

**B-Engrossed**  
**Senate Bill 404**

Ordered by the House June 4  
Including Senate Amendments dated April 27 and House Amendments  
dated June 4

Sponsored by COMMITTEE ON RULES

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes payment of certain reasonable fees, expenses and costs associated with litigation of workers' compensation claim if claimant prevails against claim denial. Caps payment at \$1,500 unless claimant demonstrates extraordinary circumstances justifying payment of larger amount.

**Provides that if injured worker signs attorney fee agreement for representation on workers' compensation claim and attorney was instrumental in obtaining additional compensation or settling claim, Administrative Law Judge or Workers' Compensation Board shall grant attorney lien for attorney fees out of additional compensation awarded or proceeds of settlement.**

**A BILL FOR AN ACT**

1  
2 Relating to workers' compensation claims; creating new provisions; and amending ORS 656.386 and  
3 656.388

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.386 is amended to read:

6 656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the  
7 denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court  
8 shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied  
9 claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in  
10 a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall  
11 allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instru-  
12 mental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge,  
13 a reasonable attorney fee shall be allowed.

14 (b) For purposes of this section, a "denied claim" is:

15 (A) A claim for compensation which an insurer or self-insured employer refuses to pay on the  
16 express ground that the injury or condition for which compensation is claimed is not compensable  
17 or otherwise does not give rise to an entitlement to any compensation;

18 (B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant  
19 to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within 60 days;  
20 or

21 (C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition  
22 made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to  
23 within 60 days.

24 (c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 failure to pay compensation for a previously accepted injury or condition in timely fashion. Attor-  
2 ney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

3 **(2)(a) If a claimant finally prevails against a denial as provided in subsection (1) of this**  
4 **section, the court, board or Administrative Law Judge may order payment of the claimant's**  
5 **reasonable expenses and costs for records, expert opinions and witness fees.**

6 **(b) The court, board or Administrative Law Judge shall determine the reasonableness of**  
7 **witness fees, expenses and costs for the purpose of paragraph (a) of this subsection.**

8 **(c) Payments for witness fees, expenses and costs ordered under this subsection shall be**  
9 **made by the insurer or self-insured employer and are in addition to compensation payable**  
10 **to the claimant.**

11 **(d) Payments for witness fees, expenses and costs ordered under this subsection may not**  
12 **exceed \$1,500 unless the claimant demonstrates extraordinary circumstances justifying pay-**  
13 **ment of a greater amount.**

14 [(2)] (3) In all other cases, attorney fees shall be paid from the increase in the claimant's com-  
15 pensation, if any, except as otherwise expressly provided in this chapter.

16 **SECTION 2. The amendments to ORS 656.386 by section 1 of this 2007 Act apply to**  
17 **workers' compensation claims in which the order on the compensability of the claim denial**  
18 **has not become final on or before the effective date of this 2007 Act.**

19 **SECTION 3.** ORS 656.388 is amended to read:

20 656.388. (1) No claim or payment for legal services by an attorney representing the worker or  
21 for any other services rendered before an Administrative Law Judge or the Workers' Compensation  
22 Board, as the case may be, in respect to any claim or award for compensation to or on account of  
23 any person, shall be valid unless approved by the Administrative Law Judge or board, or if pro-  
24 ceedings on appeal from the order of the board with respect to such claim or award are had before  
25 any court, unless approved by such court. In cases in which a claimant finally prevails after remand  
26 from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or  
27 appellate court shall approve or allow a reasonable attorney fee for services before every prior fo-  
28 rum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386. No attorney fees shall be  
29 approved or allowed for representation of the claimant before the managed care organization or  
30 Director of the Department of Consumer and Business Services except for representation at the  
31 contested case hearing.

32 (2) Any claim for payment to a claimant's attorney by the claimant so approved shall, in the  
33 manner and to the extent fixed by the Administrative Law Judge, board or such court, be a lien  
34 upon compensation.

35 **(3) If an injured worker signs an attorney fee agreement with an attorney for represen-**  
36 **tation on a claim made pursuant to this chapter and additional compensation is awarded to**  
37 **the worker or a settlement agreement is consummated on the claim after the fee agreement**  
38 **is signed and it is shown that the attorney with whom the fee agreement was signed was**  
39 **instrumental in obtaining the additional compensation or settling the claim, the Adminis-**  
40 **trative Law Judge or the board shall grant the attorney a lien for attorney fees out of the**  
41 **additional compensation awarded or proceeds of the settlement in accordance with rules**  
42 **adopted by the board governing the payment of attorney fees.**

43 [(3)] (4) The board shall, after consultation with the Board of Governors of the Oregon State  
44 Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer  
45 or self-insured employer, under this chapter.

1        [(4)] (5) The board shall approve no claim for legal services by an attorney representing a  
2 claimant to be paid by the claimant if fees have been awarded to the claimant or the attorney of the  
3 claimant in connection with the same proceeding under ORS 656.268.

4        [(5)] (6) Insurers and self-insured employers shall make an annual report to the Director of the  
5 Department of Consumer and Business Services reporting attorney salaries and other costs of legal  
6 services incurred pursuant to this chapter. The report shall be in such form and shall contain such  
7 information as the director prescribes.

8        **SECTION 4. The amendments to ORS 656.388 by section 3 of this 2007 Act apply to all**  
9 **claims in which an order that grants attorney fees is issued after the effective date of this**  
10 **2007 Act, regardless of the date of injury.**

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