

Regular Session, 2014

SENATE BILL NO. 459

BY SENATOR CLAITOR

ATTORNEYS. Prohibits contingency fee contracts for private attorneys handling matters for the Department of Health and Hospitals.

1 AN ACT

2 To amend and reenact R.S. 46:438.1, relative to contingency fee contracts; to provide for
3 prohibition of certain contingency fee payments by the state; to provide relative to
4 private counsel employed by the state to institute civil actions under the Medical
5 Assistance Programs Integrity Law; provide relative to contracts of employment of
6 private counsel by the state; to provide relative to public records; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 46:438.1 is hereby amended and reenacted to read as follows:

10 §438.1. Civil actions authorized

11 A. The secretary or the attorney general may institute a civil action in the
12 courts of this state to seek recovery from persons who violate the provisions of this
13 Part. **No private counsel employed by the secretary or attorney general to**
14 **institute such civil action shall be compensated on a contingency fee basis or any**
15 **other basis solely dependent upon the outcome of the action. The contract of**
16 **employment of such private counsel, including fee amounts, shall be a public**
17 **record.**

1 B. An action to recover costs, expenses, fees, and attorney fees shall be
2 ancillary to, and shall be brought and heard in the same court as, the civil action
3 brought under the provision of Subsection A of this Section.

4 C.(1) A prevailing defendant may only seek recovery for costs, expenses,
5 fees, and attorney fees if the court finds, following a contradictory hearing, that
6 either of the following apply:

7 (a) The action was instituted by the secretary or attorney general pursuant
8 to Subsection A of this Section after it should have been determined by the secretary
9 or attorney general to be frivolous, vexatious, or brought primarily for the purpose
10 of harassment.

11 (b) The secretary or attorney general proceeded with the action instituted
12 pursuant to Subsection A of this Section after it should have been determined by the
13 secretary or attorney general that proceeding would be frivolous, vexatious, or for
14 the purpose of harassment.

15 (2) Recovery awarded to a prevailing defendant shall be awarded only for
16 those reasonable, necessary, and proper costs, expenses, fees, and attorney fees
17 actually incurred by the prevailing defendant.

18 D. An action to recover costs, expenses, fees, and attorney fees may be
19 brought no later than sixty days after the rendering of judgment by the district court,
20 unless the district court decision is appealed. If the district court decision is appealed,
21 such action may be brought no later than sixty days after the rendering of the final
22 opinion on appeal by the court of appeal or, if applicable, by the supreme court.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Claitor (SB 459)

Present law provides that the secretary or the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of the Medical Assistance Programs Integrity Law.

Proposed law retains present law.

Proposed law provides that no private counsel employed by the secretary or attorney general

to institute such civil action shall be compensated on a contingency fee basis or any other basis solely dependent upon the outcome of the action. Proposed law further provides that the contract of employment of such private counsel, including fee amounts, shall be a public record.

Effective August 1, 2014.

(Amends R.S. 46:438.1)