

By: Lucio

S.B. No. 287

A BILL TO BE ENTITLED

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AN ACT

relating to the appointment of an attorney for a workers' compensation claimant in certain judicial review proceedings initiated by a workers' compensation insurance carrier.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter G, Chapter 410, Labor Code, is amended by adding Section 410.309 to read as follows:

Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a judicial review initiated by an insurance carrier under this subchapter, at the request of the claimant the court may appoint an attorney to represent the claimant before the court.

(b) The insurance carrier is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c) on any issue on which the claimant prevails.

(c) The subsequent injury fund is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c-1) on any issue on which the insurance carrier prevails.

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

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the division or court. Except as

1 provided by Subsection (c) or (c-1) or Section 408.147(c), the
2 attorney's fee shall be paid from the claimant's recovery.

3 (c-1) In a judicial review proceeding initiated by an
4 insurance carrier under Subchapter G, Chapter 410, in which the
5 court has appointed an attorney for the claimant under Section
6 410.309, the subsequent injury fund is liable for the attorney's
7 reasonable and necessary fees as provided by Subsection (d) on any
8 issue on which the insurance carrier prevails. If the insurance
9 carrier appeals multiple issues and the insurance carrier prevails
10 on some, but not all, of the issues appealed, the court shall
11 apportion and award fees to the claimant's court-appointed attorney
12 from the subsequent injury fund only for issues on which the
13 insurance carrier prevails. In making that apportionment, the
14 court shall consider the factors prescribed by Subsection (d). An
15 award of attorney's fees under this subsection is not subject to
16 commissioner rules adopted under Subsection (f).

17 (i) Except as provided by Subsection (c) or (c-1) or Section
18 408.147(c), an attorney's fee may not exceed 25 percent of the
19 claimant's recovery.

20 SECTION 3. Subsection (b), Section 403.006, Labor Code, is
21 amended to read as follows:

22 (b) The subsequent injury fund is liable for:

23 (1) the payment of compensation as provided by Section
24 408.162;

25 (2) reimbursement of insurance carrier claims of
26 overpayment of benefits made under an interlocutory order or
27 decision of the commissioner as provided by this subtitle,

1 consistent with the priorities established by rule by the
2 commissioner; ~~and~~

3 (3) reimbursement of insurance carrier claims as
4 provided by Sections 408.042 and 413.0141, consistent with the
5 priorities established by rule by the commissioner; and

6 (4) the payment of court-appointed attorney's fees as
7 provided by Section 408.221(c-1).

8 SECTION 4. The change in law made by this Act applies only
9 to a judicial review proceeding initiated under Subchapter G,
10 Chapter 410, Labor Code, on or after the effective date of this Act.
11 A proceeding initiated before that date is governed by the law in
12 effect on the date the proceeding was initiated, and the former law
13 is continued in effect for that purpose.

14 SECTION 5. This Act takes effect September 1, 2007.