

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 01-0141.02 Jason Gelender

SENATE BILL 01-147

SENATE SPONSORSHIP

Hillman, Andrews, Arnold, Cairns, Chlouber, Dyer (Arapahoe), Dyer (Durango), Epps, Evans, Hagedorn, Lamborn, May, McElhany, Musgrave, Owen, Taylor, and Teck

HOUSE SPONSORSHIP

Williams T., Lee, Mitchell, Snook, and Spradley

Senate Committees

Judiciary

Public Policy and Planning

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE LIMITATION OF THE USE OF CONTINGENT FEE**
102 **CONTRACTS BY GOVERNMENTAL ENTITIES TO RETAIN PRIVATE**
103 **ATTORNEYS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Specifies that a governmental entity may only enter into a contingent fee contract with a private attorney if:

- The amount in controversy is less than a specified amount at the time the contract is entered into and the contract provides for an alternative hourly or flat fee arrangement in the event that the actual amount recovered equals or exceeds the specified amount; or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

- The contract is for legal services performed by an attorney in connection with the collection of debts or taxes owed to a state governmental entity or the collection of preexisting liquidated debts or taxes owed to a local governmental entity and was entered into pursuant to a statutory provision, home rule charter provision, or local ordinance that expressly authorizes or requires the payment of a portion of the moneys collected to an attorney retained to collect such debts or taxes; or
- The governmental entity is a state governmental entity acting in a proprietary capacity to protect intellectual property or to enforce patents or copyrights.

Also specifies that a state governmental entity may only enter into a contingent fee contract if the attorney general has approved the contract.

Requires a private attorney retained by a state or local governmental entity pursuant to a contingent fee contract to maintain a contemporaneous record of the hours of legal services provided by attorneys and any court costs incurred and provide to the state or local governmental entity a statement of the hours of legal services provided by attorneys, the amount of court costs incurred, the total amount of the contingent fee, and the hourly rate for the legal services provided by attorneys. Specifies that if the statement indicates a rate for legal services provided by attorneys of more than a specified amount per hour, the fee amount shall be reduced to an amount equivalent to the specified amount per hour.

Specifies that the new limitations and requirements imposed with respect to contingent fee contracts shall not apply retrospectively to existing contingent fee contracts. Specifies that compliance with the provisions of the bill does not relieve a contracting attorney of any obligation or legal responsibility imposed by the Colorado rules of professional conduct or any provision of law.

Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 17 of title 13, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 PART 3

5 RETENTION OF ATTORNEYS BY GOVERNMENTAL ENTITIES -
6 LIMITATION ON CONTINGENT FEE CONTRACTS

7 **13-17-301. Short title.** THIS PART SHALL BE KNOWN AND MAY BE

1 CITED AS THE "GOVERNMENT ATTORNEY ETHICS ACT".

2 **13-17-302. Legislative declaration.** (1) THE GENERAL ASSEMBLY
3 HEREBY FINDS, DETERMINES, AND DECLARES THAT:

4 (a) IN RECENT YEARS, IT HAS BECOME INCREASINGLY COMMON FOR
5 GOVERNMENTAL ENTITIES TO RETAIN ATTORNEYS PURSUANT TO
6 CONTINGENT FEE CONTRACTS, AND DISPUTES HAVE ARISEN IN SEVERAL
7 STATES REGARDING THE AMOUNT AND PROPRIETY OF CONTINGENT FEES.

8 (b) CONTINGENT FEES ARE INTENDED TO ENABLE PERSONS OF
9 MODEST MEANS TO OBTAIN LEGAL REPRESENTATION THAT THEY MIGHT NOT
10 OTHERWISE BE ABLE TO AFFORD, BUT GOVERNMENTAL ENTITIES
11 ORDINARILY HAVE RESOURCES AVAILABLE FOR MERITORIOUS LITIGATION.

12 (c) GOVERNMENTAL ENTITIES SHOULD BE REQUIRED TO FULLY
13 CONSIDER THE COSTS AND RISKS OF LITIGATION BEFORE RETAINING AN
14 ATTORNEY PURSUANT TO A CONTINGENT FEE CONTRACT.

15 (d) THE COLORADO DEPARTMENT OF LAW ORDINARILY
16 SUFFICIENTLY REPRESENTS THE INTERESTS OF THE STATE OF COLORADO.

17 (e) GOVERNMENTAL OFFICIALS, INCLUDING ATTORNEYS WHO
18 REPRESENT GOVERNMENTAL ENTITIES ON A CONTRACTUAL BASIS, ARE
19 ENTRUSTED TO PROTECT THE HEALTH, SAFETY, AND WELL-BEING OF
20 CITIZENS, AND IT IS THE POLICY OF THE STATE THAT A PERSON WHO
21 EXERCISES AUTHORITY ON BEHALF OF A GOVERNMENTAL ENTITY
22 GENERALLY SHOULD NOT HAVE A PERSONAL FINANCIAL STAKE IN THE
23 OUTCOME OF LITIGATION INITIATED ON BEHALF OF THE GOVERNMENTAL
24 ENTITY.

