

**SENATE BILL No. 151**

By Committee on Judiciary

2-4

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

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

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

10 (b) (1) Except as provided in subsection (c), in any contingency fee  
11 agreement described in subsection (a), such fee shall be the exclusive  
12 method for payment of the attorney by the claimant and shall not exceed  
13 an amount equal to a percentage of the net amount recovered as follows:

- 14 (A) 33<sup>1</sup>/<sub>3</sub>% of the first \$300,000;
- 15 (B) 25% of the next \$300,000;
- 16 (C) 20% of the next \$300,000;
- 17 (D) 15% of the next \$300,000; and
- 18 (E) 10% of any amount that exceeds \$1,200,000.

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

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

- 26 (A) Explain the percentage limitations to the claimant and the reasons  
27 the attorney is unable to abide by the limitations;
- 28 (B) advise the claimant of the claimant's right to seek representation  
29 by another attorney willing to abide by the percentage limitations; and
- 30 (C) allow the claimant a sufficient period of time to review the  
31 proposed contingency fee agreement and, if the claimant wishes, seek  
32 representation by another attorney prior to entering into such agreement.

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

- 35 (A) Is in writing;
- 36 (B) sets forth in full the fee schedule provided in subsection (b);

1 (C) contains a conspicuous statement, printed in boldface type at least  
2 12 points in font size, in substantially the following form: "I  
3 UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN THE  
4 KANSAS STATUTES ANNOTATED LIMITS THE AMOUNT OF  
5 ATTORNEY FEES PAYABLE BY A CLAIMANT AND THAT THE  
6 STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE  
7 JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED  
8 BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE  
9 INTENT IN ENACTING THE FEE SCHEDULE WAS TO CONFER A  
10 BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND  
11 VOLUNTARILY WAIVE THE FEE SCHEDULE IN THIS CLAIM OR  
12 CIVIL ACTION."; and

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

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

17 (1) The total fee under the contingency fee agreement shall not  
18 exceed 33<sup>1</sup>/<sub>3</sub>% of the net amount recovered.

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

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

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

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

28 (3) a court finds that the claim or civil action is so substantially  
29 complex, unique or different from other wrongful death, personal injury or  
30 property damage claims or civil actions as to warrant a deviation from  
31 such percentage limitations. Factors that a court may consider in analyzing  
32 whether a claim or civil action meets the requirements of this subsection  
33 include, but are not limited to, if the claim or civil action:

34 (A) Involves complex factual medical or legal issues;

35 (B) involves serious permanent personal injury or death;

36 (C) is likely to require extensive investigation and discovery  
37 proceedings, including multiple depositions; or

38 (D) requires independent expert witness testimony.

39 (f) As used in this section:

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

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

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

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