

6-15-1995

Attorneys. Fees. Right To Negotiate. Frivolous Lawsuits.

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State of California

SECRETARY OF STATE

January 12, 1996

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (96037)

Pursuant to Section 9033 of the Elections Code, I hereby certify that on January 12, 1996 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS. has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS. INITIATIVE STATUTE. is, therefore, qualified for the November 5, 1996 General Election.

ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS. INITIATIVE STATUTE. Declares this measure to be in conflict with the "Lawyer Contingent Fee Limitation Act" initiative and similar measures. Provides the right to negotiate amount of attorneys' fees, whether fixed, hourly or contingent, shall not be restricted. Prohibits attorney from charging/collecting excessive or unconscionable fees. Authorizes court to impose sanctions upon attorney who files a lawsuit or pleading which is completely without merit or filed solely to harass opposing party. Prohibits sanctioned attorney from collecting fees for case. Requires State Bar to recommend appropriate discipline for attorneys who have repeated sanctions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Possible increased, but insignificant, costs to state and local governments.

IN WITNESS WHEREOF, I hereunto
set my hand and affix the Great Seal of
the State of California this 12th day of
January, 1996.



Bill Jones
BILL JONES
Secretary of State





Bill Jones
Secretary of State

1500 - 11th Street
Sacramento, CA 95814

Elections Division
(916) 657-2166
For Hearing and Speech
Impaired Only: (800) 833-8683

#664

June 15, 1995

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (95066)

Pursuant to Section 336 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS.
INITIATIVE STATUTE.**

Circulating and Filing Schedule

- 1. Minimum number of signatures required 433,269
Cal. Const., Art. II, Sec. 8(b).
- 2. Official Summary Date Thursday, 06/15/95
Elec. C., Sec. 336.
- 3. Petition Sections:
 - a. First day Proponent can circulate Sections for
signatures Thursday, 06/15/95
Elec. C., Sec. 336.
 - b. Last day Proponent can circulate and file with
the county. All sections are to be filed at
the same time within each county Monday, 11/13/95*
Elec. C., Secs. 336, 9030(a)
 - c. Last day for county to determine total number of
signatures affixed to petition and to transmit total
to the Secretary of State Monday, 11/27/95
Elec. C., Sec. 9030(b)

(If the Proponents file the petition with the county on a date prior to 11/13/95, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 9030(b).

* Date adjusted for official deadline which falls on Saturday, Sunday or holiday. Elec. C., Sec. 15.

ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS.
INITIATIVE STATUTE.

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d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties Wednesday, 12/06/95**
Elec. C., Sec. 9030(c)

e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Monday, 01/22/96
Elec. C., Sec. 9030(b)

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 12/06/95, the last day is no later than the thirtieth day after the county's receipt of notification.)
Elec. C., Sec. 9030(d), (e).

f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures Thursday, 02/01/96**
Elec. C., Sec. 9030(f), (g); 9031(a)

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Monday, 03/18/96
Elec. C., Sec. 9031(b), (c)

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 02/01/96, the last day is no later than the thirtieth working day after county's receipt of notification.)
Elec. C., Sec. 9031(b), (c).

h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient Friday, 03/22/96**
Elec. C., Sec. 9031(d), 9033

** Date varies based on receipt of county certification.

ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS.
INITIATIVE STATUTE.

June 15, 1995

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4. The Proponents of the above-named measure are:

Roy Wayne McClean
Nora Códý
c/o Joseph Remcho and Robin Johansen
Remcho, Johansen and Purcell
220 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 398-6230

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 18650; Bilofsky v. Deukmejian (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE MARCH 26, 1996 PRIMARY ELECTION: This initiative must be certified for the ballot 131 days before the election (November 16, 1995). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions to county elections officials by September 8, 1995. If a 100% check of signatures is necessary, it is advised that the petitions be filed by July 19, 1995.

