

6-14-1995

Attorneys' Contingent Fees. Limits.

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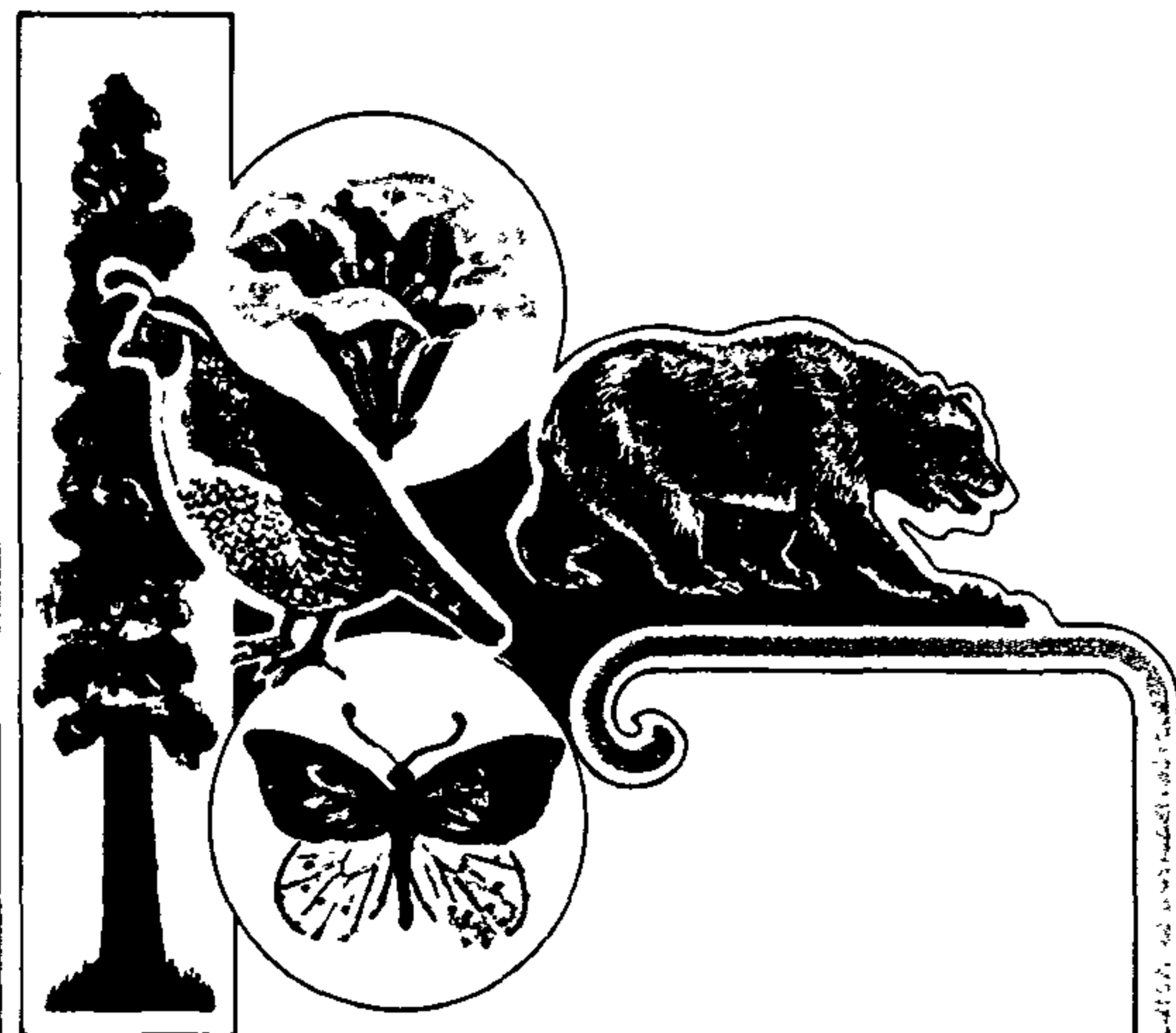
Attorneys' Contingent Fees. Limits. California Initiative 662 (1995).
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State of California

OFFICE OF THE SECRETARY OF STATE

October 26, 1995



TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (95131)

