

CHAPTER 124

COURTS

SENATE BILL 03-086

BY SENATOR(S) Hillman, Andrews, Arnold, Dyer, Evans, Hagedorn, Kester, Lamborn, Owen, Teck, and McElhany;
also REPRESENTATIVE(S) Williams T., Fairbank, Hefley, Lee, Young, Cadman, Coleman, Hall, Hoppe, King, May M., Miller,
Rippy, Schultheis, Sinclair, Spence, and Spradley.

AN ACT

CONCERNING A LIMITATION ON THE USE OF CONTINGENT FEE CONTRACTS BY GOVERNMENTAL ENTITIES TO RETAIN PRIVATE ATTORNEYS.

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

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

**PART 3
RETENTION OF ATTORNEYS BY GOVERNMENTAL ENTITIES -
LIMITATION ON CONTINGENT FEE CONTRACTS**

13-17-301. Short title. THIS PART 3 SHALL BE KNOWN AND MAY BE CITED AS THE "GOVERNMENT ATTORNEY ETHICS ACT".

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

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

(b) CONTINGENT FEES ARE INTENDED TO ENABLE PERSONS OF MODEST MEANS TO OBTAIN LEGAL REPRESENTATION THAT THEY MIGHT NOT OTHERWISE BE ABLE TO AFFORD, BUT GOVERNMENTAL ENTITIES HAVE RESOURCES THAT ARE UNAVAILABLE TO INDIVIDUAL CITIZENS.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

(f) A CONTINGENT FEE CONTRACT THAT GIVES AN ATTORNEY WHO IS RETAINED TO REPRESENT A GOVERNMENTAL ENTITY A DIRECT PERSONAL STAKE IN THE OUTCOME OF LEGAL PROCEEDINGS IS POTENTIALLY UNFAIR TO THE CITIZENS OR BUSINESSES AGAINST WHOM THE GOVERNMENTAL ENTITY HAS FILED SUIT AND MAY NOT SERVE THE BEST INTERESTS OF THE CITIZENS OR BUSINESSES ON WHOSE BEHALF THE GOVERNMENTAL ENTITY INITIATES LEGAL PROCEEDINGS.

(g) BECAUSE CONTINGENT FEE CONTRACTS DO NOT REQUIRE THE APPROPRIATION OF MONEYS, SUCH CONTRACTS CIRCUMVENT THE SYSTEM OF CHECKS AND BALANCES THAT ORDINARILY PROVIDES ACCOUNTABILITY FOR DECISIONS OF GOVERNMENTAL ENTITIES, AND IT IS APPROPRIATE TO LIMIT CONTINGENT FEE CONTRACTS TO ENSURE THAT THE DECISION-MAKING PROCESS IS PROTECTED.

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

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

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

(1) "CONTINGENT FEE" MEANS A FEE FOR LEGAL SERVICES THAT IS CONTINGENT IN WHOLE OR IN PART UPON THE SUCCESSFUL OUTCOME OF THE MATTER FOR WHICH THE LEGAL SERVICES WERE RETAINED.

(2) "CONTINGENT FEE CONTRACT" OR "CONTRACT" MEANS A CONTRACT FOR LEGAL SERVICES IN WHICH THE AMOUNT OF THE FEE TO BE PAID FOR THE LEGAL SERVICES DEPENDS IN WHOLE OR IN PART UPON THE SUCCESSFUL OUTCOME OF THE MATTER FOR WHICH THE SERVICES WERE OBTAINED. THE TERM ALSO INCLUDES ANY CONTRACT THAT SPECIFIES THAT FEES FOR LEGAL SERVICES WILL BE DETERMINED BY A COURT OR AN ARBITRATOR OR ANY PROVISION OF A SETTLEMENT AGREEMENT THAT REQUIRES THE OPPOSING PARTY TO PAY FEES FOR LEGAL SERVICES DIRECTLY TO A PRIVATE ATTORNEY RETAINED BY A GOVERNMENTAL ENTITY PURSUANT TO A CONTINGENT FEE

CONTRACT.

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

13-17-304. Limitation on contingent fees - applicability. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (2) AND (3) OF THIS SECTION, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CONTINGENT FEE CONTRACT BETWEEN A GOVERNMENTAL ENTITY AND A PRIVATE ATTORNEY SHALL:

(I) REQUIRE THE PRIVATE ATTORNEY TO MAINTAIN AND PROVIDE TO THE GOVERNMENTAL ENTITY ON A MONTHLY BASIS A CONTEMPORANEOUS RECORD OF THE HOURS OF LEGAL SERVICES PROVIDED BY INDIVIDUAL ATTORNEYS, THE NATURE OF SUCH SERVICES, AND ANY COURT COSTS INCURRED DURING EACH MONTH AND IN THE AGGREGATE FROM THE EFFECTIVE DATE OF THE CONTINGENT FEE CONTRACT;

(II) REQUIRE THE PRIVATE ATTORNEY, UPON THE SUCCESSFUL RESOLUTION OF THE MATTER FOR WHICH THE PRIVATE ATTORNEY WAS RETAINED, TO PROVIDE TO THE GOVERNMENTAL ENTITY A STATEMENT OF THE HOURS OF LEGAL SERVICES PROVIDED BY ATTORNEYS, THE NATURE OF SUCH SERVICES, THE AMOUNT OF COURT COSTS INCURRED, THE TOTAL AMOUNT OF THE CONTINGENT FEE, AND THE AVERAGE HOURLY RATE FOR LEGAL SERVICES PROVIDED BY ATTORNEYS; AND

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

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

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

(3) THE LIMITATIONS AND REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO ANY CONTINGENT FEE CONTRACT ENTERED INTO BY A GOVERNMENTAL ENTITY IF THE CONTRACT IS FOR LEGAL SERVICES PERFORMED BY AN ATTORNEY IN CONNECTION WITH THE COLLECTION OF DEBTS OR TAXES OWED TO A GOVERNMENTAL ENTITY AND WAS ENTERED INTO PURSUANT TO SECTION 23-3.1-104 (1) (f) OR (2) (i), 23-5-113 (1), 24-30-202.4, OR 39-21-114, C.R.S., OR ANY OTHER STATUTORY PROVISION THAT EXPRESSLY AUTHORIZES OR REQUIRES THE PAYMENT OF A PORTION OF THE MONEYS COLLECTED TO AN ATTORNEY RETAINED TO COLLECT SUCH DEBTS OR TAXES.

(4) COMPLIANCE WITH THIS PART 3 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.

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

Approved: April 9, 2003