

2024 Regular Session

SENATE BILL NO. 458

BY SENATOR BASS

ATTORNEYS. Provides for contingency fee contracts. (8/1/24)

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AN ACT

To amend and reenact R.S. 37:218 and to enact R.S. 22:1276, relative to attorney-client contracts; to provide relative to contingency fee contracts; to provide for a short title; to provide that certain contracts are null, void, and unenforceable; to provide for definitions; to prohibit certain coverage by legal malpractice insurance; to provide for an effective date; to provide for applicability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1276 is hereby enacted to read as follows:

§1276. Legal malpractice insurance

A. On and after August 1, 2024, any insurance policy issued or renewed in this state that provides legal malpractice coverage shall exclude coverage for any contingency fee contract between the attorney and his client that does not comply with the provisions of R.S. 37:218.

B. In the event of a claim on a policy issued or renewed in accordance with Subsection A of this Section, any liability resulting from any action or inaction by the attorney in a suit, proposed suit, or claim on behalf of a client shall not be compensable under the policy if the contract between the attorney

1 and the client provides for an interest in the subject matter of the suit, proposed
2 suit, or claim as the attorney's fee and the contract does not comply with the
3 provisions of R.S. 37:218.

4 C. Any legal malpractice insurance policy issued or renewed on and after
5 August 1, 2024, which contains a condition or provision not in compliance with
6 this Section but is otherwise valid, shall not be rendered invalid, but shall be
7 construed and applied in accordance with the conditions and provisions which
8 would have applied had the policy been in full compliance with this Section.

9 Section 2. R.S. 37:218 is hereby amended and reenacted to read as follows:

10 §218. Contract for fee based on proportion of subject matter; stipulation concerning
11 compromise, discontinuance, or settlement; client protections

12 A. This Section shall be known and may be cited as the "Plaintiff
13 Protection from Predatory Practices Law".

14 ~~A.B.~~ By written contract signed by his client, an attorney at law may acquire
15 as his fee an interest in the subject matter of a suit, proposed suit, or claim in the
16 assertion, prosecution, or defense of which he is employed, whether the claim or suit
17 be either for money or for property. ~~Such~~ The interest shall be a special privilege to
18 take rank as a first privilege thereon, superior to all other privileges and security
19 interests under Chapter 9 of the Louisiana Commercial Laws. In ~~such~~ the contract,
20 it may be stipulated that neither the attorney nor the client may, without the written
21 consent of the other, settle, compromise, release, discontinue, or otherwise dispose
22 of the suit or claim. Either party to the contract may, at any time, file and record it
23 with the clerk of court in the parish in which the suit is pending or is to be brought
24 or with the clerk of court in the parish of the client's domicile. After ~~such~~ the filing,
25 any settlement, compromise, discontinuance, or other disposition made of the suit
26 or claim by either the attorney or the client, without the written consent of the other,
27 is null and void and the suit or claim shall be proceeded with as if no ~~such~~ settlement,
28 compromise, discontinuance, or other disposition has been made.

29 C.(1) Any contract authorized by Subsection B of this Section shall be

1 absolutely null, void, and unenforceable in the state of Louisiana as contrary to
2 public policy if the contract includes any of the following:

3 (a) A contingency fee in excess of twenty-five percent of the total amount
4 of compensation received in the suit, proposed suit, or claim, reduced by
5 amounts specified in Subparagraphs (b) and (c) of this Paragraph, as
6 applicable.

7 (b) A contingency fee on that portion of the total amount of
8 compensation received in the suit, proposed suit, or claim that is equivalent to
9 the amount of a written settlement offer received by the client from an opposing
10 party prior to the date of execution of the initial contract between the client and
11 an attorney for representation in the matter.

12 (c) A contingency fee on that portion of the amount of compensation
13 received for property damage to a motor vehicle.

14 (d) A contingency fee in a medical liability claim that exceeds twenty-five
15 percent of the first two hundred fifty thousand dollars of compensation received
16 and exceeds ten percent of the total amount of compensation received in excess
17 of two hundred fifty thousand dollars.

