

## **BILL ANALYSIS**

S.B. 287  
By: Lucio  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, an employee who is injured on the job is responsible for visiting a treating doctor and a designated doctor who provide the employee with an impairment rating. The impairment rating is submitted to the employee's insurance carrier to indicate the patient's medical needs and required services. However, even if both doctors are in agreement that the patient is in need of treatment based on an injury sustained in the workplace, the insurance carrier can still contest the payment of benefits in a district court. Once the carrier decides to go to court, the injured employee must seek legal representation. In some cases the injured employee is unable to find counsel due to lack of availability or limited financial resources. As a result, the injured employee who prevailed throughout the administrative process may ultimately lose the case to a default judgment in a district court.

S.B. 287 authorizes a court, for injured employees who have prevailed in the administrative process, to appoint an attorney to represent the claimant before the court. If the injured employee prevails in court, the insurance carrier must pay for reasonable and necessary attorney fees. Attorney's fees are to be paid through the subsequent injury fund on any issue on which the insurance carrier prevails.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Subchapter G, Chapter 410, Labor Code, by adding Section 410.309, as follows:

Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN PROCEEDING INITIATED BY INSURANCE CARRIER. Authorizes the court, upon request of a workers' compensation claimant, to appoint an attorney to represent the claimant in a judicial review initiated by an insurance carrier under this subchapter. Provides that the insurance carrier is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c) (regarding attorney's fees paid to claimants counsel) on any issue on which the claimant prevails and provides that the subsequent injury fund (fund) is liable for the fees in accordance with Section 408.221(c-1) on any issue on which the carrier prevails.

SECTION 2. Amends Section 408.221, Labor Code, by amending Subsections (b) and (i) and adding Subsection (c-1), as follows:

(b) Makes a conforming change.

(c-1) Provides that the fund is liable for the attorney's reasonable and necessary fees, as provided by Subsection (d), on any issue on which the insurance carrier prevails in a judicial review proceeding initiated by an insurance carrier under Subchapter G, Chapter 410 (Adjudication of Disputes), in which the court has appointed an attorney under Section 410.309. Requires the court to apportion and award fees, considering the factors prescribed by Subsection (d), to the claimant's court-appointed attorney from the fund only for issues on which the insurance carrier prevails if the carrier appeals multiple

issues and prevails only for some. Provides that an award of attorney's fees under this subsection is not subject to the commissioner of workers' compensation's rules adopted under Subsection (f) (regarding guidelines for maximum attorney's fees for specific services).

(i) Makes a conforming change.

SECTION 3. Amends Section 403.006(b), Labor Code, by including that the fund is liable for the payment of court-appointed attorney's fees as provided by Section 408.221(c-1). Makes a conforming change.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.

**EFFECTIVE DATE**

September 1, 2007.