

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>    </u>	

---

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

**Amendment (with title amendment)**

5 Remove lines 553-754 and insert:

6 Section 6. Paragraphs (a), (c), (h) and (j) of subsection  
 7 (4) of section 440.25, Florida Statutes, are amended to read:

8 440.25 Procedures for mediation and hearings.—

9 (4)

10 (a) If the parties fail to agree to written submission of  
 11 pretrial stipulations, the judge of compensation claims shall  
 12 conduct a live pretrial hearing. The judge of compensation  
 13 claims shall give the interested parties at least 14 days'  
 14 advance notice of the pretrial hearing by mail or by electronic  
 15 means approved by the Deputy Chief Judge. At least 5 days before  
 16 the pretrial hearing, the claimant's attorney must file with the

Amendment No. 1

17 judge of compensation claims, and serve on all interested  
18 parties, an attestation by the claimant's attorney detailing the  
19 claimant's attorney hours to date, which specifically allocates  
20 the hours by each benefit claimed and accounting for hours  
21 relating to multiple benefits in a manner that apports such  
22 hours by percentage, in whole numbers, to each benefit.

23 (c) The judge of compensation claims shall give the  
24 interested parties at least 14 days' advance notice of the final  
25 hearing, served upon the interested parties by mail or by  
26 electronic means approved by the Deputy Chief Judge. At least 5  
27 days before the final hearing, the claimant's attorney must file  
28 with the judge of compensation claims, and serve on all  
29 interested parties, an attestation by the claimant's attorney  
30 detailing the claimant's attorney hours to date, which  
31 specifically allocates the hours by each benefit claimed and  
32 accounting for hours relating to multiple benefits in a manner  
33 that apports such hours by percentage, in whole numbers, to  
34 each benefit.

35 (h) To further expedite dispute resolution and to enhance  
36 the self-executing features of the system, those petitions filed  
37 in accordance with s. 440.192 that involve a claim for benefits  
38 of \$5,000 or less shall, in the absence of compelling evidence  
39 to the contrary, be presumed to be appropriate for expedited  
40 resolution under this paragraph; and any other claim filed in  
41 accordance with s. 440.192, upon the written agreement of both

915137 - h7085-line 553.docx

Published On: 4/5/2017 5:47:09 PM

Amendment No. 1

42 parties and application by either party, may similarly be  
43 resolved under this paragraph. A claim in a petition of \$5,000  
44 or less for medical benefits only or a petition for  
45 reimbursement for mileage for medical purposes shall, in the  
46 absence of compelling evidence to the contrary, be resolved  
47 through the expedited dispute resolution process provided in  
48 this paragraph. For purposes of expedited resolution pursuant to  
49 this paragraph, the Deputy Chief Judge shall make provision by  
50 rule or order for expedited and limited discovery and expedited  
51 docketing in such cases. At least 15 days prior to hearing, the  
52 parties shall exchange and file with the judge of compensation  
53 claims a pretrial outline of all issues, defenses, and  
54 witnesses, including an attestation by the claimant's attorney  
55 detailing the claimant's attorney hours to date, which  
56 specifically allocates the hours by each benefit claimed and  
57 accounting for hours relating to multiple benefits in a manner  
58 that apportions such hours by percentage, in whole numbers, to  
59 each benefit, on a form adopted by the Deputy Chief Judge;  
60 provided, in no event shall such hearing be held without 15  
61 days' written notice to all parties. No pretrial hearing shall  
62 be held and no mediation scheduled unless requested by a party.  
63 The judge of compensation claims shall limit all argument and  
64 presentation of evidence at the hearing to a maximum of 30  
65 minutes, and such hearings shall not exceed 30 minutes in  
66 length. Neither party shall be required to be represented by

915137 - h7085-line 553.docx

Published On: 4/5/2017 5:47:09 PM

Amendment No. 1

67 counsel. The employer or carrier may be represented by an  
68 adjuster or other qualified representative. The employer or  
69 carrier and any witness may appear at such hearing by telephone.  
70 The rules of evidence shall be liberally construed in favor of  
71 allowing introduction of evidence.

