

SECOND REGULAR SESSION

SENATE BILL NO. 915

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Read 1st time January 16, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5708S.01I

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Section A. Section 34.378, RSMo, is repealed and one new section enacted
2 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
2 a private attorney unless the attorney general makes a written determination
3 prior to entering into such a contract that contingency fee representation is both
4 cost effective and in the public interest. Any written determination shall include
5 specific findings for each of the following factors:

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

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

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

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

16 2. If the attorney general makes the determination described in subsection
17 1 of this section, the attorney general shall request written proposals from private
18 attorneys to represent the state, unless the attorney general determines that
19 requesting proposals is not feasible under the circumstances and sets forth the
20 basis for this determination in writing. If a request for proposals is issued, the

21 attorney general shall choose the lowest and best bid or request **that** the office
22 of administration establish an independent panel to evaluate the proposals and
23 choose the lowest and best bid.

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

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

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

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

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

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

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

42 5. Copies of any executed contingency fee contract and the attorney
43 general's written determination to enter into a contingency fee contract with the
44 private attorney shall be posted on the attorney general's website for public
45 inspection within five business days after the date the contract is executed and
46 shall remain posted on the website for the duration of the contingency fee
47 contract, including any extensions or amendments to the contract. Any payment
48 of contingency fees shall be posted on the attorney general's website within fifteen
49 days after the payment of such contingency fees to the private attorney and shall
50 remain posted on the website for at least three hundred sixty-five days.

51 6. Any private attorney under contract to provide services to the state on
52 a contingency fee basis shall, from the inception of the contract until at least four
53 years after the contract expires or is terminated, maintain detailed current
54 records, including documentation of all expenses, disbursements, charges, credits,
55 underlying receipts and invoices, and other financial transactions that concern
56 the provision of such attorney services. The private attorney shall maintain

57 detailed contemporaneous time records for the attorneys and paralegals working
58 on the matter in increments of no greater than one-tenth of an hour and shall
59 promptly provide these records to the attorney general, upon request. Any
60 request under chapter 610 for inspection and copying of such records shall be
61 served upon and responded to by the attorney general's office.

62 **7. Except as otherwise provided in subsection 8 of this section,**
63 **a retained private attorney shall not be entitled to a fee, exclusive of**
64 **any costs and expenses described in subsection 8 of this section, of**
65 **more than:**

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

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

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

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

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

82 **9. A contingency fee:**

83 **(1) Shall be payable only from moneys that are actually received**
84 **under a judgment or settlement agreement; and**

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

87 **10. As used in this section, "amount recovered" does not include**
88 **any moneys paid as costs.**

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

93 **(1) Identify all new contingency fee contracts entered into during the year**

94 and all previously executed contingency fee contracts that remain current during
95 any part of the year, and for each contract describe:

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

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

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

100 (d) The amount of any recovery; and

101 (e) The amount of any contingency fee paid;

102 (2) Include copies of any written determinations made under subsections
103 1 and 2 of this section.

Unofficial ✓

Bill

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