

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Planas offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Paragraph (c) of subsection (3) of section  
6 440.105, Florida Statutes, is amended to read:

7 440.105 Prohibited activities; reports; penalties;  
8 limitations.--

9 (3) Whoever violates any provision of this subsection  
10 commits a misdemeanor of the first degree, punishable as  
11 provided in s. 775.082 or s. 775.083.

12 ~~(c) It is unlawful for any attorney or other person, in~~  
13 ~~his or her individual capacity or in his or her capacity as a~~  
14 ~~public or private employee, or for any firm, corporation,~~  
15 ~~partnership, or association to receive any fee or other~~  
16 ~~consideration or any gratuity from a person on account of~~

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17 ~~services rendered for a person in connection with any~~  
18 ~~proceedings arising under this chapter, unless such fee,~~  
19 ~~consideration, or gratuity is approved by a judge of~~  
20 ~~compensation claims or by the Deputy Chief Judge of Compensation~~  
21 ~~Claims.~~

22 Section 2. Paragraph (c) of subsection (11) of section  
23 440.20, Florida Statutes, is amended to read:

24 440.20 Time for payment of compensation and medical bills;  
25 penalties for late payment.--

26 (11)

27 (c) Notwithstanding s. 440.21(2), when a claimant is  
28 represented by counsel, the claimant may waive all rights to any  
29 and all benefits under this chapter by entering into a  
30 settlement agreement releasing the employer and the carrier from  
31 liability for workers' compensation benefits in exchange for a  
32 lump-sum payment to the claimant. The settlement agreement  
33 requires approval by the judge of compensation claims shall  
34 enter an order determining what, if any, portion of the  
35 settlement proceeds must be allocated to satisfy any child  
36 support arrearage only as to the attorney's fees paid to the  
37 claimant's attorney by the claimant. The parties need not submit  
38 any information or documentation in support of the settlement,  
39 except as needed to justify the amount of the attorney's fees.  
40 Neither the employer nor the carrier is responsible for any  
41 attorney's fees relating to the settlement and release of claims  
42 under this section. Attorney's fees related to a settlement and  
43 release of claims shall not be subject to the provisions of s.  
44 440.34(1), provided that any attorney's fees paid by a claimant

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45 shall not exceed the amount of fees allowable, based upon the  
46 gross amount of the settlement, under the Supreme Court's  
47 guidelines governing contingency fee agreements. Unless the  
48 parties agree otherwise, payment of the lump-sum settlement  
49 amount must be made within 14 days after the date the judge of  
50 compensation claims mails the order determining the portion of  
51 the settlement proceeds, if any, that must be allocated to  
52 satisfy a child support arrearage ~~approving the attorney's fees.~~  
53 ~~Any order entered by a judge of compensation claims approving~~  
54 ~~the attorney's fees as set out in the settlement under this~~  
55 ~~subsection is not considered to be an award and is not subject~~  
56 ~~to modification or review.~~ The judge of compensation claims  
57 shall report these settlements to the Deputy Chief Judge in  
58 accordance with the requirements set forth in paragraphs (a) and  
59 (b). Settlements entered into under this subsection are valid  
60 and apply to all dates of accident.

61 Section 3. Section 440.34, Florida Statutes, is amended to  
62 read:

63 440.34 Attorney's fees; costs.--

64 (1) A claimant shall be responsible for the payment of his  
65 or her own attorney's fees, except that he or she shall be  
66 entitled to recover an attorney's fee payable by a carrier or  
67 employer:

68 (a) Where the carrier or employer furnishes benefits  
69 claimed in a petition for benefits more than 30 days after the  
70 carrier or employer, if self-insured, receives the petition; or

71 (b) Where the claimant successfully prevails in a  
72 proceeding filed under s. 440.24 or s. 440.28.

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73  
74 The attorney's fees a carrier or employer is obligated to pay  
75 under this subsection shall be equal to 25 percent of the first  
76 \$5,000 of the amount of the benefits secured, 20 percent of the  
77 next \$5,000 of the amount of the benefits secured, and 15  
78 percent of the remaining amount of the benefits secured;  
79 provided, however, an attorney's fee payable under this  
80 subsection shall not be less than the fee paid by the employer  
81 or carrier to their attorneys to defend against the claim.  
82 Notwithstanding any other provision of law, the payment of  
83 attorney's fees pursuant to this subsection may not be recouped,  
84 directly or indirectly, by any carrier in the rate base, the  
85 premium, or any rate filing.

