

By the Committee on Judiciary; and Senators Richter and Baker

590-05202-09

20092072c1

1 A bill to be entitled
2 An act relating to workers' compensation; repealing s.
3 440.105(3)(c), F.S., relating to the prohibition
4 against a fee, consideration, or gratuity for an
5 attorney or other person for certain services;
6 amending s. 440.20, F.S.; requiring that a judge of
7 compensation claims enter an order determining the
8 portion of settlement proceeds to be allocated to
9 child support arrearages; deleting the requirement
10 that a judge of compensation claims approve the
11 attorney's fees paid by a claimant; deleting the
12 requirement that parties to a settlement submit
13 information or documentation to support the
14 settlement; exempting settlement attorney's fees from
15 certain provisions of state law; limiting the amount
16 of attorney's fees paid by a claimant; requiring
17 payment of a settlement within a specified time after
18 a judge determines the portion of the settlement
19 amount allocated to child support; amending s. 440.34,
20 F.S.; providing that a claimant is responsible for the
21 payment of his or her attorney's fees; providing
22 exceptions; specifying a schedule for the
23 determination of attorney's fees to be paid by a
24 carrier or employer; requiring that a judge of
25 compensation claims determine the amount of attorney's
26 fees unless the parties agree otherwise; deleting
27 certain restrictions on the amount of attorney's fees;
28 deleting requirements relating to offers of
29 settlement; preserving the right of a claimant to

590-05202-09

20092072c1

30 contract with an attorney for representation in
31 connection with certain claims; prohibiting the
32 recovery of attorney's fees under certain
33 circumstances; prohibiting the recoupment of certain
34 attorney's fees and costs by a carrier; prohibiting
35 the inclusion of such fees or costs in any rate base
36 or rate filing and the use of such fees or costs to
37 justify a rate or rate change; providing an effective
38 date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Paragraph (c) of subsection (3) of section
43 440.105, Florida Statutes, is repealed.

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

46 440.20 Time for payment of compensation and medical bills;
47 penalties for late payment.-

48 (11)

49 (c) Notwithstanding s. 440.21(2), when a claimant is
50 represented by counsel, the claimant may waive all rights to any
51 and all benefits under this chapter by entering into a
52 settlement agreement releasing the employer and the carrier from
53 liability for workers' compensation benefits in exchange for a
54 lump-sum payment to the claimant. ~~The settlement agreement~~
55 ~~requires approval by the judge of compensation claims shall~~
56 enter an order determining what, if any, portion of the
57 settlement proceeds must be allocated to satisfy any child
58 support arrearage only as to the attorney's fees paid to the

590-05202-09

20092072c1

59 ~~claimant's attorney by the claimant. The parties need not submit~~
60 ~~any information or documentation in support of the settlement,~~
61 ~~except as needed to justify the amount of the attorney's fees.~~
62 Neither the employer nor the carrier is responsible for any
63 attorney's fees relating to the settlement and release of claims
64 under this section. Attorney's fees related to a settlement and
65 release of claims are not subject to the provisions of s.
66 440.34(1). However, any attorney's fees paid by a claimant may
67 not exceed the amount allowable under the Supreme Court's
68 guidelines governing contingency fee agreements based upon the
69 gross amount of the settlement. Payment of the lump-sum
70 settlement amount must be made within 14 days after the date the
71 judge of compensation claims mails the order determining the
72 portion of the settlement proceeds, if any, that must be
73 allocated to satisfy a child support arrearage ~~approving the~~
74 ~~attorney's fees. Any order entered by a judge of compensation~~
75 ~~claims approving the attorney's fees as set out in the~~
76 ~~settlement under this subsection is not considered to be an~~
77 ~~award and is not subject to modification or review.~~ The judge of
78 compensation claims shall report these settlements to the Deputy
79 Chief Judge in accordance with the requirements set forth in
80 paragraphs (a) and (b). Settlements entered into under this
81 subsection are valid and apply to all dates of accident.

82 Section 3. Section 440.34, Florida Statutes, is amended to
83 read:

84 440.34 Attorney's fees; costs.—

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

590-05202-09

20092072c1

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

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

93
94 The attorney's fees a carrier or employer must pay under this
95 subsection must equal 25 percent of the first \$5,000 of the
96 amount of the benefits secured, 20 percent of the next \$5,000 of
97 the amount of the benefits secured, and 15 percent of the
98 remaining amount of the benefits secured. However, an attorney's
99 fee payable under this subsection may be increased up to the fee
100 paid by the employer or carrier to the employer's or carrier's
101 attorneys if it is determined that the employer or carrier
102 engaged in a bad faith denial of benefits, unreasonably delayed
103 furnishing benefits that were due and owing, or unreasonably
104 continued or increased the expense of litigation.