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

79 Section 7. Section 440.34, Florida Statutes, is amended to  
80 read:

81 440.34 Attorney ~~Attorney's~~ fees; costs.—

82 (1) A judge of compensation claims may award attorney fees  
83 payable to the claimant pursuant to this section to be paid by  
84 the employer or carrier. An employer or carrier may not pay a  
85 fee, gratuity, or other consideration ~~may not be paid~~ for a  
86 claimant in connection with any proceedings arising under this  
87 chapter, unless approved by the judge of compensation claims or  
88 court having jurisdiction over such proceedings. Attorney fees  
89 awarded ~~Any attorney's fee approved~~ by a judge of compensation  
90 claims for benefits secured on behalf of a claimant must equal  
91 ~~to~~ 20 percent of the first \$5,000 of the amount of the benefits

Amendment No. 1

92 secured, 15 percent of the next \$5,000 of the amount of the  
93 benefits secured, 10 percent of the remaining amount of the  
94 benefits secured to be provided during the first 10 years after  
95 the date the claim is filed, and 5 percent of the benefits  
96 secured after 10 years. A ~~The judge of compensation claims shall~~  
97 ~~not approve a compensation order, a joint stipulation for lump-~~  
98 ~~sum settlement, a stipulation or agreement between a claimant~~  
99 ~~and his or her attorney, or any other agreement related to~~  
100 ~~benefits under this chapter which provides for an attorney's fee~~  
101 ~~in excess of the amount permitted by this section. The judge of~~  
102 ~~compensation claims is not required to approve any retainer~~  
103 ~~agreement between the claimant and his or her attorney~~ is not  
104 subject to approval by a judge of compensation claims but must  
105 be filed with the Office of the Judges of Compensation Claims.  
106 Attorney fees are a lien upon compensation payable to the  
107 claimant, notwithstanding s. 440.22. A retainer agreement may  
108 not place any portion of the employee's compensation into an  
109 escrow account until benefits are secured. ~~The retainer~~  
110 ~~agreement as to fees and costs may not be for compensation in~~  
111 ~~excess of the amount allowed under this subsection or subsection~~  
112 ~~(7).~~

113 (2) In awarding a claimant's attorney fees ~~attorney's fee~~,  
114 a ~~the~~ judge of compensation claims must ~~shall~~ consider only  
115 those benefits secured by the attorney. ~~An~~ Attorney is not  
116 entitled to attorney's fees are not due for representation in

Amendment No. 1

117 any issue that was ripe, due, and owing and that reasonably  
118 could have been addressed, but was not addressed, during the  
119 pendency of other issues for the same injury or on claimant  
120 attorney hours reasonably related to a benefit upon which the  
121 claimant did not prevail. The amount, statutory basis, and type  
122 of benefits obtained through legal representation shall be  
123 listed on all attorney ~~attorney's~~ fees awarded by a ~~the~~ judge of  
124 compensation claims. For purposes of this section, the term  
125 "benefits secured" does not include future medical benefits to  
126 be provided ~~on any date~~ more than 5 years after the date the  
127 petition claim is filed. In the event an offer to settle an  
128 issue pending before a judge of compensation claims, including  
129 attorney ~~attorney's~~ fees ~~as provided for in this section~~, is  
130 communicated in writing to the claimant or the claimant's  
131 attorney at least 30 days before ~~prior to~~ the trial date on such  
132 issue, for purposes of calculating the amount of attorney  
133 ~~attorney's~~ fees to be taxed against the employer or carrier, the  
134 term "benefits secured" includes ~~shall be deemed to include~~ only  
135 that amount awarded to the claimant above the amount specified  
136 in the offer to settle. If multiple issues are pending before a  
137 ~~the~~ judge of compensation claims, said offer of settlement must  
138 ~~shall~~ address each issue pending and ~~shall~~ state explicitly  
139 whether or not the offer on each issue is severable. The written  
140 offer must ~~shall~~ also unequivocally state whether or not it

Amendment No. 1

141 includes medical witness fees and expenses and all other costs  
142 associated with the claim.

