

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1654
99TH GENERAL ASSEMBLY

4957H.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 34.378, RSMo, and to enact in lieu thereof one new section relating to contingency fee contracts.

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

Section A. Section 34.378, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.378, to read as follows:

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 exists 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 written proposals from private attorneys to represent the state, unless the attorney general determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing. If a request for proposals is issued, the attorney general shall choose the lowest and best bid or request **that** the office of administration establish an independent panel to evaluate the proposals and choose the lowest and best bid.

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.

19 3. The state shall not enter into a contract for contingency fee attorney services unless
20 the following requirements are met throughout the contract period and any extensions to the
21 contract:

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

24 (2) A government attorney with supervisory authority shall oversee the litigation;

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

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

29 (5) Decisions regarding settlement of the case shall be reserved exclusively to the
30 discretion of the attorney general.

31 4. The attorney general shall develop a standard addendum to every contract for
32 contingent fee attorney services that shall be used in all cases, describing in detail what is
33 expected of both the contracted private attorney and the state, including, without limitation, the
34 requirements listed in subsection 3 of this section.

35 5. Copies of any executed contingency fee contract and the attorney general's written
36 determination to enter into a contingency fee contract with the private attorney shall be posted
37 on the attorney general's website for public inspection within five business days after the date
38 the contract is executed and shall remain posted on the website for the duration of the
39 contingency fee contract, including any extensions or amendments to the contract. Any payment
40 of contingency fees shall be posted on the attorney general's website within fifteen days after the
41 payment of such contingency fees to the private attorney and shall remain posted on the website
42 for at least three hundred sixty-five days.

43 6. Any private attorney under contract to provide services to the state on a contingency
44 fee basis shall, from the inception of the contract until at least four years after the contract
45 expires or is terminated, maintain detailed current records, including documentation of all
46 expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial
47 transactions that concern the provision of such attorney services. The private attorney shall
48 maintain detailed contemporaneous time records for the attorneys and paralegals working on the
49 matter in increments of no greater than one-tenth of an hour and shall promptly provide these
50 records to the attorney general, upon request. Any request under chapter 610 for inspection and
51 copying of such records shall be served upon and responded to by the attorney general's office.

52 7. **Except as otherwise provided in subsection 8 of this section, a retained private**
53 **attorney is not entitled to a contingency fee, exclusive of any costs and expenses described**
54 **in subsection 8 of this section, of more than:**

55 **(1) Fifteen percent of that portion of any amount recovered that is ten million**
56 **dollars or less;**

57 **(2) Ten percent of that portion of any amount recovered that is more than ten**
58 **million dollars but less than or equal to fifteen million dollars;**

59 **(3) Five percent of that portion of any amount recovered that is more than fifteen**
60 **million dollars but less than or equal to twenty million dollars; and**

61 **(4) Two percent of that portion of any amount recovered that is more than twenty**
62 **million dollars.**

63 **8. The total fee payable to all retained private attorneys in any matter that is the**
64 **subject of a contingency fee contract shall not exceed ten million dollars, exclusive of any**
65 **costs and expenses provided by the contract and actually incurred by the retained private**
66 **attorneys, regardless of the number of actions or proceedings or the number of retained**
67 **private attorneys involved in the matter.**

68 **9. A contingency fee:**

69 **(1) Is payable only from moneys that are actually received under a judgment or**
70 **settlement agreement; and**

71 **(2) Shall not be based on any amount attributable to a fine or civil penalty.**

72 **10. As used in this section, “amount recovered” does not include any moneys paid**
73 **as costs.**

74 **11. By February first of each year, the attorney general shall submit a report to the**
75 **president pro tem of the senate and the speaker of the house of representatives describing the use**
76 **of contingency fee contracts with private attorneys in the preceding calendar year. At a**
77 **minimum, the report shall:**

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

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

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

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

85 **(d) The amount of any recovery; and**

86 **(e) The amount of any contingency fee paid;**

87 **(2) Include copies of any written determinations made under subsections 1 and 2 of this**
88 **section.**

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