25 (f) A CONTINGENT FEE CONTRACT THAT GIVES AN ATTORNEY WHO
26 IS RETAINED TO REPRESENT A GOVERNMENTAL ENTITY A DIRECT PERSONAL
27 STAKE IN THE OUTCOME OF LEGAL PROCEEDINGS IS POTENTIALLY UNFAIR

1 TO THE PRIVATE CITIZENS OR BUSINESS AGAINST WHOM THE
2 GOVERNMENTAL ENTITY HAS FILED SUIT AND MAY NOT SERVE THE BEST
3 INTERESTS OF THE CITIZENS FOR WHOM THE GOVERNMENTAL ENTITY
4 INITIATES LEGAL PROCEEDINGS.

5 (g) BECAUSE CONTINGENT FEE CONTRACTS DO NOT REQUIRE THE
6 APPROPRIATION OF FUNDS BY THE GENERAL ASSEMBLY OR THE GOVERNING
7 BODY OF A LOCAL GOVERNMENTAL ENTITY, SUCH CONTRACTS CIRCUMVENT
8 THE SYSTEM OF CHECKS AND BALANCES THAT ORDINARILY PROTECTS THE
9 DECISION-MAKING PROCESS OF GOVERNMENTAL ENTITIES, AND IT IS
10 APPROPRIATE TO LIMIT CONTINGENT FEE CONTRACTS TO ENSURE THAT THE
11 DECISION-MAKING PROCESS IS PROTECTED.

12 (h) A CONTINGENT FEE CONTRACT MAY RESULT IN THE PAYMENT OF
13 EXCESSIVE ATTORNEY FEES BY A GOVERNMENTAL ENTITY, THEREBY
14 DENYING TO CITIZENS REPRESENTED BY GOVERNMENT THE FULL MEASURE
15 OF JUSTICE AWARDED BY THE COURTS.

16 (i) IT IS IN THE BEST INTEREST OF THE PEOPLE OF COLORADO TO
17 LIMIT THE CIRCUMSTANCES IN WHICH GOVERNMENTAL ENTITIES MAY
18 RETAIN PRIVATE ATTORNEYS PURSUANT TO CONTINGENT FEE CONTRACTS.

19 **13-17-303. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
20 CONTEXT OTHERWISE REQUIRES:

21 (1) "CONTINGENT FEE" MEANS THAT PART OF A FEE FOR LEGAL
22 SERVICES UNDER A CONTINGENT FEE CONTRACT THAT IS CONTINGENT UPON
23 THE SUCCESSFUL OUTCOME OF THE MATTER FOR WHICH THE LEGAL
24 SERVICES WERE RETAINED.

25 (2) "CONTINGENT FEE CONTRACT" OR "CONTRACT" MEANS A
26 CONTRACT FOR LEGAL SERVICES IN WHICH THE AMOUNT OF THE FEE TO BE
27 PAID FOR THE LEGAL SERVICES DEPENDS IN WHOLE OR IN PART UPON THE

1 SUCCESSFUL OUTCOME OF THE MATTER FOR WHICH THE SERVICES WERE
2 OBTAINED. THE TERM ALSO INCLUDES ANY CONTRACT THAT SPECIFIES
3 THAT FEES FOR LEGAL SERVICES WILL BE DETERMINED BY A COURT OR AN
4 ARBITRATOR OR ANY PROVISION OF A SETTLEMENT AGREEMENT THAT
5 REQUIRES THE OPPOSING PARTY TO PAY FEES FOR LEGAL SERVICES
6 DIRECTLY TO A PRIVATE ATTORNEY RETAINED BY A GOVERNMENTAL
7 ENTITY PURSUANT TO A CONTINGENT FEE CONTRACT.

8 (3) "GOVERNMENTAL ENTITY" MEANS A STATE GOVERNMENTAL
9 ENTITY OR A LOCAL GOVERNMENTAL ENTITY.

10 (4) "LOCAL GOVERNMENTAL ENTITY" MEANS ANY COUNTY,
11 MUNICIPALITY, CITY AND COUNTY, OR SCHOOL DISTRICT AND ANY
12 DEPARTMENT, AGENCY, INSTITUTION, OR AUTHORITY OF SUCH A COUNTY,
13 MUNICIPALITY, CITY AND COUNTY, OR SCHOOL DISTRICT.

14 (5) "STATE GOVERNMENTAL ENTITY" MEANS THE STATE, ANY
15 DEPARTMENT OR AGENCY OF THE STATE, AND ANY STATE-SPONSORED
16 INSTITUTION OF HIGHER EDUCATION.

