1996

Attorneys' Contingent Fees. Limits.

Attorneys' Contingent Fees. Limits. Initiative Statute.

Official Title and Summary Prepared by the Attorney General

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 prompt 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' prompt settlement offer.
- Fiduciary relationship applies to fee agreement between plaintiff, plaintiff's attorney.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Adoption of this measure would have an unknown net fiscal impact on state and local governments.

Analysis by the Legislative Analyst

Background

An injured party (the "plaintiff") may sue a person, business, or government (the "defendant") to recover damages for personal injury, death, or property loss. These types of cases are referred to as "tort" cases. The amount of damages to be paid in a tort case may be determined by negotiation and settlement, court trial, or arbitration. Settlement may occur at any stage of the process.

Typically, tort cases are handled on a "contingent fee" basis, which means that the plaintiff's attorney is paid a percentage of the settlement or judgment only if the case is won or settled in favor of the plaintiff. Generally, attorney contingent fees are negotiated between the plaintiff and the attorney. Current law limits attorney contingent fees for tort cases only in medical malpractice cases. In all cases, attorneys are required by law to provide written contracts that specify, among other things, the contingent fee agreed upon and the extent to which the plaintiff may be required to compensate the attorney for matters not covered in the contract. The court may reduce a contingent fee if it finds the fee unjust.

Proposal

This measure limits the amount of contingent fees attorneys representing plaintiffs could charge their clients when the defendant makes a prompt offer to settle the tort claim. Specifically, if the plaintiff accepts a prompt settlement offer, the attorney contingent fee would be limited to no more than 15 percent of the offer. If the plaintiff rejects a prompt settlement offer, the fee would then be limited to no more than 15 percent of the prompt settlement offer, plus an additional amount agreed to by the attorney and client. The additional amount would be a percentage of the recovery in excess of the prompt settlement offer. Contingent fees also would be limited to no more than 15 percent in those cases where attorneys do not fully disclose prompt settlement offers to their clients.

The measure provides that these fee limitations may not be waived.

The measure requires the plaintiff's attorney to disclose to his or her client (1) the fee limitations imposed by this measure and (2) that lower fee rates can be negotiated. The measure also requires these attorneys to disclose all offers of prompt settlement of tort disputes to their clients.

Fiscal Effect

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 its provisions. The responses could affect the number of cases filed, the number of cases settled before trial, and the amount of the awards in cases against state and local governments.

For the text of Proposition 202 see page 70

202 Attorneys' Contingent Fees. Limits. Initiative Statute.

Argument in Favor of Proposition 202

Proposition 202 limits what lawyers can take out of your pocket when you win a lawsuit that settles quickly. Along with Proposition 200 and Proposition 201, it'll stop unfair legal practices and runaway lawsuits from costing California more jobs and more money.

There are too many phony lawsuits in California. And in legitimate cases, lawyers often take too much, leaving victims too little.

In California, seven lawsuits are filed every minute of every working day—nearly one million every year. Why? Because close to one out of every five lawyers in America lives in California. In 1992, they pocketed $16.3 billion in fees.

With so many lawyers competing for business, it's inevitable that some file unnecessary lawsuits looking for a quick buck. They ruin our business climate and create a huge backlog in our courts. Proposition 202 takes away the incentives for filing phony lawsuits.

Proposition 202 also encourages faster settlements of legitimate cases, and puts more money in victims' pockets. Usually, lawyers who represent deserving victims are only paid if they win. Typically, they take between 30% and 40% of the award, plus expenses. That's very steep, but lawyers argue that if they work for several years on a case, they deserve a big fee.

That may be true, but some cases settle quickly. The lawyers do little for their clients except write letters demanding payment. Do they still deserve big fees? No. But that's what many take. It's not fair because the dollars come right out of the pockets of the victims.