18 (2) The protections for clients required in contingency fee contracts as
19 provided in Paragraph (1) of this Subsection shall apply exclusive of reasonable
20 and customary costs, whether recovery is received by judgment, settlement, or
21 otherwise, and regardless of the number of opposing parties.

22 (3) Any contract authorized by Subsection B of this Section between the
23 attorney and his client that provides an interest in the subject matter of the suit,
24 proposed suit, or claim as the attorney's fee shall require that the client's net
25 recovery exceed the attorney's fee.

26 B: D.(1) The term "fee", as used in this Section, means the agreed upon fee,
27 whether fixed or contingent, and any and all other amounts advanced by the attorney
28 to or on behalf of the client, as permitted by the Rules of Professional Conduct of the
29 Louisiana State Bar Association.

1 **(2) The term "reasonable and customary costs", as used in this Section,**
 2 **shall be as permitted by the Rules of Professional Conduct of the Louisiana**
 3 **State Bar Association.**

4 **E. The provisions of this Section shall be considered an exercise of the**
 5 **police powers of the state to protect the public health, safety, and welfare of the**
 6 **people of the state from predatory practices.**

7 Section 3.(A) This Act shall become effective on August 1, 2024.

8 (B) The provisions of this Act shall apply to any contract executed on and after
 9 August 1, 2024, between an attorney and his client that provides for an interest in the subject
 10 matter of the suit, proposed suit, or claim as the attorney's fee.

The original instrument was prepared by Hanna Gettys. The following digest,
 which does not constitute a part of the legislative instrument, was prepared
 by Dawn Romero Watson.

DIGEST

SB 458 Engrossed

2024 Regular Session

Bass

Present law provides that by written contract signed by his client, an attorney at law may acquire as his fee an interest in the subject matter of a suit, proposed suit, or claim in the assertion, prosecution, or defense of which he is employed, whether the claim or suit be for money or for property.

Proposed law provides that any contingency fee contract authorized by present law is absolutely null, void, and unenforceable as contrary to public policy if the contract includes any of the following:

- (1) A contingency fee in excess of 25% of the total amount of compensation received in the suit, proposed suit, or claim, reduced by: (a) the amount of a written settlement offer received by the client from an opposing party prior to the date of execution of the initial contract between the client and an attorney for representation in the matter; and (b) the amount of compensation received for property damage to a motor vehicle.
- (2) A contingency fee in a medical liability claim that exceeds 25% of the first \$250,000 of compensation received and exceeds 10% of the total amount of compensation received in excess of \$250,000.

Proposed law provides that proposed law shall apply exclusive of reasonable and customary costs, whether recovery is received by judgement, settlement, or otherwise, and regardless of the number of opposing parties.

Proposed law requires that the contingency fee contract between the attorney and his client provide that the client's net recovery shall exceed the attorney's fee.

Present law defines "fee" as the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.

Proposed law provides that "reasonable and customary costs" shall be as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.

Proposed law provides that it shall be considered an exercise of the police powers of the state to protect the public health, safety and welfare of the people of the state from predatory practices. Provides that proposed law shall be known and may be cited as "Plaintiff Protection from Predatory Practices Law".

Proposed law, regarding legal malpractice insurance, provides that on and after August 1, 2024, any insurance policy issued or renewed that provides legal malpractice coverage shall exclude coverage for any contingency fee contract between the attorney and his client that does not comply with the provisions of proposed law.

Proposed law provides that in the event of a claim on a policy issued or renewed in accordance with proposed law and the contract between the attorney and his client provides for a contingency fee, any liability shall not be compensable under the policy if the contract between the attorney and his client is not in compliance with proposed law.

Proposed law provides that any legal malpractice insurance policy issued or renewed on and after August 1, 2024, that is otherwise valid, which contains a condition or provision not in compliance with proposed law, shall not be rendered invalid, but shall be construed and applied in accordance with conditions and provisions as would have applied had the policy been in full compliance with proposed law.

Effective August 1, 2024, and shall apply to any contract executed on an after August 1, 2024, between an attorney and his client that includes a contingency fee as the attorney's fee.

(Amends R.S. 37:218; adds R.S. 22:1276)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Adds contingency fee contract requirements.
2. Adds requirements of legal malpractice insurance.
3. Defines "reasonable and customary costs".
4. Provides for applicability.