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Attorney Fees Limit For Tort Claims.

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Official Title and Summary Prepared by the Attorney General

ATTORNEY FEES LIMIT FOR TORT CLAIMS. INITIATIVE STATUTE. Measure places limit on amount of a contingency fee an attorney may collect for representing a plaintiff in connection with a tort claim. The fee may be no more than 25 percent of first \$50,000 recovered, no more than 15 percent of next \$50,000 recovered, and no more than 10 percent of amount recovered above \$100,000. The court may review the fee and reduce it below the stated limits if it is not reasonable and fair. Defines amount recovered to calculate fee limitations. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Fiscal impact on state and local governments is unknown and would depend on how attorneys and their clients respond to these contingency limits. The response could affect the number of cases filed and settled, and the size of awards.

Analysis by the Legislative Analyst**Background**

An injured party may sue to recover damages for injury, death, or property loss. The amount of damages to be paid may be determined by negotiation, court trial, or arbitration. These types of cases are referred to as "tort" cases.

Typically tort cases are handled on a "contingency fee" basis, which means that the attorney is paid only if the case is won or settled in favor of the client. Statutory limitations on these fees apply only to medical malpractice cases.

Current law limits attorney contingency fees in medical malpractice cases to the following: (1) 40 percent of the first \$50,000 recovered for damages; (2) 33.3 percent of the next \$50,000 recovered; (3) 25 percent of the next \$500,000 recovered; and (4) 15 percent of any amount recovered which exceeds \$600,000.

Proposal

This measure places limits on the amount of contingency fees attorneys could charge clients for their services in tort cases, including medical malpractice cases. It would limit attorney contingency fees to the following: (1) 25 percent of the first \$50,000 recovered; (2) 15 percent of the next \$50,000 recovered; and (3) 10 percent of the amount recovered above \$100,000.

The measure authorizes the court to conduct a hearing to determine whether a proposed fee is reasonable and fair. The court may reduce the fee below the limits proposed in this measure, but it may not increase the fee above these limits.

Fiscal Effect

The fiscal impact of this measure on state and local governments is unknown, and would depend largely on how attorneys and their clients respond to these contingency fee limits. The response could affect the number of cases filed, the number settled before trial, and the size of the awards.

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Business and Professions Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

TITLE.

This shall be known as the Lawyers Fair Fee Act.

FINDINGS AND DECLARATION.

Attorneys who represent injured persons in most tort claims charge a fee based on a percentage of the amount recovered, whether by settlement or judgment. Contingency fees of up to 40% are common.

The people of California find that excessively high contingency fees deprive injured persons of too large a share of the amounts they recover on tort claims. Adequate legal representation will be available to injured persons if attorneys' fees are limited as provided herein.

LIMIT ATTORNEY FEES.

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

6146.1. (a) *An attorney shall not contract for or collect a contingency fee in connection with a tort claim, including a claim covered by Section 6146, in excess of the following limits:*

- (1) Twenty-five percent of the first fifty thousand dollars (\$50,000) recovered.*
- (2) Fifteen percent of the next fifty thousand dollars*

(\$50,000) recovered.

(3) Ten percent of the amount of recovery above one hundred thousand dollars (\$100,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment.

(b) The court, in any action filed seeking damages based on a tort claim, including a claim covered by Section 6146, may on its motion, or on the motion of a party, review the contingency fee arrangement upon notice and hearing to determine whether the fee is reasonable and fair and may order a fee less than the amount set out in subdivision (a). The fee ordered by the court shall not exceed the amount set out in subdivision (a).

(c) If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this total amount in computing the award from which attorney's fees are calculated under this section.

(d) For purposes of this section, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

Argument in Favor of Proposition 106

VOTE FOR PROP 106 TO LIMIT ATTORNEY CONTINGENCY FEES AND SECURE MORE MONEY FOR VICTIMS.

PROP 106 reforms our legal system by limiting the amount lawyers can take from their clients' award, channeling more money to victims and less to attorneys.

Our current legal system allows lawyers to routinely collect up to 40% of an injured victim's total award. In many cases, attorneys collect much more.

