

By the Committees on General Government Appropriations; and
Judiciary; and Senators Richter and Baker

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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

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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 that the
38 finder of fact and law is not bound by provisions of
39 state law relating to the provision of indemnity or
40 medical benefits for employment-related accidents or
41 injuries involving exposure to a toxic substance or
42 occupational disease when awarding attorney's fees in
43 cases involving first responders; requiring that the
44 finder of fact and law consider certain factors when
45 awarding attorney's fees in such cases; defining the
46 term "occupational disease" for specified purposes;
47 deleting provisions authorizing a judge of
48 compensation claims to approve alternative attorney's
49 fees under certain circumstances; providing
50 legislative findings; providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Paragraph (c) of subsection (3) of section
55 440.105, Florida Statutes, is repealed.

56 Section 2. Paragraph (c) of subsection (11) of section
57 440.20, Florida Statutes, is amended to read:

58 440.20 Time for payment of compensation and medical bills;

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59 penalties for late payment.-

60 (11)

61 (c) Notwithstanding s. 440.21(2), when a claimant is
62 represented by counsel, the claimant may waive all rights to any
63 and all benefits under this chapter by entering into a
64 settlement agreement releasing the employer and the carrier from
65 liability for workers' compensation benefits in exchange for a
66 lump-sum payment to the claimant. ~~The settlement agreement~~
67 ~~requires approval by the~~ judge of compensation claims shall
68 enter an order determining what, if any, portion of the
69 settlement proceeds must be allocated to satisfy any child
70 support arrearage only as to the attorney's fees paid to the
71 claimant's attorney by the claimant. ~~The parties need not submit~~
72 ~~any information or documentation in support of the settlement,~~
73 ~~except as needed to justify the amount of the attorney's fees.~~
74 Neither the employer nor the carrier is responsible for any
75 attorney's fees relating to the settlement and release of claims
76 under this section. Attorney's fees related to a settlement and
77 release of claims are not subject to the provisions of s.
78 440.34(1). However, any attorney's fees paid by a claimant may
79 not exceed the amount allowable under the Supreme Court's
80 guidelines governing contingency fee agreements based upon the
81 gross amount of the settlement. Payment of the lump-sum
82 settlement amount must be made within 14 days after the date the
83 judge of compensation claims mails the order determining the
84 portion of the settlement proceeds, if any, that must be
85 allocated to satisfy a child support arrearage ~~approving the~~
86 ~~attorney's fees.~~ ~~Any order entered by a judge of compensation~~
87 ~~claims approving the attorney's fees as set out in the~~

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88 ~~settlement under this subsection is not considered to be an~~
89 ~~award and is not subject to modification or review.~~ The judge of
90 compensation claims shall report these settlements to the Deputy
91 Chief Judge in accordance with the requirements set forth in
92 paragraphs (a) and (b). Settlements entered into under this
93 subsection are valid and apply to all dates of accident.

94 Section 3. Section 440.34, Florida Statutes, is amended to
95 read:

96 440.34 Attorney's fees; costs.—

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

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

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

105

106 The attorney's fees a carrier or employer must pay under this
107 subsection must equal 25 percent of the first \$5,000 of the
108 amount of the benefits secured, 20 percent of the next \$5,000 of
109 the amount of the benefits secured, and 15 percent of the
110 remaining amount of the benefits secured. However, an attorney's
111 fee payable under this subsection may be increased up to the fee
112 paid by the employer or carrier to the employer's or carrier's
113 attorneys if it is determined that the employer or carrier
114 engaged in a bad faith denial of benefits, unreasonably delayed
115 furnishing benefits that were due and owing, or unreasonably
116 continued or increased the expense of litigation.

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117 (2) Unless the parties agree otherwise, attorney's fees
118 payable under subsection (1) shall be determined ~~A fee,~~
119 ~~gratuity, or other consideration may not be paid for a claimant~~
120 ~~in connection with any proceedings arising under this chapter,~~
121 ~~unless approved as reasonable by the judge of compensation~~
122 ~~claims or court having jurisdiction over such proceedings. Any~~
123 ~~attorney's fee approved by a judge of compensation claims for~~
124 ~~benefits secured on behalf of a claimant must equal to 20~~
125 ~~percent of the first \$5,000 of the amount of the benefits~~
126 ~~secured, 15 percent of the next \$5,000 of the amount of the~~
127 ~~benefits secured, 10 percent of the remaining amount of the~~
128 ~~benefits secured to be provided during the first 10 years after~~
129 ~~the date the claim is filed, and 5 percent of the benefits~~
130 ~~secured after 10 years. The judge of compensation claims shall~~
131 ~~not approve a compensation order, a joint stipulation for lump-~~
132 ~~sum settlement, a stipulation or agreement between a claimant~~
133 ~~and his or her attorney, or any other agreement related to~~
134 ~~benefits under this chapter that provides for an attorney's fee~~
135 ~~in excess of the amount permitted by this section. The judge of~~
136 ~~compensation claims is not required to approve any retainer~~
137 ~~agreement between the claimant and his or her attorney. The~~
138 ~~retainer agreement as to fees and costs may not be for~~
139 ~~compensation in excess of the amount allowed under this section.~~