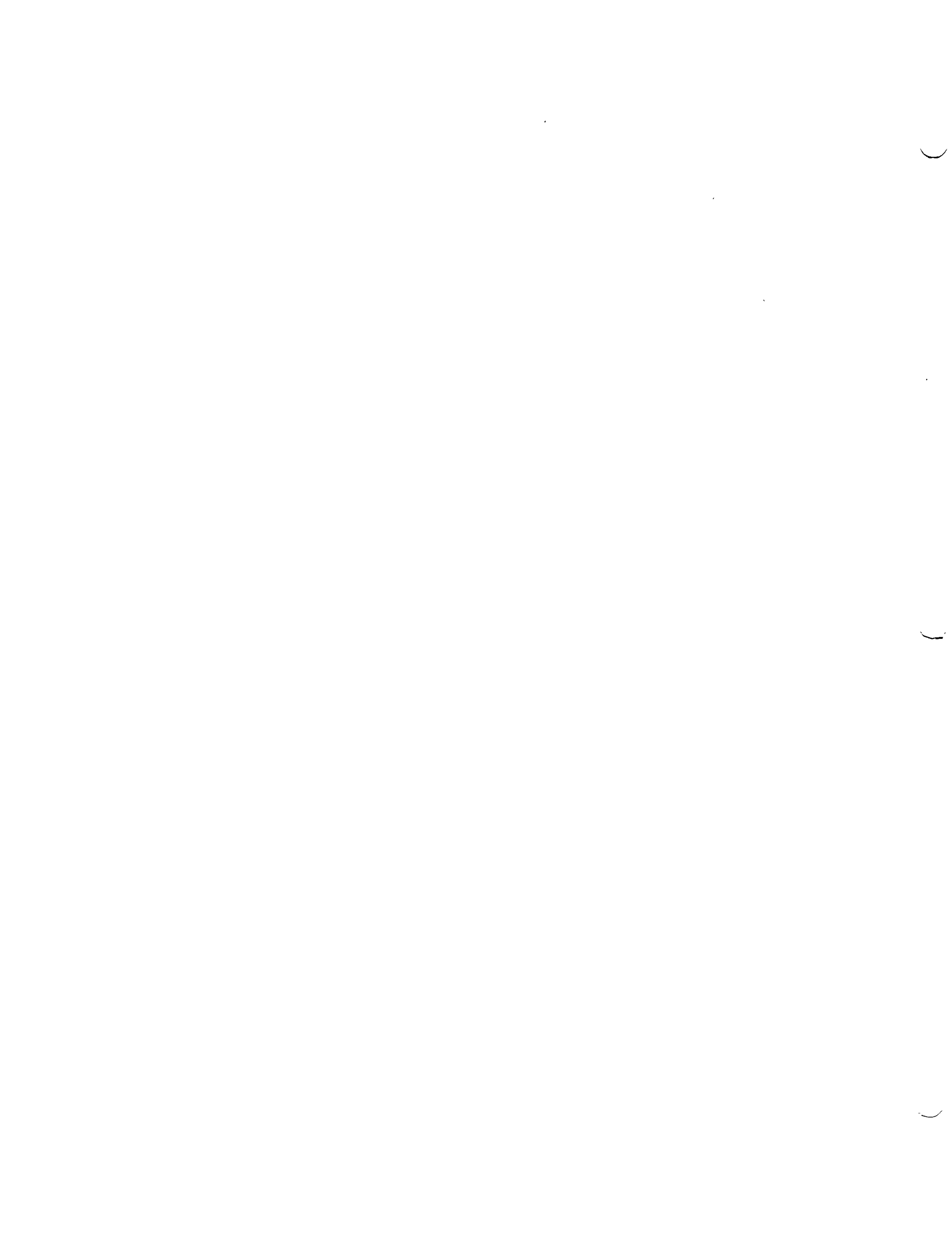
Pursuant to Section 9033 of the Elections Code, I hereby certify that on October 26, 1995 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, ATTORNEYS' CONTINGENT FEES. LIMITS. has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The ATTORNEYS' CONTINGENT FEES. LIMITS. INITIATIVE STATUTE is, therefore, qualified for the March 26, 1996 Primary Election.

ATTORNEYS' CONTINGENT FEES. LIMITS. INITIATIVE STATUTE. Limits fees which plaintiffs' attorneys may collect, if payable contingent on plaintiffs' recovery of compensation, in personal injury, wrongful death, other tort cases. Hourly rates not limited. Requires demand against defendants for compensation with supporting information. Allows defendants to respond with early settlement offer with supporting information. If accepted, plaintiffs' attorneys may not collect contingent fees exceeding 15% of defendants' offer. If not accepted, they may collect fees above 15% only on part of recovery in excess of defendants' early settlement offer. Fiduciary relationship applies to fee agreement between plaintiff, plaintiff's attorney. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The fiscal impact of this measure on state and local governments is unknown. It could result in either net savings or costs, depending largely on how attorneys and their clients respond to contingency limits.

