

As Passed by the Senate

130th General Assembly
Regular Session
2013-2014

Am. Sub. S. B. No. 344

Senator Seitz

Cosponsors: Senators Brown, Beagle, Coley, Burke, Eklund, Obhof, Patton,
Peterson, Schaffer

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A BILL

To enact sections 9.49, 9.491, 9.492, 9.493, 9.494, 1
9.495, 9.496, 9.497, and 9.498 of the Revised Code 2
to provide transparency in contracts between the 3
state and private attorneys. 4

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

Section 1. That sections 9.49, 9.491, 9.492, 9.493, 9.494, 5
9.495, 9.496, 9.497, and 9.498 of the Revised Code be enacted to 6
read as follows: 7

Sec. 9.49. Sections 9.49 to 9.498 of the Revised Code shall 8
be known as the transparency in private attorney contracts act. 9

Sec. 9.491. As used in sections 9.49 to 9.498 of the Revised 10
Code: 11

(A) "Legal matter" means any administrative proceeding, case, 12
group of cases, or legal issue for which the state requires legal 13
representation or advice. 14

(B) "Private attorney" means any attorney in the private 15
practice of law or a law firm but does not mean an attorney 16
appointed by the attorney general pursuant to section 109.08 of 17

the Revised Code for the purpose of collecting debts certified to 18
the attorney general for collection under any law or debts that 19
the attorney general is authorized to collect. 20

(C) "State" means this state and any officer, department, 21
board, commission, division, bureau, council, or unit of 22
organization, however designated, of the executive branch of 23
government of this state and any of its agents. 24

(D) "Securities class action" means an action brought as a 25
class action that includes a violation of the "Securities Act of 26
1933," 15 U.S.C. 77a and following, or the "Securities Exchange 27
Act of 1934," 15 U.S.C. 78a and following. 28

Sec. 9.492. (A) The state shall not enter into a contingency 29
fee contract with a private attorney unless the attorney general 30
or the attorney general's designee makes a written determination 31
prior to entering into that contract or within a reasonable time 32
after entering into the contract that private representation is 33
both cost-effective and in the public interest. Any written 34
determination shall include findings for each of the following 35
factors: 36

(1) Whether there exist sufficient and appropriate legal and 37
financial resources within the attorney general's office to handle 38
the matter involved; 39

(2) The nature of the legal matter for which private 40
representation is required so long as divulging that information 41
would not violate any ethical responsibility of the attorney 42
general or privilege held by the state. 43

(B) If the attorney general or the attorney general's 44
designee makes the determination described in division (A) of this 45
section, the attorney general or the attorney general's designee 46
shall request qualifications from private attorneys to represent 47

the state, unless the attorney general or the attorney general's 48
designee determines that requesting qualifications is not feasible 49
under the circumstances and sets forth the basis for this 50
determination in writing. 51

(C)(1) Except as otherwise provided in division (C)(2) of 52
this section and subject to divisions (C)(3) and (4) of this 53
section, the state shall not enter into a contingency fee contract 54
with a private attorney that provides for the private attorney to 55
receive an aggregate contingency fee in excess of the total of the 56
following amounts: 57

(a) Twenty-five per cent of any damages up to ten million 58
dollars; 59

(b) Twenty per cent of any portion of any damages of ten 60
million dollars or more but less than fifteen million dollars; 61

(c) Fifteen per cent of any portion of any damages of fifteen 62
million dollars or more but less than twenty million dollars; 63

(d) Ten per cent of any portion of any damages of twenty 64
million dollars or more but less than twenty-five million dollars; 65

(e) Five per cent of any portion of any damages of 66
twenty-five million dollars or more. 67

(2) Except as provided in division (D) of this section with 68
respect to security class actions, the aggregate contingency fee 69
under division (C)(1) of this section, exclusive of reasonable 70
costs and expenses, shall not exceed fifty million dollars, 71
regardless of the number of lawsuits filed or the number of 72
private attorneys retained to achieve the recovery, unless the 73
contract expressly authorizes a contingency fee in excess of fifty 74
million dollars. The attorney general shall not enter into a 75
contract authorizing a contingency fee in excess of fifty million 76
dollars without the approval of the controlling board. 77

(3) A contingency fee in a contingency fee contract under 78
division (C)(1) of this section shall not be based on penalties or 79
civil fines awarded or on any amounts attributable to penalties or 80
civil fines. 81

(4) The amount of a contingency fee paid to a private 82
attorney under a contingency fee contract between the state and 83
the private attorney shall be the percentage of the amount of 84
damages actually recovered by the state to which the private 85
attorney is entitled under division (C)(1) of this section. 86