86 (2) Unless the parties agree, such attorney's fees as may  
87 be payable under subsection (1) shall be determined by A fee,  
88 gratuity, or other consideration may not be paid for a claimant  
89 in connection with any proceedings arising under this chapter,  
90 unless approved as reasonable by the judge of compensation  
91 claims or court having jurisdiction over such proceedings. Any  
92 attorney's fee approved by a judge of compensation claims for  
93 benefits secured on behalf of a claimant must equal to 20  
94 percent of the first \$5,000 of the amount of the benefits  
95 secured, 15 percent of the next \$5,000 of the amount of the  
96 benefits secured, 10 percent of the remaining amount of the  
97 benefits secured to be provided during the first 10 years after  
98 the date the claim is filed, and 5 percent of the benefits  
99 secured after 10 years. The judge of compensation claims shall  
100 not approve a compensation order, a joint stipulation for lump-  
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101 ~~sum settlement, a stipulation or agreement between a claimant~~  
102 ~~and his or her attorney, or any other agreement related to~~  
103 ~~benefits under this chapter that provides for an attorney's fee~~  
104 ~~in excess of the amount permitted by this section. The judge of~~  
105 ~~compensation claims is not required to approve any retainer~~  
106 ~~agreement between the claimant and his or her attorney. The~~  
107 ~~retainer agreement as to fees and costs may not be for~~  
108 ~~compensation in excess of the amount allowed under this section.~~

109       (3)(2) In awarding a claimant's attorney's fee, the judge  
110 of compensation claims shall consider only those benefits  
111 secured by the attorney. An attorney is not entitled to  
112 attorney's fees for representation in any issue that was ripe,  
113 due, and owing and that reasonably could have been addressed,  
114 but was not addressed, during the pendency of other issues for  
115 the same injury. The amount, statutory basis, and type of  
116 benefits obtained through legal representation shall be listed  
117 on all attorney's fees awarded by the judge of compensation  
118 claims. For purposes of this section, the term "benefits  
119 secured" does not include future medical benefits to be provided  
120 on any date more than 5 years after the date the claim is filed.  
121 ~~In the event an offer to settle an issue pending before a judge~~  
122 ~~of compensation claims, including attorney's fees as provided~~  
123 ~~for in this section, is communicated in writing to the claimant~~  
124 ~~or the claimant's attorney at least 30 days prior to the trial~~  
125 ~~date on such issue, for purposes of calculating the amount of~~  
126 ~~attorney's fees to be taxed against the employer or carrier, the~~  
127 ~~term "benefits secured" shall be deemed to include only that~~  
128 ~~amount awarded to the claimant above the amount specified in the~~

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129 ~~offer to settle. If multiple issues are pending before the judge~~  
130 ~~of compensation claims, said offer of settlement shall address~~  
131 ~~each issue pending and shall state explicitly whether or not the~~  
132 ~~offer on each issue is severable. The written offer shall also~~  
133 ~~unequivocally state whether or not it includes medical witness~~  
134 ~~fees and expenses and all other costs associated with the claim.~~

135 ~~(4)(3) If any party should prevail in any proceedings~~  
136 ~~before a judge of compensation claims or court, there shall be~~  
137 ~~taxed against the nonprevailing party the reasonable costs of~~  
138 ~~such proceedings, not to include attorney's fees. A claimant~~  
139 ~~shall be responsible for the payment of her or his own~~  
140 ~~attorney's fees, except that a claimant shall be entitled to~~  
141 ~~recover a reasonable attorney's fee from a carrier or employer:~~

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

147 ~~(b) In any case in which the employer or carrier files a~~  
148 ~~response to petition denying benefits with the Office of the~~  
149 ~~Judges of Compensation Claims and the injured person has~~  
150 ~~employed an attorney in the successful prosecution of the~~  
151 ~~petition;~~

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

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

158  
159 ~~Regardless of the date benefits were initially requested,~~  
160 ~~attorney's fees shall not attach under this subsection until 30~~  
161 ~~days after the date the carrier or employer, if self-insured,~~  
162 ~~receives the petition.~~

163 (5)~~(4)~~ In such cases in which the claimant is responsible  
164 for the payment of her or his own attorney's fees, such fees are  
165 a lien upon compensation payable to the claimant,  
166 notwithstanding s. 440.22.

167 (6)~~(5)~~ If any proceedings are had for review of any claim,  
168 award, or compensation order before any court, the court may  
169 award the injured employee or dependent an attorney's fee to be  
170 paid by the employer or carrier, in its discretion, which shall  
171 be paid as the court may direct.

172 (7)~~(6)~~ A judge of compensation claims may not enter an  
173 order approving the contents of a retainer agreement that  
174 permits the escrowing of any portion of the employee's  
175 compensation until benefits have been secured.

