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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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05/05/2017 09:27 AM

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Senator Brandes moved the following:

Senate Amendment to Amendment (655850)

Delete lines 359 - 636

and insert:

petition, including attorney fees, not to exceed \$150 per hour,
based on the number of necessary hours related to the
determination that the claimant or, if the claimant is
represented by counsel, the claimant's attorney has not made a
good faith effort to resolve the dispute.

(5) (a) All motions to dismiss must state with particularity
the basis for the motion. The judge of compensation claims shall



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12 enter an order upon such motions without hearing, unless good
13 cause for hearing is shown. Dismissal of any petition or portion
14 of a petition under this subsection is without prejudice.

15 (b) Upon motion that a petition or portion of a petition be
16 dismissed for lack of specificity, the judge of compensation
17 claims shall enter an order on the motion, unless stipulated in
18 writing by the parties, within 10 days after the motion is
19 filed, or, if good cause for hearing is shown, within 20 days
20 after hearing on the motion. When any petition or portion of a
21 petition is dismissed for lack of specificity under this
22 subsection, the claimant must be allowed 20 days after the date
23 of the order of dismissal in which to file an amended petition.
24 Any grounds for dismissal for lack of specificity under this
25 section which are not asserted within 30 days after receipt of
26 the petition for benefits are thereby waived.

27 (7) Notwithstanding ~~the provisions of s. 440.34,~~ a judge of
28 compensation claims may not award attorney ~~attorney's~~ fees
29 payable by the employer or carrier for services expended or
30 costs incurred before ~~prior to~~ the filing of a petition ~~that~~
31 ~~does not meet the requirements of this section.~~

32 Section 7. Paragraphs (c) and (j) of subsection (4) of
33 section 440.25, Florida Statutes, are amended to read:

34 440.25 Procedures for mediation and hearings.—

35 (4)

36 (c) The judge of compensation claims shall give the
37 interested parties at least 14 days' advance notice of the final
38 hearing, served upon the interested parties by mail or by
39 electronic means approved by the Deputy Chief Judge. At least 5
40 days before the final hearing, the claimant's attorney must file



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41 with the judge of compensation claims and serve on all
42 interested parties a personal attestation detailing his or her
43 hours to date, which specifically allocates the hours by each
44 benefit claimed, and accounting for hours relating to multiple
45 benefits in a manner that apportions such hours by percentage,
46 in whole numbers, to each benefit.

47 (j) A judge of compensation claims may not award interest
48 on unpaid medical bills and the amount of such bills may not be
49 used to calculate the amount of interest awarded. Regardless of
50 the date benefits were initially requested, attorney ~~attorney's~~
51 fees do not attach under this subsection until 45 ~~30~~ days after
52 the date the carrier ~~or self-insured employer~~ receives the
53 petition.

54 Section 8. Section 440.34, Florida Statutes, is amended to
55 read

56 440.34 Attorney ~~Attorney's~~ fees; costs.—

57 (1) A judge of compensation claims may award attorney fees
58 payable to the claimant pursuant to this section to be paid by
59 the employer or carrier. An employer or carrier may not pay a
60 fee, gratuity, or other consideration ~~may not be paid~~ for a
61 claimant in connection with any proceedings arising under this
62 chapter, unless approved by the judge of compensation claims or
63 court having jurisdiction over such proceedings. Attorney fees
64 awarded ~~Any attorney's fee approved~~ by a judge of compensation
65 claims for benefits secured on behalf of a claimant must equal
66 to 20 percent of the first \$5,000 of the amount of the benefits
67 secured, 15 percent of the next \$5,000 of the amount of the
68 benefits secured, 10 percent of the remaining amount of the
69 benefits secured to be provided during the first 10 years after



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70 the date the claim is filed, and 5 percent of the benefits
71 secured after 10 years. ~~A The judge of compensation claims shall~~
72 ~~not approve a compensation order, a joint stipulation for lump-~~
73 ~~sum settlement, a stipulation or agreement between a claimant~~
74 ~~and his or her attorney, or any other agreement related to~~
75 ~~benefits under this chapter which provides for an attorney's fee~~
76 ~~in excess of the amount permitted by this section. The judge of~~
77 ~~compensation claims is not required to approve any retainer~~
78 ~~agreement between the claimant and his or her attorney is not~~
79 ~~subject to approval by a judge of compensation claims but must~~
80 ~~be filed with the Office of the Judges of Compensation Claims.~~
81 Notwithstanding s. 440.22, attorney fees are a lien upon
82 compensation payable to the claimant. A retainer agreement may
83 not place any portion of the employee's compensation into an
84 escrow account until benefits are secured. ~~The retainer~~
85 ~~agreement as to fees and costs may not be for compensation in~~
86 ~~excess of the amount allowed under this subsection or subsection~~
87 ~~(7).~~