(D) In any contingency fee contract covering a securities 87
class action in which this state is appointed as lead plaintiff 88
pursuant to section 27(a)(3)(B)(i) of the "Securities Act of 89
1933," 15 U.S.C. 77z-1(a)(3)(B)(i) or section 21D(a)(3)(B)(i) of 90
the "Securities Exchange Act of 1934," 15 U.S.C. 78u-4(a)(3)(B)(i) 91
or in which any state is a class representative, division (C)(2) 92
of this section applies only with respect to the state's share of 93
any judgment, settlement amount, or common fund and does not apply 94
to the amount of attorney's fees that may be awarded to a private 95
attorney for representing other members of a class certified 96
pursuant to Rule 23 of the Federal Rules of Civil Procedure or 97
state class action procedures. 98

(E)(1) A contract entered into between the state and a 99
private attorney under this section shall include all of the 100
following provisions that apply throughout the term of the 101
contract and any extensions of that term: 102

(a) The private attorney shall acknowledge that the assistant 103
attorney general retains complete control over the course and 104
conduct of the case involved. 105

(b) An assistant attorney general with supervisory authority 106
shall oversee the litigation of the case. 107

(c) An assistant attorney general shall retain veto power 108

over any decisions made by the private attorney. 109

(d) Any opposing party in the case may contact the assistant attorney general directly without having to confer with the private attorney unless the assistant attorney general instructs the opposing party otherwise. 110
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(e) An assistant attorney general with supervisory authority for the case may attend all settlement conferences. 114
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(f) The private attorney shall acknowledge that final approval regarding settlement of the case is reserved exclusively to the discretion of the attorney general. 116
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(2) Nothing in division (E)(1) of this section shall be construed to limit the authority of the client regarding the course, conduct, or settlement of the case. 119
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Sec. 9.493. The state shall not enter into a contract with a private attorney located outside this state unless the attorney general determines that at least one of the following applies: 122
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(A) There are no private attorneys with an office in this state that are willing to accept the legal representation. 125
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(B) All private attorneys with offices in this state that possess the necessary experience or capability are conflicted and unable to represent the state or the attorney general or lack necessary personnel and capacity in the firm to take on the engagement. 127
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(C) The attorney general is prevented from engaging a private attorney with an office in this state under the rules of the controlling board regarding waiver of competitive selection. 132
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(D) There are no private attorneys with offices in this state that possess the necessary experience, capability, or capacity required by the contemplated engagement. 135
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Sec. 9.494. (A) A copy of the executed contingency fee contract between the state and a private attorney pursuant to section 9.492 or 9.493 of the Revised Code and any corresponding submission by the attorney general to the controlling board pursuant to division (C)(2) of section 9.492 of the Revised Code shall be posted on the attorney general's web site and shall remain posted on the web site for the duration of the contract.

(B) A private attorney under a contingency fee contract to provide services to the state pursuant to section 9.492 or 9.493 of the Revised Code shall maintain from the inception of the contract until at least three years after the contract expires or is terminated detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of the attorney services. The private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the legal matter and shall promptly provide these records to the attorney general upon request.

Sec. 9.495. By the first day of September of each year, the attorney general shall submit a report to the president of the senate and the speaker of the house of representatives describing the use of contracts with private attorneys in the preceding fiscal year. The report shall include the following:

(A) Identification of all contracts entered into during the fiscal year and all previously executed contracts that remain current during any part of the fiscal year or that have been closed during any part of the fiscal year, and for each contract a description of all of the following:

(1) The name of the private attorney with whom the state has contracted, including the name of the private attorney's law firm

<u>if the private attorney is an individual;</u>	168
<u>(2) The nature of the legal matter that is the subject of the contract so long as divulging that information would not violate any ethical responsibility of the attorney general or privilege held by the state;</u>	169 170 171 172
<u>(3) The state entity the private attorney was engaged to represent or counsel;</u>	173 174
<u>(4) The total legal fees approved by the attorney general for payment to a private attorney by the state for legal services rendered during the preceding fiscal year.</u>	175 176 177
<u>(B) Copies of any written determinations made pursuant to sections 9.492 to 9.494 of the Revised Code during the fiscal year.</u>	178 179 180
<u>Sec. 9.496. Sections 9.491 to 9.495 of the Revised Code do not apply to contingency fee contracts and renewals thereof that are in existence on the effective date of this section.</u>	181 182 183
<u>Sec. 9.497. Nothing in sections 9.49 to 9.496 of the Revised Code shall be construed to expand the authority of any state agency or state agent to enter into contracts if no such authority previously existed.</u>	184 185 186 187
<u>Sec. 9.498. The general assembly intends that any limitations on entering into a contingency fee contract, as provided by sections 9.491 to 9.495 of the Revised Code, are to be applied only to contracts with a private attorney retained on a contingency fee basis by the state. These limitations shall not apply to contingency fee contracts between private parties and contracts not involving the state.</u>	188 189 190 191 192 193 194