Sincerely,



CATHY MITCHELL
ELECTIONS SPECIALIST

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555

Facsimile: (916) 324-8835
(916) 324-5490


June 15, 1995

FILED

In the office of the Secretary of State
of the State of California

JUN 15 1995

Bill Jones
Secretary of State
1500 - 11th Street
Sacramento, CA 95814

By 
BILL JONES, Secretary of State
Deputy Secretary of State

Re: Initiative Title and Summary
Subject: ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS.
INITIATIVE STATUTE.
File No: SA 95 RF 0005

Dear Mr. Jones:

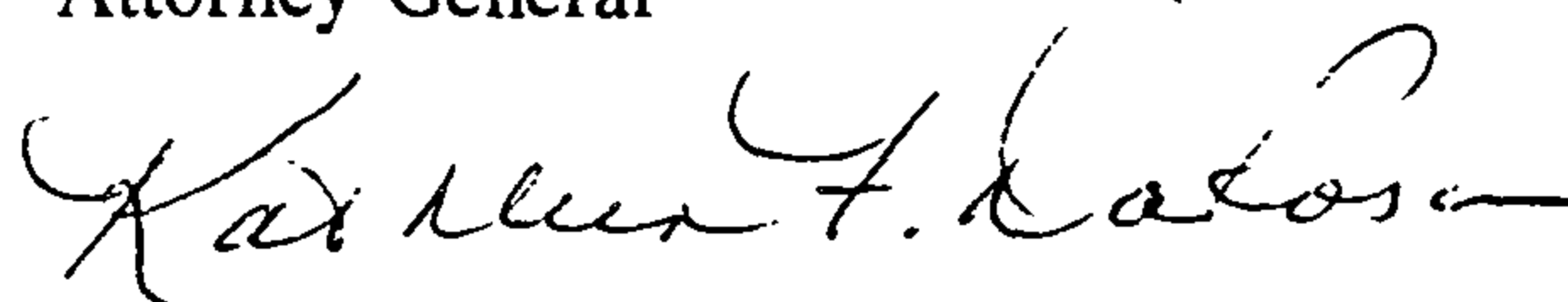
Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and address of the proponents are as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN
Attorney General



KATHLEEN F. DaROSA
Initiative Coordinator

KFD:ms
Enclosures

Date: June 15, 1995
File No: SA95RF0005

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

ATTORNEYS. FEES. RIGHT TO NEGOTIATE. FRIVOLOUS LAWSUITS.

INITIATIVE STATUTE. Declares this measure to be in conflict with the "Lawyer Contingent Fee Limitation Act" initiative and similar measures. Provides the right to negotiate amount of attorneys' fees, whether fixed, hourly or contingent, shall not be restricted. Prohibits attorney from charging/collecting excessive or unconscionable fees.

Authorizes court to impose sanctions upon attorney who files a lawsuit or pleading which is completely without merit or filed solely to harass opposing party. Prohibits sanctioned attorney from collecting fees for case. Requires State Bar to recommend appropriate discipline for attorneys who have repeated sanctions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Possible increased, but insignificant, costs to state and local governments.

VIA MESSENGER

April 14, 1995

RECEIVED
APR 14 1995

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General
Department of Justice
1515 K Street
Sacramento, CA 95814

Attention: Kathleen DaRosa, Initiative Coordinator

Re: Frivolous Lawsuit Limitation Act

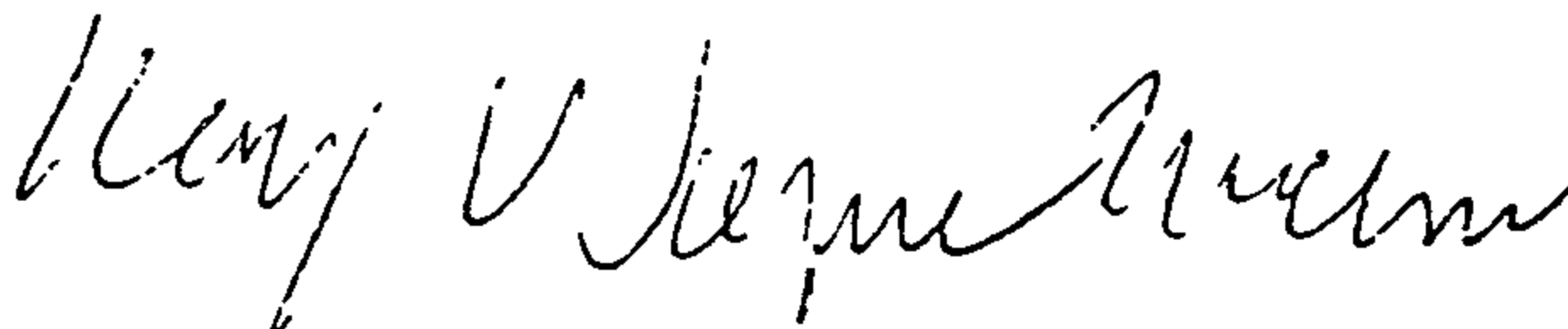
Dear Ms. DaRosa:

Pursuant to Elections Code section 9002, I request the Attorney General to prepare a title and summary of an initiative measure entitled "Frivolous Lawsuit Limitation Act." The text of the measure, a check for \$200, and the address at which I am registered to vote are attached.