88 (2) (a) In awarding a claimant's attorney fees attorney's
89 fee, a the judge of compensation claims must shall consider only
90 those benefits secured by the attorney. ~~An Attorney is not~~
91 ~~entitled to attorney's fees are not due in any of the following~~
92 circumstances:

93 1. For representation in any issue that was ripe, due, and
94 owing and that reasonably could have been addressed, but was not
95 addressed, during the pendency of other issues for the same
96 injury;

97 2. On claimant attorney hours related to a benefit upon
98 which the claimant did not prevail; or



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99 3. On claimant attorney hours that the judge of
100 compensation claims apportions to benefits upon which the
101 claimant did not prevail, pursuant to paragraph (5) (d).

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

124 (3) If a ~~any~~ party prevails ~~should prevail~~ in any
125 proceedings before a judge of compensation claims or court,
126 there shall be taxed against the nonprevailing party the
127 reasonable costs of such proceedings, not to include attorney



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128 ~~attorney's~~ fees. A claimant is responsible for the payment of
129 her or his own attorney ~~attorney's~~ fees, except that a claimant
130 is entitled to recover attorney fees ~~an attorney's fee~~ in an
131 amount equal to the amount provided for in subsection (1),
132 subsection (5), or subsection (6) ~~(7)~~ from a carrier or
133 employer:

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

139 (b) In a ~~any~~ case in which the employer or carrier files a
140 response to petition denying benefits with the Office of the
141 Judges of Compensation Claims and the injured person has
142 employed an attorney in the successful prosecution of the
143 petition;

144 (c) In a proceeding in which a carrier or employer denies
145 that an accident occurred for which compensation benefits are
146 payable, and the claimant prevails on the issue of
147 compensability; or

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

150

151 Regardless of the date benefits were initially requested,
152 attorney ~~attorney's~~ fees do ~~shall~~ not attach under this
153 subsection until 45 ~~30~~ days after the date the carrier or
154 employer, ~~if self-insured~~, receives the petition.

155 ~~(4) In such cases in which the claimant is responsible for~~
156 ~~the payment of her or his own attorney's fees, such fees are a~~



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157 ~~lien upon compensation payable to the claimant, notwithstanding~~
158 ~~s. 440.22.~~

159 (4)(5) If any proceedings are had for review of any claim,
160 award, or compensation order before any court, the court may, in
161 its discretion, award the injured employee or dependent attorney
162 fees an attorney's fee to be paid by the employer or carrier, in
163 its discretion, which shall be paid as the court may direct.

164 (5) (a) As used in this subsection, the term:

165 1. "Attorney hours" means the number of hours necessary for
166 the claimant's attorney to obtain the benefits secured, as
167 determined by a judge of compensation claims. The term only
168 includes hours expended by the claimant's attorney reasonably
169 related to claimed benefits upon which the claimant prevailed.

170 2. "Customary fee" means the average hourly rate that an
171 attorney for a claimant customarily charges in the same locality
172 for similar legal services under this chapter, as determined by
173 a judge of compensation claims.

174 3. "Departure fee" means the amount of attorney fees
175 calculated by a judge of compensation claims in place of the fee
176 allowed under subsection (1) when attorney fees are due under
177 this section.

178 (b) A departure fee under this subsection is in place of,
179 not in addition to, the amount allowed under subsection (1) or
180 subsection (6).

181 (c) Upon a petition for a departure fee, a judge of
182 compensation claims may depart from the attorney fees amount set
183 forth in subsection (1) upon a finding that the attorney fees
184 provided for in that subsection are less than 60 percent or
185 greater than 125 percent of the customary fee when the amount



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186 allowed under subsection (1) is converted to an hourly rate by
187 dividing that amount by the attorney hours necessary to obtain
188 the benefits secured.

189 (d)1. When resolving a petition for a departure fee under
190 this subsection, a judge of compensation claims must determine
191 the number of attorney hours by making detailed findings that
192 specifically allocate and account for the attorney hours to each
193 benefit claimed by the claimant's attorney that, in the
194 independent discretion of the judge of compensation claims,
195 reasonably relate to:

196 a. Benefits upon which the claimant prevailed;
197 b. Benefits upon which the claimant did not prevail; and
198 c. Multiple benefits, regarding which the judge of
199 compensation claims shall exercise independent discretion and
200 apportion such hours by percentage, in whole numbers, to each
201 benefit claimed.

