

- SUBJECT:** Attorneys' fees in certain workers' compensation cases
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Cook, Menendez, Craddick, Frullo, Harless, Hilderbran, Huberty, Solomons, Turner
- 0 nays
- 4 absent — Gallego, Geren, Oliveira, Smithee
- WITNESSES:** For — Royce Bicklein
- Against — None
- On — (*Registered, but did not testify:* Jonathan Bow, Barbara Klein, State Office of Risk Management; Amy Lee, Texas Department of Insurance, Division of Workers' Compensation)
- BACKGROUND:** Sec. 408.203(a), Labor Code, specifies that an income or death benefit awarded in a workers' compensation claim is subject to a lien or claim in the following order of priority: an attorney's fee for representing an employee or legal beneficiary, court-ordered child support, or a subrogation interest. The Labor Code specifies that an attorney's fees may not exceed 25 percent of the claimant's recovery.
- DIGEST:** CSHB 1871 would amend sec. 408.203(a), Labor Code to require that an attorney's fee for representing an employee or legal beneficiary in a workers' compensation income or death benefit claim be made in proportionate shares to each attorney with an outstanding lien, if more than one attorney had an outstanding lien. The bill would specify that any attorney's fees or, if applicable, the aggregated fees of more than one attorney, could not exceed 25 percent of the claimant's recovery.
- The bill would take effect September 1, 2011, and would apply only to claims for injuries that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 1871 would ensure that each attorney hired by an injured worker received payment. This would provide an incentive for a second attorney to represent an injured worker if the injured worker and his or her original attorney parted ways. Under current law, during the workers' compensation claim process, an injured worker may hire an attorney and, even if the attorney does not finish the case, must pay the attorney fee bills when the injured worker recovers benefits. When the injured worker seeks new representation, the second attorney often will not take the case because of the prospect that he or she would not be paid. This issue is exacerbated in rural areas, where there are very few attorneys who specialize in workers' compensation. The bill would allow an injured worker to find other counsel and guarantee payment for both the original and subsequent attorneys.

If the bill defined proportionate shares, judges would be confined to a limited scope in which to determine what is fair and proportionate in a specific case. It is reasonable to permit judges to interpret the facts of each individual case and allow flexibility.

**OPPONENTS
SAY:**

CSHB 1871 does not provide a definition of proportionate shares, which could mean the hours worked by an attorney or the results gained by each attorney. If left undefined in the bill, the judicial system likely would determine the definition. To avoid having the court determine legislative intent, the bill should define a proportionate share.