Please direct all correspondence and inquiries regarding this measure to my attorneys:

Joseph Remcho
Robin Johansen
Remcho, Johansen & Purcell
220 Montgomery St. Suite 800
San Francisco, CA 94104
Tel. (415) 398-6230
Fax. (415) 398-7256

Sincerely,



Roy Wayne McClean

Encl.

REMCHO, JOHANSEN & PURCELL
ATTORNEYS AT LAW

220 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104
415/ 398-6230 FAX: 415/ 398-7256

May 26, 1995

RECEIVED
JUN 8 1995

Office of the Attorney General
Department of Justice
1515 "K" Street
Sacramento, CA 95814

INITIATIVE COORDINATOR?
ATTORNEY GENERAL'S OFFICE

Attention: Kathleen DaRosa, Initiative Coordinator

Re: Frivolous Lawsuit Limitation Act

Dear Ms. DaRosa:

I am the proponent of the Frivolous Lawsuit
Limitation Act. Please add, as an additional proponent
Ms. Nora Cody, whose letter requesting to be added as a
proponent is enclosed.

Thank you.


Roy Wayne McClean

Enclosure

RECEIVED

JUN 8 1995

COORDINATOR
ATTORNEY GENERAL'S OFFICE

April 30, 1995

Office of the Attorney General
Department of Justice
1515 K Street, 6th Floor
Sacramento, CA 95814

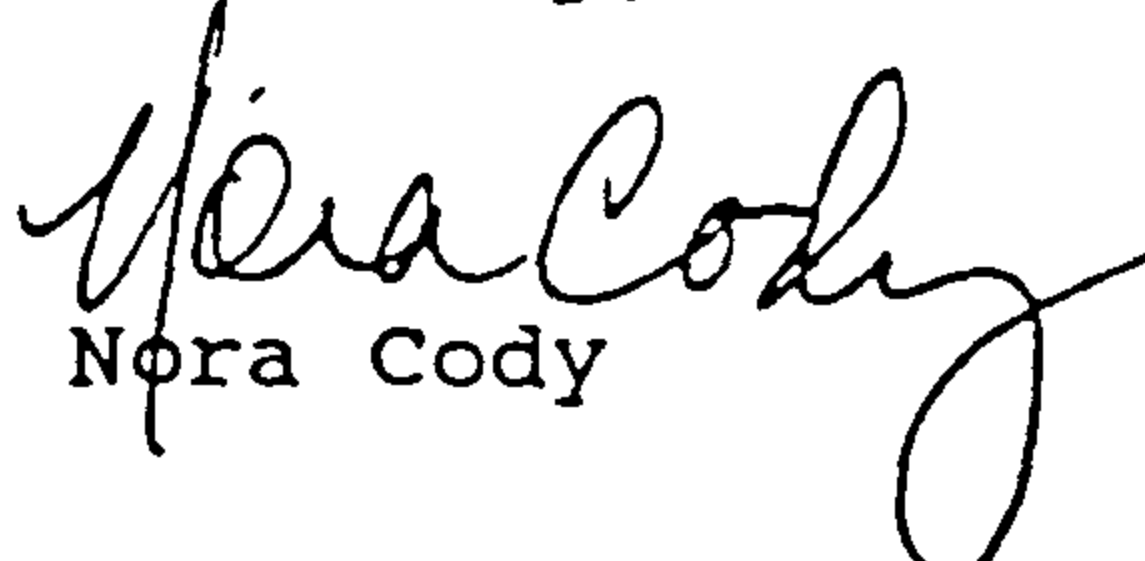
Attention: Kathleen DaRosa

Re: Frivolous Lawsuit Limitations Act; SA95RF0005

Dear Ms. DaRosa:

Please add my name as an additional proponent to the initiative measure entitled "Frivolous Lawsuit Limitation Act" submitted to your office for title and summary on April 14, 1995. The address at which I am registered to vote is stated in the attached letter.

