

SENATE BILL NO. 828

March 11, 2020, Introduced by Senators RUNESTAD, LUCIDO, BARRETT, MACGREGOR, VICTORY, NESBITT, BUMSTEAD, DALEY, ZORN, HORN, THEIS, SCHMIDT, VANDERWALL, MACDONALD, LASATA and MCBROOM and referred to the Committee on Oversight.

A bill to regulate contingency fee contracts entered into by the department of the attorney general; to prescribe the powers and duties of certain state agencies and officials; and to require reports.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "transparency in private attorney contracts act".

3 Sec. 3. As used in this act:

1 (a) "Department" means the department of the attorney general.

2 (b) "Government attorney" means an attorney employed as a
3 staff attorney by the department.

4 (c) "Private attorney" means a private attorney or law firm.

5 Sec. 5. (1) The department shall not enter into a contingency
6 fee contract with a private attorney unless all of the following
7 conditions are met:

8 (a) The department makes a determination before entering into
9 the contingency fee contract that contingency fee-based
10 representation is cost-effective and in the public interest. The
11 determination must be in writing and include specific findings for
12 each of the following:

13 (i) Whether the department has sufficient and appropriate legal
14 and financial resources to handle the matter.

15 (ii) The time, labor, skill, and experience required to
16 properly perform the attorney services that are necessary to handle
17 the matter.

18 (iii) The novelty, complexity, and difficulty of the legal
19 questions involved in the matter.

20 (iv) The geographic area where the attorney's services are to
21 be provided.

22 (b) The contingency fee contract provides for all of the
23 following:

24 (i) Subject to subparagraph (ii), the private attorney must
25 receive a contingency fee at a rate that is less than or equal to
26 the following:

27 (A) 25% of the portion of the amount recovered that is less
28 than \$10,000,000.00.

29 (B) 20% of the portion of the amount recovered that is

1 \$10,000,000.00 or more but less than \$15,000,000.00.

2 (C) 15% of the portion of the amount recovered that is
3 \$15,000,000.00 or more but less than \$20,000,000.00.

4 (D) 10% of the portion of the amount recovered that is
5 \$20,000,000.00 or more but less than \$25,000,000.00.

6 (E) 5% of the portion of the amount recovered that is
7 \$25,000,000.00 or more.

8 (ii) The private attorney must not receive an aggregate
9 contingency fee of more than \$50,000,000.00, not including
10 reasonable costs and expenses, and a contingency fee must not be
11 based on the awarding of a penalty or fine or amount attributable
12 to a penalty or fine.

13 (iii) A government attorney must retain complete control over
14 the matter.

15 (iv) The government attorney with supervisory authority must be
16 personally involved in overseeing any litigation and must attend
17 all settlement conferences.

18 (v) Decisions regarding settlement of the matter must be made
19 at the sole discretion of the government attorney with supervisory
20 authority.

21 (vi) A defendant in the matter who is a state employee or
22 officer must not be prohibited from communicating with the
23 government attorney.

24 (vii) The private attorney must maintain records regarding the
25 performance of the contract for the duration of the contract and
26 until 4 years after the contract expires or is terminated, and must
27 make the records available for inspection upon the request of the
28 department. Records required to be maintained under this
29 subdivision include, but are not limited to, all of the following:

- 1 (A) Expenses.
2 (B) Disbursements.
3 (C) Charges.
4 (D) Credits.
5 (E) Underlying receipts and invoices.
6 (F) Any other financial transaction regarding the provision of
7 attorney services under the contract.

8 (viii) The private attorney must maintain detailed time records
9 for each individual private attorney and each private attorney's
10 paralegal who works on the matter, and must make the records
11 available for inspection upon the request of the department. The
12 time records must be recorded in increments of 1/10 of an hour or
13 less.

14 (2) If the department makes a determination under subsection
15 (1)(a) that contingency fee-based representation is cost-effective
16 and in the public interest, the department shall request proposals
17 from private attorneys to provide representation on a contingency-
18 fee basis. The department is not required to request proposals
19 under this subsection if the department makes a determination that
20 requesting proposals is not feasible under the circumstances. A
21 determination made under this subsection must be in writing.

22 (3) The department shall develop a standard addendum to be
23 used in contingency fee contracts with private attorneys that meets
24 the requirements of this act.

25 Sec. 7. (1) Within 5 days after entering into a contingency
26 fee contract with a private attorney, the department shall post on
27 the department's public website the executed contract and the
28 associated determination made under section 5(1)(a). The contract
29 and determination must remain posted on the website for the

1 duration of the contract including any renewals or extensions of
2 the contract.

3 (2) Within 15 days after the department pays a contingency fee
4 to a private attorney, the department shall post on the
5 department's public website the payment information including the
6 payment amount and private attorney to whom the payment was made.
7 The payment information must remain posted on the website for 1
8 year after the date it is first posted.

9 Sec. 9. By February 1 of each year, the department shall
10 submit a report regarding contingency fee contracts entered into
11 with private attorneys to the majority leader of the senate and the
12 speaker of the house. The report must cover the immediately
13 preceding calendar year and include all of the following:

14 (a) The following information for each contingency fee
15 contract entered into during the calendar year and each contingency
16 fee contract that expired or was terminated during the calendar
17 year or was in effect at the end of the calendar year:

18 (i) The name of each private attorney who is a party to the
19 contract including the private attorney's law firm, if applicable.

20 (ii) The nature and status of the matter.

21 (iii) The name of the parties to the matter.

22 (iv) The amount recovered, if any.

23 (v) The amount of contingency fees paid.

24 (b) All determinations made under section 5.

25 Enacting section 1. This act does not take effect unless
26 Senate Bill No. 829 of the 100th Legislature is enacted into
27 law.