

'Tort reform' group starts move to limit attorney fees

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SACRAMENTO — The backers of last year's successful "deep pockets" initiative, Proposition 51, have begun a second tort reform initiative drive — limiting attorney contingency fees and punitive damages — for the June 1988 ballot.

Under the aegis of "Californians for Fair Liability Laws," the initiative was submitted last Thursday to the Attorney General's Office for title and summary — the first stage in the initiative process. It then goes to the legislative analyst and the state finance department for further analysis of the proposed ballot language before signatures are collected to qualify it for the ballot.

Called the "Fair Liability Act," the proposed initiative contains the following provisions:

- Limits attorney contingency fees to one-third of the first \$100,000 recovered, one-fourth of the next \$100,000 recovered and one-fifth of any amount above \$200,000.
 - Requires judgements "to be reduced by the amount of previous payments from collateral sources," less the costs paid by the plaintiff for the collateral benefits. (Currently juries cannot be told that the plaintiff has received money for an injury from other sources, except in medical malpractice cases.)
 - Requires an evidence standard of "beyond a reasonable doubt" for awarding of punitive damages.
 - Protects volunteer directors and officers of non-profit, public service organizations for "certain acts or omissions they take in good faith."
 - Precludes strict liability against a manufacturer or seller in a lawsuit alleging that a product was designed defectively "if the unsafe aspect of the product is an inherent characteristic of the product that is recognized by the ordinary consumer."
 - Prohibits the legislature from changing the initiative or the provisions of the Medical Injury Compensation Reform Act (MICRA) without a two-thirds vote. (MICRA, passed by the Legislature in 1975, applies to medical malpractice suits, restricting contingency fees and limiting non-economic damages to \$250,000).
- The long-expected initiative drive has been

harshly criticized by consumer activists and environmental groups as a ploy to further limit the rights of victims in personal injury suits. A coalition of consumer and citizen activists and public interest lawyers, under the aegis of the "Access to Justice Foundation," has promised to fight such an initiative and/or to start a consumer-based grass-roots initiative drive to counter the tort reform initiative.

Such an initiative is also opposed by the California Trial Lawyers Association, which has said it may support a counter-initiative or draft its own. Trial lawyers spent an estimated \$5 million in an effort to defeat Proposition 51 last year, while the tort reform group spent \$6 million to pass it.

The new initiative proposal is backed by a coalition of business, medical and local government groups in the Association for California Tort Reform (ACTR), which sponsored Proposition 51 last year.

Heading the drive are Sacramento attorney Gene Livingston of Livingston & Mattesich and California Chamber of Commerce President Kirk West. Livingston was the author of Proposition 51 and is chairman of ACTR.

West said in a prepared statement accompanying the initiative draft that it is in response to "exorbitant" liability costs "paid by taxpayers, consumers and businesses," and because the Legislature has failed to enact significant tort reform.

Legislators recently killed a package of tort reform bills, the Personal Injury Compensation Reform Act (PICRA), which would have extended the provisions of MICRA to non-medical personal injury cases.

"Our present laws encourage frivolous lawsuits, cause excessive damage awards, reduced governmental services and high insurance rates, and hurt the competitiveness of California producers of goods and services," West said. "The only group of people who consistently benefit from our liability laws are trial lawyers."