

State of Wisconsin



2013 Assembly Bill 27

Date of enactment:
Date of publication*:

2013 WISCONSIN ACT

AN ACT *to amend* 14.11 (2) (b) and 108.14 (3m); and *to create* 20.9305 of the statutes; **relating to:** executive agencies entering into contracts for legal services on a contingent fee basis.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 14.11 (2) (b) of the statutes is amended to read:

14.11 (2) (b) When special counsel is employed, a contract in writing shall be entered into between the state and such counsel, in which shall be fixed the compensation to be paid such counsel by the state. If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305. The contract shall be executed in behalf of the state by the governor, and shall be filed in the office of the secretary of state. Such compensation shall be charged to the special counsel appropriation in s. 20.455 (1) (b).

SECTION 3. 20.9305 of the statutes is created to read:

20.9305 Contracting for legal services on a contingent fee basis. (1) Except as provided in sub. (2), an agency in the executive branch may not contract for legal services on a contingent fee basis.

(2) (a) The prohibition under sub. (1) does not apply if the governor makes a written determination that contracting for legal services for the state on a contingent fee basis is cost-effective and in the public interest. In the written determination, the governor shall include all of the following:

1. A finding that the attorney general's office lacks sufficient and appropriate legal and financial resources, which necessitates the need to contract for the legal services. The governor shall consult with the attorney general in making this finding.

2. The estimated amount of time and labor required to perform the legal services, including the novelty, complexity, and difficulty of the legal issues involved and the required skill.

3. The venue in which the litigation would likely occur.

4. The amount of experience with similar legal issues or cases needed for the particular type of legal services to be provided.

(b) If the governor makes a determination under par. (a), the governor shall request the department of administration to invite bids to be submitted. The department of administration shall invite bids and shall ensure that the notice of the bidding process contains any pertinent requirements in this section. Following the bidding process, the secretary of administration shall recommend a responsible bidder to the governor, who shall make the final determination. The governor may determine that inviting bids is not feasible and the governor shall set forth the basis for this determination in writing.

(c) 1. No contract entered into under this subsection may provide an aggregate contingency fee excluding reasonable costs and expenses, as determined by the court

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

with jurisdiction over the action, that is more than any of the following:

a. If the recovery is less than \$10 million, 25 percent of the recovery.

b. If the recovery is at least \$10 million but less than \$15 million, the sum of \$2,500,000 and 20 percent of the amount by which the recovery exceeds \$10 million.

c. If the recovery is at least \$15 million but less than \$20 million, the sum of \$3,500,000 and 15 percent of the amount by which the recovery exceeds \$15 million.

d. If the recovery is at least \$20 million but less than \$25 million, the sum of \$4,250,000 and 10 percent of the amount by which the recovery exceeds \$20 million.

e. If the recovery is at least \$25 million, the sum of \$4,750,000 and 5 percent of the amount by which the recovery exceeds \$25 million.

2. The aggregate contingency fee for one action under this subsection may not exceed \$30 million, excluding reasonable costs and expenses as determined by the court with jurisdiction over the action, without regard to the number of attorneys retained or the number of lawsuits filed. A contingency fee may not be based on penalties or fines or any amounts attributable to penalties or fines.

(e) The governor shall post on the Internet site maintained by the government accountability board under s. 16.753 all of the following:

1. A copy of any contingency fee contract entered into under this subsection and of the corresponding determination under par. (a) during the period beginning 5 days after the contract is entered into and ending when the contract and all of its extensions expire or are terminated.

2. Notice of the amount of any contingency fees paid under a contract entered into under this subsection during the period beginning 15 days after payment is made and ending 365 days after the payment is made.

(f) An attorney who is party to a contract entered into under this subsection shall, during the period beginning from the date the contract is entered into until 4 years after the contract and all of its extensions expire or are terminated, do all of the following:

1. Maintain records, including documentation of all expenses, disbursements, charges, credits, receipts and invoices, and other financial transactions, that relate to the provision of the legal services under this subsection.

2. Make all records maintained under subd. 1. available, upon request, for inspection and copying as provided under s. 19.35 (1).

3. Maintain current records detailing the time, in increments no greater than one-tenth of an hour, that attorneys and paralegals spent working under the contract and provide the record, as soon as practically possible, to the governor upon request.

(g) Annually, no later than February 1, the governor shall submit a report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) that describes the use of contingency fee contracts under this subsection. The report shall include all of the following:

1. All contracts entered into under this subsection in the year prior to the submittal of the report and all contracts that were active in the year prior to the submittal of the report. The report shall include for each contract all of the following:

a. The name of the attorney and the attorney's law firm with which the agency has contracted.

b. The nature and status of the legal matter under contract.

c. The name of the parties to the legal matter.

d. The amount of any recovery.

e. The amount of any contingency fee paid.

2. Copies of written determinations made under par. (a).

SECTION 4. 108.14 (3m) of the statutes is amended to read:

108.14 (3m) In any court action to enforce this chapter the department, the commission, and the state may be represented by any licensed attorney who is an employee of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the social security act, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the administrative account. If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

SECTION 5. Initial applicability.

(1) This act first applies to contracts entered into, renewed, or extended on the effective date of this subsection.