140 (3)~~(2)~~ In awarding a claimant's attorney's fee, the judge
141 of compensation claims shall consider only those benefits
142 secured by the attorney. An attorney is not entitled to
143 attorney's fees for representation in any issue that was ripe,
144 due, and owing and that reasonably could have been addressed,
145 but was not addressed, during the pendency of other issues for

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146 the same injury. The amount, statutory basis, and type of
147 benefits obtained through legal representation shall be listed
148 on all attorney's fees awarded by the judge of compensation
149 claims. For purposes of this section, the term "benefits
150 secured" does not include future medical benefits to be provided
151 on any date more than 5 years after the date the claim is filed.
152 ~~In the event an offer to settle an issue pending before a judge
153 of compensation claims, including attorney's fees as provided
154 for in this section, is communicated in writing to the claimant
155 or the claimant's attorney at least 30 days prior to the trial
156 date on such issue, for purposes of calculating the amount of
157 attorney's fees to be taxed against the employer or carrier, the
158 term "benefits secured" shall be deemed to include only that
159 amount awarded to the claimant above the amount specified in the
160 offer to settle. If multiple issues are pending before the judge
161 of compensation claims, said offer of settlement shall address
162 each issue pending and shall state explicitly whether or not the
163 offer on each issue is severable. The written offer shall also
164 unequivocally state whether or not it includes medical witness
165 fees and expenses and all other costs associated with the claim.~~

166 (4)~~(3)~~ If any party should prevail in any proceedings
167 before a judge of compensation claims or court, there shall be
168 taxed against the nonprevailing party the reasonable costs of
169 such proceedings, not to include attorney's fees. ~~A claimant
170 shall be responsible for the payment of her or his own
171 attorney's fees, except that a claimant shall be entitled to
172 recover a reasonable attorney's fee from a carrier or employer:~~

173 ~~(a) Against whom she or he successfully asserts a petition
174 for medical benefits only, if the claimant has not filed or is~~

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175 ~~not entitled to file at such time a claim for disability,~~
176 ~~permanent impairment, wage-loss, or death benefits, arising out~~
177 ~~of the same accident;~~

178 ~~(b) In any case in which the employer or carrier files a~~
179 ~~response to petition denying benefits with the Office of the~~
180 ~~Judges of Compensation Claims and the injured person has~~
181 ~~employed an attorney in the successful prosecution of the~~
182 ~~petition;~~

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

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

189
190 ~~Regardless of the date benefits were initially requested,~~
191 ~~attorney's fees shall not attach under this subsection until 30~~
192 ~~days after the date the carrier or employer, if self-insured,~~
193 ~~receives the petition.~~

194 (5)~~(4)~~ In such cases in which the claimant is responsible
195 for the payment of her or his own attorney's fees, such fees are
196 a lien upon compensation payable to the claimant,
197 notwithstanding s. 440.22.

198 (6)~~(5)~~ If any proceedings are had for review of any claim,
199 award, or compensation order before any court, the court may
200 award the injured employee or dependent an attorney's fee to be
201 paid by the employer or carrier, in its discretion, which shall
202 be paid as the court may direct.

203 (7)~~(6)~~ A judge of compensation claims may not enter an

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204 order approving the contents of a retainer agreement that
205 permits the escrowing of any portion of the employee's
206 compensation until benefits have been secured.

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

213 (9) Notwithstanding any provision of law to the contrary,
214 attorney's fees and costs of the prevailing party paid by a
215 carrier to a claimant or a claimant's attorney pursuant to this
216 chapter may not be recouped, directly or indirectly, by any
217 carrier, included in any rate base or rate filing, or used to
218 justify a rate or rate change.

219 (10) For purposes of first responders as defined in s.
220 112.1815(1), the finder of fact and law is not bound by any
221 statutory provision regarding attorney's fees relating to the
222 provision of indemnity or medical benefits for employment-
223 related accidents or injuries involving exposure to a toxic
224 substance or occupational disease, but must consider the
225 following factors when awarding an attorney's fee:

226 (a) The time and labor required, the novelty and difficulty
227 of the questions involved, and the skill required to perform the
228 legal service properly.

229 (b) The fee customarily charged in the locality for similar
230 legal services.

231 (c) The amount involved in the controversy and the benefits
232 payable to the claimant.

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233 (d) The time limitations imposed by the claimant or the
234 circumstances.

235 (e) The experience, reputation, and ability of the attorney
236 or attorneys performing services.

237 (f) The contingency or certainty of a fee.

238

239 For purposes of this subsection, the term "occupational disease"
240 has the same meaning as provided in s. 112.1815(4).

241 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~
242 ~~the judge of compensation claims may approve an alternative~~
243 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
244 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
245 ~~compensation claims expressly finds that the attorney's fee~~
246 ~~amount provided for in subsection (1), based on benefits~~
247 ~~secured, fails to fairly compensate the attorney for disputed~~
248 ~~medical-only claims as provided in paragraph (3) (a) and the~~
249 ~~circumstances of the particular case warrant such action.~~

250 Section 4. The Legislature finds that this act fulfills an
251 important state interest relating to the public interest in
252 prompt and adequate response to provide for the safety of the
253 public unique to first responders.

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