Sincerely,


Nora Cody

Encl.

FRIVOLOUS LAWSUIT LIMITATION ACT

SECTION 1. TITLE

 This initiative shall be known and may be cited as the "Frivolous Lawsuit Limitation Act."

SECTION 2. FINDINGS AND DECLARATIONS

 The People of the State of California find and declare:

 (a) Frivolous lawsuits and frivolous defenses clog our courts, cost taxpayers money, and delay the legal process.

 (b) Lawyers who file frivolous lawsuits or frivolous defenses violate their ethical obligations as officers of the court and should be punished.

 (c) Lawyers who file frivolous lawsuits or defenses should not be paid.

 (d) Injured people who have legitimate legal claims have the same right to contract freely with the attorney of their choice as do corporations and wealthy individuals.

 (e) People with legitimate claims need to be protected against some attorneys who are able to manipulate the system so that they collect enormous fees for almost no work.

 (f) The most effective way to preserve the rights of consumers, corporations, and small businesses to contract freely while at the same time protecting them from unscrupulous attorneys is to allow clients to ask the courts to decide whether an attorney's fee is excessive.

THEREFORE, THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 3: SANCTIONS AND DISCIPLINE FOR FRIVOLOUS LAWSUITS AND FRIVOLOUS DEFENSES

Section 6089.5 is added to the Business and Professions Code, to read:

6089.5(a) If, after using the notice and procedures contained in Code of Civil Procedure section 128.7, a court determines that an attorney or law firm has filed a frivolous lawsuit or a frivolous answer or other responsive pleading to a lawsuit, the court shall impose appropriate sanctions upon the attorney or law firm.

(b) (1) For purposes of this section, a frivolous lawsuit or frivolous answer or other responsive pleading to a lawsuit is one that is either (A) totally and completely without merit, or (B) filed for the sole purpose of harassing an opposing party.

(2) For purposes of this section, an appropriate sanction is one that is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated.

(c) No attorney against whom sanctions have been imposed pursuant to subsection (a) shall collect or retain any fee for services performed in connection with a lawsuit in which the court has imposed sanctions under this section and a final judgment has been entered and all appeals have been exhausted, unless the attorney can demonstrate that he or she has been misled by the misrepresentation or mistake of the client with regard to one or more facts material to the case.

(d) After a final judgment has been entered and all appeals have been exhausted, a court that has imposed sanctions upon an attorney or law firm pursuant to subsection (a) of this section shall notify the State Bar. The notification shall include the sanctions order, any written findings related thereto, including the name or names of the attorneys involved, and those portions of the record relevant to the order. The attorney or law firm against whom sanctions have been imposed shall reimburse the court for all expenses incurred in reporting to the State Bar pursuant to this section.

(e) Upon notification from the court that sanctions have been imposed and the matter has been referred to the State Bar, the attorney and his or her law firm shall immediately notify the client or clients in writing that sanctions have been imposed for the attorney's conduct of the case.

(f) If the State Bar determines that it has received three notifications of sanctions against the same attorney pursuant to subsection (a) within the past five years, after considering all relevant circumstances, the State Bar shall recommend appropriate discipline, including but not limited to suspension or disbarment, to the Supreme Court.

(g) Reprovals and other disciplinary measures taken by the State Bar pursuant to this section shall be a matter of public record.

Code of Civil Procedure section 128.7(j) is amended as follows:

~~128.7(j) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.~~ If a court imposes sanctions on an

attorney or law firm pursuant to this section, it shall notify the State Bar if the sanctions were imposed for filing a frivolous lawsuit or a frivolous answer or other responsive pleading to a lawsuit pursuant to section 6089.5 of the Business and Professions Code. The notification shall include the sanctions order, any written findings related thereto and those portions of the record relevant to the order. The attorney or law firm against whom sanctions have been imposed shall reimburse the court for all expenses incurred in reporting to the State Bar pursuant to this section.