IN WITNESS WHEREOF, I hereunto
set my hand and affix the Great
Seal of the State of California this
26th day of October, 1995.


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

#662

June 14, 1995

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (95064)

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' CONTINGENT FEES. LIMITS.
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 Wednesday, 06/14/95
Elec. C., Sec. 336.
- 3. Petition Sections:
 - a. First day Proponent can circulate Sections for
signatures Wednesday, 06/14/95
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. Elec. C., Sec. 15.

ATTORNEYS' CONTINGENT FEES. LIMITS.
INITIATIVE STATUTE.

June 14, 1995

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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' CONTINGENT FEES. LIMITS.
INITIATIVE STATUTE.

June 14, 1995

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

Michael Johnson
Bill Zimmerman
Bill Westermeyer
Alliance to Revitalize California
3303 Pico Blvd., Suite C
Santa Monica, CA 90405
(310) 449-5390

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 14, 1995

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

JUN 14 1995

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

By William Mitchell
Deputy Secretary of State

Re: Initiative Title and Summary
Subject: ATTORNEY'S CONTINGENT FEES. LIMITS. INITIATIVE STATUTE.
File No: SA 95 RF 0006

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

A handwritten signature in cursive script that reads "Kathleen F. DaRosa".

KATHLEEN F. DaROSA
Initiative Coordinator

KFD:ms
Enclosures

Date: June 14, 1995
File No: SA95RF0006

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

ATTORNEYS' CONTINGENT FEES. LIMITS. INITIATIVE STATUTE.

Limits fees which plaintiffs' attorneys may collect, if payable contingent on plaintiffs' recovery of compensation, in personal injury, wrongful death, other tort cases. Hourly rates not limited. Requires demand against defendants for compensation with supporting information. Allows defendants to respond with early settlement offer with supporting information. If accepted, plaintiffs' attorneys may not collect contingent fees exceeding 15% of defendants' offer. If not accepted, they may collect fees above 15% only on part of recovery in excess of defendants' early settlement offer. Fiduciary relationship applies to fee agreement between plaintiff, plaintiff's attorney. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The fiscal impact of this measure on state and local governments is unknown. It could result in either net savings or costs, depending largely on how attorneys and their clients respond to contingency limits.

ALLIANCE 
to REVITALIZE
CALIFORNIA
A CONSUMER/BUSINESS
PARTNERSHIP FOR TORT REFORM

April 18, 1994

THOMAS PROULX
Chairman

MICHAEL JOHNSON
Executive Director

BILL ZIMMERMAN
Campaign Manager

Ms. Kathleen DaRosa
Initiative Coordinator
Office of the Attorney General
1515 K Street, 6th floor
Sacramento, CA 95814

RECEIVED
APR 19 1995

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Ms. DaRosa:

BOARD OF DIRECTORS

THOMAS PROULX
Co-founder, Intuit

ALAN SHUGART
Chairman and CEO, Seagate Technology

BILL WESTERMEYER
Executive Director, Voter Revolt

ANDREW TOBIAS
Financial Writer and Columnist

MICHAEL JOHNSON
Consumer Insurance Advocate

We are writing to request that the Attorney General prepare a title and summary of the chief purpose and points of the "Contingent Fee Limitation Act," a copy of which is attached. Please note that the enclosed initiative is an amended draft of an earlier initiative (File No. SA 94 RF 0023) filed by the Alliance. For your convenience, we've also enclosed a copy of the initiative showing the changes made.

We have also enclosed the statement required pursuant to Sections 3502 and 5358 of the Elections Code and a list of the addresses where we, the proponents of the measure, are registered to vote.

Sincerely,



Michael Johnson



Bill Zimmerman



Bill Westermeyer

3303 PICO BLVD. SUITE C
SANTA MONICA CA 90405

TELEPHONE (310) 449-5390
FAX (310) 449-5398

Lawyer Contingent Fee Limitation Act

SECTION ONE. This Act shall be known and may be cited as the "Lawyer Contingent Fee Limitation Act".

