

## **BILL ANALYSIS**

S.B. 394  
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Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

When an employee becomes injured on the job, the employee is responsible for visiting a treating doctor and a designated doctor who provides 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 district court. Once the carrier decides to go to court, the injured employee must seek legal representation. However, in some cases, the injured employee is unable to find counsel due to a lack of availability or financial resources. As a result, the injured employee who prevailed throughout the administrative process may ultimately lose to a default judgment in district court.

S.B. 394 amends current law relating to the appointment of an attorney for a workers' compensation claimant in certain proceedings initiated by a workers' compensation insurance carrier.

### **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**

S.B. 394 amends the Labor Code to require a court, at the request of a workers' compensation claimant, to appoint an attorney to represent the claimant before the court in a trial initiated by an insurance carrier relating to a judicial review of a final decision of an appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits. The bill authorizes the court to hold a pre-trial hearing to determine whether the claimant made a good faith effort to obtain representation by an attorney before the appointment of an attorney.

S.B. 394 makes the insurance carrier liable for such an attorney's reasonable and necessary fees as determined by the jury in the case or by the trial judge when a jury is not requested on any issue on which the claimant prevails. The bill makes the subsequent injury fund liable for the attorney's reasonable and necessary fees as determined by the jury in the case, or by the trial judge when a jury is not requested, on any issue on which the insurance carrier prevails. The bill requires the court, if the carrier appeals multiple issues and prevails on some, but not all, of those issues, to apportion and award fees to the claimant's court-appointed attorney from the subsequent injury fund only for issues on which the insurance carrier prevails, and requires the court to consider the time and labor required and certain other factors in making that apportionment. The bill provides that the award of attorney's fees to the claimant's court-appointed attorney from the subsequent injury fund is not subject to the commissioner of workers' compensation's rules relating to guidelines for maximum attorney's fees for specific services.

S.B. 394 specifies that it does not make an appropriation and establishes that a bill provision that creates a new governmental program or entitlement or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision. The bill makes these provisions inapplicable if the bill does not require an appropriation.

**EFFECTIVE DATE**

September 1, 2009.