



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 191 (as introduced 2-22-11)  
Sponsor: Senator Bruce Caswell  
Committee: Judiciary

Date Completed: 3-7-11

**CONTENT**

**The bill would amend the Revised Judicature Act to limit attorneys' contingent fees in personal injury or wrongful death cases to 33% of the first \$1.0 million recovered, 15% of the next \$4.0 million recovered, and 10% of any amount recovered over \$5.0 million.**

The Act leaves the compensation of attorneys at law to the express or implied agreement of the parties, subject to regulation of the Supreme Court. The bill would leave an attorney's compensation to the express or implied agreement of the attorney and his or her client, except as otherwise provided by law or by Supreme Court regulation.

Under the bill, if an attorney entered into an express or implied agreement to prosecute a claim for personal injury or wrongful death that provided that the attorney's compensation was contingent in whole or in part on successful prosecution or settlement of the claim or on the amount of recovery, the attorney could not receive, retain, or share a fee that was more than 33% of the first \$1.0 million recovered, 15% of the next \$4.0 million recovered, and 10% of any amount recovered over \$5.0 million.

The maximum fee would have to be calculated using the net amount recovered, including taxed costs and interest included in or on the judgment, but not including disbursements properly chargeable to the enforcement or prosecution of the claim. If the recovery were by a settlement or judgment payable in installments, the maximum fee would have to be calculated using the present value of the future payments.

Before entering into a contingent fee agreement in a personal injury or wrongful death case, an attorney would have to advise the client that an attorney could be employed under a different fee arrangement in which he or she was compensated for the reasonable value of services performed, such as on an hourly or per diem basis. This provision would not require an attorney to enter into a fee agreement that he or she did not wish to enter into.

A contingent fee agreement in a personal injury or wrongful death case would have to be in writing, stating the method by which the fee was to be determined, the nature of disbursements that would be deducted from the recovery, and the required advice regarding the availability of a different fee arrangement. A copy of the agreement would have to be given to the client.

MCL 600.919

## **BACKGROUND**

Michigan Court Rule 8.121 limits attorneys' contingent fees in claims or actions for personal injury or wrongful death to a maximum allowable fee of one-third of the amount recovered. In any claim or action for personal injury or wrongful death based upon the alleged conduct of another, in which an attorney enters into an express or implied agreement in which the attorney's compensation is dependent or contingent in whole or in part upon successful prosecution or settlement or upon the amount of recovery, the receipt, retention, or sharing by the attorney of compensation that is equal to or less than the maximum allowable fee is deemed to be fair and reasonable.

The rule specifies that an attorney may enter into contingent fee arrangements calling for less compensation than the maximum allowed.

The rule requires the amount of the fee to be computed on the net sum recovered after deducting all disbursements properly chargeable to the enforcement of the claim or prosecution of the action. The costs as taxed and any interest included in or upon the amount of a judgment must be deemed part of the amount received.

In the case of a settlement payable in installments, the amount of the maximum allowable fee must be computed using the present value of the future payments. If an annuity contract will be used to fund the future payments, "present value" is the actual cost of purchasing the contract. If the defendant will make the future payments directly, "present value" is the amount that an entity of the same financial standing as the defendant would pay for an annuity contract.

Before entering into a contingent fee arrangement, the rule requires an attorney to advise a client that attorneys may be employed under other fee arrangements in which the attorney is compensated for the reasonable value of the services performed, such as on an hourly or per diem basis. The method of compensation used by an individual attorney remains his or her option, and the rule does not require an attorney to accept compensation in a manner other than that chosen by him or her.

If an attorney receives, retains, or shares compensation in excess of the maximum allowable fee under the rule, that action will be considered the charging of a "clearly excessive fee" in violation of the Michigan Rules of Professional Conduct.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

S1112\191sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.