

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 2155

By: Echols

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6 AS INTRODUCED

7 An Act relating to state government; enacting  
8 Transparency in Private Attorney Contingency-Fee  
9 Contracts Act; defining terms; prohibiting  
10 contingency-fee contract without prior determination  
11 by Attorney General; listing possible factors for  
12 determination; directing Attorney General to request  
13 proposals from private attorneys; providing exception  
14 if made in writing; proscribing contingency-fee  
15 contract in excess of specified amounts; stating  
16 maximum contingency-fee amount; clarifying process  
17 for calculating contingency fee; excluding penalties,  
18 fines, costs and expenses from calculation; outlining  
19 requirements for contingency-fee contracts; directing  
20 Attorney General to develop addendum for contingency-  
21 fee contracts; specifying contents of addendum;  
22 requiring website posting of documents after the case  
23 is resolved; directing private attorney to retain  
24 documents for specified time; authorizing Attorney  
General to request documents; exempting self-  
governing entities from act; mandating coordination  
with Attorney General; providing for codification;  
and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 20.1 of Title 74, unless there  
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Transparency in  
2 Private Attorney Contingency-Fee Contracts Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 20.2 of Title 74, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Transparency in Private Attorney Contingency-Fee  
7 Contracts Act:

8 1. "Government attorney" means an attorney employed by the  
9 state as a staff attorney in a state agency;

10 2. "Private attorney" means an attorney in private practice or  
11 employed by a private law firm;

12 3. "State" means the State of Oklahoma, including state  
13 officers, departments, boards, commissions, divisions, bureaus,  
14 councils, and units of organization, however designated, of the  
15 executive branch of state government and any of its agents; and

16 4. "State agency" means every agency, institution, department,  
17 bureau, board, or commission of the State of Oklahoma authorized by  
18 law to retain private counsel through a contingency-fee contract.

19 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 20.3 of Title 74, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. The state shall not enter into a contingency-fee contract  
23 with a private attorney unless the Attorney General makes a written  
24 determination prior to entering into the contract that contingency-

1 fee representation is both cost-effective and in the public  
2 interest. Any written determination may include, but not be limited  
3 to, the following factors:

4 1. Whether there exists sufficient and appropriate legal and  
5 financial resources within the Attorney General's office to handle  
6 the matter;

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

10 3. The geographic area where the attorney services are to be  
11 provided; and

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

15 B. If the Attorney General makes the determination described in  
16 subsection A of this section, the Attorney General shall request  
17 proposals from private attorneys to represent the state agency on a  
18 contingency-fee basis, unless the Attorney General determines that  
19 requesting proposals is not feasible under the circumstances and  
20 sets forth the basis for this determination in writing.

21 SECTION 4. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 20.4 of Title 74, unless there  
23 is created a duplication in numbering, reads as follows:

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1 A. The state shall not enter into a contingency-fee contract  
2 that provides for the private attorney to receive an aggregate  
3 contingency fee in excess of:

4 1. Twenty-five percent (25%) of any recovery of up to Ten  
5 Million Dollars (\$10,000,000.00); plus

6 2. Twenty percent (20%) of any portion of the recovery between  
7 Ten Million Dollars (\$10,000,000.00) and Fifteen Million Dollars  
8 (\$15,000,000.00); plus

9 3. Fifteen percent (15%) of any portion of the recovery between  
10 Fifteen Million Dollars (\$15,000,000.00) and Twenty Million Dollars  
11 (\$20,000,000.00); plus

12 4. Ten percent (10%) of any portion of the recovery between  
13 Twenty Million Dollars (\$20,000,000.00) and Twenty-five Million  
14 Dollars (\$25,000,000.00); plus

15 5. Five percent (5%) of any portion of the recovery exceeding  
16 Twenty-five Million Dollars (\$25,000,000.00).

17 B. In no event shall the aggregate contingency fee exceed Fifty  
18 Million Dollars (\$50,000,000.00), exclusive of reasonable costs and  
19 expenses, and irrespective of the number of lawsuits filed or the  
20 number of private attorneys retained to achieve the recovery.

21 C. For purposes of calculating the contingency fees in  
22 subsections A and B of this section, "recovery" shall include all  
23 damage awards, or settlement amounts agreed upon, but shall not  
24 include any penalties or fines awarded or included as part of the

1 settlement. A contingency fee shall not be based on penalties or  
2 fines awarded or any amounts attributable to penalties or fines.  
3 Reasonable costs and expenses shall be determined by the court and  
4 may be paid outside of any contingency-fee limitation set out.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 20.5 of Title 74, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. The following requirements shall be met throughout the  
9 duration of any contract for contingency-fee attorney services  
10 entered into by the state, and overseen by the Attorney General:

11 1. The Attorney General, or designated government attorney,  
12 shall retain complete control over the course and conduct of the  
13 case;

14 2. The Attorney General, or designated government attorney,  
15 shall assign a government attorney with supervisory authority who  
16 shall be personally involved in overseeing the litigation;

17 3. The Attorney General shall retain veto power over any  
18 decisions made by outside counsel;

19 4. Any defendant that is the subject of the litigation may  
20 contact the lead government attorneys directly, without having to  
21 confer with contingency-fee counsel;

22 5. A government attorney with supervisory authority for the  
23 case, as designated by the Attorney General, shall participate in  
24 all settlement conferences; and

1           6. Decisions regarding settlement of the case shall be reserved  
2 exclusively to the discretion of the Attorney General and the state.

3           B. The Attorney General shall develop a standard addendum to  
4 every contract for contingency-fee attorney services that shall be  
5 used in all cases, describing in detail what is expected of both the  
6 contracted private attorney and the state agency, including, without  
7 limitation, the requirements listed in this act.

8           C. Once the case is resolved, copies of any executed  
9 contingency-fee contract and the Attorney General's written  
10 determination to enter into a contingency-fee contract with the  
11 private attorney shall be posted on the Attorney General's website  
12 for public inspection. Any payment of contingency fees shall be  
13 posted on the Attorney General's website.

14           D. Any private attorney under contract to provide services to  
15 the state or a state agency on a contingency-fee basis shall, from  
16 the inception of the contract until at least four (4) years after  
17 the contract expires or is terminated, maintain detailed records  
18 including documentation of all expenses, disbursements, charges,  
19 credits, underlying receipts and invoices, and other financial  
20 transactions that concern the provision of the attorney services and  
21 shall make the records available for the Attorney General upon  
22 request.

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1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 20.6 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

4 The provisions of the Transparency in Private Attorney  
5 Contingency-Fee Contracts Act shall not apply to entities charged  
6 with self-governance under the Oklahoma Constitution; provided,  
7 those entities shall coordinate with the Attorney General to  
8 maximize efficiency and utilization of existing state resources.

9 SECTION 7. This act shall become effective November 1, 2015.

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