

The Florida Senate  
**HOUSE MESSAGE SUMMARY**

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

[h07085.hms.docx]

BILL: CS/HB 7085 (CS/SB 1582)  
INTRODUCER: Insurance and Banking Subcommittee  
SUBJECT: Workers' Compensation  
DATE: May 5, 2017

---

### **I. Amendments Contained in Message:**

**House Amendment 1 – 912973 to Senate Amendment 1 – 473190** (body with title)

### **II. Summary of Amendments Contained in Message:**

**House Amendment 1** contains the provisions of CS/HB 7085, 1<sup>st</sup> Eng., with one change. The amendment caps departure fees of claimant attorney fees at \$180 instead of \$150 per hour. The amendment provides the following changes to the workers' compensation law and the insurance code:

- Permits direct payment of attorneys by or for claimants to codify the *Miles* decision.
- Increases total combined temporary wage replacement benefits (TTD/TPD) from 104 weeks to 260 weeks, which codifies the *Westphal* decision.
  - Provides an additional 26 weeks of TTD benefits if the employee has not reached overall maximum medical improvement (MMI) before receiving the maximum number of weeks of temporary disability benefits. If an employee has not reached overall MMI before receiving the maximum number of weeks, the employee is entitled to receive benefits under TTD in accordance with the greatest single impairment rating assigned to the employee.
- Allows a Judge of Compensation Claims (JCC) to award an hourly fee that departs from the statutory attorney fee schedule. This codifies the *Castellanos* decision.
  - The departure fee is only permitted if the statutory fee is less than 40 percent or greater than 125 percent of the hourly rate customarily charged in the local community by defense attorneys, with the JCC determining the relevant facts.
  - The departure fee may not exceed \$180 per hour of necessary attorney hours. The JCC calculates the departure fee by considering statutory factors, making findings regarding the customary fee charged by attorneys that represent employers and carriers, and making findings regarding the number of necessary attorney hours related to benefits secured.
- Provides that, pursuant to a retainer agreement, an employee may be responsible for any attorney fees due that exceed the departure fee. The amendment requires the claimant to sign a notice regarding attorney fees attesting that the claimant understands that he or she may be responsible for the payment of their own attorney fees in addition to any amount paid by the employer or carrier pursuant to a retainer agreement.

- 
- Allows insurers to apply a decrease in premiums by no more than 5 percent, if they file an informational-only notice within 30 days, subject to the Office of Insurance Regulation oversight.
  - Requires a good faith effort by the claimant and their attorney to resolve disputes prior to filing a petition for benefits; increases the requirements applicable to petitions for benefits; eliminates carrier paid attorney fees for services occurring before the filing a petition; attaches attorney fees 45 days, rather than 30 days, following the filing of a petition; and requires a JCC to dismiss a petition for lack of specificity, without prejudice, within 10 days or 20 days, depending upon whether a hearing is required.
  - Eliminates the charge-based reimbursement of health care facility outpatient medical care in favor of reimbursing it at 200 percent (unscheduled care) and 160 percent (scheduled surgery) of Medicare. If no Medicare fee exists, then current reimbursement standards apply and are incorporated into statute.
  - Creates a mechanism to fill vacancies on the Three-Member Panel; grants the Panel authority to fill gaps in statutory reimbursement when adopting schedules of maximum reimbursement allowances for medical care.
  - Requires the authorization or denial of medical care authorization requests, unless there is a material deficiency.
  - Requires reporting of additional information on attorney fees to the Office of Judges of Compensation Claims.