

104TH CONGRESS
2D SESSION

S. 1861

To provide for legal reform and consumer compensation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 1996

Mr. McCONNELL (for himself and Mr. DOLE) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for legal reform and consumer compensation,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Legal Reform and
5 Consumer Compensation Act of 1996”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.

TITLE I—EARLY OFFER AND RAPID RECOVERY

Sec. 101. Early offer and rapid recovery mechanisms.

TITLE II—FAIRNESS IN LEGAL FEES

- Sec. 201. Findings and purpose.
 Sec. 202. Definitions.
 Sec. 203. Creation of a fiduciary relationship.
 Sec. 204. Written hourly rate fee agreement.
 Sec. 205. Nature of demand for compensation.
 Sec. 206. Time limit for, and requisite contents of, response setting forth settlement offer.
 Sec. 207. Consequences of failure to include prescribed material with settlement offer.
 Sec. 208. No obligation to issue response; inadmissibility of demands, responses, and failure to respond.
 Sec. 209. Effect of pre-demand settlement offer.
 Sec. 210. Pre-retention offer.
 Sec. 211. Post-retention offer when a pre-retention offer has been made.
 Sec. 212. Post-retention offer when no pre-retention offer has been made.
 Sec. 213. Calculation of attorney's fee when there is a subsequent resolution of the claim.
 Sec. 214. Provision of closing statement.
 Sec. 215. Effect of contravening agreements.
 Sec. 216. Inapplicability.

TITLE III—APPLICABILITY AND RULE OF CONSTRUCTION

- Sec. 301. Applicability to States; choice of law; jurisdiction; and construction.
 Sec. 302. Effective date.

1 **SEC. 3. FINDINGS.**

2 The Congress finds that—

3 (1) the current liability system is, all too often,
 4 a frustrating experience for many personal injury
 5 claimants, resulting in a time-consuming process
 6 which provides inadequate compensation for their in-
 7 juries;

8 (2) for other personal injury claimants, the sys-
 9 tem can provide a windfall of financial gain, greatly
 10 in excess of their actual losses;

11 (3) the unpredictable and erratic system is a
 12 product of a perverse incentive structure in which
 13 the magnitude of noneconomic damages is directly

1 linked to, and is a multiple of, the out-of-pocket ex-
2 penses incurred by the claimant;

3 (4) the incentives of the litigation system per-
4 petuate the overuse and abuse of the medical sys-
5 tem, costing the economy billions of dollars and cost-
6 ing every United States family hundreds of dollars
7 in unnecessary insurance premiums and health care
8 expenses;

9 (5) the system as it has recently developed—

10 (A) is highly regressive;

11 (B) is often duplicative of and inconsistent
12 with Federal regulatory and social welfare pro-
13 grams for the protection of injured parties;

14 (C) is burdened by an administrative cost
15 structure that causes a disproportionate amount
16 of its dollars to go to lawyers rather than to in-
17 jured parties;

18 (D) is particularly prejudicial to the com-
19 petitive position of the American small business
20 community;

21 (E) is a major and increasing threat to the
22 economic viability of American cities;

23 (F) imposes a major burden on the Amer-
24 ican economy and if reformed would signifi-

1 cantly enhance American productivity and
2 consumer wealth;

3 (G) is replete with incentives that reward
4 abusive claiming and defensive behavior; and

5 (H) is therefore a major cause of the dan-
6 gerous disesteem increasingly felt by increasing
7 numbers of Americans toward the legal system
8 and, indeed, the rule of law itself; and

9 (6) there is a need for a system of early offer,
10 rapid recovery and consumer choice to enable claim-
11 ants to be made whole and recover all economic
12 losses without resort to complex and protracted liti-
13 gation.

14 **TITLE I—EARLY OFFER AND**
15 **RAPID RECOVERY**

16 **SEC. 101. EARLY OFFER AND RAPID RECOVERY MECHA-**
17 **NISMS.**

18 (a) PURPOSE.—The purpose of this title is to estab-
19 lish a system of early offer and rapid recovery to permit
20 personal injury claimants to recover their economic losses
21 from a responsible party in a timely manner.

22 (b) IN GENERAL.—Chapter 111 of title 28, United
23 States Code, is amended by adding at the end the follow-
24 ing new section:

1 **“§ 1660. Early offer and rapid recovery mechanisms**

2 “(a) For purposes of this section:

3 “(1) The term ‘allegedly responsible party’
4 means a person, partnership, or corporation, and an
5 insurer thereof, alleged by the claimant to be respon-
6 sible for at least some portion of an injury alleged
7 by a claimant.

8 “(2) The term ‘claimant’ means an individual
9 who, in his or her own right, or vicariously as other-
10 wise permitted by law, is seeking compensation for
11 personal injury.