SECTION 4. CLIENTS' RIGHT TO HIRE AND FIRE ATTORNEY

Section 6146.5 is added to the Business and Professions Code, to read:

6146.5(a) Except as otherwise provided by law in effect on January 1, 1995 or by the provisions of this Act, the right of a client or a client's representative to choose and contract with the attorney of his or her choice shall not be restricted, nor shall the right of a client or the client's representative to negotiate the amount of an attorney's fee, whether fixed, hourly or contingent, be restricted or the validity of such contracts be impaired.

(b) A client shall have the right to discharge his or her attorney at any time during the course of the representation.

(c) Notwithstanding the terms of any contract entered into pursuant to Sections 6146, 6147, and 6148 of this chapter, attorneys who are discharged before a case is finally concluded shall be entitled to compensation only as set forth below:

(1) Attorneys who have entered into contingency fee contracts pursuant to Sections 6146 and 6147 shall be entitled to compensation only in the event the client recovers an award or settlement in the matter for which the attorney had been retained. In the event of such an award or settlement, the attorney shall be entitled to any unreimbursed expenses advanced or incurred by the attorney during the course of the representation and to the reasonable value of the attorney's services rendered to the time of discharge.

(2) Attorneys who have entered into hourly rate contracts for services pursuant to Section 6148 shall be entitled to payment at the agreed-upon rate for reasonable services rendered and expenses advanced or incurred during the course of the representation to the time of discharge. Attorneys who have contracted for a flat fee or any other method of compensation not subject to Sections 6146 and 6147 shall be entitled to any unreimbursed expenses advanced or incurred and the reasonable value of their services to the time of discharge.

(d) Nothing in this section shall limit or otherwise affect any law in effect on January 1, 1995, with regard to attorneys' fees, or impair the inherent authority of the courts to regulate the practice of law or to prohibit illegal or unconscionable fees, or the authority of a court in a particular case to find that a fee is excessive pursuant to Section 6146.1.

SECTION 5: RELIEF FROM EXCESSIVE ATTORNEYS' FEES

Section 6146.1 is added to the Business and Professions Code, to read:

6146.1(a) No attorney shall enter into an agreement for, charge, or collect an excessive fee.

(b) In addition to any other remedies at law, a client may bring an action against an attorney to seek declaratory relief that a fee agreement or a portion of the fee required by that agreement is excessive, or to recover that portion of a fee collected or withheld that is excessive.

(c) In addition to any other remedies at law, in an action brought by an attorney against a client for breach of a fee agreement, the client may file a cross-complaint or assert an affirmative defense alleging that the fee agreement or a portion of the fee required by that agreement is excessive.

(d) For purposes of this Act, an excessive fee is defined as one that is unconscionable. In determining whether a fee or a fee agreement is unconscionable, the court shall consider the following factors, in light of all the facts and circumstances:

(1) The amount of the fee in proportion to the value of the services performed.

(2) The relative sophistication of the attorney and the client.

(3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(4) The fact or likelihood that the acceptance of the particular employment would or did preclude other employment by the attorney.

(5) The amount involved and the results obtained.

(6) The time limitations imposed by the client or by circumstances.

(7) The nature and length of the professional relationship with the client.

(8) The experience, reputation, and ability of the attorney performing the services, including his or her capacity because of that reputation or ability to secure a better result for the client.

(9) Whether the fee is fixed, hourly, or contingent, including whether the fee reflects the risk that the representation could result in little or no recovery.

(10) The time and labor required.

(11) The informed consent of the client to the fee agreement.

(12) Whether the attorney has advanced costs in furtherance of the representation, and the amount thereof.

(13) Any other fact or circumstance relevant to the conscionability of the fee.

(e) Nothing in this section shall affect the right of the attorney to be reimbursed for actual costs advanced or incurred.

SECTION 6. Relationship to Other Initiatives

The people recognize that more than one measure dealing with the general matters set forth in this measure may be on the ballot at the same time. It is the intent of the voters in passing this measure that it be considered, for purposes of Article II, section 10(b) of the California Constitution, to be in conflict with the "Lawyer Contingency Fee Limitation Act" and any other similar measure attempting to limit the right of a client and an attorney to contract with each other for legal services and to enforce such contracts.

SECTION 7. SEVERABILITY

If any provision of this act or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 8. AMENDMENT

The provisions of this act may be amended by a statute that becomes effective upon approval by the electorate or by a statute to further the act's purposes passed by a two-thirds vote of each house of the Legislature and signed by the Governor.