

# AN ACT

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

*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, 9.495, 9.496, 9.497, and 9.498 of the Revised Code be enacted to read as follows:

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

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

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

(B) "Private attorney" means any attorney in the private practice of law or a law firm but does not mean an attorney appointed by the attorney general pursuant to section 109.08 of the Revised Code for the purpose of collecting debts certified to the attorney general for collection under any law or debts that the attorney general is authorized to collect.

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

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

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

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

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

(B) If the attorney general or the attorney general's designee makes the determination described in division (A) of this section, the attorney general or the attorney general's designee shall request qualifications from private attorneys to represent the state, unless the attorney general or the attorney general's designee determines that requesting qualifications is not feasible under the circumstances and sets forth the basis for this determination in writing.

(C)(1) Except as otherwise provided in division (C)(2) of this section and subject to divisions (C)(3) and (4) of this section, the state shall not enter into a contingency fee contract with a

private attorney that provides for the private attorney to receive an aggregate contingency fee in excess of the total of the following amounts:

- (a) Twenty-five per cent of any damages up to ten million dollars;
- (b) Twenty per cent of any portion of any damages of ten million dollars or more but less than fifteen million dollars;
- (c) Fifteen per cent of any portion of any damages of fifteen million dollars or more but less than twenty million dollars;
- (d) Ten per cent of any portion of any damages of twenty million dollars or more but less than twenty-five million dollars;

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

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

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

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

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

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

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

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

(c) An assistant attorney general shall retain veto power over any decisions made by the private attorney.

(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.

(e) An assistant attorney general with supervisory authority for the case may attend all settlement conferences.

(f) The private attorney shall acknowledge that final approval regarding settlement of the case is reserved exclusively to the discretion of the attorney general.

(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.

**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:

(A) There are no private attorneys with an office in this state that are willing to accept the legal representation.

(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.

(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.

(D) There are no private attorneys with offices in this state that possess the necessary experience, capability, or capacity required by the contemplated engagement.

**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 if the private attorney is an individual;

(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;

(3) The state entity the private attorney was engaged to represent or counsel;

(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.

(B) Copies of any written determinations made pursuant to sections 9.492 to 9.494 of the Revised Code during the fiscal year.

**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.

**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.

**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.

---

*Speaker* \_\_\_\_\_ *of the House of Representatives.*

---

*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

---

*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

---

*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

---

*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_