



General Assembly

January Session, 2011

**Amendment**

LCO No. 8682

**\*HB0648708682SR0\***

Offered by:  
SEN. BOUCHER, 26<sup>th</sup> Dist.

To: Subst. House Bill No. 6487      File No. 865      Cal. No. 576

**"AN ACT CONCERNING CERTIFICATES OF MERIT."**

1      After the last section, add the following and renumber sections and  
2      internal references accordingly:

3      "Sec. 501. Section 52-251c of the general statutes is repealed and the  
4      following is substituted in lieu thereof (*Effective October 1, 2011, and*  
5      *applicable to contingency fee agreements entered into 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) the settlement amount received  
14     pursuant to a settlement agreement.

15     (b) In any such contingency fee agreement 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) Notwithstanding the provisions of subsection (b) of this section,  
26 a claimant may waive the percentage limitations of said subsection if  
27 the claim or civil action is so substantially complex, unique or different  
28 from other wrongful death, personal injury or property damage claims  
29 or civil actions as to warrant a deviation from such percentage  
30 limitations. Factors that may indicate that a claim or civil action is  
31 substantially complex, unique or different from other wrongful death,  
32 personal injury or property damage claims or civil actions include, but  
33 are not limited to, if the claim or civil action (1) involves complex  
34 factual medical or legal issues, (2) involves serious permanent personal  
35 injury or death, (3) is likely to require extensive investigation and  
36 discovery proceedings, including multiple depositions, or (4) requires  
37 independent expert witness testimony. For the purposes of this  
38 subsection, "independent expert witness testimony" means testimony,  
39 whether at trial or in a deposition, from an expert who has not  
40 participated in the care of the claimant and has not participated in any  
41 official investigation of the incident involved.

42 (d) Prior to a claimant entering into a contingency fee agreement  
43 that provides for a fee that exceeds the percentage limitations of  
44 subsection (b) of this section, the attorney shall (1) explain the  
45 percentage limitations of subsection (b) of this section to the claimant  
46 and the reasons the attorney is unable to abide by those limitations; (2)  
47 advise the claimant of the claimant's right to seek representation by  
48 another attorney willing to abide by the percentage limitations of  
49 subsection (b) of this section; and (3) allow the claimant a sufficient

50 period of time to review the proposed contingency fee agreement and,  
51 if the claimant wishes, seek representation by another attorney prior to  
52 entering into such agreement.

53 (e) No waiver of the percentage limitations of subsection (b) of this  
54 section shall be valid unless the contingency fee agreement (1) is in  
55 writing, (2) sets forth in full the fee schedule of subsection (b) of this  
56 section, (3) contains a conspicuous statement, printed in boldface type  
57 at least twelve points in size, in substantially the following form: "I  
58 UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN  
59 SECTION 52-251c OF THE CONNECTICUT GENERAL STATUTES  
60 LIMITS THE AMOUNT OF ATTORNEY'S FEES PAYABLE BY A  
61 CLAIMANT AND THAT THE STATUTE WAS INTENDED TO  
62 INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT  
63 THAT WAS ACTUALLY RECEIVED BY A CLAIMANT.  
64 NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN  
65 ENACTING THAT FEE SCHEDULE WAS TO CONFER A BENEFIT  
66 ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND  
67 VOLUNTARILY WAIVE THAT FEE SCHEDULE IN THIS CLAIM OR  
68 CIVIL ACTION.", and (4) is signed and acknowledged by the claimant  
69 before a notary public or other person authorized to take  
70 acknowledgments.

71 (f) If a claimant waives the percentage limitations of subsection (b)  
72 of this section pursuant to this section, in no event shall (1) the total fee  
73 under the contingency fee agreement exceed thirty-three and one-third  
74 per cent of the damages awarded and received by the claimant or of  
75 the settlement amount received by the claimant, and (2) the claimant  
76 be required to repay any costs that the attorney incurred in  
77 investigating and prosecuting the claim or civil action if there is no  
78 recovery.

79 (g) No fee shall be payable to any attorney who seeks a fee that  
80 exceeds the percentage limitations of subsection (b) of this section  
81 unless the claimant has waived such limitations pursuant to this  
82 section and the contingency fee agreement complies with the

83 requirements of subsection (e) of this section.]

84 [(h)] (c) For the purposes of this section, "damages awarded and  
85 received" means in a civil action in which final judgment is entered,  
86 that amount of the judgment or amended judgment entered by the  
87 court that is received by the claimant; "settlement amount received"  
88 means in a claim or civil action in which no final judgment is entered,  
89 the amount received by the claimant pursuant to a settlement  
90 agreement; and "fee" shall not include disbursements or costs incurred  
91 in connection with the prosecution or settlement of the claim or civil  
92 action, other than ordinary office overhead and expense."