~~response to petition denying benefits with the Office of the~~
281 ~~Judges of Compensation Claims and the injured person has~~
282 ~~employed an attorney in the successful prosecution of the~~
283 ~~petition;~~

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

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

290
291 ~~Regardless of the date benefits were initially requested,~~
292 ~~attorney's fees shall not attach under this subsection until 30~~
293 ~~days after the date the carrier or employer, if self-insured,~~
294 ~~receives the petition.~~

295 ~~(5)(4)~~ In such cases in which the claimant is responsible
296 for the payment of her or his own attorney's fees, such fees are
297 a lien upon compensation payable to the claimant,
298 notwithstanding s. 440.22.

299 ~~(6)(5)~~ If any proceedings are had for review of any claim,
300 award, or compensation order before any court, the court may
301 award the injured employee or dependent an attorney's fee to be



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302 paid by the employer or carrier, in its discretion, which shall
303 be paid as the court may direct.

304 (7)~~(6)~~ A judge of compensation claims may not enter an
305 order approving the contents of a retainer agreement that
306 permits the escrowing of any portion of the employee's
307 compensation until benefits have been secured.

308 (8) This chapter does not impair the right of a claimant to
309 contract with an attorney for representation in connection with
310 a claim under this chapter, except that an attorney may not
311 recover attorney's fees from a claimant with respect to benefits
312 secured for which attorney's fees have been paid by a carrier or
313 employer under this section.

314 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~
315 ~~the judge of compensation claims may approve an alternative~~
316 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
317 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
318 ~~compensation claims expressly finds that the attorney's fee~~
319 ~~amount provided for in subsection (1), based on benefits~~
320 ~~secured, fails to fairly compensate the attorney for disputed~~
321 ~~medical-only claims as provided in paragraph (3) (a) and the~~
322 ~~circumstances of the particular case warrant such action.~~

323 Section 5. This act shall take effect upon becoming a law.

324
325 ===== T I T L E A M E N D M E N T =====

326 And the title is amended as follows:

327 Delete everything before the enacting clause
328 and insert:

329 A bill to be entitled

330 An act relating to workers' compensation; amending s.



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331 440.105, F.S.; deleting provisions listing certain
332 unlawful activities; amending s. 440.20, F.S.;
333 requiring that a judge of compensation claims enter an
334 order determining the portion of settlement proceeds
335 used to satisfy child support arrearage; providing
336 that attorney's fees related to a settlement or
337 release of claims are not subject to certain
338 provisions of state law; amending s. 440.25, F.S.;
339 revising certain procedures for mediation and
340 hearings; authorizing the substitution of private
341 mediation for mediation noticed by a court under
342 certain circumstances; authorizing certain parties to
343 attend a mediation conference by telephone or
344 electronic means; providing that a party is entitled
345 to one continuance of a mediation under certain
346 circumstances; requiring the consent of certain
347 parties for additional continuances; deleting certain
348 provisions related to the granting of continuances;
349 revising the amount of time each party is granted for
350 the presentation of evidence; amending s. 440.34,
351 F.S.; providing that a claimant is responsible for the
352 payment of his or her own attorney's fees; providing
353 exceptions; specifying an amount for attorney's fees
354 in certain cases; revising provisions relating to the
355 determination of certain attorney's fees; deleting
356 provisions qualifying the definition of the term
357 "benefits secured"; deleting provisions relating to
358 responsibility for the payment of attorney's fees;
359 providing that a claimant's right to contract with an



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360 attorney for certain purposes is not impaired by
361 specified provisions of state law; providing an
362 exception; deleting provisions authorizing a judge of
363 compensation claims to approve alternative attorney's
364 fees under certain circumstances; providing an
365 effective date.