

By: Lucio

S.B. No. 394

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of an attorney for a workers' compensation claimant in certain 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 trial initiated by an insurance carrier under this subchapter, at the request of the claimant the court shall appoint an attorney to represent the claimant before the court. The court may hold a pretrial hearing to determine whether the claimant made a good faith effort to obtain representation by an attorney before the appointment of an attorney.

(b) The insurance carrier is 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, 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 as determined by the jury in the case, or by the trial judge when a jury is not requested, in accordance with Section 408.221(c-1) on any issue on which the insurance

1 carrier prevails.

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

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

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

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

27 SECTION 3. Subsection (b), Section 403.006, Labor Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

24 SECTION 5. This Act does not make an appropriation. A
25 provision in this Act that creates a new governmental program,
26 creates a new entitlement, or imposes a new duty on a governmental
27 entity is not mandatory during a fiscal period for which the

1 legislature has not made a specific appropriation to implement the
2 provision. This section does not apply if this Act does not require
3 an appropriation.

4 SECTION 6. This Act takes effect September 1, 2009.