12 “(3) The term ‘clear and convincing evidence’
13 means that measure or degree of proof that will
14 produce in the mind of the trier of fact a firm belief
15 or conviction as to the truth of the allegations
16 sought to be established. The level of proof required
17 to satisfy such standard shall be more than that re-
18 quired under preponderance of the evidence, and less
19 than that required for proof beyond a reasonable
20 doubt.

21 “(4) The term ‘collateral benefits’ means all
22 benefits and advantages received or entitled to be re-
23 ceived (regardless of the right of recoupment of any
24 other entity, through subrogation, trust agreement,
25 lien, or otherwise) by an injured individual (or other

1 entity) as reimbursement of loss because of personal
2 injury—

3 “(A) payable or required to be paid by—

4 “(i) Federal, State, or other govern-
5 mental disability, unemployment, or sick-
6 ness programs;

7 “(ii) under the terms of any Federal,
8 State, or other governmental or private
9 health insurance, accident insurance, wage
10 or salary continuation plan, or disability
11 income insurance; or

12 “(iii) any other program or compensa-
13 tion system, if the payment is intended to
14 compensate the claimant for the same in-
15 jury or disability which is the subject of
16 the claim; minus

17 “(B) the amount paid by such individual
18 (or by the spouse, parent, child, or legal guard-
19 ian of such individual) to secure the payments
20 described in subparagraph (A).

21 “(5) The term ‘economic loss’ means any objec-
22 tively verifiable pecuniary loss resulting from the
23 harm suffered, including past and future medical ex-
24 penses, loss of past and future earnings, burial
25 costs, property damage accompanying bodily injury,

1 costs of replacement services in the home, including
2 child care, transportation, food preparation, and
3 household care, costs of making reasonable accom-
4 modations to a personal residence, loss of employ-
5 ment, and loss of business or employment opportuni-
6 ties, to the extent recovery for such losses is allowed
7 under applicable State law.

8 “(6) The term ‘entity’ includes an individual or
9 person.

10 “(7) The term ‘intentional misconduct’ means
11 conduct whereby harm is intentionally caused or at-
12 tempted to be caused by one who acts or fails to act
13 for the purpose of causing harm or with knowledge
14 that harm is substantially certain to follow when
15 such conduct caused or substantially contributed to
16 the harm claimed for, except a person does not in-
17 tentiously cause or attempt to cause harm—

18 “(A) merely because his or her act or fail-
19 ure to act is intentional or done with the real-
20 ization that it creates a risk of harm; or

21 “(B) if the act or omission causing bodily
22 harm is for the purpose of averting bodily harm
23 to oneself or another person.

24 “(8) The term ‘liability claim’ means a demand
25 for compensation by certified mail to an allegedly re-

1 sponsible party, which shall set forth the material
2 facts relevant to the claim including—

3 “(A) the name, address, age, marital sta-
4 tus, and occupation of claimant, which term for
5 the purposes of this section includes the injured
6 party if claimant is operating in a representa-
7 tive capacity;

8 “(B) a brief description of how the injury
9 occurred;

10 “(C) the names, and, if known, the ad-
11 dresses, telephone numbers, and occupations of
12 all known witnesses to the injury;

13 “(D) copies of photographs in claimant’s
14 possession that relate to the injury;

15 “(E) the basis for claiming that the party
16 to whom the claim is addressed is at least par-
17 tially responsible for causing the injury;

18 “(F) a description of the nature of the in-
19 jury, the names and addresses of all physicians,
20 other health care providers, and hospitals, clin-
21 ics, or other medical service entities that pro-
22 vided medical care to the claimant or the in-
23 jured party including the date and nature of the
24 service;

1 “(G) a copy of the medical records relating
2 to the injury and those involving a prior injury
3 or preexisting medical condition which an alleg-
4 edly responsible party would be able to intro-
5 duce into evidence in a trial or, in lieu of either
6 or both, executed releases authorizing the alleg-
7 edly responsible party to obtain such records di-
8 rectly from health care providers that produced
9 or possess them; and

10 “(H) relevant documents, including records
11 of earnings if a claimant is self-employed and
12 employer records of earnings if a claimant is
13 employed, and any medical expenses, wages
14 lost, or other pertinent damages suffered as a
15 consequence of the injury.

16 “(9) The term ‘noneconomic loss’ means non-
17 monetary losses including punitive damage claims
18 and further including without being limited to pain,
19 suffering, inconvenience, mental suffering, emotional
20 distress, loss of society and companionship, loss of
21 consortium, hedonic damages, injury to reputation,
22 and humiliation.

23 “(10) The term ‘punitive damages’ means dam-
24 ages awarded against any person or entity to punish
25 such persons or entity or to deter such person or en-

1 tity, or others, from engaging in similar behavior in
2 the future.

