

1 A bill to be entitled
 2 An act relating to workers' compensation; amending s.
 3 440.34, F.S.; revising provisions relating to the award of
 4 attorney's fees; removing a provision prohibiting an award
 5 of attorney's fees under certain conditions; removing a
 6 provision entitling a claimant to recover attorney's fees
 7 from a carrier or employer under certain conditions;
 8 removing a provision establishing a lien in cases in which
 9 a claimant is responsible for the payment of his or her
 10 own attorney's fees; removing a prohibition on judges
 11 entering an order approving the contents of specified
 12 retainer agreements; providing that a judge of
 13 compensation claims may approve certain alternative
 14 attorney's fees in certain limited cases; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 440.34, Florida Statutes, is amended to
 20 read:

21 440.34 Attorney's fees; costs.--

22 (1) A fee, gratuity, or other consideration may not be
 23 paid for a claimant in connection with any proceedings arising
 24 under this chapter, unless approved as reasonable by the judge
 25 of compensation claims or court having jurisdiction over such
 26 proceedings. Any attorney's fee approved by a judge of
 27 compensation claims for benefits secured on behalf of a claimant
 28 must equal to 20 percent of the first \$5,000 of the amount of

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29 | the benefits secured, 15 percent of the next \$5,000 of the
30 | amount of the benefits secured, 10 percent of the remaining
31 | amount of the benefits secured to be provided during the first
32 | 10 years after the date the claim is filed, and 5 percent of the
33 | benefits secured after 10 years. The judge of compensation
34 | claims shall not approve a compensation order, a joint
35 | stipulation for lump-sum settlement, a stipulation or agreement
36 | between a claimant and his or her attorney, or any other
37 | agreement related to benefits under this chapter that provides
38 | for an attorney's fee in excess of the amount permitted by this
39 | section. The judge of compensation claims is not required to
40 | approve any retainer agreement between the claimant and his or
41 | her attorney. The retainer agreement as to fees and costs may
42 | not be for compensation in excess of the amount allowed under
43 | this section.

44 | (2) In awarding a claimant's attorney's fee, the judge of
45 | compensation claims shall consider only those benefits secured
46 | by the attorney. An attorney is not entitled to attorney's fees
47 | for representation in any issue that was ripe, due, and owing
48 | and that reasonably could have been addressed, but was not
49 | addressed, during the pendency of other issues for the same
50 | injury. The amount, statutory basis, and type of benefits
51 | obtained through legal representation shall be listed on all
52 | attorney's fees awarded by the judge of compensation claims. For
53 | purposes of this section, the term "benefits secured" does not
54 | include future medical benefits to be provided on any date more
55 | than 5 years after the date the claim is filed. In the event an
56 | offer to settle an issue pending before a judge of compensation

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57 | claims, including attorney's fees as provided for in this
58 | section, is communicated in writing to the claimant or the
59 | claimant's attorney at least 30 days prior to the trial date on
60 | such issue, for purposes of calculating the amount of attorney's
61 | fees to be taxed against the employer or carrier, the term
62 | "benefits secured" shall be deemed to include only that amount
63 | awarded to the claimant above the amount specified in the offer
64 | to settle. If multiple issues are pending before the judge of
65 | compensation claims, said offer of settlement shall address each
66 | issue pending and shall state explicitly whether or not the
67 | offer on each issue is severable. The written offer shall also
68 | unequivocally state whether or not it includes medical witness
69 | fees and expenses and all other costs associated with the claim.

70 | (3) If any party should prevail in any proceedings before
71 | a judge of compensation claims or court, there shall be taxed
72 | against the nonprevailing party the reasonable costs of such
73 | proceedings, ~~not to include attorney's fees. A claimant shall~~
74 | ~~be responsible for the payment of her or his own attorney's~~
75 | ~~fees, except that a claimant shall be entitled to recover a~~
76 | ~~reasonable attorney's fee from a carrier or employer.~~

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

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

85 ~~employed an attorney in the successful prosecution of the~~
 86 ~~petition;~~

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

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

93
 94 ~~Regardless of the date benefits were initially requested,~~
 95 ~~attorney's fees shall not attach under this subsection until 30~~
 96 ~~days after the date the carrier or employer, if self-insured,~~
 97 ~~receives the petition.~~

98 ~~(4) In such cases in which the claimant is responsible for~~
 99 ~~the payment of her or his own attorney's fees, such fees are a~~
 100 ~~lien upon compensation payable to the claimant, notwithstanding~~
 101 ~~s. 440.22.~~

102 (4)~~(5)~~ If any proceedings are had for review of any claim,
 103 award, or compensation order before any court, the court may
 104 award the injured employee or dependent an attorney's fee to be
 105 paid by the employer or carrier, in its discretion, which shall
 106 be paid as the court may direct.

107 ~~(6) A judge of compensation claims may not enter an order~~
 108 ~~approving the contents of a retainer agreement that permits the~~
 109 ~~escrowing of any portion of the employee's compensation until~~
 110 ~~benefits have been secured.~~

111 (5)~~(7)~~ If an attorney's fee is owed under paragraph
 112 ~~(3)(a),~~ The judge of compensation claims may approve an

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113 alternative attorney's fee not to exceed \$1,500 only once per
114 accident in those limited cases in which the value of medical
115 benefits secured under subsection (1) would result in an
116 attorney's fee award of less than \$1,500, ~~based on a maximum~~
117 ~~hourly rate of \$150 per hour, if the judge of compensation~~
118 ~~claims expressly finds that the attorney's fee amount provided~~
119 ~~for in subsection (1), based on benefits secured, fails to~~
120 ~~fairly compensate the attorney for disputed medical-only claims~~
121 ~~as provided in paragraph (3)(a) and the circumstances of the~~
122 ~~particular case warrant such action.~~

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