143 (3) If a ~~any~~ party prevails ~~should prevail~~ in any  
144 proceedings before a judge of compensation claims or court,  
145 there shall be taxed against the nonprevailing party the  
146 reasonable costs of such proceedings, not to include attorney  
147 ~~attorney's~~ fees. A claimant is responsible for the payment of  
148 her or his own attorney ~~attorney's~~ fees, except that a claimant  
149 is entitled to recover attorney fees ~~an attorney's fee~~ in an  
150 amount equal to the amount provided for in subsection (1),  
151 subsection (5), or subsection (6) ~~(7)~~ from a carrier or  
152 employer:

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

158 (b) In a ~~any~~ case in which the employer or carrier files a  
159 response to petition denying benefits with the Office of the  
160 Judges of Compensation Claims and the injured person has  
161 employed an attorney in the successful prosecution of the  
162 petition;

163 (c) In a proceeding in which a carrier or employer denies  
164 that an accident occurred for which compensation benefits are

Amendment No. 1

165 payable, and the claimant prevails on the issue of  
166 compensability; or

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

169

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

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

178 ~~(4)(5)~~ If ~~any~~ proceedings are had for review of a ~~any~~  
179 claim, award, or compensation order before any court, the court  
180 may, in its discretion, award the injured employee or dependent  
181 attorney fees ~~an attorney's fee~~ to be paid by the employer or  
182 carrier, ~~in its discretion,~~ which shall be paid as the court may  
183 direct.

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

185 1. "Attorney hours" means the number of hours necessary  
186 for the claimant's attorney to obtain the benefits secured as  
187 determined by a judge of compensation claims. The term "attorney  
188 hours" does not include the volume of hours expended by the



Amendment No. 1

189 claimant's attorney that were devoted to claimed benefits upon  
190 which the claimant did not prevail.

191 2. "Customary fee" means the average hourly rate that  
192 employer/carrier attorneys customarily charge in the same  
193 locality for similar legal services in defense of claims under  
194 this chapter as determined by a judge of compensation claims.

195 3. "Departure fee" means the amount of attorney fees  
196 calculated by a judge of compensation claims in place of the fee  
197 allowed under subsection (1) when attorney fees are due under  
198 this section.

199 (b) A departure fee under this subsection is in place of,  
200 not in addition to, the amount allowed under subsections (1) or  
201 (6).

202 (c) Upon petition, a judge of compensation claims may  
203 depart from the attorney fees amount set forth in subsection (1)  
204 upon a finding that the attorney fees provided for in that  
205 subsection are less than 40 percent or greater than 125 percent  
206 of the customary fee when the amount allowed under subsection  
207 (1) is converted to an hourly rate by dividing that amount by  
208 the attorney hours necessary to obtain the benefits secured.

209 (d) When resolving a petition for departure fee under this  
210 subsection, a judge of compensation claims must:

211 1. Determine the number of attorney hours and make  
212 specific detailed findings specifically allocating the attorney  
213 hours to each benefit claimed and which must account for hours

Amendment No. 1

214 relating to multiple benefits in a manner that, in the  
215 independent discretion of the judge of compensation claims,  
216 apportions such hours by percentage, in whole numbers, to each  
217 benefit claimed,

218 2. Specify the number of hours claimed by the claimant's  
219 attorney that, in the independent discretion of the judge of  
220 compensation claims, reasonably relate to benefits upon which  
221 the claimant did not prevail, and

222 3. Reduce the number of attorney hours if she or he  
223 determines, in her or his independent discretion, that the  
224 number of attorney hours are excessive.

225 (e) A judge of compensation claims may determine the  
226 locality and is not limited to an average hourly rate or number  
227 of attorney hours pled by a party, but may not exceed the amount  
228 or hours pled by the claimant's attorney, and may rely on  
229 evidence or take notice of credible data, including attorney fee  
230 data on file with the office of the judges of compensation  
231 claims or the Florida Bar.

232 (f) If a departure is permitted pursuant to paragraph (c),  
233 a judge of compensation claims must consider the following  
234 factors when departing from the amount set forth in subsection  
235 (1):

236 1. Whether the departure fee sought by the claimant's  
237 attorney is excessive.

Amendment No. 1

238       2. The time and labor reasonably required, the novelty and  
239 difficulty of the questions involved, and the skill required to  
240 properly perform the legal services as established by evidence  
241 or as independently found by the judge of compensation claims.

242       3. The customary fee.

243       4. Whether the total fee available under this section in  
244 relation to the amount involved in the controversy is excessive.

245       5. Whether the total fee available under this section in  
246 relation to the amount of benefits secured is excessive.

247       6. The time limits imposed by the circumstances.