PROP 106 limits attorney contingency fees in all tort cases to:

- no more than 25% of any award up to \$50,000.
- no more than 15% of that portion of an award between \$50,000 and \$100,000.
- no more than 10% of an award above \$100,000.

Currently, the State Bar of California, an organization that lobbies for attorney interests, is responsible for managing lawyer conduct and fees.

Under current rules, the State Bar routinely recognizes 40% as an appropriate fee and no fee is too high unless it is "unconscionable." According to the State Bar, an "unconscionable" fee is:

"so exorbitant and wholly disproportionate to the services performed as to shock the conscience of lawyers of ordinary prudence practicing in the same community."

We wonder just what shocks the conscience of a lawyer of ordinary prudence, since contingency fees of 50% and more are upheld.

PROP 106 WILL RETURN COURT AWARDS TO VICTIMS.

More money should go to compensate accident victims. Less should go toward padding lawyers' wallets. Today, after paying attorney fees, accident victims often don't

have enough money left over to pay their medical expenses or rehabilitation costs. We cannot continue to allow lawyers to make outrageous profits at the expense of accident victims.

Compare these facts: In 1987, the Lawyer's Almanac reports the *starting salary* for a law school graduate at top Los Angeles firms was \$52,000. Don't believe lawyers when they say that they can't work for less money. There are over 106,000 lawyers in California. If we limit attorney contingency fees, every good case will still be presented to the court by competent lawyers; the only difference is that lawyers will be prohibited from charging their clients excessive fees.

The federal government and several other states have recognized the need to cap attorney contingency fees. Nearly 40 years ago the federal government enacted contingency fee limitations in cases where it is a defendant. Florida, New York and California limit contingency fees in medical malpractice cases, and last year Connecticut passed legislation similar to PROP 106.

PROP 106 will reform our wasteful tort system by directing more money to those who need it most: accident victims and other wronged claimants.

PLEASE VOTE TO LIMIT ATTORNEY CONTINGENCY FEES.

VOTE YES on PROP 106.

TOM McCLINTOCK

Member of the Assembly, 36th District

Vice Chairman, Assembly Judiciary Committee

ALAN F. SHUGART

Chairman of the Board and CEO, Seagate Technology

JOHN FLEMING

University of California Law Professor

Rebuttal to Argument in Favor of Proposition 106

Don't let insurance companies trick you. They wrote and financed Proposition 106 to make it harder for you to make them pay up. They plan to *wreck* an effective system that allows seriously injured Americans to pay their lawyers **ONLY IF THEY WIN—AND NOTHING IF THEY LOSE!**

The negotiable contingent fee permits Californians of modest means to bring wrongdoers to justice *without* having to pay fat hourly lawyers' fees. That's why scholars call the contingent fee the key to the courtroom door for average Americans.

Even a major insurance executive said, in the July 19 *Los Angeles Times*, 106 "... will bar public access to the courts."

'Proposition 106 deviously stifles your ability to hire the smartest, most determined lawyers for you and your children against drunk drivers and manufacturers of defective cars, cancerous chemicals and dangerous prescription drugs. It will result in more wrongdoers getting off and more insurance companies not paying up.

In the June 2 *San Diego Union*, insurance industry executive George Tye said Proposition 106 *won't reduce insurance rates.*

Notice that 106 doesn't restrict fees that insurance companies pay *their* lawyers to defend wrongdoers. So while they can hire the best lawyers to fight you, you couldn't afford to do the same. *That's the trick of 106.*

The contingent fee allowed thousands of Americans to prevail against drunk drivers, and asbestos, hazardous household products and Pinto fuel tank manufacturers. Such victories make companies pay more attention to their safety obligations toward all Americans.

Vote NO.

RALPH NADER

Consumer Advocate

HEATHER BECHTEL MAURER

Executive Director, Asbestos Victims of America

GENE PATTERSON

Executive Director, National Victim Center

Attorney Fees Limit for Tort Claims. Initiative Statute

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Argument Against Proposition 106

Don't be misled! Proposition 106 is the most insidious insurance industry-sponsored initiative on this ballot.

The insurance industry wants caps on legal fees.

But whose fees? NOT the fees paid to lawyers who work for insurance companies, NOT manufacturers' lawyers, NOT large corporation lawyers, NOT criminals' lawyers.

