

Amendment No. 1

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WITHDRAWN (Y/N)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 Burgess offered the following:

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

5 Remove lines 507-679 and insert:

6 under this chapter through an attorney shall provide his or her
7 personal signature attesting that he or she has reviewed,
8 understands, and acknowledges the following statement, which
9 must be in at least 14-point bold type, prior to engaging an
10 attorney for services related to a petition for benefits under
11 s. 440.192 or s. 440.25: "THE WORKERS' COMPENSATION LAW REQUIRES
12 YOU TO PAY YOUR OWN ATTORNEY FEES. YOUR EMPLOYER AND/OR ITS
13 INSURANCE CARRIER ARE NOT REQUIRED TO PAY YOUR ATTORNEY FEES,
14 EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN THEN, YOU MAY BE
15 RESPONSIBLE FOR PAYING ATTORNEY FEES IN ADDITION TO ANY AMOUNT
16 YOUR EMPLOYER OR ITS CARRIER MAY BE REQUIRED TO PAY, DEPENDING

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

17 ON THE DETAILS OF YOUR AGREEMENT WITH YOUR ATTORNEY OR
18 REPRESENTATIVE. CAREFULLY READ AND MAKE SURE YOU UNDERSTAND ANY
19 AGREEMENT OR RETAINER FOR REPRESENTATION BEFORE YOU SIGN IT." If
20 the injured employee or other party does not sign or refuses to
21 sign the document attesting that he or she has reviewed,
22 understands, and acknowledges the statement, the injured
23 employee or other party making a claim under this chapter shall
24 be prohibited from proceeding with a petition for benefits under
25 s. 440.192 or s. 440.25, except pro se, until such signature is
26 obtained.

27 Section 6. Subsections (2), (4), (5), and (7) of section
28 440.192, Florida Statutes, are amended to read:

29 440.192 Procedure for resolving benefit disputes.—

30 (2) Upon receipt, the Office of the Judges of Compensation
31 Claims shall review each petition and shall dismiss each
32 petition or any portion of such a petition that does not on its
33 face meet the requirements of this section and the definition of
34 specificity under s. 440.02, and specifically identify or
35 itemize the following:

36 (a) The name, address, and telephone number, ~~and social~~
37 ~~security number~~ of the employee.

38 (b) The name, address, and telephone number of the
39 employer.

40 (c) A detailed description of the injury and cause of the
41 injury, including the Florida county or, if outside of Florida,

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

42 | the state location of the occurrence and the date or dates of
43 | the accident.

44 | (d) A detailed description of the employee's job, work
45 | responsibilities, and work the employee was performing when the
46 | injury occurred.

47 | (e) The specific time period for which compensation and
48 | the specific classification of compensation were not timely
49 | provided.

50 | (f) The specific date of maximum medical improvement,
51 | character of disability, and specific statement of all benefits
52 | or compensation that the employee is seeking. A claim for
53 | permanent benefits must include the specific date of maximum
54 | medical improvement and the specific date that such permanent
55 | benefits are claimed to begin.

56 | (g) All specific travel costs to which the employee
57 | believes she or he is entitled, including dates of travel and
58 | purpose of travel, means of transportation, and mileage and
59 | including the date the request for mileage was filed with the
60 | carrier and a copy of the request filed with the carrier.

61 | (h) A specific listing of all medical charges alleged
62 | unpaid, including the name and address of the medical provider,
63 | the amounts due, and the specific dates of treatment.

64 | (i) The type or nature of treatment care or attendance
65 | sought and the justification for such treatment. If the employee
66 | is under the care of a physician for an injury identified under

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

67 paragraph (c), a copy of the physician's request, authorization,
68 or recommendation for treatment, care, or attendance must
69 accompany the petition.

70 (j) The specific amount of compensation claimed and the
71 methodology used to calculate the average weekly wage, if the
72 average weekly wage calculated by the employer or carrier is
73 disputed; otherwise, the average weekly wage and corresponding
74 compensation calculated by the employer or carrier are presumed
75 to be accurate.

76 (k) ~~(j)~~ A specific explanation of any other disputed issue
77 that a judge of compensation claims will be called to rule upon.

78 (l) The signed attestation required pursuant to s.
79 440.1915.

80 (m) Evidence of a good faith attempt to resolve the
81 dispute pursuant to subsection (4).

82
83 The dismissal of any petition or portion of such a petition
84 under this subsection ~~section~~ is without prejudice and does not
85 require a hearing.