3 “(11) The term ‘reasonable attorney’s fee’
4 means an hourly fee for services rendered subse-
5 quent to the execution of a written agreement estab-
6 lishing an attorney-client relationship that bears a
7 reasonable relation to the attorney’s actual efforts
8 on the client’s behalf. Fees shall not be deemed rea-
9 sonable to the extent that services provided by an at-
10 torney are attributable to any failure to provide rea-
11 sonably prompt notice pursuant to subsection
12 (b)(1)(A)(ii).

13 “(12) The term ‘serious bodily injury’ means
14 bodily injury which results in death, dismemberment,
15 significant and permanent loss of an important bod-
16 ily function, or significant and permanent scarring
17 or disfigurement.

18 “(13) The term ‘wanton misconduct’ means
19 conduct that the allegedly responsible party realized
20 was excessively dangerous, done heedlessly and reck-
21 lessly, and with a conscious disregard of the con-
22 sequences to or rights and safety of the claimant.

23 “(b)(1)(A) After an occurrence that may give rise to
24 a civil action or claim against any person, in any Federal
25 or State court based on any cause of action to recover

1 damages for personal injury, any potentially allegedly re-
2 sponsible party has the option to offer, not later than the
3 later of—

4 “(i) 120 days after the injury; or

5 “(ii) 120 days after the initiation of the liability
6 claim,

7 to compensate a claimant for reasonable economic loss, in-
8 cluding future economic loss, less collateral benefits, and
9 including a reasonable attorney’s fee for the claimant.

10 “(B) If within 30 days of receipt of a liability claim
11 an allegedly responsible party notifies an unrepresented
12 claimant or a claimant’s attorney of a request for a medi-
13 cal examination of the claimant, and the claimant is not
14 made available for such examination within 10 days of re-
15 ceipt of the request, the time provided by this section for
16 issuing a response is extended by 1 day for each day that
17 the request is not honored after the expiration of 10 days
18 from the date of the request. Any such extension shall also
19 include a further period of 10 days from the date of the
20 completion of the medical examination.

21 “(C) The claimant may extend the time for receiving
22 the offer specified in subparagraph (A).

23 “(2) States may establish for all cases, including
24 cases covered by this title, a minimum dollar value for de-
25 fined classes involving death or serious bodily injury. A

1 claimant shall have the option of accepting such minimum
2 dollar value payable in lump sum, or accepting the benefit
3 specified in paragraph (1)(A).

4 “(c) An offer under subsection (b) may include other
5 allegedly responsible parties, individuals, or entities that
6 were involved in the events which gave rise to the civil
7 action, regardless of the theory of liability on which the
8 claim is based, upon their request or consent.

9 “(d) Future economic losses shall be payable to an
10 individual under this section as such losses occur.

11 “(e) If, after an offer is made under subsection (b),
12 the participants in the offer dispute their relative contribu-
13 tions to the payments to be made to the individual, such
14 disputes shall be resolved through binding arbitration in
15 accordance with applicable rules and procedures estab-
16 lished by the Attorney General of the United States.

17 “(f)(1) The claimant may reject an offer of com-
18 pensation made under subsection (b) and elect to bring
19 or maintain a civil action. Upon rejection of the offer, the
20 claimant may recover economic loss, including future eco-
21 nomic loss, less collateral benefits. The amount of collat-
22 eral benefits shall be determined by the court in a pretrial
23 proceeding. In any subsequent proceeding in the action,
24 no evidence shall be admitted as to the amount of eco-
25 nomic loss for which collateral benefits have been paid to,

1 or will be paid to, the claimant. The claimant may recover
2 for noneconomic loss to the extent authorized by other ap-
3 plicable law only if the claimant proves each element of
4 the claim for noneconomic loss by clear and convincing
5 evidence, that the allegedly responsible party caused the
6 injury by intentional or wanton misconduct.

7 “(2) A notice of such a rejection is required to be
8 made not later than 90 days after the date on which the
9 offer of compensation benefits is made. A failure to accept
10 the offer within the 90-day period is deemed a rejection.

11 “(g) Rejected offers may not be disclosed in any sub-
12 sequent action brought by the claimant.

13 “(h) Nothing in this section shall be construed to—

14 “(1) waive or affect any defense of sovereign
15 immunity asserted by any State under any law;

16 “(2) waive or affect any defense of sovereign
17 immunity asserted by the United States;

18 “(3) affect the applicability of any provision of
19 chapter 97;

20 “(4) preempt State choice-of-law rules with re-
21 spect to claims brought by a foreign nation or a citi-
22 zen of a foreign nation;

23 “(5) affect the right of any court to transfer
24 venue or to apply the law of a foreign nation or to
25 dismiss a claim of a foreign nation or of a citizen

1 of a foreign nation on the ground of inconvenient
2 forum;

3 “(6) affect any applicable statute of limitations
4 of any State or of the United States, except as ex-
5 pressly provided in this title; or

6 “(7) impair any right of a provider of collateral
7 benefits to seek reimbursement outside of the claim-
8 ant’s cause of action where permitted by State law,
9 other than by a lien on the recovery of the claimant.

