

Amendment No. a1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
 ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
 ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
 FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
 WITHDRAWN \_\_\_\_\_ (Y/N)  
 OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Commerce Committee  
 2 Representative Jenne offered the following:

3  
 4 **Amendment to Amendment (915137) by Representative Burgess**  
 5 **(with title amendment)**

6 Remove lines 82-305 of the amendment and insert:

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

Amendment No. a1

17 10 years after the date the claim is filed, and 5 percent of the  
18 benefits secured after 10 years.

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

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

27 2. The fee customarily charged in the locality for similar  
28 legal services.

29 3. The amount involved in the controversy and the benefits  
30 resulting to the claimant.

31 4. The time limitation imposed by the claimant or the  
32 circumstances.

33 5. The experience, reputation, and ability of the attorney  
34 or attorneys performing services.

35 6. The contingency or certainty of a fee.

36 (c) The judge of compensation claims shall not approve a  
37 compensation order, a joint stipulation for lump-sum  
38 settlement, a stipulation or agreement between a claimant and  
39 his or her attorney, or any other agreement related to benefits  
40 under this chapter which provides for carrier-paid attorney  
41 fees an attorney's fee in excess of the amount permitted by

Amendment No. a1

42 this section. The judge of compensation claims is not required  
43 to approve any retainer agreement between the claimant and his  
44 or her attorney. ~~The retainer agreement as to fees and costs  
45 may not be for compensation in excess of the amount allowed  
46 under this subsection or subsection (7).~~

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

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Amendment No. a1

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

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

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

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

Amendment No. a1

91 employed an attorney in the successful prosecution of the  
92 petition;

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

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

99

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

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

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

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

Amendment No. a1

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

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

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

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Remove lines 315-324 of the amendment and insert:

134

provisions relating to awarding attorney fees;

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authorizing a judge of compensation claims to increase

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an award of attorney fees upon consideration of

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specified factors; providing construction relating to

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a claimant's right under the Workers' Compensation

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Law; amending s. 440.345, F.S.;