105 (2) Unless the parties agree otherwise, attorney's fees
106 payable under subsection (1) shall be determined ~~A fee,~~
107 ~~gratuity, or other consideration may not be paid for a claimant~~
108 ~~in connection with any proceedings arising under this chapter,~~
109 ~~unless approved as reasonable by the judge of compensation~~
110 ~~claims or court having jurisdiction over such proceedings. Any~~
111 ~~attorney's fee approved by a judge of compensation claims for~~
112 ~~benefits secured on behalf of a claimant must equal to 20~~
113 ~~percent of the first \$5,000 of the amount of the benefits~~
114 ~~secured, 15 percent of the next \$5,000 of the amount of the~~
115 ~~benefits secured, 10 percent of the remaining amount of the~~
116 ~~benefits secured to be provided during the first 10 years after~~

590-05202-09

20092072c1

117 ~~the date the claim is filed, and 5 percent of the benefits~~
118 ~~secured after 10 years. The judge of compensation claims shall~~
119 ~~not approve a compensation order, a joint stipulation for lump-~~
120 ~~sum settlement, a stipulation or agreement between a claimant~~
121 ~~and his or her attorney, or any other agreement related to~~
122 ~~benefits under this chapter that provides for an attorney's fee~~
123 ~~in excess of the amount permitted by this section. The judge of~~
124 ~~compensation claims is not required to approve any retainer~~
125 ~~agreement between the claimant and his or her attorney. The~~
126 ~~retainer agreement as to fees and costs may not be for~~
127 ~~compensation in excess of the amount allowed under this section.~~

128 (3)~~(2)~~ In awarding a claimant's attorney's fee, the judge
129 of compensation claims shall consider only those benefits
130 secured by the attorney. An attorney is not entitled to
131 attorney's fees for representation in any issue that was ripe,
132 due, and owing and that reasonably could have been addressed,
133 but was not addressed, during the pendency of other issues for
134 the same injury. The amount, statutory basis, and type of
135 benefits obtained through legal representation shall be listed
136 on all attorney's fees awarded by the judge of compensation
137 claims. For purposes of this section, the term "benefits
138 secured" does not include future medical benefits to be provided
139 on any date more than 5 years after the date the claim is filed.
140 ~~In the event an offer to settle an issue pending before a judge~~
141 ~~of compensation claims, including attorney's fees as provided~~
142 ~~for in this section, is communicated in writing to the claimant~~
143 ~~or the claimant's attorney at least 30 days prior to the trial~~
144 ~~date on such issue, for purposes of calculating the amount of~~
145 ~~attorney's fees to be taxed against the employer or carrier, the~~

590-05202-09

20092072c1

146 ~~term "benefits secured" shall be deemed to include only that~~
147 ~~amount awarded to the claimant above the amount specified in the~~
148 ~~offer to settle. If multiple issues are pending before the judge~~
149 ~~of compensation claims, said offer of settlement shall address~~
150 ~~each issue pending and shall state explicitly whether or not the~~
151 ~~offer on each issue is severable. The written offer shall also~~
152 ~~unequivocally state whether or not it includes medical witness~~
153 ~~fees and expenses and all other costs associated with the claim.~~

154 (4) ~~(3)~~ If any party should prevail in any proceedings
155 before a judge of compensation claims or court, there shall be
156 taxed against the nonprevailing party the reasonable costs of
157 such proceedings, not to include attorney's fees. A claimant
158 shall be responsible for the payment of her or his own
159 attorney's fees, except that a claimant shall be entitled to
160 recover a reasonable attorney's fee from a carrier or employer:

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

166 (b) ~~In any case in which the employer or carrier files a~~
167 ~~response to petition denying benefits with the Office of the~~
168 ~~Judges of Compensation Claims and the injured person has~~
169 ~~employed an attorney in the successful prosecution of the~~
170 ~~petition;~~

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

590-05202-09

20092072c1

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

177
178 ~~Regardless of the date benefits were initially requested,~~
179 ~~attorney's fees shall not attach under this subsection until 30~~
180 ~~days after the date the carrier or employer, if self-insured,~~
181 ~~receives the petition.~~

182 (5)~~(4)~~ In such cases in which the claimant is responsible
183 for the payment of her or his own attorney's fees, such fees are
184 a lien upon compensation payable to the claimant,
185 notwithstanding s. 440.22.

186 (6)~~(5)~~ If any proceedings are had for review of any claim,
187 award, or compensation order before any court, the court may
188 award the injured employee or dependent an attorney's fee to be
189 paid by the employer or carrier, in its discretion, which shall
190 be paid as the court may direct.

191 (7)~~(6)~~ A judge of compensation claims may not enter an
192 order approving the contents of a retainer agreement that
193 permits the escrowing of any portion of the employee's
194 compensation until benefits have been secured.

195 (8) Nothing in this chapter impairs the right of a claimant
196 to contract with an attorney for representation in connection
197 with a claim filed under this chapter, except that an attorney
198 may not recover an attorney's fee from a claimant on benefits
199 secured for which an attorney's fee has been paid by a carrier
200 or employer pursuant to this section.

201 (9) Notwithstanding any provision of law to the contrary,
202 attorney's fees and costs of the prevailing party paid by a
203 carrier to a claimant or a claimant's attorney pursuant to this

590-05202-09

20092072c1

204 chapter may not be recouped, directly or indirectly, by any
205 carrier, included in any rate base or rate filing, or used to
206 justify a rate or rate change.

207 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~
208 ~~the judge of compensation claims may approve an alternative~~
209 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
210 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
211 ~~compensation claims expressly finds that the attorney's fee~~
212 ~~amount provided for in subsection (1), based on benefits~~
213 ~~secured, fails to fairly compensate the attorney for disputed~~
214 ~~medical-only claims as provided in paragraph (3) (a) and the~~
215 ~~circumstances of the particular case warrant such action.~~

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