

March 15, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative which establishes a limitation on contingency fees collected by attorneys for tort claims, personal injury claims, or wrongful death claims (File No. SA2005RF0064). (Revised analysis.)

Proposal

A contingency fee agreement is a method of paying an attorney for legal representation whereby, instead of paying an hourly rate, the attorney receives a percentage of the money that the client obtains after settling or winning the case. Current law limits the amount of contingency fees attorneys can collect in medical malpractice cases. In all other cases, there is no limitation on contingency fees.

This measure would (1) limit the amount that attorneys are able to collect in contingency fees in connection with tort, personal injury, or wrongful death cases to 20 percent; (2) prohibit attorneys from shifting litigation and expert witness fees to the client for payment as part of the contingency fee agreement; and (3) preclude attorneys from recovering referral fees.

Fiscal Effects

Court Operations. The state pays for court operations using revenues from a number of sources, including court filing fees and the state General Fund. If the measure were to cause a significant decrease in the number of civil case filings, this would reduce the amount of filing fee revenues collected by the state, thereby placing pressure on the state General Fund to cover a greater share of the statewide costs of operating the courts. Whether, and to what extent, the measure would actually reduce the number of filings is unknown. This would depend on the behavior of attorneys and injured persons. For example, if attorneys no longer take certain cases because of the limits imposed on attorney fees by the measure, this could reduce the number of case filings. On the other hand, some injured persons who lack legal representation because of the limitation proposed by the measure may choose to

represent themselves. For these reasons, the number of cases that would be affected by the measure is unknown.

State Tax Revenue. The state collects tax revenue on personal income, including attorney income earned from contingency fees in personal injury cases. By placing an upper limit on contingency fees, this measure could reduce the amount of state income tax revenues from that source of income. However, the net fiscal impact of the measure on state income tax revenue is unknown since attorneys affected by the measure could potentially earn as much or more taxable income through other means. For example, they may choose to practice another type of law, or accept more cases on an hourly basis rather than on a contingency fee basis. In addition, any reduction in income tax revenue could be partially offset by increased sales taxes generated by greater spending by plaintiffs. As such, the fiscal impact of the measure on state tax revenue is unknown.

Other State and Local Fiscal Effects. The state and local governments operate programs that offer benefits, most notably health care services, to certain persons—usually low-income persons, which include individuals who may be party to a personal injury lawsuit. Current law requires repayment of state and local costs for such benefits from amounts awarded in personal injury cases when those costs resulted from the injury at issue in the case. To the extent that the measure reduces the number of personal injury cases in which damage awards are granted, state and local governments could recover less money from personal injury cases, thereby shifting some costs to taxpayers. Information is not available on how this measure would effect total recoveries. Therefore, the fiscal impact of the measure on state and local governments is unknown.

Summary of Fiscal Effects

In summary, the initiative would have the following fiscal effect:

- Unknown net fiscal impact on state and local governments, depending largely on how attorneys and their clients respond to the measure.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance