



General Assembly

February Session, 2004

**Amendment**

LCO No. 4075

**\*HB0566904075HDO\***

Offered by:  
REP. LAWLOR, 99<sup>th</sup> Dist.

To: Subst. House Bill No. 5669      File No. 504      Cal. No. 355

(As Amended)

**"AN ACT CONCERNING MEDICAL MALPRACTICE INSURANCE REFORM."**

1      Strike section 15 in its entirety and insert the following in lieu  
2 thereof:

3      "Sec. 15. Section 52-251c of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective from passage and*  
5 *applicable to causes of action accruing on or after said date*):

6      (a) In any claim or civil action to recover damages resulting from  
7 personal injury, wrongful death or damage to property occurring on or  
8 after October 1, 1987, the attorney and the claimant may provide by  
9 contract, which contract shall comply with all applicable provisions of  
10 the rules of professional conduct governing attorneys adopted by the  
11 judges of the Superior Court, that the fee for the attorney shall be paid  
12 contingent upon, and as a percentage of: (1) Damages awarded and  
13 received by the claimant; or (2) settlement amount pursuant to a

14 settlement agreement.

15 (b) In any such contingency fee arrangement such fee shall be the  
16 exclusive method for payment of the attorney by the claimant and  
17 shall not exceed an amount equal to a percentage of the damages  
18 awarded and received by the claimant or of the settlement amount  
19 received by the claimant as follows: (1) Thirty-three and one-third per  
20 cent of the first three hundred thousand dollars; (2) twenty-five per  
21 cent of the next three hundred thousand dollars; (3) twenty per cent of  
22 the next three hundred thousand dollars; (4) fifteen per cent of the next  
23 three hundred thousand dollars; and (5) ten per cent of any amount  
24 which exceeds one million two hundred thousand dollars.

25 (c) The fee schedule set forth in subsection (b) of this section may be  
26 waived by the claimant only if the attorney signing the fee agreement  
27 executes a statement under oath that is attached to the fee agreement  
28 attesting to the fact that (1) the case involves complex factual, medical  
29 or legal issues, (2) the case involves a claim of serious permanent  
30 injury or death, (3) the case is likely to require extensive investigation  
31 and discovery proceedings, including multiple depositions, (4) the  
32 attorney will advance all costs of investigating and prosecuting the  
33 case, (5) the claimant will not be required to repay any costs in the  
34 event that there is no recovery, and (6) the case requires independent  
35 expert witness testimony. For the purposes of this subsection,  
36 "independent expert witness testimony" means testimony from an  
37 expert who has not participated in the care of the claimant and has not  
38 participated in any official investigation of the incident involved.

39 (d) Under no circumstances shall the total fee charged under a fee  
40 agreement containing a waiver provision entered into under this  
41 section exceed thirty-three and one-third per cent of the damages  
42 awarded and received by the claimant or of the settlement amount  
43 received by the claimant.

44 (e) Under no circumstances shall the claimant be required to pay  
45 interest on costs advanced by the attorney under a fee agreement

46 containing a waiver provision.

47 (f) Any waiver provision entered into under this section shall be  
48 clearly stated in the written fee agreement between the attorney and  
49 the claimant. Such waiver provision shall be clearly printed in not less  
50 than twelve-point type and shall set forth the fact that the claimant  
51 understands the fee schedule set forth in subsection (b) of this section  
52 and that the claimant knowingly and voluntarily waives said fee  
53 schedule.

54 (g) Any fee agreement containing a waiver provision entered into  
55 under this section shall be subject to approval of the Office of the State-  
56 Wide Bar Counsel following a review of the proposed waiver  
57 provision and the statement of the attorney that is required under  
58 subsection (c) of this section. The Office of the State-Wide Bar Counsel  
59 shall approve the fee agreement containing a waiver provision if the  
60 office finds that the fee agreement was entered into in accordance with  
61 the requirements of this section. The Office of the State-Wide Bar  
62 Counsel shall charge a fee of one hundred fifty dollars to the attorney  
63 seeking approval of the fee agreement containing a waiver provision.

64 (h) The Office of the State-Wide Bar Counsel shall review each such  
65 proposed waiver not later than sixty days after receipt of the proposed  
66 waiver and statement of the attorney. All applicable statutes of  
67 limitations shall be extended for ninety days from the submission of  
68 the proposed waiver and statement of the attorney for purposes of  
69 such review and, if the Office of the State-Wide Bar Counsel finds that  
70 the fee agreement containing the waiver provision or the statement of  
71 the attorney is not in compliance with the requirements of this section,  
72 as provided in subsection (i) of this section, all applicable statutes of  
73 limitations shall be extended for an additional ninety days from the  
74 date of such finding.

75 (i) If, upon review of the fee agreement containing a waiver  
76 provision and the statement of the attorney attached to the fee  
77 agreement, the Office of the State-Wide Bar Counsel finds that the fee

78 agreement containing the waiver provision or the statement of the  
79 attorney is not in compliance with the requirements of this section, the  
80 office may invalidate the fee agreement containing the waiver  
81 provision and shall so inform the attorney not later than sixty days  
82 after receipt of the proposed waiver and statement of the attorney. In  
83 addition, if the Office of the State-Wide Bar Counsel finds that either  
84 the fee agreement containing the waiver provision or the statement of  
85 the attorney was not executed in good faith or that the claimant was  
86 coerced into executing such fee agreement, the attorney may be  
87 referred for disciplinary review.

88 [(c) For] (j) (1) Except as provided in subdivision (2) of this  
89 subsection, for the purposes of this section, "damages awarded and  
90 received" means in a civil action in which final judgment is entered,  
91 that amount of the judgment or amended judgment entered by the  
92 court that is received by the claimant; [, except that in a civil action  
93 brought pursuant to section 38a-368 such amount shall be reduced by  
94 any basic reparations benefits paid to the claimant pursuant to section  
95 38a-365;] "settlement amount received" means in a claim or civil action  
96 in which no final judgment is entered, the amount received by the  
97 claimant pursuant to a settlement agreement; [, except that in a claim  
98 or civil action brought pursuant to section 38a-368 such amount shall  
99 be reduced by any basic reparations benefits paid to the claimant  
100 pursuant to section 38a-365;] and "fee" shall not include disbursements  
101 or costs incurred in connection with the prosecution or settlement of  
102 the claim or civil action, other than ordinary office overhead and  
103 expense.

104 (2) For the purposes of this section and with respect to a case in  
105 which a fee agreement containing a waiver provision was approved by  
106 the Office of State-Wide Bar Counsel pursuant to subsection (g) of this  
107 section, "damages awarded and received" means in a civil action in  
108 which final judgment is entered, that amount of the judgment or  
109 amended judgment entered by the court that is received by the  
110 claimant after deduction for any disbursements made or costs incurred  
111 by the attorney in connection with the investigation and prosecution or

112 settlement of the civil action, other than ordinary office overhead and  
113 expense, for which the claimant is liable; and "settlement amount  
114 received" means in a claim or civil action in which no final judgment is  
115 entered, the amount received by the claimant pursuant to a settlement  
116 agreement after deduction for any disbursements made or costs  
117 incurred by the attorney in connection with the investigation and  
118 prosecution or settlement of the claim or civil action, other than  
119 ordinary office overhead and expense, for which the claimant is liable."