The ONLY lawyer whose fees would be limited would be YOURS—the lawyer YOU HIRE to help you recover damages from a drunk driver, an insurance company that won't pay you what it owes you or a shoddy manufacturer.

YOUR lawyer, NOT THEIRS!

Written by insurance company lawyers to confuse California voters and obscure the real issues—insurance reform and accountability—Proposition 106 would cripple the ability of crime and accident victims to retain qualified legal counsel.

Proposition 106 would hurt, among others, drunk driving victims who would be hindered from seeking justice from the offenders.

Proposition 106 is unfair! It cleverly restricts YOUR ability to fight for your rights, but does nothing to limit the amount insurance companies can pay THEIR attorneys to fight you.

Proposition 106 puts a straitjacket on the average Californian's ability to challenge insurance companies who refuse to pay benefits on legitimate claims. It also allows unscrupulous insurance companies' lawyers to bully victims and their families (who use the contingency fee system) through intimidation and delaying tactics.

Why are insurance companies behind Proposition 106?

Because the insurers who are bankrolling this initiative know that if they *stack the deck against policyholders by restricting legal challenges, they can increase their profits.* After all, the fewer claims they pay, the higher

their profits. In 1987 alone, they made a record \$13.7 billion! They should lower your rates without restricting your rights.

If Proposition 106 passes, Californians would lose valuable rights in exchange for empty promises. Don't be taken in by the insurance companies' secret strategy to divert your attention from the real issues—their outrageous premiums and obscene profits—by making the victim's attorney their scapegoat.

Proposition 106 is another "fine-print" insurance scam restricting the rights of policyholders to hold insurance companies accountable—even if those actions involve legitimate claims against drunk or negligent drivers.

Will this initiative save you money? NO! The insurance companies admit it. *But this initiative could cost you money!* If you lack proper recourse in demanding that your insurance company reimburse you fairly for your losses, you may never receive the compensation to which you are entitled. *You may be letting a drunk driver off the hook!*

Proposition 106 is discriminatory and unfair. It stacks the deck in favor of insurance companies AT YOUR EXPENSE by allowing them to hire whatever legal talent they want at whatever fee they want to pay while innocent victims would lose such rights.

If you think the fight against insurance companies is unfair today, just consider what will happen if Proposition 106 passes.

The free-choice system is essential for parents, victims and consumers. Don't put your loved ones and yourself in *needless jeopardy!* Vote **NO** on **PROPOSITION 106.**

JUDITH ROWLAND

Executive Director, California Center on Victimology

TOM BRADLEY

Mayor of Los Angeles

Rebuttal to Argument Against Proposition 106

DON'T BE FOOLED BY THE TRIAL LAWYERS' PLEA TO PROTECT THEIR EXORBITANT CONTINGENCY FEES. VOTE YES ON PROP 106.

Injured victims will have no difficulty finding proper legal representation. PROP 106 protects victims from excessive contingency fees.

Trial lawyers routinely take up to 40% or more of an injured victim's award. PROP 106 will give more money to victims by reducing excessive contingency fees. Vote **YES** on PROP 106.

Trial lawyers protest that they can't work for less than they make now, but the facts show otherwise.

Don't believe trial lawyers when they claim they cannot work for less money.

California has more than 106,000 attorneys—one out of seven nationwide. And their ranks continue to swell. The number of lawyers licensed to practice in Los Angeles

County has multiplied two and a half times since 1970 and has increased by 35% since 1980!

California, New York and Florida already have fee limitations in medical malpractice cases, and injured victims have not gone without representation.

TRIAL LAWYERS ARE BENT ON DEFEATING PROP 106 TO PROTECT THEIR EXCESSIVE FEES—NOT TO SAFEGUARD VICTIMS' RIGHTS. DON'T BE TRICKED.

Please **VOTE YES** on PROP 106 to ensure that injured victims—not their attorneys—receive compensation. Vote **YES** on PROP 106.

JERRY EAVES

Member of the Assembly, 66th District

JAMES NIELSEN

State Senator, 4th District

REGIS MCKENNA

Chairman of the Board and CEO, Regis McKenna, Inc.