

By: Zerwas

H.B. No. 699

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of an attorney for a workers'
3 compensation claimant in certain judicial review proceedings
4 initiated by a workers' compensation insurance carrier.

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

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

8 Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN
9 PROCEEDING INITIATED BY INSURANCE CARRIER. (a) In a trial
10 initiated by an insurance carrier under this subchapter, at the
11 request of the claimant the court shall appoint an attorney to
12 represent the claimant before the court, if the court determines
13 that the claimant has made a good faith effort to retain counsel but
14 is unable to retain counsel. The court may hold a pre-trial hearing
15 to make the determination required by this subsection.

16 (b) Except as otherwise provided by this subsection, the
17 insurance carrier is liable for the attorney's reasonable and
18 necessary fees in accordance with Section 408.221(c) on any issue
19 on which the claimant prevails. The number of hours for which
20 attorney's fees are awarded to the claimant's attorney under this
21 subsection concerning an issue on which the claimant prevails may
22 not exceed the number of hours the carrier's counsel billed the
23 carrier for work concerning that same issue.

24 (c) The subsequent injury fund is liable for the attorney's

1 reasonable and necessary fees in accordance with Section
2 408.221(c-1) on any issue on which the insurance carrier prevails.

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

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

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

25 (i) Except as provided by Subsection (c) or (c-1) or Section
26 408.147(c), an attorney's fee may not exceed 25 percent of the
27 claimant's recovery.

1 SECTION 3. Section 403.006(b), Labor Code, is amended to
2 read as follows:

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

4 (1) the payment of compensation as provided by Section
5 408.162;

6 (2) reimbursement of insurance carrier claims of
7 overpayment of benefits made under an interlocutory order or
8 decision of the commissioner as provided by this subtitle,
9 consistent with the priorities established by rule by the
10 commissioner;

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

14 (4) the reimbursement of an insurance carrier as
15 provided by Section 408.0041(f-1); and

16 (5) the payment of court-appointed attorney's fees as
17 provided by Section 408.221(c-1).

18 SECTION 4. The change in law made by this Act applies only
19 to a judicial review proceeding initiated under Subchapter G,
20 Chapter 410, Labor Code, on or after the effective date of this Act.
21 A proceeding initiated before that date is governed by the law in
22 effect on the date the proceeding was initiated, and the former law
23 is continued in effect for that purpose.

24 SECTION 5. This Act takes effect September 1, 2009.