

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CONTINGENCY FEES BILL**

[B 33—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 33A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP
GEBEURLIKHEIDSGELDE**

[W 33—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 33A—97]

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AMENDMENTS AGREED TO

CONTINGENCY FEES BILL [B 33—97]

CLAUSE 1

1. On page 2, in line 8, to omit all words after “means” up to and including “proceedings” in line 9 and to substitute “an attorney or an advocate”.
2. On page 2, in line 12, to omit “upon” and to substitute “or assessed on”.
3. On page 2, in line 12, after “and” to insert “own”.
4. On page 2, in line 18, after “includes” to insert:

any professional services rendered by the legal practitioner concerned
and
5. On page 2, after line 20, to insert the following definition:

“professional controlling body”—

 - (a) in respect of an attorney, means any body established by or under any law for the purposes of exercising control over the carrying on of the business of the attorneys’ profession, and of which such an attorney is a member; and
 - (b) in respect of an advocate, means any body which is determined by the Minister of Justice by notice in the *Gazette* for the purposes of this Act, and of which such an advocate is a member.

CLAUSE 2

1. On page 2, in line 34, after “concerned” to insert:

(hereinafter referred to as the ‘success fee’)
2. On page 2, in lines 35 and 36, to omit “fees higher than such normal fees” and to substitute “such success fee”.
3. On page 2, in lines 36 and 37, to omit “including an advocate in cases where one is employed,”.
4. On page 2, in line 38, after “awarded” to insert “or any amount obtained by”.
5. On page 2, in line 39, to omit “awards as to”.

CLAUSE 3

1. On page 4, in lines 2 and 3, to omit “approved by the professional controlling body of which the legal practitioner is a member” and to substitute:

prescribed by the Minister of Justice, which shall be published in the *Gazette*, after consultation with the advocates’ and attorneys’ professions

2. On page 4, after line 3, to insert the following paragraph:
 - (b) The Minister of Justice shall cause a copy of the form referred to in paragraph (a) to be tabled in Parliament, before such form is put into operation.
3. On page 4, from line 16, to omit “, in cases where an advocate is to be employed,”.
4. On page 4, from line 17, to omit “uplift portion of the advocate’s” and to substitute “success”.
5. On page 4, in line 24, after “due” to insert:
 - , and the consequences which will follow,
6. In the English text, on page 4, in line 32, to omit “resile” and to substitute “withdraw”.
7. In the English text, on page 4, in line 34, to omit “resilement” and to substitute “withdrawal”.
8. On page 4, in line 35, after “of” to insert “any necessary or essential”.
9. On page 4, in line 35, after “done” to insert:
 - to protect the interests of the client

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 3:

Settlement

4. (1) Any offer of settlement made to any party who has entered into a contingency fees agreement, may be accepted after the legal practitioner has filed an affidavit with the court, if the matter is before court, or has filed an affidavit with the professional controlling body, if the matter is not before court, stating—
 - (a) the full terms of the settlement;
 - (b) an estimate of the amount or other relief that may be obtained by taking the matter to trial;
 - (c) an estimate of the chances of success or failure at trial;
 - (d) an outline of the legal practitioner’s fees if the matter is settled as compared to taking the matter to trial;
 - (e) the reasons why the settlement is recommended;
 - (f) that the matters contemplated in paragraphs (a) to (e) were explained to the client, and the steps taken to ensure that the client understands the explanation; and
 - (g) that the legal practitioner was informed by the client that he or she understands and accepts the terms of the settlement.
- (2) The affidavit referred to in subsection (1) must be accompanied by an affidavit by the client, stating—

- (a) that he or she was notified in writing of the terms of the settlement;
- (b) that the terms of the settlement were explained to him or her, and that he or she understands and agrees to them; and
- (c) his or her attitude to the settlement.

(3) Any settlement made where a contingency fees agreement has been entered into, shall be made an order of court, if the matter was before court.

CLAUSE 5

1. On page 4, in line 52, to omit all the words after “the” up to and including “member” on page 6 in line 1 and to substitute “professional controlling body”.
2. On page 6, in line 2, to omit “Bar Association or Law Society, to a competent court” and to substitute:

professional controlling body, to such body or person as the Minister of Justice may designate by notice in the *Gazette* for the purposes of this section
3. On page 6, in line 3, to omit “Bar Association, Law Society or court” and to substitute:

professional controlling body or designated body or person

CLAUSE 6

1. On page 6, in line 7, to omit “The controlling professional bodies mentioned in section 5” and to substitute “Any professional controlling body”.
2. On page 6, in line 8, to omit “bodies” and substitute “body”.
3. On page 6, in line 10, to omit “controlling professional bodies” and to substitute “professional controlling body”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 6:

Regulations

7. The Minister of Justice may make regulations prescribing further steps to be taken for the purposes of implementing and monitoring the provisions of this Act.