Proposition 202 protects legitimate victims. Here's how:

- If a case settles quickly (within 60 days), your lawyer can take no more than 15% as a fee.
- You, not the lawyer, decide whether or not to accept a settlement.
- If you reject an early settlement, or if no settlement is offered, your lawyer may be paid for the additional work required. In that event, your lawyer can charge whatever you and he have agreed on. However, the 15% limit still applies to the amount originally offered.
- Lawyers failing to inform their clients about this system are severely punished.

This simple proposition solves a number of problems in California:

- Legitimate claims will be settled quicker. Wrongdoers will make fair settlement offers (to avoid legal expenses) because victims will be more likely to accept those offers if lawyers' fees are limited to 15%.
- Our clogged court system can handle legitimate cases faster.
- More money will go to deserving victims and less to lawyers.
- Lawyers trying to get rich quick won't be as tempted to file frivolous lawsuits hoping to settle fast and walk away with 30% to 40%. This will reduce the number of phony lawsuits damaging our business climate.

Proposition 202 does nothing to discourage the serious and legitimate cases that deserve their day in cour Good, honest lawyers will still represent genuine victin

Proposition 202 is good for consumers, good for victims, and good for California. THE ONLY LOSERS ARE THE LAWYERS.

MARY ANDERSON
Executive Director, California Business Roundtable

GARRY DELOSS
Former Executive Director, California Consumer Organization

THOMAS PROULX
Author of* Quicken *personal finance software

Rebuttal to Argument in Favor of Proposition 202

"Contingent fees in negligence cases are important to consumers, because they enable consumers who can't afford to pay a lawyer in advance, to have access to the courts when they are injured." Harry M. Snyder, Consumers Union, Publisher of *Consumer Reports*.

Propositions 201 and 202 are two parts of the same rotten deal. One makes you pay for their lawyer. And the other limits your lawyer without limiting theirs.

Why didn't the corporations who paid millions for Proposition 202 include their own lawyers?

Because they don't want to limit the "justice" they can "buy" with their corporate lawyers.

Why didn't these corporations limit their own lawsuits?

Because "businesses file ten times as many lawsuits as injured consumers," according to a 1995 study by Citizen Action, one of the nation's leading consumer organizations.

These same corporations say that Proposition 201 won't "affect lawsuits over dangerous products."

But they wrote Proposition 202 to rig the system against lawsuits over *any* dangerous product.

Their argument for Proposition 202 is that lawyers "pocketed" too much money.

Easy for them to say . . .

In Proposition 201 they took care of their legal costs by making consumers put up what could be millions in deposits to pay their corporate lawyers before anyone can sue them.

Under Propositions 201 and 202, the only winners are the corporations that paid to put them on the ballot . . . you and every other consumer lose.

MICHAEL SHAMES
Executive Director, Utility Consumer Action Network (UCAN)

LOIS WELLINGTON
President, Congress of California Seniors

Argument Against Proposition 202

This is Part Two of "The Attack of the Stock Swindlers." Their first initiative, Proposition 201, attacks your pension and retirement savings by preventing you from holding swindlers responsible and getting your money back.

Proposition 202 limits the Contingent Fees of the lawyers for consumers and people with savings or retirement funds.

What are Contingent Fees?

Are those the big fees that celebrity criminal lawyers get paid? No.

Does Proposition 202 limit those fees? No.

Are those the big fees that corporation lawyers got when they defended the Exxon Valdez Oil Spill? No.

Does Proposition 202 limit those fees? No.

Are those the big fees that drunk drivers pay their attorneys to get them off? No.

Does Proposition 202 limit those fees? No.

Are those the big fees the lawyers got for defending Charles Keating and the Lincoln Savings and Loan rip-off? No.

Does Proposition 202 limit those fees? No.

Are those the big fees that insurance companies pay their lawyers to drag out cases for years delaying payment of valid claims? No.

Does Proposition 202 limit those fees? No.

Are those the big fees that the lawyers got for defending the producers of flammable pajamas, defective heart valves, or exploding automobiles? No.

Does Proposition 202 limit those fees? No.

Well then, what are the Contingent Fees that are limited under Proposition 202? And who are Contingent Fee Attorneys?

