



383074

LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/R/RM	.	Floor: RC
05/01/2009 05:05 PM	.	04/30/2009 06:15 PM
	.	

Senator Ring moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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440.105, Florida Statutes, is repealed.

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

440.20 Time for payment of compensation and medical bills;
penalties for late payment.—

(11)

(c) Notwithstanding s. 440.21(2), when a claimant is



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13 represented by counsel, the claimant may waive all rights to any
14 and all benefits under this chapter by entering into a
15 settlement agreement releasing the employer and the carrier from
16 liability for workers' compensation benefits in exchange for a
17 lump-sum payment to the claimant. ~~The settlement agreement~~
18 ~~requires approval by the~~ judge of compensation claims shall
19 enter an order determining what, if any, portion of the
20 settlement proceeds must be allocated to satisfy any child
21 support arrearage only as to the attorney's fees paid to the
22 claimant's attorney by the claimant. The parties need not submit
23 any information or documentation in support of the settlement,
24 except as needed to justify the amount of the attorney's fees.
25 Neither the employer nor the carrier is responsible for any
26 attorney's fees relating to the settlement and release of claims
27 under this section. Attorney's fees related to a settlement and
28 release of claims are not subject to the provisions of s.
29 440.34(1). However, any attorney's fees paid by a claimant may
30 not exceed the amount allowable under the Supreme Court's
31 guidelines governing contingency fee agreements based upon the
32 gross amount of the settlement. Payment of the lump-sum
33 settlement amount must be made within 14 days after the date the
34 judge of compensation claims mails the order determining the
35 portion of the settlement proceeds, if any, that must be
36 allocated to satisfy a child support arrearage ~~approving the~~
37 ~~attorney's fees. Any order entered by a judge of compensation~~
38 ~~claims approving the attorney's fees as set out in the~~
39 ~~settlement under this subsection is not considered to be an~~
40 ~~award and is not subject to modification or review.~~ The judge of
41 compensation claims shall report these settlements to the Deputy



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42 Chief Judge in accordance with the requirements set forth in
43 paragraphs (a) and (b). Settlements entered into under this
44 subsection are valid and apply to all dates of accident.

45 Section 3. Section 440.34, Florida Statutes, is amended to
46 read:

47 440.34 Attorney's fees; costs.—

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

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

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

56
57 The attorney's fees a carrier or employer must pay under this
58 subsection must equal 25 percent of the first \$5,000 of the
59 amount of the benefits secured, 20 percent of the next \$5,000 of
60 the amount of the benefits secured, and 15 percent of the
61 remaining amount of the benefits secured. However, an attorney's
62 fee payable under this subsection may be increased up to the fee
63 paid by the employer or carrier to the employer's or carrier's
64 attorneys if it is determined that the employer or carrier
65 engaged in a bad faith denial of benefits, unreasonably delayed
66 furnishing benefits that were due and owing, or unreasonably
67 continued or increased the expense of litigation.

68 (2) Unless the parties agree otherwise, attorney's fees
69 payable under subsection (1) shall be determined ~~A fee,~~
70 ~~gratuity, or other consideration may not be paid for a claimant~~



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71 ~~in connection with any proceedings arising under this chapter,~~
72 ~~unless approved as reasonable by the judge of compensation~~
73 ~~claims or court having jurisdiction over such proceedings. Any~~
74 ~~attorney's fee approved by a judge of compensation claims for~~
75 ~~benefits secured on behalf of a claimant must equal to 20~~
76 ~~percent of the first \$5,000 of the amount of the benefits~~
77 ~~secured, 15 percent of the next \$5,000 of the amount of the~~
78 ~~benefits secured, 10 percent of the remaining amount of the~~
79 ~~benefits secured to be provided during the first 10 years after~~
80 ~~the date the claim is filed, and 5 percent of the benefits~~
81 ~~secured after 10 years. The judge of compensation claims shall~~
82 ~~not approve a compensation order, a joint stipulation for lump-~~
83 ~~sum settlement, a stipulation or agreement between a claimant~~
84 ~~and his or her attorney, or any other agreement related to~~
85 ~~benefits under this chapter that provides for an attorney's fee~~
86 ~~in excess of the amount permitted by this section. The judge of~~
87 ~~compensation claims is not required to approve any retainer~~
88 ~~agreement between the claimant and his or her attorney. The~~
89 ~~retainer agreement as to fees and costs may not be for~~
90 ~~compensation in excess of the amount allowed under this section.~~

