

SECOND REGULAR SESSION

# HOUSE BILL NO. 1654

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CORNEJO.

4957H.021

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

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

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

Section A. Section 34.378, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 34.378 and 37.851, to read as follows: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**

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.

17 office of administration establish an independent panel to evaluate the proposals and choose the  
18 lowest and best bid.

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.

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53           7. **Except as otherwise provided in subsection 8 of this section, a retained private**  
54 **attorney is not entitled to a fee, exclusive of any costs and expenses described in subsection**  
55 **8 of this section, of more than:**

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

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

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

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

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

69           9. **A contingency fee:**

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

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

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

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

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

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

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

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

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

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

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

**37.851. 1. The general assembly and every department and division of the executive  
2 branch of the state, including the office of any statewide elected official and any executive  
3 branch appointee, shall document and make easily available to the public on the  
4 MissouriBUYS statewide e-procurement system operated and maintained by the office of  
5 administration the following information for all contracts greater than two thousand five  
6 hundred dollars entered into for the provision of legal services by a private law firm:**

7 (1) The dollar amount of each such contract;

8 (2) The dollar rate per hour of each attorney working for the private law firm  
9 under the contract, if available; and

10 (3) A brief summary of the legal services to be provided by the firm.

11 **2. As used in this section, "executive branch appointee" shall include any member  
12 of any task force, advisory committee, board, commission, or other body, or persons  
13 appointed by, named by, or at the direction of an executive branch official.**

14 **3. The office of administration shall promulgate rules to implement the provisions  
15 of this section that relate to any executive department or agency. Any rule or portion of  
16 a rule, as that term is defined in section 536.010, that is created under the authority  
17 delegated in this section shall become effective only if it complies with and is subject to all  
18 of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
19 chapter 536 are nonseverable, and if any of the powers vested with the general assembly  
20 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul  
21 a rule are subsequently held unconstitutional, then the grant of rulemaking authority and  
22 any rule proposed or adopted after August 28, 2018, shall be invalid and void.**

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