

SECOND REGULAR SESSION

HOUSE BILL NO. 2236

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COX (Sponsor), GATSCHENBERGER, STEVENSON,
NANCE AND BIVINS (Co-sponsors).

5180L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 484, RSMo, by adding thereto one new section relating to the private attorney retention act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 484, RSMo, is amended by adding thereto one new section, to be
2 known as section 484.500, to read as follows:

484.500. 1. This act shall be known as the "Private Attorney Retention Act".

2 **2. (1) For the purposes of this section, a contract in excess of one million dollars is**
3 **one which the fee paid to an attorney or group of attorneys, either in the form of a flat,**
4 **hourly, or contingent fee, and their expenses, exceeds or can be reasonably expected to**
5 **exceed one million dollars.**

6 **(2) For purposes of this section "fees" shall include any compensation for legal**
7 **services however measured, including but not limited to flat, hourly, and contingent fees.**

8 **3. Any state agency or state agent that wishes to retain a lawyer or law firm to**
9 **perform legal services on behalf of this state, where the fees and expenses for such services**
10 **will exceed or can be reasonably expected to exceed one hundred thousand dollars, shall**
11 **not do so until an open and competitive bidding process has been undertaken.**

12 **4. No state agency or state agent shall enter into a contract for legal services**
13 **exceeding one million dollars without the opportunity for legislative review of the terms**
14 **of the contract in accordance with the provisions of subsection 5 of this section.**

15 **5. (1) Except as provided in subdivision (5) of this subsection, any state agency or**
16 **state agent proposing to enter into a contract for legal services exceeding one million**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 dollars shall file a copy of the proposed contract with the clerk of the house of
18 representatives and shall also accompany such proposed contract with a written statement
19 that identifies:

20 (a) The reasons the state should retain private counsel and the consideration of
21 alternatives;

22 (b) The open and competitive bidding process that has been undertaken with
23 respect to the proposed legal services;

24 (c) The reasons for the selection of the lawyer or law firm that is the proposed
25 contracting party;

26 (d) The past or present relationship, if any, between such lawyer, law firm, or any
27 partner or other principal in such law firm and the state agency or state agent proposing
28 to enter into the contract; and

29 (e) If the contract contemplates that all or part of the fee is contingent on the
30 outcome of the legal proceeding, the reasons the contingent fee arrangement is believed to
31 be in the state's interest and any efforts undertaken to obtain private counsel on a
32 noncontingent fee basis.

33 (2) Except as provided in subdivision (6) of this subsection, the clerk of the house
34 of representatives, with the approval of the president of the senate and speaker of the house
35 of representatives, shall promptly refer such proposed contract and written statement to
36 the appropriate committee for review.

37 (3) Within forty-five days after the filing of the proposed contract and statement
38 with the clerk, the reviewing committee may hold a public hearing on the proposed
39 contract and, whether or not a public hearing is held, shall issue a report to the referring
40 state agency or state agent. The report shall include any recommended changes to the
41 proposed contract approved by the committee. If the reviewing committee recommends
42 no changes to the proposed contract within forty-five days of the initial filing of the
43 proposed contract with the clerk of the house of representatives, the referring state agency
44 or state agent may enter into the proposed contract. If the report of the reviewing
45 committee recommends changes to the proposed contract in accordance with the provisions
46 of this subdivision, the state agency or state agent shall review the report and prepare a
47 revised contract as deemed appropriate in view of the report and shall file with the clerk
48 of the house of representatives a copy of the revised contract.

49 (4) If the revised contract does not contain all changes recommended by the
50 reviewing committee, the referring state agency or state agent shall include with the revised
51 contract filed with the clerk a letter stating the reasons why the recommended changes
52 were not adopted. The clerk shall promptly refer such letter and revised contract to the

53 reviewing committee, which may hold additional hearings and issue additional reports in
54 its discretion. Not earlier than forty-five days after the filing of such letter and revised
55 contract with the clerk, the referring state agency or state agent may enter into the revised
56 contract. Notwithstanding any provision of this subsection, any revised contract
57 containing terms not previously reviewed or recommended by the reviewing committee
58 that can reasonably be expected to increase the fees and expenses to be paid shall be
59 treated as a new proposed contract and shall be filed and reviewed in accordance with
60 subdivisions (1), (2), (3), and (4) of this subsection.

61 (5) In the event that the legislature is not in session and the state agency or state
62 agent wishes to enter into a contract for legal services exceeding one million dollars, the
63 proposed contract and written statement described in paragraphs (a) and (b) of subdivision
64 (1) of this subsection shall be filed with the governor in addition to the clerk of the house
65 of representatives. Except as provided in subdivision (6) of this subsection the governor
66 shall establish a five-member interim committee consisting of five state legislators, one each
67 to be appointed by the governor, the speaker of the house of representatives, the president
68 pro tem of the senate, and the minority leader in each house of the legislature, to execute
69 the legislative oversight duties set forth in subdivisions (2) and (3) of this subsection. All
70 deadlines and responsibilities set forth in those subdivisions shall apply as though the
71 interim committee were a committee of the legislature.

72 (6) In the event the state agency or state agent in a writing filed with the governor
73 and the clerk of the house of representatives states that time exigencies require that the
74 state retain counsel before the periods provided in subdivisions (1), (2), (3), and (4) of this
75 subsection have elapsed, and provides the reasons therefor, the governor shall establish a
76 five-member committee, with members appointed as provided in subdivision (5) of this
77 subsection to which the proposed contract and written statement described in paragraphs
78 (a) and (b) of subdivision (1) of this subsection shall be referred. The committee shall
79 consult with the state agency or state agent to establish an expedited schedule for review
80 and recommendations on the proposed contract.

81 6. (1) At the conclusion of any legal proceeding for which a state agency or state
82 agent retained outside counsel on a contingent fee basis, the state shall receive from counsel
83 a statement of the hours worked on the case, expenses incurred, the aggregate fee amount,
84 and a breakdown as to the hourly rate, based on hours worked divided into fee recovered,
85 less expenses.

86 (2) In no case shall the state incur fees and expenses in excess of two hundred fifty
87 dollars per hour for legal services. In cases where a disclosure submitted in accordance
88 with subdivision (1) of this subsection indicates an hourly rate in excess of two hundred

89 **fifty dollars per hour, the fee amount shall be reduced to an amount equivalent to two**
90 **hundred fifty dollars per hour.**

91 **7. Nothing in this section shall be construed to expand the authority of any state**
92 **agency or state agent to enter into contracts where no such authority previously existed.**

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