248       7. The contingency or certainty of a claimant's attorney  
249 fee, taking into account any retainer agreement filed under this  
250 section.

251       8. The volume of hours expended by the claimant's attorney  
252 that were devoted to issues upon which the claimant did not  
253 prevail.

254       9. Whether the departure fee sought by the claimant's  
255 attorney shocks the conscience as excessive.

256  
257       (g) Based on the considerations of the factors in  
258 paragraph (f), a judge of compensation claims shall determine  
259 the hourly rate used to compute the departure fee awarded under  
260 this subsection, in \$1 increments, which may not exceed \$150 per  
261 hour. A judge of compensation claims is not limited to an hourly  
262 rate pled by a party.

Amendment No. 1

263 (h) Using the hourly rate determined under paragraph (g)  
264 and number of attorney hours determined under paragraph (d), a  
265 judge of compensation claims must determine the amount of the  
266 departure fee under this subsection by multiplying the hourly  
267 rate by the number of attorney hours. The claimant is  
268 responsible for attorney fees pursuant to his or her retainer  
269 agreement that exceed the departure fee.

270 (i) The employer/carrier may contest the departure fee  
271 amount awarded under this section within 20 calendar days of the  
272 entry of the departure fee award. Upon filing of a request by  
273 the employer/carrier, the departure fee award must be vacated  
274 and reviewed de novo upon the existing record by a judge of  
275 compensation claims in another district as assigned by the  
276 deputy chief judge of compensation claims, if the number of  
277 attorney hours determined by the presiding judge of compensation  
278 claims under paragraph (d) exceeds 125 percent of the number of  
279 hours the employer/carrier's attorney attests were devoted by  
280 the employer/carrier's attorney to the defense of the benefits  
281 secured. The reviewing judge of compensation claims must issue  
282 an order determining the amount of departure fee under this  
283 paragraph making all determinations and findings required under  
284 this subsection. The judge of compensation claims must issue the  
285 order within 30 calendar days of receiving the assignment. This  
286 paragraph does not apply to cases settled under subsection

Amendment No. 1

287 440.20(11) or if a stipulation has been filed resolving the  
288 claimant's attorney fees.

289 ~~(6) A judge of compensation claims may not enter an order~~  
290 ~~approving the contents of a retainer agreement that permits~~  
291 ~~placing any portion of the employee's compensation into an~~  
292 ~~escrow account until benefits have been secured.~~

293 ~~(7)~~ If an attorney ~~attorney's~~ fee is owed under paragraph  
294 (3) (a), a ~~the~~ judge of compensation claims may approve an  
295 alternative attorney ~~attorney's~~ fee not to exceed \$1,500 ~~only~~  
296 ~~once per accident~~, based on a maximum hourly rate of \$150 per  
297 hour, if the judge of compensation claims expressly finds that  
298 the attorney ~~attorney's~~ fee amount provided for in subsection  
299 (1), based on benefits secured, results in an effective hourly  
300 rate of less than \$150 per hour ~~fails to fairly compensate the~~  
301 ~~attorney~~ for disputed medical-only claims as provided in  
302 paragraph (3) (a) ~~and the circumstances of the particular case~~  
303 ~~warrant such action.~~ The attorney fees under this subsection are  
304 in place of, not in addition to, any attorney fees available  
305 under this section.

306  
307  
308 -----  
309 **T I T L E A M E N D M E N T**

310 Remove lines 40-56 and insert:

Amendment No. 1

311 | awarding attorney fees; amending s. 440.25, F.S.; requiring the  
312 | filing of a statement of claimant attorney hours prior to  
313 | pretrial and final hearings; extending the timeframe in which  
314 | attorney fees attach; amending s. 440.34, F.S.; revising  
315 | provisions relating to awarding attorney fees; providing that  
316 | retainer agreements do not require approval by a judge of  
317 | compensation claims but are required to be filed with the Office  
318 | of the Judges of Compensation Claims; conforming a cross-  
319 | reference; extending the timeframe in which attorney fees  
320 | attach; authorizing a judge of compensation claims to depart  
321 | from the attorney fees schedule under certain circumstances;  
322 | requiring a judge to consider certain factors when awarding  
323 | attorney fees that depart from such schedule; defining terms;  
324 | limiting the amount of such fee; amending s. 440.345, F.S.;  
325 | providing