10 “(i)(1) This section shall not apply to accidental bod-
11 ily injury caused by the operation or the use of a motor
12 vehicle in claims in which an uninsured motorist or a per-
13 sonal protection insured is involved.

14 “(2) For purposes of this subsection the term ‘oper-
15 ation or use’—

16 “(A) means operation or use of a motor vehicle
17 as a motor vehicle, including, incident to its oper-
18 ation or use as a vehicle, the occupation of the vehi-
19 cle;

20 “(B) does not cover conduct within the course
21 of a business of manufacturing, selling, or maintain-
22 ing a motor vehicle, including repairing, servicing,
23 washing, loading, or unloading; and

1 take intransigent settlement positions and otherwise
2 unethically add to the costs and delays of settling
3 meritorious claims for, among other reasons, the
4 purpose of reducing the marginal rates of compensa-
5 tion received by claimants' counsel;

6 (5) many deserving claimants receive inequi-
7 table compensation because—

8 (A) such claimants are required to pay at-
9 torneys approximately one-third or more of any
10 recovery even when there is little or no issue of
11 liability or damages and therefore little or no
12 assumption of risk by the attorney; and

13 (B) when a defendant or its insurer has
14 made a substantial settlement offer before the
15 attorney's retention or shortly thereafter and
16 the attorney has added little or nothing to the
17 value of the claim to that point, payment of a
18 substantial contingent fee is nonetheless gen-
19 erally required;

20 (6) the current compensation system often fails
21 to provide sufficient financial incentives to effectuate
22 prompt and adequate compensation to deserving
23 claimants, resulting in—

24 (A) delays in adjudications and case settle-
25 ments often caused by intransigent defendant

1 conduct that the present system perversely re-
2 wards and thereby deprives claimants of prompt
3 compensation;

4 (B) a substantial burden on Federal and
5 State courts contributing to very high case
6 backlogs; and

7 (C) regressive cost burdens and substantial
8 avoidable costs imposed on all parties resulting
9 from the long delays in resolving many claims;

10 (7) the current tort compensation system which
11 results in delays in resolving claims and which effec-
12 tively provides for increased noneconomic damages
13 and, therefore, increased legal fees as medical care
14 costs increase, provides perverse financial incentives
15 for both more intensive and unnecessary use of med-
16 ical care providers and the fraudulent incurrence of
17 medical care expenses, thereby adding materially to
18 the Nation's health care costs and burdens;

19 (8) delays in resolving claims often result in
20 more intensive and unnecessary use of medical care
21 providers, thereby adding to the Nation's health care
22 burden;

23 (9) the claims process gives rise to substantial,
24 avoidable transaction costs because of the lack of
25 adequate incentives for defendants and their insur-

1 ers to offer prompt and equitable settlements to
2 meritorious claimants and because claimants' attor-
3 neys exact a significant share of any settlement even
4 when their efforts do not generate or augment the
5 settlement offer;

6 (10) contingency fee practices, as described in
7 the preceding paragraphs, expose a clear and imper-
8 missible gap between (A) the ethical standards es-
9 tablished and promulgated by courts and professed
10 by the Bar, and (B) the actual practices of the Bar;

11 (11) contingency fee practices, as described in
12 the preceding paragraphs, bring substantial disre-
13 pute to the Bar and to the legal system as a whole
14 and loss of confidence in the rule of law itself, not
15 the least because they create and expose broad gaps
16 between the stated ethical principles of the legal pro-
17 fession and its real world practices;

18 (12) the inability of the Bar and the courts to
19 curb contingency fee abuses has led to higher settle-
20 ment costs, lowered compensation to injured per-
21 sons, excessive medical care costs and delayed claims
22 processing; and

23 (13) there is a need for adopting a procedure
24 to implement appropriate ethical and legal standards

1 and to resolve personal injury claims more fairly and
2 promptly.

3 (b) PURPOSES.—The purposes of this title are to—

4 (1) enforce more efficiently and effectively ethi-
5 cal standards governing the reasonableness of law-
6 yers' fees and correspondingly to implement the
7 stricter scrutiny that courts are obliged to apply to
8 contingent fees;

9 (2) reverse systemic incentives now in effect so
10 as to reward, and not to penalize, defendants who
11 make substantial early settlement offers;

12 (3) compensate claimants' attorneys more ra-
13 tionally by calculating their compensation in relation
14 to the value of services rendered and risks under-
15 taken;

16 (4) compensate more fairly those seeking re-
17 dress for injuries by giving them a larger share of
18 promptly achieved settlements;

19 (5) further enhance the likelihood of early set-
20 tlement of claims by preserving a larger share of
21 early settlement offers for claimants;