SECTION TWO. The People of the State of California find and declare:

(a) The contingent-fee arrangements lawyers typically negotiate with claimants, most of whom are inexperienced and unsophisticated purchasers of legal services, often require claimants to pay their lawyers too much for handling tort claims that a defendant has offered to settle.

(b) These excessive fees harm claimants by depriving them of compensation they deserve.

(c) The excessive fees also discourage early settlement of tort claims, forcing injured people to suffer long delays in receiving compensation and clogging the courts with lawsuits that should not have to be filed.

(d) Imposing a cap on the fees lawyers can charge for handling tort claims that a defendant has offered to settle quickly would:

(1) Prevent lawyers from taking an unreasonable portion of the compensation offered or awarded to an injured person.

(2) Encourage defendants to settle claims quickly.

(3) Enable injured people to be compensated more promptly.

(4) Relieve some of the present burden placed on the courts, reducing costs for taxpayers and enabling other legal disputes to be resolved more quickly.

SECTION THREE. Sections 6146.1, 6146.2, 6146.3, 6146.4, 6146.5 and 6146.6 of Article 8.5 of Chapter 4 of Division 3 of the Business and Professions Code are added as follows:

6146.1 [CONTINGENT-FEE LIMITATIONS] (a) An attorney who represents a claimant who has accepted an early settlement offer shall not collect a contingent fee that is greater than 15% of the amount of the early settlement offer.

(b) An attorney who represents a claimant who has rejected or failed to accept an early settlement offer shall not collect a contingent fee that is greater than 15% of the amount of the early settlement offer plus such percentage of the amount recovered in excess of the early settlement offer as was agreed to by the claimant and the attorney.

(c) A claimant's attorney who has failed to make a demand for compensation pursuant to Section 6146.2, or who has omitted from such demand information required under Section 6146.2 of a material nature which the attorney had in his or her possession or which was readily available to him or her, shall not collect a contingent fee greater than 15% of the amount recovered.

(d) A claimant's attorney who has failed to provide his or her client a true and complete copy of an early settlement offer received by the attorney, as required under subdivision (c) of Section 6146.3, shall not collect a contingent fee greater than 15% of the amount recovered.

(e) Reasonable costs and expenses incurred by an attorney up to the time of receipt of an early settlement offer shall be deducted from that settlement offer for purposes of calculating the maximum permissible fee under subdivisions (a) and (b).

(f) An attorney shall disclose, plainly and in writing, to claimants whom the attorney proposes to represent on a contingent-fee basis, (1) the fee limitations imposed by this section and (2) the fact that such limitations are maximum limits and that the attorney and claimant may negotiate a lower fee. The attorney shall also provide to each such claimant a copy of this act.

(g) The fee limitations imposed by this section may not be waived.

(h) The provisions of this section apply to all attorneys practicing in California, including attorneys prosecuting claims filed in federal court, to the maximum extent permitted by federal law.

6146.2 [CLAIMANT'S DEMAND FOR COMPENSATION] (a) An attorney representing a claimant on a contingent-fee basis shall send a demand for compensation by certified mail to each allegedly responsible party. In the event that multiple allegedly responsible parties are known to the attorney, a demand shall be sent on the same date to each such party. The demand shall specify the amount of compensation sought and shall set forth the material facts, documentary evidence, and other information relevant to the demand, including:

(1) The name and address of the claimant or of the person on whose behalf the claim is being made.

(2) A brief description of how the injury or loss occurred.

(3) The names and, if known, the addresses and telephone numbers of all known witnesses to the injury or loss.

(4) Copies of photographs in the claimant's possession which relate to the injury or loss.

(5) The basis for claiming that the party to whom the demand is addressed is responsible or partially responsible for the injury or loss.

(6) A description of the nature of the injury or loss, including the dates and nature of the care or services provided, and the names and addresses of all physicians and other health-care providers that provided medical care or services to the claimant or injured party.

(7) Medical records relating to the injury, including those involving a prior injury or pre-existing medical condition which would be discoverable by the allegedly responsible party during the course of litigation or, in lieu thereof, executed releases authorizing the allegedly responsible party to obtain such records directly from those health-care providers who provided treatment to the claimant.

(8) Documentation of any medical expenses, lost wages, personal losses, and other economic and non-economic losses suffered as a consequence of the injury or loss.

(b) The attorney shall mail copies of each demand to the claimant and to each and every allegedly responsible party.

(c) A claimant's attorney who learns of an additional allegedly responsible party after making a demand for compensation under subdivision (a) shall send a demand for compensation to the newly discovered allegedly responsible party and simultaneously mail a copy of such demand to each of the other allegedly responsible parties and to the claimant.

