

SENATE BILL NO. 459

BY SENATOR CLAITOR

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

9 §438.1. Civil actions authorized

10 A. The secretary or the attorney general may institute a civil action in the  
11 courts of this state to seek recovery from persons who violate the provisions of this  
12 Part. **The contract of employment of any private counsel, including fee amounts,**  
13 **and all final fees and costs, shall be a public record.**

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

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

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

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

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

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_