22 (6) lower the costs of the personal injury tort
23 compensation system including unnecessary medical
24 and defense costs;

1 (7) remove the burdens on interstate commerce
2 and the Nation’s health care programs that are im-
3 posed by the current tort compensation system;

4 (8) create a simple, self-enforcing system, con-
5 trolled by the parties, which forms an early basis for
6 establishing the sums and issues that are in dispute;

7 (9) reduce unworkable burdens now placed on
8 courts and bar grievance boards presently charged
9 with enforcing ethical standards through ex post
10 facto, case-by-case fact finding processes that pose
11 difficult burdens of proof and impose disproportion-
12 ate transaction costs on both parties and fact find-
13 ers; and

14 (10) provide alternatives to across-the-board fee
15 cap reforms, which often provide defendants with
16 unearned advantages and further encourage many
17 defendants in unethical protraction of settlement of
18 meritorious claims.

19 **SEC. 202. DEFINITIONS.**

20 For purposes of this title:

21 (1) The term “allegedly responsible party”
22 means a person, partnership, corporation, and an in-
23 surer thereof, alleged by a claimant to be responsible
24 for at least some portion of a personal injury alleged
25 by claimant.

1 (2) The term “claim” means an assertion of en-
2 tlement to compensation for personal injury from
3 an allegedly responsible party and, to the extent sub-
4 ject to a contingent fee agreement, to all other relat-
5 ed claims arising from such injury.

6 (3) The term “claimant” means an individual
7 who, in his or her own right, or vicariously as other-
8 wise permitted by law, is seeking compensation for
9 personal injury.

10 (4) The term “contingent fee” means the fee
11 negotiated in a contingent fee agreement that is pay-
12 able in fact or in effect only from the proceeds of
13 any recovery on behalf of claimant.

14 (5) The term “contingent fee agreement”
15 means a fee agreement between an attorney and
16 claimant wherein the attorney agrees to bear the
17 risk of no or inadequate compensation in exchange
18 for a proportionate share of any recovery by settle-
19 ment or verdict obtained for claimant.

20 (6) The term “contingent fee attorney” means
21 an attorney who agrees to represent claimant in ex-
22 change for a contingent fee.

23 (7) The term “fixed fee” means an agreement
24 between an attorney and claimant whereby the attor-

1 ney agrees to perform a specific legal task in ex-
2 change for a specified sum to be paid by claimant.

3 (8) The term “hourly rate fee” means the fee
4 generated by an agreement, or otherwise by oper-
5 ation of law, between an attorney and claimant pro-
6 viding that claimant pay the attorney a fee deter-
7 mined by multiplying the hourly rate negotiated, or
8 otherwise set by law, between the attorney and
9 claimant, by the number of hours that the attorney
10 has worked on behalf of claimant in furtherance of
11 claimant’s interest. An hourly rate fee may also be
12 a contingent fee to the extent it is only payable in
13 fact or in effect from the proceeds of any recovery
14 on behalf of claimant.

15 (9) The term “injury” means personal injury.

16 (10) The term “personal injury” means an oc-
17 currence resulting from any act giving rise to a tort
18 claim, including, without limitation, bodily injury,
19 sickness, disease, death, or property damage accom-
20 panying bodily injury.

21 (11) The term “post-retention offer” means an
22 offer of settlement in response to a demand for com-
23 pensation made within the time constraints, and
24 conforming to the provisions of this title, made to a

1 claimant who is represented by a contingent fee at-
2 torney.

3 (12) The term “pre-retention offer” means an
4 offer to settle a claim for compensation made to a
5 claimant not represented by an attorney at the time
6 of the offer.

7 (13) The term “response” means a written
8 communication by claimant or an allegedly respon-
9 sible party or the attorney for either, deposited into
10 the United States mail and sent certified mail or de-
11 livered by an overnight delivery service.

12 (14) The term “settlement offer” means a writ-
13 ten offer of settlement set forth in a response within
14 the time limits set forth in this title.

15 **SEC. 203. CREATION OF A FIDUCIARY RELATIONSHIP.**

16 For purposes of this title, a fiduciary relationship
17 commences when a claimant consults a contingent fee at-
18 torney to seek professional services.

19 **SEC. 204. WRITTEN HOURLY RATE FEE AGREEMENT.**

20 Contingent fee agreements for the representation of
21 parties with claims shall also include alternate hourly rate
22 fees. If a contingent fee attorney has not entered into a
23 written agreement with claimant at the time of retention
24 setting forth the attorney’s hourly rate, then a reasonable

1 hourly rate is payable, subject to the limitations set forth
2 in this title.

