

FIRST REGULAR SESSION

HOUSE BILL NO. 872

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOUGHTON (Sponsor), REDMON, SCHATZ, JOHNSON,
KORMAN, GRISAMORE, CURTMAN AND GUERNSEY (Co-sponsors).

1920L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 34, RSMo, by adding thereto three new sections relating to transparency in state contracts.

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

Section A. Chapter 34, RSMo, is amended by adding thereto three new sections, to be known as sections 34.376, 34.378, and 34.380, to read as follows:

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, including state officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of state government, and any of its agents.

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;

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.

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

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

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

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

19 3. The state may not enter into a contingency fee contract that provides for the
20 private attorney to receive an aggregate contingency fee in excess of:

21 (1) Twenty-five percent of any recovery of up to ten million dollars;

22 (2) Twenty percent of any portion of such recovery between ten million dollars and
23 fifteen million dollars;

24 (3) Fifteen percent of any portion of such recovery between fifteen million dollars
25 and twenty million dollars;

26 (4) Ten percent of any portion of such recovery between twenty million dollars and
27 twenty-five million dollars; and

28 (5) Five percent of any portion of such recovery exceeding twenty-five million
29 dollars.

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31 The aggregate contingency fee shall not exceed fifty million dollars, exclusive of reasonable
32 costs and expenses, and irrespective of the number of lawsuits filed or the number of
33 private attorneys retained to achieve the recovery.

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

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

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

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

43 **(4) Any defendant that is the subject of such litigation may contact the lead**
44 **government attorneys directly, without having to confer with contingency fee counsel;**

45 **(5) A government attorney with supervisory authority for the case shall attend all**
46 **settlement conferences; and**

47 **(6) Decisions regarding settlement of the case shall be reserved exclusively to the**
48 **discretion of the government attorneys and the state.**

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

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

61 **7. Any private attorney under contract to provide services to the state on a**
62 **contingency fee basis shall, from the inception of the contract until at least four years after**
63 **the contract expires or is terminated, maintain detailed current records, including**
64 **documentation of all expenses, disbursements, charges, credits, underlying receipts and**
65 **invoices, and other financial transactions that concern the provision of such attorney**
66 **services. The private attorney shall make all such records available for inspection and**
67 **copying upon request in accordance with chapter 610. The private attorney shall maintain**
68 **detailed contemporaneous time records for the attorneys and paralegals working on the**
69 **matter in increments of no greater than one tenth of an hour and shall promptly provide**
70 **these records to the attorney general, upon request.**

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

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

- 78 **(a) The name of the private attorney with whom the department has contracted,**
- 79 **including the name of the attorney's law firm;**
- 80 **(b) The nature and status of the legal matter;**
- 81 **(c) The name of the parties to the legal matter;**
- 82 **(d) The amount of any recovery; and**
- 83 **(e) The amount of any contingency fee paid.**
- 84 **(2) Include copies of any written determinations made under subsections 1 and 2**
- 85 **of this section.**

34.380. Nothing in sections 34.376 to 34.380 shall be construed to expand the
2 **authority of any state agency or state agent to enter into contracts where no such authority**
3 **previously existed.**

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