

1-1 By: Lucio S.B. No. 287  
1-2 (In the Senate - Filed January 23, 2007; January 30, 2007,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 March 21, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 21, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 287 By: Lucio

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the appointment of an attorney for a workers'  
1-11 compensation claimant in certain judicial review proceedings  
1-12 initiated by a workers' compensation insurance carrier.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter G, Chapter 410, Labor Code, is  
1-15 amended by adding Section 410.309 to read as follows:

1-16 Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN  
1-17 PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a judicial  
1-18 review initiated by an insurance carrier under this subchapter, at  
1-19 the request of the claimant the court may appoint an attorney to  
1-20 represent the claimant before the court.

1-21 (b) The insurance carrier is liable for the attorney's  
1-22 reasonable and necessary fees in accordance with Section 408.221(c)  
1-23 on any issue on which the claimant prevails.

1-24 (c) The subsequent injury fund is liable for the attorney's  
1-25 reasonable and necessary fees in accordance with Section  
1-26 408.221(c-1) on any issue on which the insurance carrier prevails.

1-27 SECTION 2. Section 408.221, Labor Code, is amended by  
1-28 amending Subsections (b) and (i) and adding Subsection (c-1) to  
1-29 read as follows:

1-30 (b) Except as otherwise provided, an attorney's fee under  
1-31 this section is based on the attorney's time and expenses according  
1-32 to written evidence presented to the division or court. Except as  
1-33 provided by Subsection (c) or (c-1) or Section 408.147(c), the  
1-34 attorney's fee shall be paid from the claimant's recovery.

1-35 (c-1) In a judicial review proceeding initiated by an  
1-36 insurance carrier under Subchapter G, Chapter 410, in which the  
1-37 court has appointed an attorney for the claimant under Section  
1-38 410.309, the subsequent injury fund is liable for the attorney's  
1-39 reasonable and necessary fees as provided by Subsection (d) on any  
1-40 issue on which the insurance carrier prevails. If the insurance  
1-41 carrier appeals multiple issues and the insurance carrier prevails  
1-42 on some, but not all, of the issues appealed, the court shall  
1-43 apportion and award fees to the claimant's court-appointed attorney  
1-44 from the subsequent injury fund only for issues on which the  
1-45 insurance carrier prevails. In making that apportionment, the  
1-46 court shall consider the factors prescribed by Subsection (d). An  
1-47 award of attorney's fees under this subsection is not subject to  
1-48 commissioner rules adopted under Subsection (f).

1-49 (i) Except as provided by Subsection (c) or (c-1) or Section  
1-50 408.147(c), an attorney's fee may not exceed 25 percent of the  
1-51 claimant's recovery.

1-52 SECTION 3. Subsection (b), Section 403.006, Labor Code, is  
1-53 amended to read as follows:

1-54 (b) The subsequent injury fund is liable for:

1-55 (1) the payment of compensation as provided by Section  
1-56 408.162;

1-57 (2) reimbursement of insurance carrier claims of  
1-58 overpayment of benefits made under an interlocutory order or  
1-59 decision of the commissioner as provided by this subtitle,  
1-60 consistent with the priorities established by rule by the  
1-61 commissioner; ~~and~~

1-62 (3) reimbursement of insurance carrier claims as  
1-63 provided by Sections 408.042 and 413.0141, consistent with the

2-1 priorities established by rule by the commissioner; and  
2-2 (4) the payment of court-appointed attorney's fees as  
2-3 provided by Section 408.221(c-1).

2-4 SECTION 4. The change in law made by this Act applies only  
2-5 to a judicial review proceeding initiated under Subchapter G,  
2-6 Chapter 410, Labor Code, on or after the effective date of this Act.  
2-7 A proceeding initiated before that date is governed by the law in  
2-8 effect on the date the proceeding was initiated, and the former law  
2-9 is continued in effect for that purpose.

2-10 SECTION 5. This Act takes effect September 1, 2007.

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