

# STATE OF NEW YORK

7762

## IN SENATE

January 11, 2022

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the workers' compensation law, in relation to claims for attorney's fees; and to amend a chapter of the laws of 2021 amending the workers' compensation law relating to attorney's fees, as proposed in legislative bills numbers S. 946-B and A. 1034-B, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 24 of the workers' compensation law, as amended by  
2 a chapter of the laws of 2021 amending the workers' compensation law  
3 relating to attorney's fees as proposed in legislative bills numbers  
4 S. 946-B and A. 1034-B, is amended to read as follows:

5 § 24. Costs and fees. 1. If the court before which any proceedings for  
6 compensation or concerning an award of compensation have been brought,  
7 under this chapter, determine that such proceedings have not been so  
8 brought upon reasonable ground, it shall assess the cost of the  
9 proceedings upon the party who has so brought them.

10 2. Claims of attorneys and counselors-at-law for legal services in  
11 connection with any claim arising under this chapter, and claims for  
12 services or treatment rendered or supplies furnished pursuant to subdi-  
13 vision (b) of section thirteen of this article, shall not be enforceable  
14 unless approved by the board. A written fee application on a form  
15 prescribed by the board shall be filed for all legal fees in excess of  
16 one thousand dollars (\$1,000.00.) In the fee application the attorney  
17 shall set forth the calculation used to determine the fee and certify  
18 that the amount is in accordance with the following provisions. The form  
19 prescribed by the board shall not require a description of the services  
20 rendered or time records in conjunction with such written application.  
21 The attorney shall set forth on the record the same calculation and  
22 certification in all oral fee applications of one thousand dollars  
23 (\$1,000.00) or less. The board shall approve such written and submitted  
24 fee application in an amount commensurate with the services rendered and  
25 the amount of compensation awarded, having due regard for the financial

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 state of the claimant in accordance with each applicable provision of  
2 the following schedule:

3 (a) When an award is made directing the continuation of weekly compen-  
4 sation benefits for temporary total or partial disability, the attor-  
5 ney's fee shall be one-third of one week's compensation.

6 (b) When an award is made that increases the amount of compensation  
7 awarded or paid for a previous period or periods of temporary total or  
8 temporary partial disability, the attorney's fee shall be fifteen  
9 percent of the increased compensation.

10 (c) When an award is made for schedule loss of use or permanent facial  
11 disfigurement pursuant to paragraphs a through t of subdivision three of  
12 section fifteen of this article, the attorney's fee shall be fifteen  
13 percent of the compensation due in excess of the employer or carrier's  
14 previous payments.

15 (d) When an award is made for permanent total disability pursuant to  
16 subdivision one of section fifteen of this article or permanent partial  
17 disability pursuant to paragraph w of subdivision three of section  
18 fifteen of this article, the attorney's fee shall be equivalent to  
19 fifteen percent of the compensation due in excess of the employer or  
20 carrier's previous payments, plus a sum equivalent to fifteen weeks of  
21 compensation at the rate fixed by the board.

22 (e) When an award is made for death benefits pursuant to section  
23 sixteen of this article, the attorney's fee shall be equivalent to  
24 fifteen percent of the compensation due in excess of the employer or  
25 carrier's previous payments, plus a sum equivalent to fifteen weeks of  
26 compensation at the rate fixed by the board.

27 (f) When an award is made pursuant to section thirty-two of this arti-  
28 cle, the attorney's fee shall be fifteen percent of ~~[any]~~ benefits to be  
29 paid by the employer or carrier under the approved agreement, except  
30 that benefits allocated for future medical expenses shall not be  
31 included in the calculation of the fee. However, if the attorney has  
32 previously been awarded a fee pursuant to this subdivision, any un-ac-  
33 crued balance of any attorney fees under the foregoing paragraphs shall  
34 be waived.

35 3. If a prior attorney has been substituted in a manner prescribed by  
36 the board, and has submitted a fee request, the board shall determine  
37 the amount of fees allocated to any prior attorney out of the total fees  
38 awarded.

39 4. When so approved, such claim or claims shall become a lien upon the  
40 compensation awarded, and upon any moneys ordered paid under an award by  
41 the board into the special funds provided for in subdivision nine of  
42 section fifteen and section twenty-five-a of this article, and any other  
43 section of this chapter, but shall be paid therefrom only in the manner  
44 fixed by the board. Any other person, firm or corporation who shall  
45 exact or receive fee or gratuity for any services rendered on behalf of  
46 a claimant except in an amount determined by the board, shall be guilty  
47 of a misdemeanor. Any person, firm or corporation who shall solicit the  
48 business of appearing before the board on behalf of a claimant, or who  
49 shall make it a business to solicit employment for a lawyer in  
50 connection with any claim for compensation under this chapter shall be  
51 guilty of a misdemeanor. In case an award is affirmed upon an appeal to  
52 the appellate division, the same shall be payable with interest thereon  
53 from the date when said award was made by the board except as provided  
54 in section twenty-seven of this article.

1     § 2. Section 2 of a chapter of the laws of 2021 amending the workers'  
2 compensation law relating to attorney's fees, as proposed in legislative  
3 bills numbers S. 946-B and A. 1034-B, is amended to read as follows:

4     § 2. This act shall take effect [~~immediately~~] January 1, 2023.

5     § 3. This act shall take effect immediately; provided, however, that  
6 section one of this act shall take effect on the same date and in the  
7 same manner as a chapter of the laws of 2021 amending the workers'  
8 compensation law relating to attorney's fees, as proposed in legislative  
9 bills numbers S. 946-B and A. 1034-B, takes effect.