86 (4) Prior to filing a petition, the claimant or, if the
87 claimant is represented by counsel, the claimant's attorney must
88 make a good faith effort to resolve the dispute. The petition
89 must include evidence of a certification by the claimant or, if
90 the claimant is represented by counsel, the claimant's attorney,
91 stating that the claimant, or attorney if the claimant is

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

92 represented by counsel, has made a good faith effort to resolve
93 the dispute and that the claimant or attorney was unable to
94 resolve the dispute with the carrier or employer, if self-
95 insured. If the petition is not dismissed under subsection (2),
96 the judge of compensation claims must review the evidence
97 required under this subsection and determine, in her or his
98 independent discretion, whether a good faith effort to resolve
99 the dispute was made by the claimant or the claimant's attorney.
100 Upon a determination that the claimant or the claimant's
101 attorney has not made a good faith effort to resolve the
102 dispute, the judge of compensation claims must dismiss the
103 petition and may impose sanctions to ensure compliance with this
104 subsection, which may include an order to pay to the other party
105 or parties the amount of the reasonable expenses incurred
106 because of the filing of the petition, including attorney fees,
107 not to exceed \$150 per hour, based on the number of necessary
108 hours related to the determination that the claimant or, if the
109 claimant is represented by counsel, the claimant's attorney has
110 not made a good faith effort to resolve the dispute.

111 (5)(a) All motions to dismiss must state with
112 particularity the basis for the motion. The judge of
113 compensation claims shall enter an order upon such motions
114 without hearing, unless good cause for hearing is shown.
115 Dismissal of any petition or portion of a petition under this
116 subsection is without prejudice.

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

117 (b) Upon motion that a petition or portion of a petition
118 be dismissed for lack of specificity, a judge of compensation
119 claims shall enter an order on the motion, unless stipulated in
120 writing by the parties, within 10 days after the motion is filed
121 or, if good cause for hearing is shown, within 20 days after
122 hearing on the motion. When any petition or portion of a
123 petition is dismissed for lack of specificity under this
124 subsection, the claimant must be allowed 20 days after the date
125 of the order of dismissal in which to file an amended petition.
126 Any grounds for dismissal for lack of specificity under this
127 section which are not asserted within 30 days after receipt of
128 the petition for benefits are thereby waived.

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

134 Section 7. Paragraphs (a), (c), (h), and (j) of subsection
135 (4) of section 440.25, Florida Statutes, are amended to read:

136 440.25 Procedures for mediation and hearings.—

137 (4)

138 (a) If the parties fail to agree to written submission of
139 pretrial stipulations, the judge of compensation claims shall
140 conduct a live pretrial hearing. The judge of compensation
141 claims shall give the interested parties at least 14 days'

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

142 advance notice of the pretrial hearing by mail or by electronic
143 means approved by the Deputy Chief Judge. At least 5 days before
144 the pretrial hearing, the claimant's attorney must file with the
145 judge of compensation claims, and serve on all interested
146 parties, a statement verified pursuant to s. 92.525 detailing
147 his or her hours to date, which specifically allocates the hours
148 by each benefit claimed, and accounting for hours relating to
149 multiple benefits in a manner that apportions such hours by
150 percentage, in whole numbers, to each benefit.

151 (c) The judge of compensation claims shall give the
152 interested parties at least 14 days' advance notice of the final
153 hearing, served upon the interested parties by mail or by
154 electronic means approved by the Deputy Chief Judge. At least 5
155 days before the final hearing, the claimant's attorney must file
156 with the judge of compensation claims, and serve on all
157 interested parties, a statement verified pursuant to s. 92.525
158 detailing his or her hours to date, which specifically allocates
159 the hours by each benefit claimed, and accounting for hours
160 relating to multiple benefits in a manner that apportions such
161 hours by percentage, in whole numbers, to each benefit.

162 (h) To further expedite dispute resolution and to enhance
163 the self-executing features of the system, those petitions filed
164 in accordance with s. 440.192 that involve a claim for benefits
165 of \$5,000 or less shall, in the absence of compelling evidence
166 to the contrary, be presumed to be appropriate for expedited

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

167 resolution under this paragraph; and any other claim filed in
168 accordance with s. 440.192, upon the written agreement of both
169 parties and application by either party, may similarly be
170 resolved under this paragraph. A claim in a petition of \$5,000
171 or less for medical benefits only or a petition for
172 reimbursement for mileage for medical purposes shall, in the
173 absence of compelling evidence to the contrary, be resolved
174 through the expedited dispute resolution process provided in
175 this paragraph. For purposes of expedited resolution pursuant to
176 this paragraph, the Deputy Chief Judge shall make provision by
177 rule or order for expedited and limited discovery and expedited
178 docketing in such cases. At least 15 days prior to hearing, the
179 parties shall exchange and file with the judge of compensation
180 claims a pretrial outline of all issues, defenses, and
181 witnesses, including a statement verified pursuant to s. 92.525
182 detailing his or her

183
184 -----

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

186 Remove line 44 and insert:

187 requiring the filing of a verified statement detailing a