Contingent Fee Attorneys are the consumers' lawyers who get unsafe automobiles off the road, protect people's retirement savings from investment frauds, and force polluters to pay for cleaning up their poisonous waste.

Contingent Fee attorneys only get paid when consumers recover their money.

Contingent Fee consumer attorneys are not very popular on Wall Street or in Silicon Valley Board Rooms because they fight against investment fraud schemes, insider stock trading, pension ripoffs and toxic pollution.

Much of the money behind Proposition 202 comes from those Silicon Valley Executives and Wall Street Corporations that have had to pay to settle lawsuits in which they were accused of cheating small investors.

But these corporate executives know that lawyers aren't popular with voters. So these executives figure they can get you to vote with them, and *limit your lawyer, not theirs.*

This initiative only limits people who can't afford to pay a lawyer up front. It doesn't limit the hourly fees the corporations or insurance companies or the Charles Keatings pay their lawyers . . . $300 per hour. Or more.

So how will ordinary people protect themselves and their families from drunk drivers and greedy manufacturers . . . and how will they protect their savings and retirement funds from unscrupulous speculators if they can't pay a lawyer by the hour? They won't be able to.

That's the point. It's why modern day stock swindlers want Propositions 201 and 202 to pass.

Say "No" to them. Vote "NO" on Propositions 201 and 202.

CANDACE LIGHTNER
Founder, Mothers Against Drunk Driving (MADD)
HARVEY ROSENFIELD
Director, Foundation For Taxpayer and Consumer Rights

Rebuttal to Argument Against Proposition 202

Oh, nonsense. If Proposition 202 passes, consumers will have the same aggressive legal representation as now. It'll just cost less. That means more money in victims' pockets, less for personal injury lawyers.

So lawyers are spending millions to defeat this. Candace Lightner is just wrong on this issue. Harvey Rosenfield, previously funded by personal injury lawyers, is a lawyer who charges $295 an hour.

Proposition 202 simply limits legal fees WHEN A PROMPT SETTLEMENT OFFER IS MADE. If no offer is made, nothing changes. If an offer is made but it's too low, then you can pay your lawyer whatever you want on the extra money he gets you.

I worked for Public Citizen, the consumer group founded by Ralph Nader. I support Proposition 202 because it protects consumers. When a powerful industry hurt consumers, we tried to stop the abuse. Well, personal injury lawyers are one of the most powerful groups in America and THEY'RE taking advantage of consumers.

I helped write Proposition 202 because personal injury lawyers are ripping us off. If a lawyer takes a few hours to write a letter demanding $100,000 for your injury, and the wrongdoer agrees to pay, why should the lawyer take $33,000? Proposition 202 would limit him to $15,000. Isn't that enough for writing a letter?

For the lawyers, the system's great. They'll say anything to keep it the way it is. But what about the victims?

MICHAEL JOHNSON
Policy Director, Voter Revolt to Cut Insurance Rates

~~(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the limited partnership or its partners.~~

~~(2) That the moving party, if other than the limited partnership, did not participate in the transaction complained of in any capacity. The court on application of the limited partnership or any defendant may, for good cause shown, extend the 30-day period for an additional period not exceeding 60 days.~~

~~(c) At the hearing upon any motion pursuant to subdivision (b), the court shall consider evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited partnership and the moving party which will be incurred in the defense of the action. If the court determines after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed fifty thousand dollars ($50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be incurred by the moving party and the limited partnership in connection with the action. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The amount of the security may thereafter be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or is excessive, but the court may not in any event increase the total amount of the security beyond fifty thousand dollars ($50,000) in the aggregate for all defendants. If the court, upon any such motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to such defendant or defendants, unless the security required by the court shall have been furnished within any reasonable time as may be fixed by the court. The limited partnership and the moving party shall have recourse to the security in such amount as the court shall determine upon the termination of the action.~~

