

## **BILL ANALYSIS**

Senate Research Center

S.B. 394  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

When an employee becomes injured on the job, the employee is responsible for visiting a treating doctor and a designated doctor who provides an impairment rating. The impairment rating is submitted to the employee's insurance carrier to indicate the patient's medical needs and required services. However, even if both doctors are in agreement that the patient is in need of treatment based on an injury sustained in the workplace, the insurance carrier can still contest the payment of benefits in district court. Once the carrier decides to go to court, the injured employee must seek legal representation. However, in some cases, the injured employee is unable to find counsel due to a lack of availability or financial resources. As a result, the injured employee who prevailed throughout the administrative process may ultimately lose to a default judgment in district court.

As proposed, S.B. 394 requires the court, at the request of the claimant, in a trial initiated by an insurance carrier, to appoint an attorney to represent the claimant.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of workers' compensation is modified in SECTION 2 (Section 408.221, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter G, Chapter 410, Labor Code, by adding Section 410.309, as follows:

Sec. 410.309. APPOINTMENT OF ATTORNEY FOR CLAIMANT IN PROCEEDING INITIATED BY INSURANCE CARRIER. (a) Requires the court, at the request of the claimant, in a trial initiated by an insurance carrier under this subchapter, to appoint an attorney to represent the claimant before the court. Authorizes the court to 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) Provides that the insurance carrier is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c) (relating to an insurance carrier that seeks judicial review of a final decision of the appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits being liable for reasonable and necessary attorney's fees) on any issue on which the claimant prevails. Prohibits the claimant attorney from billing for more hours than the hours the carrier attorney billed.

(c) Provides that the subsequent injury fund is liable for the attorney's reasonable and necessary fees in accordance with Section 408.221(c-1) on any issue on which the insurance carrier prevails.

SECTION 2. Amends Section 408.221, Labor Code, by amending Subsections (b) and (i), and adding Subsection (c-1), as follows:

(b) Requires that, except as provided by Subsection (c) or (c-1) or Section 408.147(c) (relating to an insurance carrier being liable for reasonable and necessary attorney's fees

incurred by the employee as a result of the insurance carrier's dispute and for supplemental income benefits), the attorney's fee be paid from the claimant's recovery.

(c-1) Provides that in a judicial review proceeding initiated by an insurance carrier under Subchapter G (Judicial Review of Issues Regarding Compensability or Income or Death Benefits), Chapter 410 (Adjudication of Disputes), in which the court has appointed an attorney for the claimant under Section 410.309, the subsequent injury fund is liable for the attorney's reasonable and necessary fees as provided by Subsection (d) (relating to requiring the commissioner of workers' compensation (commissioner) court to consider certain information in approving an attorney's fee under this section) on any issue on which the insurance carrier prevails. Requires the court, if the insurance carrier appeals multiple issues and the insurance carrier prevails on some, but not all, of the issues appealed, to apportion and award fees to the claimant's court-appointed attorney from the subsequent injury fund only for issues on which the insurance carrier prevails. Requires the courts, in making that apportionment, to consider the factors prescribed by Subsection (d). Provides that an award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (f) (relating to requiring the commissioner by rule to provide guidelines for maximum attorney's fees for specific services).

(i) Prohibits the attorney's fee, except as provided by Subsection (c) or (c-1) or Section 408.147(c), from exceeding 25 percent of the claimant's recovery.

SECTION 3. Amends Section 408.006(b), Labor Code, to provide that the subsequent injury fund is liable for the payment of court-appointed attorney's fees as provided by Section 408.221(c-1). Makes nonsubstantive changes.

SECTION 4. Make the application of Subchapter G, Chapter 410, Labor Code, of this Act prospective.

SECTION 5. Effective date: September 1, 2009.