

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S2/10/15
A Bill

SENATE BILL 204

5 By: Senators J. English, Caldwell, J. Hutchinson, E. Williams
6 By: Representative Brown
7

8 **For An Act To Be Entitled**

9 AN ACT TO CREATE THE TRANSPARENCY IN PRIVATE ATTORNEY
10 CONTRACTS ACT; TO REGULATE THE ATTORNEY GENERAL'S
11 PROCUREMENT OF CERTAIN CONTRACTS WITH PRIVATE
12 ATTORNEYS; AND FOR OTHER PURPOSES.
13

14
15 **Subtitle**

16 TO CREATE THE TRANSPARENCY IN PRIVATE
17 ATTORNEY CONTRACTS ACT; AND TO REGULATE
18 THE ATTORNEY GENERAL'S PROCUREMENT OF
19 CERTAIN CONTRACTS WITH PRIVATE ATTORNEYS.
20

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. DO NOT CODIFY. Title.

25 This act shall be known as the "Transparency in Private Attorney
26 Contracts Act".
27

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

30 25-16-714. Procurement of contingency fee contracts.

31 (a) As used in this section:

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

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

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



1 Transparency Act, § 25-1-401 et seq.

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

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

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

12 (B) The time and labor required;

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

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

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

19 (F) The amount of experience desired for the particular
20 kind of attorney services to be provided and the nature of the private
21 attorney's experience with similar issues or cases.

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

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

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

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

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

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

1 dollars (\$10,000,000);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subsection (g) of this section.

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

5
6 25-16-715. Transparency – Contingency fee contracts.

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

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

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

26 (2) The private attorney shall make the records maintained under
27 this subsection available for inspection and copying by the Attorney General
28 upon request in accordance with the Freedom of Information Act of 1967, § 25-
29 19-101 et seq.

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

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

1 private attorneys in the preceding calendar year.

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

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

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

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

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

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

16 (iv) The amount of any recovery; and

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

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

20
21 *SECTION 3. Arkansas Code § 25-1-403(1), concerning the definitions to*
22 *be used under the Arkansas Financial Transparency Act, is amended to read as*
23 *follows:*

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

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

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

33
34 /s/J. English

35 **APPROVED: 03/31/2015**

36