

SENATE BILL No. 446

By Committee on Judiciary

2-14

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 (1) 33¹/₃% of the first \$300,000; (2) 25% of the next \$300,000; (3) 20% of
15 the next \$300,000; (4) 15% of the next \$300,000; and (5) 10% of any
16 amount that exceeds \$1,200,000.

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

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

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

26 (B) advise the claimant of the claimant's right to seek representation
27 by another attorney willing to abide by the percentage limitations; and

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

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

33 (A) Is in writing;

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

35 (C) contains a conspicuous statement, printed in boldface type at least
36 12 points in font size, in substantially the following form: "I

1 UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN THE
2 KANSAS STATUTES ANNOTATED LIMITS THE AMOUNT OF
3 ATTORNEY FEES PAYABLE BY A CLAIMANT AND THAT THE
4 STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE
5 JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED
6 BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE
7 INTENT IN ENACTING THE FEE SCHEDULE WAS TO CONFER A
8 BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND
9 VOLUNTARILY WAIVE THE FEE SCHEDULE IN THIS CLAIM OR
10 CIVIL ACTION."; and

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

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

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

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

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

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

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

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

36 (f) As used in this section:

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

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

43 (g) Nothing in this section shall be construed as modifying or

- 1 otherwise limiting an attorney's responsibilities under the rules of the
- 2 Kansas supreme court relating to attorneys.
- 3 Sec. 2. This act shall take effect and be in force from and after its
- 4 publication in the statute book.