

SENATE BILL NO. _____

AN ACT concerning attorneys; relating to contingency fee agreements; limitations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) In any claim or civil action to recover damages resulting from personal injury, wrongful death or damage to property, the attorney and the claimant may provide by contract that the fee for the attorney shall be paid contingent upon successful prosecution or settlement of the claim.

(b) (1) Except as provided in subsection (c), in any contingency fee agreement described in subsection (a), such fee shall be the exclusive method for payment of the attorney by the claimant and shall not exceed an amount equal to a percentage of the net amount recovered as follows: (1) 33 $\frac{1}{3}$ % of the first \$300,000; (2) 25% of the next \$300,000; (3) 20% of the next \$300,000; (4) 15% of the next \$300,000; and (5) 10% of any amount that exceeds \$1,200,000.

(2) This limitation applies regardless of whether: The recovery is by settlement, arbitration or judgment; an appeal is involved; or the resolution occurs prior to commencement of litigation.

(c) (1) A claimant may waive the percentage limitations provided in subsection (b). Prior to a claimant entering into a contingency fee agreement that provides for a fee that exceeds the percentage limitations, the attorney shall:

(A) Explain the percentage limitations to the claimant and the reasons the attorney is unable to abide by the limitations;

(B) advise the claimant of the claimant's right to seek representation by another

attorney willing to abide by the percentage limitations; and

(C) allow the claimant a sufficient period of time to review the proposed contingency fee agreement and, if the claimant wishes, seek representation by another attorney prior to entering into such agreement.

(2) A waiver of the percentage limitations provided in subsection (b) shall be valid only if the contingency fee agreement:

(A) Is in writing;

(B) sets forth in full the fee schedule provided in subsection (b);

(C) contains a conspicuous statement, printed in boldface type at least twelve points in size, in substantially the following form: "I UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN THE KANSAS STATUTES ANNOTATED LIMITS THE AMOUNT OF ATTORNEY FEES PAYABLE BY A CLAIMANT AND THAT THE STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN ENACTING THE FEE SCHEDULE WAS TO CONFER A BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND VOLUNTARILY WAIVE THE FEE SCHEDULE IN THIS CLAIM OR CIVIL ACTION."; and

(D) is signed and acknowledged by the claimant before a notary public or other person authorized to take acknowledgments.

(d) If a claimant waives the percentage limitations provided in subsection (b), the provisions of this subsection shall apply.

(1) The total fee under the contingency fee agreement shall not exceed $33\frac{1}{3}\%$ of the net

amount recovered.

(2) The claimant shall not be required to repay any costs that the attorney incurred in investigating and prosecuting the claim or civil action if there is no recovery.

(e) Any fee that exceeds the percentage limitations provided in subsection (b) shall be payable to an attorney only if:

(1) The claimant properly waived such limitations pursuant to subsection (c);

(2) the contingency fee agreement complies with the requirements of subsection (d);

and

(3) a court finds that the claim or civil action is so substantially complex, unique or different from other wrongful death, personal injury or property damage claims or civil actions as to warrant a deviation from such percentage limitations. Factors that a court may consider in analyzing whether a claim or civil action meets the requirements of this subsection include, but are not limited to, if the claim or civil action: (A) Involves complex factual medical or legal issues; (B) involves serious permanent personal injury or death; (C) is likely to require extensive investigation and discovery proceedings, including multiple depositions; or (D) requires independent expert witness testimony.

(f) As used in this section:

(1) "Independent expert witness testimony" means testimony, whether at trial or in a deposition, from an expert who has not participated in the care of the claimant and has not participated in any official investigation of the incident involved; and

(2) "net amount recovered" means the amount recovered after payment of liens and other expenses.

(g) Nothing in this section shall be construed as modifying or otherwise limiting an attorney's responsibilities under the rules of the Kansas supreme court relating to attorneys.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.