91 (3)~~(2)~~ In awarding a claimant's attorney's fee, the judge
92 of compensation claims shall consider only those benefits
93 secured by the attorney. An attorney is not entitled to
94 attorney's fees for representation in any issue that was ripe,
95 due, and owing and that reasonably could have been addressed,
96 but was not addressed, during the pendency of other issues for
97 the same injury. The amount, statutory basis, and type of
98 benefits obtained through legal representation shall be listed
99 on all attorney's fees awarded by the judge of compensation



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100 claims. For purposes of this section, the term "benefits
101 secured" does not include future medical benefits to be provided
102 on any date more than 5 years after the date the claim is filed.
103 ~~In the event an offer to settle an issue pending before a judge
104 of compensation claims, including attorney's fees as provided
105 for in this section, is communicated in writing to the claimant
106 or the claimant's attorney at least 30 days prior to the trial
107 date on such issue, for purposes of calculating the amount of
108 attorney's fees to be taxed against the employer or carrier, the
109 term "benefits secured" shall be deemed to include only that
110 amount awarded to the claimant above the amount specified in the
111 offer to settle. If multiple issues are pending before the judge
112 of compensation claims, said offer of settlement shall address
113 each issue pending and shall state explicitly whether or not the
114 offer on each issue is severable. The written offer shall also
115 unequivocally state whether or not it includes medical witness
116 fees and expenses and all other costs associated with the claim.~~

117 ~~(4)(3)~~ If any party should prevail in any proceedings
118 before a judge of compensation claims or court, there shall be
119 taxed against the nonprevailing party the reasonable costs of
120 such proceedings, not to include attorney's fees. ~~A claimant
121 shall be responsible for the payment of her or his own
122 attorney's fees, except that a claimant shall be entitled to
123 recover a reasonable attorney's fee from a carrier or employer:~~

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



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129 ~~(b) In any case in which the employer or carrier files a~~
130 ~~response to petition denying benefits with the Office of the~~
131 ~~Judges of Compensation Claims and the injured person has~~
132 ~~employed an attorney in the successful prosecution of the~~
133 ~~petition;~~

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

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

140
141 ~~Regardless of the date benefits were initially requested,~~
142 ~~attorney's fees shall not attach under this subsection until 30~~
143 ~~days after the date the carrier or employer, if self-insured,~~
144 ~~receives the petition.~~

145 (5)~~(4)~~ In such cases in which the claimant is responsible
146 for the payment of her or his own attorney's fees, such fees are
147 a lien upon compensation payable to the claimant,
148 notwithstanding s. 440.22.

149 (6)~~(5)~~ If any proceedings are had for review of any claim,
150 award, or compensation order before any court, the court may
151 award the injured employee or dependent an attorney's fee to be
152 paid by the employer or carrier, in its discretion, which shall
153 be paid as the court may direct.

154 (7)~~(6)~~ A judge of compensation claims may not enter an
155 order approving the contents of a retainer agreement that
156 permits the escrowing of any portion of the employee's
157 compensation until benefits have been secured.



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

164 (9) Notwithstanding any provision of law to the contrary,
165 attorney's fees and costs of the prevailing party paid by a
166 carrier to a claimant or a claimant's attorney pursuant to this
167 chapter may not be recouped, directly or indirectly, by any
168 carrier, included in any rate base or rate filing, or used to
169 justify a rate or rate change.

