**South Carolina General Assembly**

123rd Session, 2019-2020

**S. 490**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Turner, Corbin, Bennett and Shealy

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Introduced in the Senate on February 7, 2019

Currently residing in the Senate Committee on **Judiciary**

Summary: Transparency in Private Attorney Contracts Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/7/2019 Senate Introduced and read first time ([Senate Journal‑page 4](file:///h:\sj\20190207.docx))

2/7/2019 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 4](file:///h:\sj\20190207.docx))

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**VERSIONS OF THIS BILL**

[2/7/2019](file:///p:\pprever\2019-20\490_20190207.docx)

**A** **BILL**

TO ENACT THE “TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTS ACT”, TO AMEND CHAPTER 7, TITLE 1 OF THE 1976 CODE, RELATING TO THE ATTORNEY GENERAL AND SOLICITORS, BY ADDING ARTICLE 2, TO PROVIDE THAT THE STATE MAY NOT ENTER INTO CONTINGENCY FEE CONTRACTS WITHOUT A WRITTEN DETERMINATION BY THE ATTORNEY GENERAL, TO SET THE MAXIMUM FOR CONTINGENCY FEE CONTRACTS, TO PROVIDE THAT CERTAIN REQUIREMENTS MUST BE MET DURING THE TERM OF THE CONTRACT, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL ANNUALLY SUBMIT A REPORT TO THE PRESIDENT PRO TEMPORE OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR DESCRIBING THE USE OF CONTINGENCY FEE CONTRACTS WITH PRIVATE ATTORNEYS IN THE PRECEDING CALENDAR YEAR, TO PROVIDE FOR THE CONTENTS OF THAT REPORT, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Transparency in Private Attorney Contracts Act”.

SECTION 2. Chapter 7, Title 1 of the 1976 Code is amended by adding:

“ARTICLE 2

Transparency in Private Attorney Contracts Act

Section 1‑7‑210. As used in this article:

(1) ‘Government attorney’ means an attorney employed by the State in the Attorney General’s office.

(2) ‘Private attorney’ means any private attorney or law firm.

(3) ‘State’ means the State of South Carolina, including state officers, departments, agencies, boards, commissions, divisions, bureaus, councils, and any of its agents.

Section 1‑7‑220. (A) The State may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination, prior to entering into the contract, that contingency fee representation is both cost effective and in the public interest. Any written determination shall include specific findings for the following:

(1) the legal and financial resources within the Attorney General’s office and if these resources are sufficient and appropriate 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.

(B) The State may 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:

(1) twenty‑five percent of any recovery less than ten million dollars; plus

(2) twenty percent of any portion of any recovery between ten million dollars and fifteen million dollars; plus

(3) fifteen percent of any portion of any recovery between fifteen million dollars and twenty million dollars; plus

(4) ten percent of any portion of any recovery between twenty million dollars and twenty-five million dollars; plus

(5) five percent of any portion of any recovery twenty-five million dollars or greater.

(C) In no event shall the aggregate contingency fee exceed $50 million, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

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

(E) The State shall not enter into a contract for contingency fee attorney services unless the following requirements are met throughout the contract period and any extensions thereof:

(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 veto power over any decisions made by outside counsel;

(4) any defendant who 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 reserved exclusively to the discretion of the government attorneys and the State.

(F) The Attorney General shall develop a standard addendum to contracts for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the State, including, but not limited to, the requirements listed in subsection (E) of this section.

(G) Copies of any executed contingency fee contract and the Attorney General’s written determination to enter into a contingency fee contract with the private attorney shall be posted on the Attorney General’s website for public inspection within five business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments to the contract. Any payment of contingency fees shall be posted on the Attorney General’s website within fifteen days after the payment of the contingency fees to the private attorney and shall remain posted on the website for at least three hundred sixty‑five days.

(H) Any private attorney under contract to provide services to the State on a contingency fee basis shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of attorney services. The private attorney shall make all records available for inspection and copying upon request in accordance with the Freedom of Information Act. In addition, the 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 of an hour and shall promptly provide these records to the Attorney General, upon request.

(I) By February first of each year, the Attorney General shall submit a report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor describing the use of contingency fee contracts with private attorneys in the preceding calendar year. At a minimum, the report shall:

(1) 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 and, for each contract, describe the:

(a) name of the private attorney with whom the department contracted, including the name of the attorney’s law firm;

(b) nature and status of the legal matter;

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

(d) amount of any recovery; and

(e) amount of any contingency fee paid; and

(2) include copies of any written determinations made under subsection (A) of this section during the year.

Section 1‑7‑230. Nothing in this article shall be construed to expand the authority of any state agency or state agent to enter into contracts if no such authority previously existed.”

SECTION 3. This act takes effect upon approval by the Governor.

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