(d) In the event that a claimant's attorney learns of an additional allegedly responsible party more than 90 days after making a demand for compensation under subdivision (a), the attorney shall not be required to send a demand to that party nor shall the fee limitations imposed under subdivisions (a) and (b) of Section 6146.1 apply with regard to any amount recovered from that party, excepted as next provided. An attorney who fails as a result of a breach of the standard of care to learn of an additional allegedly responsible party within 90 days of sending a demand for compensation to another allegedly responsible party shall not collect a fee in excess of that allowed under subdivisions (a) and (b) of Section 6146.1 with respect to any amount recovered from such additional allegedly responsible party.

6146.3 [EARLY SETTLEMENT OFFER] (a) An offer by an allegedly responsible party to settle a claim shall constitute an early settlement offer if the allegedly responsible party:

(1) makes the settlement offer within 60 days of receipt of a demand for compensation;

(2) communicates the offer in writing and by certified mail to the claimant's attorney;

(3) leaves the offer open for acceptance for a minimum of 30 days from the date of its receipt by the claimant's attorney; and

(4) includes with the offer material information and documentary evidence in its possession relating to the alleged injury or loss upon which the allegedly responsible party relied in making the settlement offer, including:

(A) Copies of photographs which relate to the injury or loss.

(B) The basis for claiming, if it is so claimed, that the allegedly responsible party is not responsible, or is less responsible than is alleged by the claimant, for the alleged injury or loss.

(C) Information regarding injuries or losses suffered by the claimant.

(b) An allegedly responsible party may amend or issue an additional early settlement offer during the 60-day period set forth in subdivision (a). An amended or additional early settlement offer shall be subject to the requirements set forth in subdivision (a).

(c) A settlement offer that is made to a claimant prior to receipt of a demand for compensation, and which conforms to the requirements of subdivision (a), shall be deemed an early settlement offer and shall have the same effect as if it were a response to a demand for compensation.

(d) An allegedly responsible party is under no obligation to issue a response to a demand for compensation. The fact that a demand for compensation was or was not made, the fact that an early settlement offer was or was not made, and the amount of any demand or settlement offer made are inadmissible pursuant to Section 1152 of the Evidence Code.

(e) An attorney who receives an early settlement offer shall provide a true and complete copy of such offer to his or her client.

6146.4 [ENFORCEMENT] A claimant who is charged a contingent fee that is higher than that authorized under Section 6146.1, except as provided under subdivision (d) of Section 6146.2, may maintain an action against that attorney. Such claimant is entitled to recover from such attorney three times the amount overcharged or \$10,000, whichever is greater.

6146.5 [FIDUCIARY RELATIONSHIP] A fiduciary relationship applies with respect to any fee agreement between an attorney and a claimant.

6146.6 [DEFINITIONS] For purposes of Sections 6146.1 through 6146.5, the following terms have the following meanings:

(1) "Allegedly responsible party" means a person, partnership, or corporation alleged by a claimant to be responsible for at least some portion of an injury or loss alleged by that claimant.

(2) "Amount recovered" means the total compensation, including the reasonable value of non-monetary compensation, that an attorney has obtained on behalf of a claimant through settlement, arbitration, or judgment, minus the reasonable costs and expenses incurred by the attorney in prosecuting or settling the claim.

(3) "Claimant" means any natural person or persons seeking compensation in connection with a tort claim including, but not limited to, a claim for personal injury or wrongful death. However, a claimant does not include any person or persons seeking compensation in connection with a claim covered by Section 6146, a claim for workers' compensation benefits, or a case in which a court has certified the existence of a class action pursuant to state or federal law.

(4) "Contingent fee" means compensation, however calculated, that is payable only if an amount is recovered.

(5) "Early settlement offer" means a settlement offer made in accordance with Section 6146.3.

SECTION FOUR. (a) Except as provided in subdivision (b) of this section, the provisions of this initiative shall not be amended except by a statute that becomes effective only when approved by the electorate.

(b) The provisions of this initiative may be amended only to further its purposes, by a statute passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership of each house concurring. In any judicial action with respect to such amendment, the court shall exercise its independent judgment and shall determine whether the amendment is supported by findings clearly and convincingly establishing that the amendment furthers the initiative's purposes.

SECTION FIVE. If any provision of this act or application thereof 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.

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