

SENATE BILL NO. 1413

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

5890S.011

KRISTINA MARTIN, Secretary

AN ACT

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

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Section A. Section 34.378, RSMo, is repealed and one new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

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

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

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

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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

21 2. If the attorney general makes the determination
22 described in subsection 1 of this section, the attorney
23 general shall request written proposals from private
24 attorneys to represent the state, unless the attorney
25 general determines that requesting proposals is not feasible
26 under the circumstances and sets forth the basis for this
27 determination in writing. If a request for proposals is
28 issued, the attorney general shall choose the lowest and
29 best bid or request that the office of administration
30 establish an independent panel to evaluate the proposals and
31 choose the lowest and best bid.

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

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

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

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

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

44 (5) Decisions regarding settlement of the case shall
45 be reserved exclusively to the discretion of the attorney
46 general.

47 4. The attorney general shall develop a standard
48 addendum to every contract for contingent fee attorney

49 services that shall be used in all cases, describing in
50 detail what is expected of both the contracted private
51 attorney and the state, including, without limitation, the
52 requirements listed in subsection 3 of this section.

53 5. Copies of any executed contingency fee contract and
54 the attorney general's written determination to enter into a
55 contingency fee contract with the private attorney shall be
56 posted on the attorney general's website for public
57 inspection within five business days after the date the
58 contract is executed and shall remain posted on the website
59 for the duration of the contingency fee contract, including
60 any extensions or amendments to the contract. Any payment
61 of contingency fees shall be posted on the attorney
62 general's website within fifteen days after the payment of
63 such contingency fees to the private attorney and shall
64 remain posted on the website for at least three hundred
65 sixty-five days.

66 6. Any private attorney under contract to provide
67 services to the state on a contingency fee basis shall, from
68 the inception of the contract until at least four years
69 after the contract expires or is terminated, maintain
70 detailed current records, including documentation of all
71 expenses, disbursements, charges, credits, underlying
72 receipts and invoices, and other financial transactions that
73 concern the provision of such attorney services. The
74 private attorney shall maintain detailed contemporaneous
75 time records for the attorneys and paralegals working on the
76 matter in increments of no greater than one-tenth of an hour
77 and shall promptly provide these records to the attorney
78 general, upon request. Any request under chapter 610 for
79 inspection and copying of such records shall be served upon
80 and responded to by the attorney general's office.

81 7. [Except as otherwise provided in subsection 8 of
82 this section, a retained private attorney shall not be
83 entitled to a fee, exclusive of any costs and expenses
84 described in subsection 8 of this section, of more than:

85 (1) Fifteen percent of that portion of any amount
86 recovered that is ten million dollars or less;

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

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

93 (4) Two percent of that portion of any amount
94 recovered that is more than twenty million dollars.

95 8. The total fee payable to all retained private
96 attorneys in any matter that is the subject of a contingency
97 fee contract shall not exceed ten million dollars, exclusive
98 of any costs and expenses provided by the contract and
99 actually incurred by the retained private attorneys,
100 regardless of the number of actions or proceedings or the
101 number of retained private attorneys involved in the matter.

102 9. A contingency fee:

103 (1) Shall be payable only from moneys that are
104 actually received under a judgment or settlement agreement;
105 and

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

108 10. As used in this section, "amount recovered" does
109 not include any moneys paid as costs.

110 11.] By February first of each year, the attorney
111 general shall submit a report to the president pro tem of
112 the senate and the speaker of the house of representatives

113 describing the use of contingency fee contracts with private
114 attorneys in the preceding calendar year. At a minimum, the
115 report shall:

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

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

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

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

125 (d) The amount of any recovery; and

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

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

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