170 (10) For purposes of first responders as defined in s.
171 112.1815(1), the finder of fact and law is not bound by any
172 statutory provision regarding attorney's fees relating to the
173 provision of indemnity or medical benefits for employment-
174 related accidents or injuries involving exposure to a toxic
175 substance or occupational disease, but must consider the
176 following factors when awarding an attorney's fee:

177 (a) The time and labor required, the novelty and difficulty
178 of the questions involved, and the skill required to perform the
179 legal service properly.

180 (b) The fee customarily charged in the locality for similar
181 legal services.

182 (c) The amount involved in the controversy and the benefits
183 payable to the claimant.

184 (d) The time limitations imposed by the claimant or the
185 circumstances.

186 (e) The experience, reputation, and ability of the attorney



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187 or attorneys performing services.

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

189

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

192 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~
193 ~~the judge of compensation claims may approve an alternative~~
194 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
195 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
196 ~~compensation claims expressly finds that the attorney's fee~~
197 ~~amount provided for in subsection (1), based on benefits~~
198 ~~secured, fails to fairly compensate the attorney for disputed~~
199 ~~medical-only claims as provided in paragraph (3) (a) and the~~
200 ~~circumstances of the particular case warrant such action.~~

201 Section 4. The Legislature finds that this act fulfills an
202 important state interest relating to the public interest in
203 prompt and adequate response to provide for the safety of the
204 public unique to first responders.

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

206

207 ===== T I T L E A M E N D M E N T =====

208 And the title is amended as follows:

209 Delete everything before the enacting clause
210 and insert:

211 A bill to be entitled
212 An act relating to workers' compensation; repealing s.
213 440.105(3)(c), F.S., relating to the prohibition
214 against a fee, consideration, or gratuity for an
215 attorney or other person for certain services;



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216 amending s. 440.20, F.S.; requiring that a judge of
217 compensation claims enter an order determining the
218 portion of settlement proceeds to be allocated to
219 child support arrearages; deleting the requirement
220 that a judge of compensation claims approve the
221 attorney's fees paid by a claimant; deleting the
222 requirement that parties to a settlement submit
223 information or documentation to support the
224 settlement; exempting settlement attorney's fees from
225 certain provisions of state law; limiting the amount
226 of attorney's fees paid by a claimant; requiring
227 payment of a settlement within a specified time after
228 a judge determines the portion of the settlement
229 amount allocated to child support; amending s. 440.34,
230 F.S.; providing that a claimant is responsible for the
231 payment of his or her attorney's fees; providing
232 exceptions; specifying a schedule for the
233 determination of attorney's fees to be paid by a
234 carrier or employer; requiring that a judge of
235 compensation claims determine the amount of attorney's
236 fees unless the parties agree otherwise; deleting
237 certain restrictions on the amount of attorney's fees;
238 deleting requirements relating to offers of
239 settlement; preserving the right of a claimant to
240 contract with an attorney for representation in
241 connection with certain claims; prohibiting the
242 recovery of attorney's fees under certain
243 circumstances; prohibiting the recoupment of certain
244 attorney's fees and costs by a carrier; prohibiting



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245 the inclusion of such fees or costs in any rate base
246 or rate filing and the use of such fees or costs to
247 justify a rate or rate change; providing that the
248 finder of fact and law is not bound by provisions of
249 state law relating to the provision of indemnity or
250 medical benefits for employment-related accidents or
251 injuries involving exposure to a toxic substance or
252 occupational disease when awarding attorney's fees in
253 cases involving first responders; requiring that the
254 finder of fact and law consider certain factors when
255 awarding attorney's fees in such cases; defining the
256 term "occupational disease" for specified purposes;
257 deleting provisions authorizing a judge of
258 compensation claims to approve alternative attorney's
259 fees under certain circumstances; providing
260 legislative findings; providing an effective date.