176 (8) Nothing in this chapter shall impair the right of a  
177 claimant to contract with an attorney for representation in  
178 connection with a claim under this chapter, except that an  
179 attorney may not recover an attorney's fee from a claimant on  
180 benefits secured for which an attorney's fee has been paid by a  
181 carrier or employer under this section.

182 ~~(7) If an attorney's fee is owed under paragraph (3)(a),~~  
183 ~~the judge of compensation claims may approve an alternative~~  
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184 ~~attorney's fee not to exceed \$1,500 only once per accident,~~  
185 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~  
186 ~~compensation claims expressly finds that the attorney's fee~~  
187 ~~amount provided for in subsection (1), based on benefits~~  
188 ~~secured, fails to fairly compensate the attorney for disputed~~  
189 ~~medical-only claims as provided in paragraph (3)(a) and the~~  
190 ~~circumstances of the particular case warrant such action.~~

191 Section 4. Paragraph (c) of subsection (2) of section  
192 440.45, Florida Statutes, is amended to read:

193 440.45 Office of the Judges of Compensation Claims.--

194 (2)

195 (c) Each judge of compensation claims shall be appointed  
196 for a term of 4 years, but during the term of office may be  
197 removed by the Governor for cause. Prior to the expiration of a  
198 judge's term of office, the statewide nominating commission  
199 shall review the judge's conduct and determine whether the  
200 judge's performance is satisfactory. Effective July 1, 2002, in  
201 determining whether a judge's performance is satisfactory, the  
202 commission shall consider the extent to which the judge has met  
203 the requirements of this chapter, including, but not limited to,  
204 the requirements of ss. 440.25(1) and (4)(a)-(e), 440.34(3)(2),  
205 and 440.442. If the judge's performance is deemed satisfactory,  
206 the commission shall report its finding to the Governor no later  
207 than 6 months prior to the expiration of the judge's term of  
208 office. The Governor shall review the commission's report and  
209 may reappoint the judge for an additional 4-year term. If the  
210 Governor does not reappoint the judge, the Governor shall inform  
211 the commission. The judge shall remain in office until the

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212 Governor has appointed a successor judge in accordance with  
213 paragraphs (a) and (b). If a vacancy occurs during a judge's  
214 unexpired term, the statewide nominating commission does not  
215 find the judge's performance is satisfactory, or the Governor  
216 does not reappoint the judge, the Governor shall appoint a  
217 successor judge for a term of 4 years in accordance with  
218 paragraph (b).

219 Section 5. This act shall take effect upon becoming a law.  
220  
221

222 -----  
223 **T I T L E A M E N D M E N T**

224 Remove the entire title and insert:

225 A bill to be entitled

226 An act relating to workers' compensation; amending s.  
227 440.105, F.S.; decriminalizing receipt of an  
228 attorney's fee that has not been approved by a judge  
229 of compensation claims; amending s. 440.20, F.S.;  
230 requiring a judge of compensation claims to order  
231 settlement proceeds to be allocated to child support  
232 arrearages; deleting the requirement that a judge of  
233 compensation claims approve the attorney's fees paid  
234 by a claimant; deleting the requirement that parties  
235 to a settlement need not submit information or  
236 documentation to support the settlement, except to  
237 justify the amount of the attorney's fees; providing  
238 that attorney's fees related to a settlement or  
239 release of claims are not subject to certain

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240 provisions of state law; authorizing parties to extend  
241 the payment time period for settlement payments upon  
242 agreement; requiring settlement payments to be made  
243 within a specified time after a judge determines the  
244 settlement amount allocated to satisfy a child support  
245 arrearage; amending s. 440.34, F.S.; providing  
246 circumstances where a claimant shall be entitled to  
247 recover attorney's fees payable by an employer or  
248 carrier; specifying an amount for attorney's fees in  
249 certain cases; requiring a judge of compensation  
250 claims to determine the amount of the attorney's fees  
251 in specified cases; deleting restrictions on the  
252 amounts of attorney's fee; deleting requirements  
253 relating to an offer of settlement; deleting  
254 circumstances allowing for attorney's fees to be paid  
255 by a carrier or employer; deleting the time period for  
256 the attachment of an attorney's fee; specifying that  
257 nothing in the chapter shall impair a claimant's right  
258 to contract for representation; restricting the  
259 recovery of attorney's fees by certain attorneys  
260 representing a claimant; deleting a provision allowing  
261 an alternative attorney's fee to be approved by a  
262 judge of compensation claims; amending s. 440.45,  
263 F.S.; correcting a cross-reference; providing an  
264 effective date.

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