

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By

AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 70, Page 1, Line 4 of the Title, by deleting the words "the Missouri family trust" and inserting in lieu thereof the words "contractual acts"; and

Further amend said bill, Page 1, Section A, Line 5 by inserting after said line the following:

"34.376. 1. Sections 34.376 to 34.380 may be known as the "Transparency in Private Attorney Contracts Act".

2. As used in sections 34.376 to 34.380, the following terms shall mean:

(1) "Government attorney", an attorney employed by the state as an assistant attorney general;

(2) "Private attorney", any private attorney or law firm;

(3) "State", the state of Missouri, in any action instituted by the attorney general under section 27.060.

34.378. 1. The state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exist sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter;

(2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly;

(3) The geographic area where the attorney services are to be provided; and

(4) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

2. If the attorney general makes the determination described in subsection 1 of this section, the attorney general shall request proposals from private attorneys to represent the department on a contingency fee basis, unless the attorney general determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in

1 writing.

2 3. The state may not enter into a contingency fee contract that provides for the private  
3 attorney to receive an aggregate contingency fee in excess of twenty-five percent of the net  
4 recovery to the state.

5 4. The state shall not enter into a contract for contingency fee attorney services unless the  
6 following requirements are met throughout the contract period and any extensions to the contract:

7 (1) The government attorneys shall retain complete control over the course and conduct of  
8 the case;

9 (2) A government attorney with supervisory authority shall be personally involved in  
10 overseeing the litigation;

11 (3) The government attorneys shall retain veto power over any decisions made by outside  
12 counsel;

13 (4) A government attorney with supervisory authority for the case shall attend all  
14 settlement conferences; and

15 (5) Decisions regarding settlement of the case shall be reserved exclusively to the  
16 discretion of the government attorneys and the state.

17 5. The attorney general shall develop a standard addendum to every contract for  
18 contingent fee attorney services that shall be used in all cases, describing in detail what is  
19 expected of both the contracted private attorney and the state, including, without limitation, the  
20 requirements listed in subsection 4 of this section.

21 6. Copies of any executed contingency fee contract and the attorney general's written  
22 determination to enter into a contingency fee contract with the private attorney shall be posted on  
23 the attorney general's website for public inspection within five business days after the date the  
24 contract is executed and shall remain posted on the website for the duration of the contingency fee  
25 contract, including any extensions or amendments to the contract. Any payment of contingency  
26 fees shall be posted on the attorney general's website within fifteen days after the payment of such  
27 contingency fees to the private attorney and shall remain posted on the website for at least three  
28 hundred sixty-five days.

29 7. Any private attorney under contract to provide services to the state on a contingency fee  
30 basis shall, from the inception of the contract until at least four years after the contract expires or  
31 is terminated, maintain detailed current records, including documentation of all expenses,  
32 disbursements, charges, credits, underlying receipts and invoices, and other financial transactions  
33 that concern the provision of such attorney services. The private attorney shall make all such  
34 records available for inspection and copying upon request in accordance with chapter 610. The  
35 private attorney shall maintain detailed contemporaneous time records for the attorneys and  
36 paralegals working on the matter in increments of no greater than one tenth of an hour and shall

1 promptly provide these records to the attorney general, upon request.

2 8. By February first of each year, the attorney general shall submit a report to the president  
3 pro tem of the senate and the speaker of the house of representatives describing the use of  
4 contingency fee contracts with private attorneys in the preceding calendar year. At a minimum,  
5 the report shall:

6 (1) Identify all new contingency fee contracts entered into during the year and all  
7 previously executed contingency fee contracts that remain current during any part of the year, and  
8 for each contract describe:

9 (a) The name of the private attorney with whom the department has contracted, including  
10 the name of the attorney's law firm;

11 (b) The nature and status of the legal matter;

12 (c) The name of the parties to the legal matter;

13 (d) The amount of any recovery; and

14 (e) The amount of any contingency fee paid.

15 (2) Include copies of any written determinations made under subsections 1 and 2 of this  
16 section.

17 34.380. Nothing in sections 34.376 to 34.380 shall be construed to expand the authority of  
18 any state agency or state agent to enter into contracts where no such authority previously existed.”;  
19 and

20  
21 Further amend said bill by amending the title, enacting clause, and intersectional references  
22 accordingly.