202 2. A judge of compensation claims must reduce the number of
203 attorney hours if the judge of compensation claims independently
204 determines that the number of attorney hours is excessive.

205 (e) A judge of compensation claims may determine the
206 customary fee and is not limited to an average hourly rate or
207 number of attorney hours pled by a party. In determining the
208 customary fee, the judge of compensation claims may rely on
209 evidence or take notice of credible data, including attorney fee
210 data on file with the Office of the Judges of Compensation
211 Claims or The Florida Bar. The judge of compensation claims may
212 not exceed the amount or hours pled by the claimant's attorney.

213 (f) If a departure is permitted pursuant to paragraph (c),
214 a judge of compensation claims must consider the following



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215 factors when departing from the amount set forth in subsection
216 (1):

217 1. The time and labor reasonably required, the novelty and
218 difficulty of the questions involved, and the skill required to
219 properly perform the legal services as established by evidence
220 or as independently determined by the judge of compensation
221 claims.

222 2. The customary fee.

223 3. The experience, reputation, and ability of the attorney
224 or attorneys providing services.

225 4. The time limits imposed by the circumstances.

226 5. The contingency or certainty of a claimant's attorney
227 fee, taking into account any retainer agreement filed under this
228 section.

229 6. The volume of hours expended by the claimant's attorney
230 which were devoted to issues upon which the claimant prevailed,
231 and the volume of hours expended devoted to issues upon which
232 the claimant did not prevail.

233 7. Whether the total fee available under this section in
234 relation to the amount involved in the controversy is excessive.

235 8. Whether the total fee available under this section in
236 relation to the amount of benefits secured is excessive.

237 9. Whether the departure fee sought by the claimant's
238 attorney is excessive.

239 10. Whether the departure fee sought by the claimant's
240 attorney shocks the conscience as excessive.

241 (g) A judge of compensation claims shall determine the
242 hourly rate used to compute the departure fee awarded under this
243 subsection, in \$1 increments, based upon consideration of the



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244 factors in paragraph (f). A judge of compensation claims may
245 exercise independent judgment in setting the hourly rate and is
246 not limited to an hourly rate pled by a party. However, the
247 hourly rate may not exceed \$150 per hour.

248 (h) The departure fee must be the attorney hours determined
249 under paragraph (d) multiplied by the hourly rate determined
250 under paragraph (g). The claimant is responsible for attorney
251 fees pursuant to his or her retainer agreement which exceed the
252 departure fee.

253 (i) The employer or carrier may contest the departure fee
254 awarded under this subsection within 20 calendar days after the
255 entry of the departure fee award if the number of attorney hours
256 determined by the presiding judge of compensation claims under
257 paragraph (d) exceeds 125 percent of the number of hours the
258 employer's or carrier's attorney attests were devoted to the
259 defense of the benefits secured. Upon the filing of a request by
260 the employer or carrier, the departure fee award must be vacated
261 and reviewed de novo upon the existing record by a judge of
262 compensation claims in a different district as assigned by the
263 Deputy Chief Judge of Compensation Claims. The reviewing judge
264 of compensation claims must issue an order determining the
265 departure fee, making all determinations and findings required
266 under this subsection. The judge of compensation claims must
267 issue the order within 30 calendar days after receiving the
268 assignment. This paragraph does not apply to cases settled under
269 s. 440.20(11) or if a stipulation has been filed resolving the
270 claimant's attorney fees.

271 ~~(6) A judge of compensation claims may not enter an order~~
272 ~~approving the contents of a retainer agreement that permits~~



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273 ~~placing any portion of the employee's compensation into an~~
274 ~~escrow account until benefits have been secured.~~

275 ~~(7)~~ If an attorney ~~attorney's~~ fee is owed under paragraph
276 (3) (a), a ~~the~~ judge of compensation claims may approve an
277 alternative attorney ~~attorney's~~ fee not to exceed \$1,500 ~~only~~
278 ~~once per accident~~, based on a maximum hourly rate of \$150 per
279 hour, if the judge of compensation claims expressly finds that
280 the attorney ~~attorney's~~ fee amount provided for in subsection
281 (1), based on benefits secured, results in an effective hourly
282 rate of less than \$150 per hour ~~fails to fairly~~