3 **SEC. 205. NATURE OF DEMAND FOR COMPENSATION.**

4 (a) IN GENERAL.—At any time after retention, a con-
5 tingent fee attorney pursuing a claim shall send a demand
6 for compensation by certified mail to an allegedly respon-
7 sible party, which shall set forth the material facts rel-
8 evant to the claim including—

9 (1) the name, address, age, marital status, and
10 occupation of claimant, which term for the purposes
11 of this title includes the injured party if claimant is
12 operating in a representative capacity;

13 (2) a brief description of how the injury oc-
14 curred;

15 (3) the names, and, if known, the addresses,
16 telephone numbers, and occupations of all known
17 witnesses to the injury;

18 (4) copies of photographs in claimant's posses-
19 sion that relate to the injury;

20 (5) the basis for claiming that the party to
21 whom the claim is addressed is at least partially re-
22 sponsible for causing the injury;

23 (6) a description of the nature of the injury, the
24 names and addresses of all physicians, other health
25 care providers, and hospitals, clinics, or other medi-

1 cal service entities that provide medical care to
2 claimant or the injured party including the date and
3 nature of the service;

4 (7) medical records relating to the injury and
5 those involving a prior injury or pre-existing medical
6 condition which an allegedly responsible party would
7 be able to introduce into evidence in a trial or, in
8 lieu of either or both, executed releases authorizing
9 the allegedly responsible party to obtain such records
10 directly from health care providers that produced or
11 possess them; and

12 (8) relevant documentation, including records of
13 earnings if a claimant is self-employed and employer
14 records of earnings if a claimant is employed, or any
15 medical expenses, wages lost, or other pertinent
16 damages suffered as a consequence of the injury.

17 (b) MAILING OF COPIES.—At the time of the mailing
18 of the demand for compensation, a claimant's attorney
19 shall mail copies of each such demand to the claimant and
20 to every other allegedly responsible party.

21 (c) LIMITATION ON FEE.—A fee received by or con-
22 tracted for by a contingent fee attorney that exceeds 10
23 percent of any settlement or judgment received by his or
24 her client after reasonable expenses have been deducted
25 is unreasonable and excessive if the attorney has sent a

1 timely demand for compensation but has omitted informa-
2 tion of a material nature that is required by this section
3 which he or she had in his or her possession or which was
4 readily available to him or her at the time of filing.

5 **SEC. 206. TIME LIMIT FOR, AND REQUISITE CONTENTS OF,**
6 **RESPONSE SETTING FORTH SETTLEMENT**
7 **OFFER.**

8 (a) POST-RETENTION OFFER.—To qualify its re-
9 sponse as a post-retention offer under this title, an alleg-
10 edly responsible party shall—

11 (1) issue a response stating a settlement offer
12 within 60 days from receipt of a demand for com-
13 pensation;

14 (2) send the response to claimant's attorney
15 with a copy to claimant;

16 (3) state that the offer is open for acceptance
17 for a minimum of 30 days from the time of its re-
18 ceipt by claimant's attorney and further state wheth-
19 er it expires at the end of this period or remains
20 open for acceptance for a longer period or until no-
21 tice of withdrawal is given; and

22 (4) include with the offer copies of materials in
23 its or its attorney's possession concerning the alleged
24 injury upon which the allegedly responsible party re-
25 lied in making the settlement offer except material

1 that such party or its attorney believes in good faith
2 would not be discoverable by claimant during the
3 course of litigation.

4 If reproduction costs under paragraph (4) would be sig-
5 nificant relative to the size of the offer, the allegedly re-
6 sponsible party may, in the alternative, offer other forms
7 of access to the materials convenient and at reasonable
8 cost to claimant's attorney.

9 (b) TIME LIMITATIONS.—If within 30 days of receipt
10 of a claimant's demand for compensation an allegedly re-
11 sponsible party notifies an unrepresented claimant or a
12 claimant's attorney that it seeks to have a medical exam-
13 ination of claimant, and claimant is not made available
14 for such examination within 10 days of receipt of the re-
15 quest, the time herein provided for issuing a response is
16 extended by 1 day for each day that the request is not
17 honored after the expiration of 10 days from the date of
18 the request. Any such extension also includes a further
19 period of 10 days from the date of the completion of the
20 medical examination.

21 (c) INCREASE IN OFFER.—The settlement offer may
22 be increased during the 60-day period set forth in sub-
23 section (a)(1) by issuing an additional offer stating that
24 the time for acceptance is 10 days after receipt of the ad-
25 ditional offer by claimant's attorney or 30 days from re-

1 ceipt of the initial response, whichever is longer, unless
2 the additional response specifies a longer period of time
3 for acceptance as set forth in subsection (a)(3).

