

Amendment No. 4

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WITHDRAWN _____ (Y/N)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 (with title amendment)**

5 Remove lines 706-930 and insert:

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

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16 10 years after the date the claim is filed, and 5 percent of the
17 benefits secured after 10 years.

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

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

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

28 3. The amount involved in the controversy and the benefits
29 accruing to the claimant.

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

32 5. The experience, reputation, and ability of the
33 attorneys performing services.

34 6. The contingent nature of a fee.

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

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

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

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

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

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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 the

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

117 (7) This section may 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.~~

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

132 Remove lines 52-59 and insert:

133 Compensation Claims; authorizing a judge of
134 compensation claims to increase an award of attorney
135 fees upon consideration of specified factors; removing
136 a limitation on attorney fees and costs in retainer
137 agreements; deleting requirements related to offers of
138 settlement; providing construction; removing a
139 limitation on alternative attorney fees related to

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

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140 | certain claims for medical benefits only; amending s.
141 | 440.345, F.S.; providing

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