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SENATE BILL 6398

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State of Washington

52nd Legislature

1992 Regular Session

By Senators West, Rasmussen, Nelson, L. Smith, Bailey, Craswell, Barr, Bluechel, Metcalf, Oke, Saling, Patterson and Thorsness

Read first time 01/28/92. Referred to Committee on Law & Justice.

1 AN ACT Relating to limitations on attorneys' contingent fees in  
2 actions for injuries resulting from health care; amending RCW 7.70.070;  
3 and adding a new section to chapter 7.70 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each  
6 amended to read as follows:

7 The court shall, in any action under this chapter, determine the  
8 reasonableness of each party's fixed attorneys fees. The court shall  
9 take into consideration the following:

10 (1) The time and labor required, the novelty and difficulty of the  
11 questions involved, and the skill requisite to perform the legal  
12 service properly;

1 (2) The likelihood, if apparent to the client, that the acceptance  
2 of the particular employment will preclude other employment by the  
3 lawyer;

4 (3) The fee customarily charged in the locality for similar legal  
5 services;

6 (4) The amount involved and the results obtained;

7 (5) The time limitations imposed by the client or by the  
8 circumstances;

9 (6) The nature and length of the professional relationship with the  
10 client;

11 (7) The experience, reputation, and ability of the lawyer or  
12 lawyers performing the services(;

13 ~~(8) Whether the fee is fixed or contingent)).~~

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.70 RCW  
15 to read as follows:

16 (1) As used in this section:

17 (a) "Contingency fee agreement" means an agreement that an  
18 attorney's fee is dependent or contingent, in whole or in part, upon  
19 successful prosecution or settlement of a claim or action, or upon the  
20 amount of recovery.

21 (b) "Properly chargeable disbursements" means reasonable expenses  
22 incurred and paid by an attorney on a client's behalf in prosecuting or  
23 settling a claim or action.

24 (c) "Recovery" means the amount to be paid to an attorney's client  
25 as a result of a settlement or money judgment.

26 (2) In a claim or action filed under this chapter for personal  
27 injury or wrongful death based upon the alleged conduct of another, if  
28 an attorney enters into a contingency fee agreement with his or her  
29 client and if a money judgment is awarded to the attorney's client or

1 the claim or action is settled, the attorney's fee shall not exceed the  
2 amounts set forth in (a) and (b) of this subsection:

3 (a) Not more than forty percent of the first five thousand dollars  
4 recovered, then not more than thirty-five percent of the amount more  
5 than five thousand dollars but less than twenty-five thousand dollars,  
6 then not more than twenty-five percent of the amount of twenty-five  
7 thousand dollars or more but less than two hundred fifty thousand  
8 dollars, then not more than twenty percent of the amount of two hundred  
9 fifty thousand dollars or more but less than five hundred thousand  
10 dollars, and not more than ten percent of the amount of five hundred  
11 thousand dollars or more.

12 (b) As an alternative to (a) of this subsection, not more than one-  
13 third of the first two hundred fifty thousand dollars recovered, not  
14 more than twenty percent of an amount more than two hundred fifty  
15 thousand dollars but less than five hundred thousand dollars, and not  
16 more than ten percent of an amount more than five hundred thousand  
17 dollars.

18 (3) The fees allowed in subsection (2) of this section are computed  
19 on the net sum of the recovery after deducting from the recovery the  
20 properly chargeable disbursements. In computing the fee, the costs as  
21 taxed by the court are part of the amount of the money judgment. In  
22 the case of a recovery payable in installments, the fee is computed  
23 using the present value of the future payments.

24 (4) A contingency fee agreement made by an attorney with a client  
25 must be in writing and must be executed at the time the client retains  
26 the attorney for the claim or action that is the basis for the  
27 contingency fee agreement. An attorney who fails to comply with this  
28 subsection is barred from recovering a fee in excess of the lowest fee  
29 available under subsection (2) of this section, but the other  
30 provisions of the contingency fee agreement remain enforceable.

1           (5) An attorney shall provide a copy of a contingency fee agreement  
2 to a client at the time the contingency fee agreement is executed. An  
3 attorney shall include his or her usual and customary hourly rate of  
4 compensation in a contingency fee agreement.

5           (6) An attorney who enters into a contingency fee agreement that  
6 violates subsection (2) of this section is barred from recovering a fee  
7 in excess of the attorney's reasonable actual attorney fees based on  
8 his or her usual and customary hourly rate of compensation, up to the  
9 lowest amount allowed under subsection (2) of this section, but the  
10 other provisions of the contingency fee agreement remain enforceable.