4 **SEC. 207. CONSEQUENCES OF FAILURE TO INCLUDE PRE-**
5 **SCRIBED MATERIAL WITH SETTLEMENT**
6 **OFFER.**

7 (a) IN GENERAL.—If an allegedly responsible party
8 or its attorney willfully fails to include the material re-
9 quired by section 206(a)(4) with a response stating a set-
10 tlement offer or does not otherwise make such material
11 available—

12 (1) a claimant may revoke its acceptance of
13 such settlement offer within 2 years of having ac-
14 cepted it; and

15 (2) any fees and costs reasonably incurred by a
16 claimant in revoking its acceptance of such settle-
17 ment offer and reinstating its claim is recoverable
18 from the allegedly responsible party, including the
19 losses suffered by a claimant who is precluded from
20 reinstating its claim by operation of a statute of lim-
21 itations.

22 (b) SANCTIONS FOR PARTY.—Willful failure of an al-
23 legedly responsible party to comply with section 206(a)(4)
24 shall subject such party to the sanctions applicable to a

1 party who fails to comply with requests for the production
2 of documents.

3 (c) SANCTIONS FOR ATTORNEY.—Willful failure of
4 an attorney for an allegedly responsible party to comply
5 with section 206(a)(4) shall subject that attorney to the
6 same sanctions applicable to attorneys who improperly
7 counsel their clients not to produce documents for which
8 there has been a discovery request.

9 **SEC. 208. NO OBLIGATION TO ISSUE RESPONSE; INADMISS-**
10 **SIBILITY OF DEMANDS, RESPONSES, AND**
11 **FAILURE TO RESPOND.**

12 (a) NO OBLIGATION TO RESPOND.—Nothing in this
13 title imposes on an allegedly responsible party an obliga-
14 tion to issue a response to a demand for compensation.

15 (b) INADMISSIBILITY OF OFFER.—Demands for com-
16 pensation, early settlement offers, or the failure of an al-
17 legedly responsible party to issue same, are inadmissible
18 in any subsequent litigation, proceeding, or arbitration, to
19 the extent that evidence of settlement negotiations is inad-
20 missible in the jurisdiction where the case is brought.

21 **SEC. 209. EFFECT OF PRE-DEMAND SETTLEMENT OFFER.**

22 A settlement offer to an injured party represented by
23 a contingent fee counsel made before receipt of a demand
24 for compensation, which is open for acceptance for 60 days
25 or more from the time of its receipt and which conforms

1 to the requirements of section 206, is deemed a post-retention offer and has the same effect under this title as if
2 it were a response to a demand for compensation.
3

4 **SEC. 210. PRE-RETENTION OFFER.**

5 (a) PROHIBITION OF PERCENTAGE FEE OF PRE-RETENTION OFFER.—It is a violation of this title for an attorney retained after claimant has received a pre-retention offer to enter into an agreement with claimant to receive
6 a contingent fee based upon or payable from the proceeds
7 of the pre-retention offer, provided that the pre-retention offer remains in effect or is renewed until the time has
8 elapsed for issuing a response containing a settlement offer as defined under section 206.
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14 (b) UNREASONABLE AND EXCESSIVE FEE.—An attorney entering into a fee agreement that would effectively
15 result in payment of a percentage of a pre-retention offer to a claimant has charged an unreasonable and excessive
16 fee.
17
18

19 (c) PRESUMPTIVE REASONABLE FEE.—An attorney who contracts with a claimant for a reasonable hourly rate
20 or a reasonable fixed fee, or who is paid such a fee for
21 advising claimant regarding the fairness of the pre-retention offer, has charged a presumptively reasonable fee.
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1 **SEC. 211. POST-RETENTION OFFER WHEN A PRE-RETEN-**
 2 **TION OFFER HAS BEEN MADE.**

3 (a) **REASONABLE FEE BASED ON HOURLY FEE.—**

4 A fee paid or contracted to be paid to a contingent fee
 5 attorney by a claimant who has rejected a pre-retention
 6 offer and who later accepts a post-retention offer of a
 7 greater amount is an unreasonable and excessive fee un-
 8 less it is an hourly rate fee that does not exceed 25 percent
 9 of the excess of the post-retention offer over the pre-reten-
 10 tion offer.

11 (b) **REASONABLE FEE BASED ON PERCENTAGE.—If**

12 the accepted post-retention offer is less than the pre-reten-
 13 tion offer, a total fee for all services rendered that is great-
 14 er than 10 percent of the first \$100,000 of the post-reten-
 15 tion offer plus 5 percent of any amount that exceeds
 16 \$100,000 after all reasonable expenses have been deducted
 17 is an unreasonable and excessive fee.

18 **SEC. 212. POST-RETENTION OFFER WHEN NO PRE-RETEN-**
 19 **TION OFFER HAS BEEN MADE.**

20 A fee paid or contracted to be paid to a contingent
 21 fee attorney by a claimant who has not received a pre-
 22 retention offer and who has accepted a post-retention offer
 23 is an unreasonable and excessive fee unless it is an hourly
 24 rate fee that does not exceed 10 percent of the first
 25 \$100,000 of the offer plus 5 percent of any amount that

1 exceeds \$100,000 after all reasonable expenses have been
2 deducted.

