

AMENDED IN SENATE APRIL 13, 2004

**SENATE BILL**

**No. 1811**

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**Introduced by Senator ~~McPherson~~ Morrow**  
*(Coauthor: Senator McPherson)*

February 20, 2004

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An act to add Section 6149.3 to the Business and Professions Code, and to amend Section 6602 of the Family Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1811, as amended, ~~McPherson~~ Morrow. Attorney's fees: senior citizens and minors.

(1) The State Bar Act regulates attorney fee agreements, and sets specified limitations on amounts contracted for, or collected pursuant to, certain contingency fee agreements. The State Bar Rules of Professional Conduct generally require that fees not be unconscionable, and specify factors to consider in making that determination.

~~In the absence of a written fee contract or contingency fee agreement for legal services between an attorney and a senior citizen, as defined, this~~

*This bill would ~~fix the fees chargeable to~~ void any contingency fee contract for attorney's fees for services in litigation made by or on behalf of a senior citizen at 25% of the net recovery of a settlement award, and at 33 $\frac{1}{3}$ % of that is not approved by the net recovery of a judgment recovered at trial or on appeal court in which that litigation is pending, except as specified.*

(2) In the absence of an approved contract, existing law requires the court to fix the attorney's fees chargeable to a minor for civil litigation services, and provides no standard or uniform guideline thereto.

This bill would instead fix those fees at 25% of the net recovery of a settlement award, and at 33<sup>1</sup>/<sub>3</sub>% of the net recovery of a judgment recovered at trial or on appeal, *except as specified*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *The Legislature finds and declares that the*  
2 *well-being of children and senior citizens has long been an*  
3 *important concern of the Legislature and the Judiciary. This*  
4 *concern is significant as it pertains to the representation of*  
5 *children before the courts where special protection is given.*  
6 *Current law limits and provides judicial oversight over the*  
7 *percentage of contingency fees attorneys can charge when*  
8 *representing a child, yet these limits vary from county to county,*  
9 *resulting in an inequitable system that determines recovery for the*  
10 *child based on mere geographical location. It is the intent of the*  
11 *Legislature to address this disparity by creating a uniform*  
12 *statewide standard for attorney’s fees for services on behalf of*  
13 *children. It is also the intent of the Legislature to provide senior*  
14 *citizens similar protection.*

15 SEC. 2. Section 6149.3 is added to the Business and  
16 Professions Code, to read:

17 ~~6149.3.—(a) Notwithstanding any other provision of law or~~  
18 ~~rule of professional conduct, in the absence of a written fee~~  
19 ~~contract or contingency fee agreement for legal services between~~  
20 ~~an attorney and a senior citizen, the attorney’s fees chargeable~~  
21 ~~against the senior citizen shall be fixed as described below:~~

22 (1) ~~If a settlement award is entered into by or on behalf of the~~  
23 ~~senior citizen, 25 percent of the net recovery of the settlement~~  
24 ~~award.~~

25 (2) ~~If a judgment is recovered at trial or on appeal by or on~~  
26 ~~behalf of the senior citizen, 33 <sup>1</sup>/<sub>3</sub> percent of the net recovery of~~  
27 ~~the judgment.~~

28 6149.3. (a) *In a case coming within Section 6147, a contract*  
29 *for attorney’s fees for services in litigation, made by or on behalf*  
30 *of a senior citizen, is void unless the contract is approved by the*  
31 *court in which the litigation is pending.*



1 (b) For purposes of this section, “senior citizen” means a  
2 person 65 years of age or older.

3 ~~SEC. 2.~~

4 (c) *This section does not apply to contingency fee contracts*  
5 *described in Section 6146 or 6147.5.*

6 SEC. 3. Section 6602 of the Family Code is amended to read:

7 6602. (a) A contract for attorney’s fees for services in  
8 litigation, made by or on behalf of a minor, is void unless the  
9 contract is approved, ~~on petition by an interested person,~~ by the  
10 court in which the litigation is pending or by the court having  
11 jurisdiction of the guardianship estate of the minor.

12 ~~If the contract is not approved and a settlement award is entered~~  
13 ~~into by or on behalf of the minor, the attorney’s fees chargeable~~  
14 ~~against the minor shall be fixed at 25 percent of the net recovery~~  
15 ~~of the settlement award.~~

16 ~~If the contract is not approved and a judgment is recovered at~~  
17 ~~trial or on appeal by or on behalf of the minor, the attorney’s fees~~  
18 ~~chargeable against the minor shall be fixed by the court rendering~~  
19 ~~the judgment at 33 1/3 percent of the net recovery of the judgment.~~

20 (b) *When a settlement award is entered into by or on behalf of*  
21 *the minor, the attorney’s fees chargeable against the minor shall*  
22 *be fixed by the court approving the settlement at 25 percent of the*  
23 *net recovery of the settlement award. The court shall have the*  
24 *discretion to approve a lesser amount.*

25 (c) *When a judgment is recovered at trial or on appeal by or on*  
26 *behalf of the minor, the attorney’s fees chargeable against the*  
27 *minor shall be fixed by the court rendering judgment at 33 1/3*  
28 *percent of the net recovery of the judgment. The court shall have*  
29 *the discretion to approve a lesser amount.*

30 (d) *This section does not apply to contingency fee contracts*  
31 *described in Section 6146 or 6147.5 of the Business and*  
32 *Professions Code.*

