

1-1 By: Lucio S.B. No. 394  
1-2 (In the Senate - Filed January 5, 2009; February 17, 2009,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 April 15, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 15, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 394 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 proceedings initiated by a  
1-12 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 trial  
1-18 initiated by an insurance carrier under this subchapter, at the  
1-19 request of the claimant the court shall appoint an attorney to  
1-20 represent the claimant before the court. The court may hold a  
1-21 pretrial hearing to determine whether the claimant made a good  
1-22 faith effort to obtain representation by an attorney before the  
1-23 appointment of an attorney.

1-24 (b) The insurance carrier is liable for the attorney's  
1-25 reasonable and necessary fees as determined by the jury in the case,  
1-26 or by the trial judge when a jury is not requested, in accordance  
1-27 with Section 408.221(c) on any issue on which the claimant  
1-28 prevails.

1-29 (c) The subsequent injury fund is liable for the attorney's  
1-30 reasonable and necessary fees as determined by the jury in the case,  
1-31 or by the trial judge when a jury is not requested, in accordance  
1-32 with Section 408.221(c-1) on any issue on which the insurance  
1-33 carrier prevails.

1-34 SECTION 2. Section 408.221, Labor Code, is amended by  
1-35 amending Subsections (b) and (i) and adding Subsection (c-1) to  
1-36 read as follows:

1-37 (b) Except as otherwise provided, an attorney's fee under  
1-38 this section is based on the attorney's time and expenses according  
1-39 to written evidence presented to the division or court. Except as  
1-40 provided by Subsection (c) or (c-1) or Section 408.147(c), the  
1-41 attorney's fee shall be paid from the claimant's recovery.

1-42 (c-1) In a judicial review proceeding initiated by an  
1-43 insurance carrier under Subchapter G, Chapter 410, in which the  
1-44 court has appointed an attorney for the claimant under Section  
1-45 410.309, the subsequent injury fund is liable for the attorney's  
1-46 reasonable and necessary fees as provided by Subsection (d) on any  
1-47 issue on which the insurance carrier prevails. If the insurance  
1-48 carrier appeals multiple issues and the insurance carrier prevails  
1-49 on some, but not all, of the issues appealed, the court shall  
1-50 apportion and award fees to the claimant's court-appointed attorney  
1-51 from the subsequent injury fund only for issues on which the  
1-52 insurance carrier prevails. In making that apportionment, the  
1-53 court shall consider the factors prescribed by Subsection (d). An  
1-54 award of attorney's fees under this subsection is not subject to  
1-55 commissioner rules adopted under Subsection (f).

1-56 (i) Except as provided by Subsection (c) or (c-1) or Section  
1-57 408.147(c), an attorney's fee may not exceed 25 percent of the  
1-58 claimant's recovery.

1-59 SECTION 3. Subsection (b), Section 403.006, Labor Code, is  
1-60 amended to read as follows:

1-61 (b) The subsequent injury fund is liable for:

1-62 (1) the payment of compensation as provided by Section  
1-63 408.162;

2-1 (2) reimbursement of insurance carrier claims of  
2-2 overpayment of benefits made under an interlocutory order or  
2-3 decision of the commissioner as provided by this subtitle,  
2-4 consistent with the priorities established by rule by the  
2-5 commissioner;

2-6 (3) reimbursement of insurance carrier claims as  
2-7 provided by Sections 408.042 and 413.0141, consistent with the  
2-8 priorities established by rule by the commissioner; ~~and~~

2-9 (4) the reimbursement of an insurance carrier as  
2-10 provided by Section 408.0041(f-1); and

2-11 (5) the payment of court-appointed attorney's fees as  
2-12 provided by Section 408.221(c-1).

2-13 SECTION 4. The change in law made by this Act applies only  
2-14 to a trial or judicial review proceeding initiated under Subchapter  
2-15 G, Chapter 410, Labor Code, on or after the effective date of this  
2-16 Act. A trial or judicial review proceeding initiated before that  
2-17 date is governed by the law in effect on the date the trial or  
2-18 judicial review proceeding was initiated, and the former law is  
2-19 continued in effect for that purpose.

2-20 SECTION 5. This Act takes effect September 1, 2009.

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