

Amendments to House Bill No. 468
1st Reading Copy

Requested by Representative Dave Gallik
For the House Business and Labor Committee

Prepared by Bartley Campbell
February 15, 2005 (3:08pm)

1. Title, line 7.

Following: "INSURER;

Insert: "AUTHORIZING THE WORKERS' COMPENSATION JUDGE TO DETERMINE
ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE;"

2. Page 2, following line 9.

Insert: "NEW SECTION. Section 3. Determination of attorney fees under common fund doctrine. (1) The workers' compensation judge, after establishing a common fund and after notice, shall conduct a fairness hearing to determine reasonable attorney fees. In determining reasonable attorney fees, the judge shall consider:

- (a) the number of claimants that may share in the common fund;
- (b) the additional benefits each claimant might be awarded;
- (c) whether the claimants in the common fund currently have attorney representation;
- (d) whether any claimants in the common fund object to a percentage of their recovery being awarded as attorney fees; and
- (e) the expended and ongoing time, effort, and expense of the attorney responsible for the creation of the common fund.

(2) An award of attorney fees under this section, either alone or in conjunction with previously awarded attorney fees may not exceed the limitations on attorney fees in 39-71-613.

(3) In determining attorney fees, the judge may award a different amount for each claimant sharing in the common fund. The differing amounts may be based on the factors in subsection (1) or on other information relevant to an individual claimant's particular facts and circumstances."

Insert: "NEW SECTION. Section 4. {standard} Codification instruction. [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 3]."

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