

By Senator Richter

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1                   A bill to be entitled  
2           An act relating to attorney's fees in workers'  
3           compensation cases; amending s. 440.34, F.S.;  
4           clarifying requirements for the payment of fees and  
5           costs under a retainer agreement; specifying the  
6           amount of attorney's fees which a claimant is entitled  
7           to recover from a carrier or employer; providing an  
8           effective date.

9  
10   Be It Enacted by the Legislature of the State of Florida:

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12           Section 1. Section 440.34, Florida Statutes, is amended to  
13   read:

14           440.34 Attorney's fees; costs.—

15           (1) A fee, gratuity, or other consideration may not be paid  
16   for a claimant in connection with any proceedings arising under  
17   this chapter, unless approved ~~as reasonable~~ by the judge of  
18   compensation claims or court having jurisdiction over such  
19   proceedings. Any attorney's fee approved by a judge of  
20   compensation claims for benefits secured on behalf of a claimant  
21   must equal to 20 percent of the first \$5,000 of the amount of  
22   the benefits secured, 15 percent of the next \$5,000 of the  
23   amount of the benefits secured, 10 percent of the remaining  
24   amount of the benefits secured to be provided during the first  
25   10 years after the date the claim is filed, and 5 percent of the  
26   benefits secured after 10 years. The judge of compensation  
27   claims shall not approve a compensation order, a joint  
28   stipulation for lump-sum settlement, a stipulation or agreement  
29   between a claimant and his or her attorney, or any other

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30 agreement related to benefits under this chapter which ~~that~~  
31 provides for an attorney's fee in excess of the amount permitted  
32 by this section. The judge of compensation claims is not  
33 required to approve any retainer agreement between the claimant  
34 and his or her attorney. The retainer agreement as to fees and  
35 costs may not be for compensation in excess of the amount  
36 allowed under this subsection or subsection (7) ~~section~~.

37 (2) In awarding a claimant's attorney's fee, the judge of  
38 compensation claims shall consider only those benefits secured  
39 by the attorney. An attorney is not entitled to attorney's fees  
40 for representation in any issue that was ripe, due, and owing  
41 and that reasonably could have been addressed, but was not  
42 addressed, during the pendency of other issues for the same  
43 injury. The amount, statutory basis, and type of benefits  
44 obtained through legal representation shall be listed on all  
45 attorney's fees awarded by the judge of compensation claims. For  
46 purposes of this section, the term "benefits secured" does not  
47 include future medical benefits to be provided on any date more  
48 than 5 years after the date the claim is filed. In the event an  
49 offer to settle an issue pending before a judge of compensation  
50 claims, including attorney's fees as provided for in this  
51 section, is communicated in writing to the claimant or the  
52 claimant's attorney at least 30 days prior to the trial date on  
53 such issue, for purposes of calculating the amount of attorney's  
54 fees to be taxed against the employer or carrier, the term  
55 "benefits secured" shall be deemed to include only that amount  
56 awarded to the claimant above the amount specified in the offer  
57 to settle. If multiple issues are pending before the judge of  
58 compensation claims, said offer of settlement shall address each

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59 issue pending and shall state explicitly whether or not the  
60 offer on each issue is severable. The written offer shall also  
61 unequivocally state whether or not it includes medical witness  
62 fees and expenses and all other costs associated with the claim.

63 (3) If any party should prevail in any proceedings before a  
64 judge of compensation claims or court, there shall be taxed  
65 against the nonprevailing party the reasonable costs of such  
66 proceedings, not to include attorney's fees. A claimant is ~~shall~~  
67 ~~be~~ responsible for the payment of her or his own attorney's  
68 fees, except that a claimant is ~~shall be~~ entitled to recover an  
69 ~~a reasonable~~ attorney's fee in an amount equal to the amount  
70 provided for in subsection (1) or subsection (7) from a carrier  
71 or employer:

72 (a) Against whom she or he successfully asserts a petition  
73 for medical benefits only, if the claimant has not filed or is  
74 not entitled to file at such time a claim for disability,  
75 permanent impairment, wage-loss, or death benefits, arising out  
76 of the same accident;

77 (b) In any case in which the employer or carrier files a  
78 response to petition denying benefits with the Office of the  
79 Judges of Compensation Claims and the injured person has  
80 employed an attorney in the successful prosecution of the  
81 petition;

82 (c) In a proceeding in which a carrier or employer denies  
83 that an accident occurred for which compensation benefits are  
84 payable, and the claimant prevails on the issue of  
85 compensability; or

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

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89 Regardless of the date benefits were initially requested,  
90 attorney's fees shall not attach under this subsection until 30  
91 days after the date the carrier or employer, if self-insured,  
92 receives the petition.

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

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

102 (6) A judge of compensation claims may not enter an order  
103 approving the contents of a retainer agreement that permits  
104 placing the escrowing of any portion of the employee's  
105 compensation into an escrow account until benefits have been  
106 secured.

107 (7) If an attorney's fee is owed under paragraph (3) (a),  
108 the judge of compensation claims may approve an alternative  
109 attorney's fee not to exceed \$1,500 only once per accident,  
110 based on a maximum hourly rate of \$150 per hour, if the judge of  
111 compensation claims expressly finds that the attorney's fee  
112 amount provided for in subsection (1), based on benefits  
113 secured, fails to fairly compensate the attorney for disputed  
114 medical-only claims as provided in paragraph (3) (a) and the  
115 circumstances of the particular case warrant such action.

116 Section 2. This act shall take effect July 1, 2009.