

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
HOUSE BILL NO. 1531
99TH GENERAL ASSEMBLY

4988S.05T

2018

AN ACT

To repeal sections 34.378 and 507.060, RSMo, and to enact in lieu thereof two new sections relating to civil proceedings.

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

Section A. Sections 34.378 and 507.060, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 34.378 and 507.060, to read as follows: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

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.

16 proposals is issued, the attorney general shall choose the lowest and best bid or request **that** the
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.

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

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

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

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

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

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

68 9. A contingency fee:

69 (1) Shall be payable only from moneys that are actually received under a judgment
70 or settlement agreement; and

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

72 10. As used in this section, "amount recovered" does not include any moneys paid
73 as costs.

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

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

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

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

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

85 (d) The amount of any recovery; and

86 (e) The amount of any contingency fee paid;

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

507.060. 1. Persons having claims against the plaintiff **or plaintiff's insured** may be
2 joined as defendants and required to interplead when their claims are such that the plaintiff is or
3 may be exposed to ~~double or~~ multiple liability, **including multiple claims against the same**
4 **insurance coverage**. It is not ground for objection to the joinder that the claims of the several
5 claimants or the titles on which their claims depend do not have a common origin or are not
6 identical but are adverse to and independent of one another, or that the plaintiff avers that he is
7 not liable in whole or in part to any or all of the claimants. A defendant exposed to similar
8 liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of
9 this section supplement and do not in any way limit the joinder of parties permitted in section
10 507.040.

11 **2. For purposes of this subsections 2 to 5 of this section, the term "plaintiff" means**
12 **the insurer, or any entity which is subject to sections 537.700 to 537.756 or which provides**
13 **risk management services to any public or private entity, of an insured person or entity**
14 **subject to more than one claim arising out of any one incident or occurrence, but only**
15 **when such claims total an amount in excess of the plaintiff's total limits of coverage**
16 **available for that one incident or occurrence.**

17 **3. For purposes of this subsections 2 to 5 of this section, the term "claim" means**
18 **all actual or potential claims against a plaintiff or plaintiff's insured arising from the one**
19 **incident or occurrence referred to in subsection 2 of this section.**

20 **4. If, within ninety days after receiving the first offer of settlement or demand for**
21 **payment by a claimant, a plaintiff files an action for interpleader under this section and**
22 **the plaintiff timely deposits all of its applicable limits of coverage into court within thirty**
23 **days of the court's order granting interpleader, the plaintiff shall not be liable to any**
24 **insured or defendant for any amount in excess of the plaintiff's contractual limits of**
25 **coverage in the interpleader or any other action, so long as the plaintiff defends all of its**
26 **insureds in good faith from any claims or lawsuits for damages allegedly caused by the**
27 **incident or occurrence for which the limits of coverage were paid into court, even after**
28 **depositing its limits of coverage into court notwithstanding any policy provision releasing**
29 **the plaintiff of its duty to defend any of the insureds. Any insured's refusal of the**
30 **plaintiff's good faith defense shall not affect the plaintiff's rights under this section.**

31 **5. Nothing in this section shall require a release or dismissal of any claim for**
32 **damages against any insured person or entity upon interpleader by an insurer of that**
33 **person or entity.**

34 **6. Nothing in this section shall be construed, expressly or by implication, to amend,**
35 **modify, or abrogate any insured's right to consent or control the defense or settlement of**
36 **any claim as may be provided in any insurance contract.**

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