~~(d) If the plaintiff shall, either before or after a motion is made pursuant to subdivision (b), or any order or determination pursuant to such motion, post good and sufficient bond or bonds in the aggregate amount of fifty thousand dollars ($50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of this section and with any order for security theretofore made pursuant hereto, and any such motion then pending shall be dismissed and no further or additional bond or other security shall be required.~~

~~(e) If a motion is filed pursuant to subdivision (b), no pleadings need be filed by the limited partnership or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.~~

SECTION 7. Section 17501 of the Corporations Code is amended to read:

17501. ~~(a)~~ No action shall be instituted or maintained in right of any domestic or foreign limited liability company by any member of the limited liability company unless both of the following conditions exist:

~~(1)~~ *(a)* The plaintiff alleges in the complaint that plaintiff was a member of record, or beneficiary, at the time of the transaction or any part thereof of which plaintiff complains, or that plaintiff's interest thereafter devolved upon plaintiff by operation of law from a member who was a member at the time of the transaction or any part thereof complained of. Any member who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court shall consider any evidence, by affidavit or testimony, as it deems material, of all of the following:

~~(A)~~ *(1)* There is a strong prima facie case in favor of the claim asserted on behalf of the limited liability company.

~~(B)~~ *(2)* No other similar action has been or is likely to be instituted.

~~(C)~~ *(3)* The plaintiff acquired the interest before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains.

~~(D)~~ *(4)* Unless the action can be maintained, the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty.

~~(E)~~ *(5)* The requested relief will not result in unjust enrichment of the limited liability company or any member of the limited liability company.

~~(2)~~ *(b)* The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the managers the action plaintiff desires or the reasons for not making that effort, and alleges further that plaintiff has either informed the limited liability company or the managers in writing of the ultimate facts of each cause of action against each defendant or delivered to the limited liability company or the managers a true copy of the complaint that plaintiff proposes to file.

~~(b) In any action referred to in subdivision (a), at any time within 30 days af~~ service of summons upon the limited liability company or upon any defend~~ who is a manager of the limited liability company or held that position at the tn... of the acts complained of, the limited liability company or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish security as hereinafter provided. The motion shall be based upon one or both of the following grounds:~~

~~(1) That there is no reasonable possibility that the prosecution of the cause of the action alleged in the complaint against the moving party will benefit the limited liability company or its members.~~

~~(2) That the moving party, if other than the limited liability company, did not participate in the transaction complained of in any capacity. The court, on application of the limited liability company or any defendant, may, for good cause shown, extend the 30-day period for an additional period not exceeding 60 days.~~

~~(c) At the hearing upon any motion pursuant to subdivision (b), the court shall consider evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited liability company and the moving party that will be incurred in the defense of the action.~~

~~If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed fifty thousand dollars ($50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, that may be incurred by the moving party and the limited liability company in connection with the action. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The amount of the security may thereafter be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or is excessive, but the court may not in any event increase the total amount of the security beyond fifty thousand dollars ($50,000) in the aggregate for all defendants. If the court, upon a motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to that defendant or defendants, unless the security required by the court has been furnished within any reasonable time as may be fixed by the court. The limited liability company and the moving party shall have recourse to the security in the amount that the court determines upon the termination of the action.~~

~~(d) If the plaintiff, either before or after a motion is made pursuant to subdivision (b), or any order or determination pursuant to that motion, posts and sufficient bond or bonds in the aggregate amount of fifty thousand dol ($50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff shall be deemed to have complied with the requirements of this section and with any order for security made pursuant to this section. Any motion then pending shall be dismissed and no further or additional bond or other security shall be required.~~

~~(e) If a motion is filed pursuant to subdivision (b), no pleadings need be filed by the limited liability company or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.~~

SECTION 8. (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 as to whether or not the amendment satisfies the requirements of this subdivision.

SECTION 9. 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.

Proposition 202: 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 sections 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

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 cost 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% the amount of the early settlement offer plus such percentage of the amount overed 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 loss.

) The basis for claiming that the party to whom the demand is addressed is esponsible 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.