

**Fiscal:** Fiscal impact issued

**Revenue:** No Revenue Impact

---

**Action Date:** 04/20/15

**Action:** Do Pass As Amended And Be Printed Engrossed.

**Meeting Dates:** 02/27, 03/02, 04/10, 04/17, 04/20

**Vote:**

Yeas: 6 - Barton, Doherty, Evans, Fagan, Holvey, Nosse

Nays: 5 - Barreto, Esquivel, Heard, Kennemer, Weidner

**Prepared By:** Jan Nordlund, Committee Administrator

---

#### **WHAT THE MEASURE DOES:**

Modifies circumstances under which attorney fees may be awarded and amount of attorney fees in workers' compensation claims. Requires interest payment on compensable benefits, attorney fees, penalties and costs that are withheld pending an appeal. Allows attorney fees under certain circumstances for representation related to or before the Director of Department of Consumer and Business Services. Requires attorney fees awarded to be equitable in aggregate in relation to fees earned by attorneys for insurers or self-insurers. Directs Board to review attorney fees biennially. Declares emergency, effective on passage.

#### **ISSUES DISCUSSED:**

- Complexity of workers' compensation system
- Shortage of claimants attorneys
- Unique payment structure in which client is not allowed to pay attorney
- How workers' compensation coverage is paid by employer and employee
- Impact of 1990 Mahonia Hall reforms
- Exclusive remedy protections means no right for civil action
- Role of Management-Labor Advisory Committee (MLAC)
- Cap on worker benefits unaffected by measure
- Whether increasing claimant attorney fees will lead to more litigation
- Amount claimant attorney fees represent out of total workers' compensation system

#### **EFFECT OF COMMITTEE AMENDMENT:**

Deletes proposed provision that directs Board to increase fees biennially and instead directs Board to review attorney fees biennially. Requires insurer or self-insured employer to pay reasonable attorney fees based on hourly rate for work related to personal and telephonic interviews and depositions process (as opposed to work related to scheduling, providing or attending any investigation process) under subsection on investigation of claims. Modifies proposed language directing Board regarding what must be considered when establishing attorney fees.

#### **BACKGROUND:**

Claimant attorneys are private attorneys hired by injured workers to represent them through the workers' compensation claims process. Claimant attorneys cannot be paid directly by the injured worker but instead are paid out of the compensation awarded to the injured worker or awarded as an assessed fee paid by the insurer or self-insurer based on the adjudicator's judgment. There are five broad reasons for which a claimant attorney can be awarded fees: reversing a denial, obtaining an increase in compensation, obtaining penalties or sanctions, preventing a reduction in compensation, and negotiating settlements. Some claimant attorney fees are set in statute by the Legislative Assembly and some fees are set through administrative rule by the Workers Compensation Board. Attorneys representing insurers and self-insurers are compensated without limits.