

1 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
2 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
3 HOUSE BILL 386

4 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

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11 AN ACT

12 RELATING TO THE ATTORNEY GENERAL; AUTHORIZING THE ATTORNEY
13 GENERAL TO ENTER INTO CONTINGENT FEE CONTRACTS UNDER CERTAIN
14 CONDITIONS; CREATING A FUND; PROHIBITING CERTAIN CONTRIBUTIONS
15 BY CONTRACTORS OR POTENTIAL CONTRACTORS.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new Section 8-5-2.2 NMSA 1978 is enacted to
19 read:

20 "8-5-2.2. [NEW MATERIAL] CONTINGENT FEE CONTRACTS
21 AUTHORIZED--SUSPENSE FUND CREATED.--

22 A. If necessary to perform the duties of the
23 attorney general, the attorney general may, pursuant to the
24 provisions of this section, enter into contingent fee contracts
25 with private attorneys to recover, through litigation or court-

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underscored material = new
[bracketed material] = delete

1 approved settlements, money due to the state or any of its
2 departments, agencies, officers, instrumentalities,
3 institutions or political subdivisions.

4 B. The amount due to private attorneys pursuant to
5 a contingent fee contract shall be negotiated between the
6 parties; provided that, exclusive of reimbursement for
7 reasonable costs and expenses and irrespective of the number of
8 lawsuits filed or the number of private attorneys retained
9 pursuant to the contract, the total amount payable to private
10 attorneys shall not exceed the following amounts:

11 (1) if the total amount recovered is less than
12 twenty million dollars (\$20,000,000), the fee shall not exceed
13 twenty-five percent of the amount recovered;

14 (2) if the total amount recovered is equal to
15 or greater than twenty million dollars (\$20,000,000) but less
16 than thirty million dollars (\$30,000,000), the fee shall not
17 exceed five million dollars (\$5,000,000) plus twenty percent of
18 the amount recovered; and

19 (3) if the total amount recovered is equal to
20 or greater than thirty million dollars (\$30,000,000), the fee
21 shall not exceed seven million dollars (\$7,000,000) plus
22 fifteen percent of the amount recovered.

23 C. Each contingent fee contract shall include a
24 provision that mandates the termination of the contract with no
25 additional payments due to the contractor if the contractor or

1 any partner, associate or employee of the contractor is found
2 guilty of violating the provisions of Section 1-19-34.8 NMSA
3 1978 or has been assessed a civil penalty for violating the
4 provisions of that section.

5 D. The "attorney general suspense fund" is created
6 in the state treasury. Each contingent fee contract shall
7 provide that all amounts received by the contractor as
8 satisfaction of a claim shall be transferred to the attorney
9 general and deposited into the suspense fund. Upon the
10 direction of the attorney general, the compensation due to the
11 contractor shall be disbursed from the suspense fund to the
12 contractor. After a disbursement to a contractor, the balance
13 of each deposit shall be distributed to the appropriate
14 permanent fund or other appropriate fund from which the loss
15 occurred that originated the claim pursued by the contractor.

16 E. All contingent fee contracts shall be subject to
17 the provisions of the Procurement Code regarding competitive
18 sealed proposals.

19 F. By the first day of February of each year, the
20 attorney general shall submit a report to the president pro
21 tempore of the senate and the speaker of the house of
22 representatives describing the use of contingent fee contracts
23 with private attorneys in the preceding calendar year. At a
24 minimum, such reports shall identify all new contingent fee
25 contracts entered into during the preceding calendar year and

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1 all previously executed contingent fee contracts that remain
2 current during any part of the year, and for each contract
3 describe:

4 (1) the name of the private attorney with whom
5 the attorney general has contracted, including the name of the
6 attorney's law firm;

7 (2) the nature and status of the legal matter;

8 (3) the name of the parties to the action;

9 (4) the amount of any recovery; and

10 (5) the amount of any contingency fee paid."

11 SECTION 2. A new section of the Campaign Reporting Act,
12 Section 1-19-34.8 NMSA 1978, is enacted to read:

13 "1-19-34.8. [NEW MATERIAL] CERTAIN CONTRIBUTIONS TO
14 CANDIDATES FOR ATTORNEY GENERAL PROHIBITED--CERTAIN CONTRACTS
15 PROHIBITED.--

16 A. An attorney that has entered into a contingent
17 fee contract with the attorney general pursuant to Section
18 8-5-2.2 NMSA 1978 shall not make a contribution to or solicit
19 contributions on behalf of:

20 (1) a candidate seeking reelection to the
21 office of attorney general or a campaign committee established
22 by the candidate; or

23 (2) a political committee:

24 (a) established by the attorney general
25 or an agent of the attorney general or in consultation with or

1 at the request of the attorney general or an agent of the
2 attorney general; or

3 (b) controlled by the attorney general
4 or an agent of the attorney general to aid or promote the
5 nomination or election of any candidate to a state office.

6 B. A candidate or political committee described in
7 Subsection A of this section shall not accept or solicit a
8 contribution prohibited by that subsection.

9 C. As used in this section, "attorney" includes a
10 private attorney, a private business entity, the primary
11 business of which is the practice of law, or any partner,
12 associate or employee of such an attorney or business entity."