

State of Arkansas
90th General Assembly
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As Engrossed: S2/10/15
A Bill

SENATE BILL 204

By: Senators J. English, Caldwell, J. Hutchinson, E. Williams

By: Representative Brown

For An Act To Be Entitled

AN ACT TO CREATE THE TRANSPARENCY IN PRIVATE ATTORNEY
CONTRACTS ACT; TO REGULATE THE ATTORNEY GENERAL'S
PROCUREMENT OF CERTAIN CONTRACTS WITH PRIVATE
ATTORNEYS; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE TRANSPARENCY IN PRIVATE
ATTORNEY CONTRACTS ACT; AND TO REGULATE
THE ATTORNEY GENERAL'S PROCUREMENT OF
CERTAIN CONTRACTS WITH PRIVATE ATTORNEYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known as the "Transparency in Private Attorney
Contracts Act".

SECTION 2. Arkansas Code Title 25, Chapter 16, Subchapter 7, is
amended to add additional sections to read as follows:

25-16-714. Procurement of contingency fee contracts.

(a) As used in this section:

(1) "Government attorney" means an attorney employed by the
state as a staff attorney in the Attorney General's Office;

(2) "Private attorney" means a private attorney or law firm; and

(3) "State transparency website" means the website developed by
the Department of Finance and Administration under the Arkansas Financial



Transparency Act, § 25-1-401 et seq.

(b)(1) The Attorney General shall not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination before entering into the contingency fee contract that contingency fee representation is both cost effective and in the public interest.

(2) A written determination made under this subsection shall state:

(A) Whether there are sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter;

(B) The time and labor required;

(C) The novelty, complexity, and difficulty of the questions involved;

(D) The skill required to perform the attorney services properly;

(E) The geographic area in which the attorney services are to be provided; and

(F) 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.

(c)(1) If the Attorney General makes a written determination under subsection (b) of this section, the Attorney General shall:

(A) Draft a written request for proposals from private attorneys to represent the state on a contingency fee basis; and

(B) Post the request for proposals prominently on the Attorney General's website.

(2) However, if the Attorney General determines that requesting proposals is not feasible under the relevant circumstances, he or she shall state the basis for this determination in writing and include the statement in the written determination required under subsection (b) of this section.

(d) The Attorney General shall not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs and expenses, in excess of the sum of the following:

(1) Twenty-five percent (25%) of any recovery up to ten million

dollars (\$10,000,000);

(2) Twenty percent (20%) of any recovery between ten million dollars (\$10,000,000) and fifteen million dollars (\$15,000,000);

(3) Fifteen percent (15%) of any recovery between fifteen million dollars (\$15,000,000) and twenty million dollars (\$20,000,000);

(4) Ten percent (10%) of any recovery between twenty million dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); and

(5) Five percent (5%) of any recovery exceeding twenty-five million dollars (\$25,000,000).

(e) An aggregate contingency fee shall not exceed fifty million dollars (\$50,000,000), exclusive of reasonable costs and expenses, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(f) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

(g) The Attorney General shall not enter into a contingency fee contract unless the following requirements are met throughout the contract period and any extensions of the contract period:

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

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

(3) The government attorneys shall retain the authority to reject any decisions made by outside counsel;

(4) A defendant that is the subject of the litigation may contact the lead government attorneys directly without having to confer with contingency fee counsel;

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

(6) Decisions regarding settlement of the case shall be left exclusively to the discretion of the government attorneys and the Attorney General.

(h) The Attorney General shall develop a standard addendum to each contingency fee contract that shall be used in all cases and shall describe in detail the responsibilities of the contracted private attorney and the Attorney General, including without limitation the requirements under

subsection (g) of this section.

(i) This section does not expand the authority of the Attorney General to enter into a contract that the Attorney General does not otherwise have the authority to execute.

25-16-715. Transparency – Contingency fee contracts.

(a) A copy of each executed contingency fee contract and the Attorney General's written determination to enter into a contingency fee contract with a private attorney shall be posted on the *state transparency website* for public inspection within five (5) business days after the date the contract is executed and shall remain posted on the *state transparency website* for the duration of the contingency fee contract, including any extensions of or amendments to the contingency fee contract.

(b) Each payment of a contingency fee shall be posted on the *state transparency website* within fifteen (15) days after the payment of the contingency fee to the private attorney and shall remain posted on the *state transparency website* for at least one (1) year thereafter.

(c)(1) A private attorney under contract to provide services to the Attorney General on a contingency fee basis shall maintain, from the inception of the contract until at least four (4) years after the contract expires or is terminated, detailed current records, including without limitation documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of attorney services under the contingency fee contract.

(2) The private attorney shall make the records maintained under this subsection available for inspection and copying by the Attorney General upon request in accordance with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3) A private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one-tenth (1/10) of an hour and shall promptly provide these records to the Attorney General upon request.

(d)(1) By February 1 of each year, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with

private attorneys in the preceding calendar year.

(2) The Attorney General may take reasonable steps to protect the evidentiary privileges of the state when producing the report required under this subsection.

(3) At a minimum, the report required under this subsection shall:

(A) Identify all new contingency fee contracts entered into during the year and all previously executed contingency fee contracts that remain current during any part of the year, including the following information:

(i) The name of the private attorney with whom the Attorney General has contracted, including the name of the attorney's law firm;

(ii) The nature and status of the legal matter;

(iii) The names of the parties to the legal matter;

(iv) The amount of any recovery; and

(v) The amount of any contingency fee paid; and

(B) Include copies of any written determinations made under § 25-16-714 during the year.

SECTION 3. Arkansas Code § 25-1-403(1), concerning the definitions to be used under the Arkansas Financial Transparency Act, is amended to read as follows:

(1)(A) "Expenditure data" means information provided by a state agency regarding the spending of public funds that adequately identifies the purpose, amount, payor, and vendor, if such disclosure is permissible under the Arkansas Freedom of Information Act of 1967, § 25-19-101 et seq., and federal laws or regulations.

(B) "Expenditure data" does not include expenses of pending litigation.

(C) "Expenditure data" includes copies of contingency fee contracts under § 25-16-715;

/s/J. English

APPROVED: 03/31/2015