

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 715-939 and insert:

(1) (a) A fee, gratuity, or other consideration may not be paid by a carrier ~~for a claimant~~ in connection with any proceedings arising under this chapter, unless approved by the judge of compensation claims or court having jurisdiction over such proceedings. Any attorney fees ~~attorney's fee~~ approved by a judge of compensation claims for benefits secured on behalf of a claimant must equal to 20 percent of the first \$5,000 of the amount of the benefits secured, 15 percent of the next \$5,000 of the amount of the benefits secured, 10 percent of the remaining

735145

Approved For Filing: 4/14/2017 2:54:13 PM

Amendment No.

14 amount of the benefits secured to be provided during the first
15 10 years after the date the claim is filed, and 5 percent of the
16 benefits secured after 10 years.

17 (b) Notwithstanding paragraph (a), the judge of
18 compensation claims shall consider the following factors in each
19 case and may increase the attorney fees if, in his or her
20 judgment, he or she expressly finds that the circumstances of
21 the particular case warrant such increase:

22 1. The time and labor required, the novelty and difficulty
23 of the questions involved, and the skill requisite to perform
24 the legal service properly.

25 2. The fee customarily charged in the locality for similar
26 legal services.

27 3. The amount involved in the controversy and the benefits
28 resulting to the claimant.

29 4. The time limitation imposed by the claimant or the
30 circumstances.

31 5. The experience, reputation, and ability of the attorney
32 or attorneys performing services.

33 6. The contingency or certainty of a fee.

34 (c) The judge of compensation claims shall not approve a
35 compensation order, a joint stipulation for lump-sum
36 settlement, a stipulation or agreement between a claimant and
37 his or her attorney, or any other agreement related to benefits
38 under this chapter which provides for carrier-paid attorney

735145

Approved For Filing: 4/14/2017 2:54:13 PM

Amendment No.

39 ~~fees an attorney's fee~~ in excess of the amount permitted by
40 this section. The judge of compensation claims is not required
41 to approve any retainer agreement between the claimant and his
42 or her attorney. ~~The retainer agreement as to fees and costs~~
43 ~~may not be for compensation in excess of the amount allowed~~
44 ~~under this subsection or subsection (7).~~

45 (2) In awarding carrier-paid attorney fees ~~a claimant's~~
46 ~~attorney's fee~~, the judge of compensation claims shall consider
47 only those benefits secured by the attorney. An attorney is not
48 entitled to attorney ~~attorney's~~ fees for representation in any
49 issue that was ripe, due, and owing and that reasonably could
50 have been addressed, but was not addressed, during the pendency
51 of other issues for the same injury. The amount, statutory
52 basis, and type of benefits obtained through legal
53 representation shall be listed on all attorney ~~attorney's~~ fees
54 awarded by the judge of compensation claims. For purposes of
55 this section, the term "benefits secured" does not include
56 future medical benefits to be provided on any date more than 5
57 years after the date the claim is filed. ~~In the event an offer~~
58 ~~to settle an issue pending before a judge of compensation~~
59 ~~claims, including attorney's fees as provided for in this~~
60 ~~section, is communicated in writing to the claimant or the~~
61 ~~claimant's attorney at least 30 days prior to the trial date on~~
62 ~~such issue, for purposes of calculating the amount of attorney's~~
63 ~~fees to be taxed against the employer or carrier, the term~~

735145

Approved For Filing: 4/14/2017 2:54:13 PM

Amendment No.

64 ~~"benefits secured" shall be deemed to include only that amount~~
65 ~~awarded to the claimant above the amount specified in the offer~~
66 ~~to settle. If multiple issues are pending before the judge of~~
67 ~~compensation claims, said offer of settlement shall address each~~
68 ~~issue pending and shall state explicitly whether or not the~~
69 ~~offer on each issue is severable. The written offer shall also~~
70 ~~unequivocally state whether or not it includes medical witness~~
71 ~~fees and expenses and all other costs associated with the claim.~~

72 (3) If any party should prevail in any proceedings before
73 a judge of compensation claims or court, there shall be taxed
74 against the nonprevailing party the reasonable costs of such
75 proceedings, not to include attorney ~~attorney's~~ fees. A claimant
76 is responsible for the payment of her or his own attorney
77 ~~attorney's~~ fees, except that a claimant is entitled to recover
78 attorney fees ~~an attorney's fee~~ in an amount equal to the amount
79 provided for in subsection (1) ~~or subsection (7)~~ from a carrier
80 or employer:

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

86 (b) In any case in which the employer or carrier files a
87 response to petition denying benefits with the Office of the
88 Judges of Compensation Claims and the injured person has

735145

Approved For Filing: 4/14/2017 2:54:13 PM

Amendment No.

89 employed an attorney in the successful prosecution of the
90 petition;

91 (c) In a proceeding in which a carrier or employer denies
92 that an accident occurred for which compensation benefits are
93 payable, and the claimant prevails on the issue of
94 compensability; or

95 (d) In cases where the claimant successfully prevails in
96 proceedings filed under s. 440.24 or s. 440.28.

97

98 Regardless of the date benefits were initially requested,
99 attorney ~~attorney's~~ fees shall not attach under this subsection
100 until 30 days after the date the carrier or employer, if self-
101 insured, receives the petition.

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

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

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

735145

Approved For Filing: 4/14/2017 2:54:13 PM

Amendment No.

113 placing any portion of the employee's compensation into an
114 escrow account until benefits have been secured.

115 (7) This section shall not be interpreted to limit or
116 otherwise infringe on a claimant's right to retain an attorney
117 and pay the attorney reasonable attorney fees for legal services
118 related to a claim under this chapter. ~~If an attorney's fee is~~
119 ~~owed under paragraph (3) (a), the judge of compensation claims~~
120 ~~may approve an alternative attorney's fee not to exceed \$1,500~~
121 ~~only once per accident, based on a maximum hourly rate of \$150~~
122 ~~per hour, if the judge of compensation claims expressly finds~~
123 ~~that the attorney's fee amount provided for in subsection (1),~~
124 ~~based on benefits secured, fails to fairly compensate the~~
125 ~~attorney for disputed medical only claims as provided in~~
126 ~~paragraph (3) (a) and the circumstances of the particular case~~
127 ~~warrant such action.~~

128 -----
129 -----

130 **T I T L E A M E N D M E N T**

131 Remove lines 53-63 and insert:
132 authorizing a judge of compensation claims to increase
133 an award of attorney fees upon consideration of
134 specified factors; providing construction relating to
135 a claimant's right under the Workers' Compensation
136 Law; amending s. 440.345, F.S.; providing

735145

Approved For Filing: 4/14/2017 2:54:13 PM