3 **SEC. 213. CALCULATION OF ATTORNEY'S FEE WHEN THERE**
4 **IS A SUBSEQUENT RESOLUTION OF THE**
5 **CLAIM.**

6 Irrespective of any pre-retention offer, the provisions
7 of section 212 regarding maximum allowable fees remain
8 in effect if a post-retention offer is not accepted by claim-
9 ant within the time provided by this title. Contingent fees
10 are unreasonable and excessive unless charged against the
11 difference between an unaccepted post-retention offer and
12 the judgment or settlement ultimately obtained by claim-
13 ant. When such judgment or settlement is lower than the
14 unaccepted offer, the fee limitations of section 212 apply
15 against the judgment or settlement.

16 **SEC. 214. PROVISION OF CLOSING STATEMENT.**

17 Upon receipt of any settlement or judgment, and
18 prior to disbursement thereof, a contingent fee attorney
19 shall provide claimant with a written statement detailing
20 how the proceeds are to be distributed, including the
21 amount of the expenses paid out or to be paid out of the
22 proceeds, the amount of the fee, how the fee amount is
23 calculated, and the amount due claimant.

1 **SEC. 215. EFFECT OF CONTRAVENING AGREEMENTS.**

2 (a) VIOLATION.—A contingent fee attorney who
3 charges a fee that contravenes this title has charged an
4 unreasonable and excessive fee.

5 (b) EXCESSIVE AND UNREASONABLE FEES.—If the
6 fee violates subsection (a), then it is also excessive and
7 unreasonable to the extent that it has not been reduced
8 by any reasonable fees and costs incurred by claimant in
9 establishing that the fee agreement contravened this title.

10 (c) UNENFORCEABLE FEE AGREEMENTS.—Fee
11 agreements between claimants and contingent fee attor-
12 neys who have charged fees defined under this title as un-
13 reasonable or excessive are illegal and unenforceable ex-
14 cept to the extent provided in this title.

15 **SEC. 216. INAPPLICABILITY.**

16 (a) EVALUATIONS AND COLLECTIONS.—Except for
17 the provisions of section 203, nothing in this title applies
18 to an agreement between a claimant and an attorney to
19 retain the attorney—

20 (1) on an hourly rate fee or fixed fee basis sole-
21 ly to evaluate a pre-retention offer; or

22 (2) to collect overdue amounts from an accepted
23 pre-retention or post-retention settlement offer.

24 (b) AGREEMENTS IN WHICH CERTAIN OFFERS NOT
25 MADE.—The provisions of this title prohibiting the charg-
26 ing of contingency fees in the absence of assuming mean-

1 ingful risk and defining reasonable and unreasonable fees,
2 shall have no effect on contingent fee agreements in cases
3 in which neither a pre-retention nor a post-retention offer
4 of settlement is made.

5 (c) MOTOR VEHICLE ACCIDENTAL BODILY IN-
6 JURY.—(1) This title shall not apply to accidental bodily
7 injury caused by the operation or the use of a motor vehi-
8 cle in claims in which an uninsured motorist or personal
9 protection insured is involved.

10 (2) For purposes of this subsection the term “oper-
11 ation or use”—

12 (A) means operation or use of a motor vehicle
13 as a motor vehicle, including, incident to its oper-
14 ation or use as a vehicle, the occupation of the vehi-
15 cle;

16 (B) does not cover conduct within the course of
17 a business of manufacturing, selling, or maintaining
18 a motor vehicle, including repairing, servicing, wash-
19 ing, loading, or unloading; and

20 (C) does not include such conduct not within
21 the course of such a business unless such conduct
22 occurs while occupying a motor vehicle.

1 **TITLE III—APPLICABILITY AND**
2 **RULE OF CONSTRUCTION**

3 **SEC. 301. APPLICABILITY TO STATES; CHOICE OF LAW; JU-**
4 **RISDICTION; AND CONSTRUCTION.**

5 (a) **APPLICABILITY TO STATES.**—Title I or II of this
6 Act shall not apply in a State if such State enacts a stat-
7 ute that—

8 (1) cites the authority of this subsection; and
9 (2) declares the election of such State that the
10 title shall not apply.

11 (b) **CHOICE OF LAW.**—In disputes between citizens
12 of States that elect nonapplicability under subsection (a)
13 and citizens of States that do not so elect, ordinary choice
14 of law principles shall apply.

15 (c) **JURISDICTION.**—This section shall not confer ju-
16 risdiction on the district courts of the United States under
17 section 1331 or 1337 or title 28, United States Code.

18 (d) **CONSTRUCTION.**—Nothing in this Act shall alter
19 or diminish the authority or obligation of the Federal
20 courts to construe the terms of this Act.

21 **SEC. 302. EFFECTIVE DATE.**

22 This Act shall take effect on the date of enactment
23 of this Act.

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