17 **13-17-304. Limitation on contingent fees - applicability.**

18
19 (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CONTINGENT
20 FEE CONTRACT BETWEEN A GOVERNMENTAL ENTITY AND A PRIVATE
21 ATTORNEY SHALL:

22 (I) REQUIRE THE PRIVATE ATTORNEY TO MAINTAIN A
23 CONTEMPORANEOUS RECORD OF THE HOURS OF LEGAL SERVICES PROVIDED
24 BY ATTORNEYS, THE NATURE OF SUCH SERVICES, AND ANY COURT COSTS
25 INCURRED;

26 (II) REQUIRE THE PRIVATE ATTORNEY, UPON THE SUCCESSFUL
27 RESOLUTION OF THE MATTER FOR WHICH THE PRIVATE ATTORNEY WAS

1 RETAINED, TO PROVIDE TO THE GOVERNMENTAL ENTITY A STATEMENT OF
2 THE HOURS OF LEGAL SERVICES PROVIDED BY ATTORNEYS, THE NATURE OF
3 SUCH SERVICES, THE AMOUNT OF COURT COSTS INCURRED, THE TOTAL
4 AMOUNT OF THE CONTINGENT FEE, AND THE HOURLY RATE FOR LEGAL
5 SERVICES PROVIDED BY ATTORNEYS; AND

6 (III) SPECIFY AN ALTERNATIVE HOURLY RATE, NOT TO EXCEED ONE
7 THOUSAND DOLLARS PER HOUR, AT WHICH THE ATTORNEY SHALL BE
8 COMPENSATED IN THE EVENT THAT THE STATEMENT PROVIDED BY THE
9 ATTORNEY INDICATES AN HOURLY RATE FOR LEGAL SERVICES PROVIDED BY
10 ATTORNEYS OF MORE THAN ONE THOUSAND DOLLARS PER HOUR.

11 (b) THE HOURLY RATE FOR LEGAL SERVICES PROVIDED BY
12 ATTORNEYS SHALL BE DETERMINED BY DIVIDING THE AMOUNT OF THE
13 CONTINGENT FEE, LESS THE AMOUNT OF COURT COSTS INCURRED IF SAID
14 AMOUNT IS PART OF THE CONTINGENT FEE, BY THE NUMBER OF HOURS OF
15 LEGAL SERVICES PROVIDED BY ATTORNEYS. CLERICAL WORK, INCLUDING
16 BUT NOT LIMITED TO TRANSCRIPTION, PHOTOCOPYING, AND DOCUMENT
17 FILING AND ORGANIZATION, SHALL NOT BE CONSIDERED "LEGAL SERVICES
18 PROVIDED BY ATTORNEYS" EVEN IF AN ATTORNEY PERFORMS SUCH WORK.

19 (c) IN ADDITION TO THE REQUIREMENTS SPECIFIED IN PARAGRAPH (a)
20 OF THIS SUBSECTION (1), A STATE GOVERNMENTAL ENTITY MAY ONLY
21 ENTER INTO A CONTINGENT FEE CONTRACT IF THE ATTORNEY GENERAL HAS
22 APPROVED THE CONTRACT. THIS PARAGRAPH (c) SHALL NOT BE
23 CONSTRUED TO LIMIT OR AFFECT ANY POWERS OF THE ATTORNEY GENERAL
24 WITH RESPECT TO THE INITIATION OR CONDUCT OF LITIGATION BY ANY
25 STATE GOVERNMENTAL ENTITY OR WITH RESPECT TO THE RETENTION OF
26 PRIVATE COUNSEL BY ANY STATE GOVERNMENTAL ENTITY.

27 (d) IN ADDITION TO THE REQUIREMENTS SPECIFIED IN PARAGRAPH

1 (a) OF THIS SUBSECTION (1), A LOCAL GOVERNMENTAL ENTITY MAY ONLY
2 ENTER INTO A CONTINGENT FEE CONTRACT IF THE GOVERNING BODY OF THE
3 LOCAL GOVERNMENTAL ENTITY HAS APPROVED THE CONTRACT BY
4 ADOPTING A RESOLUTION APPROVING THE CONTRACT.

5 _____
6 _____

7 (2) THE LIMITATIONS AND REQUIREMENTS OF _____
8 SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO ANY CONTINGENT
9 FEE CONTRACT ENTERED INTO BY A GOVERNMENTAL ENTITY PRIOR TO THE
10 EFFECTIVE DATE OF THIS SECTION.

11 (3) COMPLIANCE WITH THIS PART 3 DOES NOT RELIEVE A
12 CONTRACTING ATTORNEY OF ANY OBLIGATION OR LEGAL RESPONSIBILITY
13 IMPOSED BY THE COLORADO RULES OF PROFESSIONAL CONDUCT OR ANY
14 PROVISION OF LAW.

15 **SECTION 2. Effective date.** This act shall take effect at 12:01
16 a.m. on the day following the expiration of the ninety-day period after
17 final adjournment of the general assembly that is allowed for submitting
18 a referendum petition pursuant to article V, section 1 (3) of the state
19 constitution; except that, if a referendum petition is filed against this act
20 or an item, section, or part of this act within such period, then the act,
21 item, section, or part, if approved by the people, shall take effect on the
22 date of the official declaration of the vote thereon by proclamation of the
23 governor.