

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1236 Session of 2013

INTRODUCED BY KRIEGER, METCALFE, SWANGER, TURZAI, KAUFFMAN, DAY, DeLUCA, EVERETT, JAMES, CUTLER, SAYLOR, MILLER, GINGRICH, MOUL, GROVE, SACCONI, ENGLISH, LAWRENCE, COX, TALLMAN, RAPP, SIMMONS, PYLE, MUSTIO, ROAE, ROCK, DUNBAR, GABLER, BLOOM, REESE, BROOKS AND DENLINGER, APRIL 22, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 22, 2013

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, providing for contingency fee contracts.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Title 62 of the Pennsylvania Consolidated  
6 Statutes is amended by adding a section to read:

7 § 544. Contingency fee contracts.

8 (a) Scope.--Nothing in this section shall be construed to  
9 expand the authority of the Commonwealth to enter into contracts  
10 if the authority never previously existed.

11 (b) Procurement determination.--When the head of the  
12 purchasing agency determines in writing that it is in the best  
13 interests of the Commonwealth for the agency to pay for legal  
14 services on a contingent fee basis, the determination shall be  
15 part of the contract file and a solicitation shall disclose that  
16 a contingent fee basis is the method of compensation for the

1 procurement.

2 (c) Prohibition.--

3 (1) The Commonwealth shall not enter into a contingency  
4 fee contract that provides for a legal entity to receive an  
5 aggregate contingency fee, exclusive of reasonable costs and  
6 expenses, in excess of \$50,000,000.

7 (2) Except as provided for in paragraph (4), the  
8 Commonwealth shall not enter into a contingency fee contract  
9 that provides for a legal entity to receive an aggregate  
10 contingency fee, exclusive of reasonable costs and expenses,  
11 in excess of any of the following:

12 (i) twenty-five percent of any recovery up to  
13 \$10,000,000; plus

14 (ii) twenty percent of any portion of such recovery  
15 between \$10,000,000 and \$15,000,000; plus

16 (iii) fifteen percent of any portion of such  
17 recovery between \$15,000,000 and \$20,000,000; plus

18 (iv) ten percent of any portion of such recovery  
19 between \$20,000,000 and \$25,000,000; plus

20 (v) five percent of any portion of such recovery  
21 exceeding \$25,000,000.

22 (3) A contingency fee shall not be based on a penalty or  
23 civil fine awarded or an amount attributable to a penalty or  
24 civil fine.

25 (4) The Commonwealth shall not enter a contingency fee  
26 contract covering a securities class action that provides for  
27 a legal entity to receive an aggregate contingency fee,  
28 exclusive of reasonable costs and expenses, in excess of 20%  
29 of a portion of the recovery if any of the following:

30 (i) The Commonwealth is appointed as lead plaintiff

1 pursuant to section 21D(a)(3)(B)(i) of the Securities Act  
2 of 1933 (48 Stat. 74, 15 U.S.C. § 78u-4(a)(3)(B)(i)) or  
3 section 27 of the Securities Exchange Act of 1934 (48  
4 Stat. 881, 15 U.S.C. § 78aa).

5 (ii) The Commonwealth is a class representative.

6 (5) This subsection shall apply only to the  
7 Commonwealth's share of any judgment, settlement amount or  
8 common fund and shall not apply to the amount of attorney  
9 fees that may be awarded to a legal entity for representing  
10 other members of a class certified pursuant to the Rules of  
11 Civil Procedure or state class action procedures.

12 (d) Applicability.--This section shall not apply to  
13 contingency fee contracts where the gross amount of the award or  
14 settlement is less than \$100,000.

15 (e) Control.--

16 (1) A contingency fee contract for legal services  
17 entered into shall include all of the following provisions:

18 (i) A Commonwealth attorney shall retain control  
19 over the course and conduct of the case.

20 (ii) A Commonwealth attorney shall retain veto power  
21 over a decision made by outside counsel.

22 (iii) A Commonwealth attorney shall attend all  
23 settlement conferences.

24 (iv) Decisions regarding settlement of the case  
25 shall be reserved exclusively to the discretion of a  
26 Commonwealth attorney and the Commonwealth.

27 (v) A Commonwealth attorney shall be subject to the  
28 Rules of Professional Conduct.

29 (2) The head of the purchasing agency shall develop a  
30 standard addendum to the contingency fee contract that shall

1 be used in all cases, which shall include all of the  
2 following:

3 (i) A detailed description of the expectations for  
4 both the contracted legal entity and the Commonwealth.

5 (ii) The provisions listed in paragraph (1).

6 (f) Oversight.--

7 (1) A copy of an executed contingency fee contract for  
8 legal services and the head of the purchasing agency's  
9 written determination under subsection (b) to enter into the  
10 contract shall be posted on the purchasing agency's website  
11 for public inspection no less than five business days after  
12 the date the contract is executed and shall remain posted on  
13 the website for the duration of the contract, including an  
14 extension or amendment to the contract.

15 (2) The cost of a contingency fee shall be posted on the  
16 purchasing agency's website no less than 15 days after the  
17 payment of the contingency fee and shall remain posted on the  
18 website for no less than 365 days.

19 (3) A contingency fee contract for legal services  
20 executed under this section shall be in writing and posted in  
21 accordance with Chapter 17 of the act of February 14, 2008  
22 (P.L.6, No.3), known as the Right-to-Know Law.

23 (4) A legal entity under contract to provide legal  
24 services on a contingency fee basis shall, from the inception  
25 of the contract until no less than four years after the  
26 contract expires or is terminated, maintain detailed current  
27 records, including documentation of all expenses,  
28 disbursements, charges, credits, underlying receipts and  
29 invoices and other financial transactions concerning the  
30 legal services. The legal entity shall make all the records

1 available to the head of the purchasing agency, where they  
2 will be available for inspection and copying upon request in  
3 accordance with the Right-to-Know Law. The Commonwealth may  
4 take reasonable steps to protect the evidentiary privileges  
5 of the Commonwealth when producing the records under the  
6 Right-to-Know Law. The legal entity shall maintain detailed  
7 contemporaneous time records for the legal services in  
8 increments of no greater than one-tenth of an hour and shall  
9 promptly provide the records upon request to the head of the  
10 purchasing agency.

11 (5) By February 1 of each year, the head of the  
12 purchasing agency shall submit a report to the President of  
13 the Senate and the Speaker of the House of Representatives  
14 describing the use of contingency fee contracts with legal  
15 entities in the preceding calendar year. The Commonwealth may  
16 take reasonable steps to protect the evidentiary privileges  
17 of the Commonwealth when producing the report. The report  
18 shall include, but not be limited to, the following:

19 (i) The contingency fee contracts entered into  
20 during the year and all previously executed contingency  
21 fee contracts that remain current and for each contract  
22 describe all of the following:

23 (A) The name of the legal entity with whom the  
24 purchasing agency has contracted, including the name  
25 of the attorney representing the Commonwealth.

26 (B) The nature and status of the legal matter.

27 (C) The name of the parties to the legal matter.

28 (D) The amount of the recovery.

29 (E) The amount of the contingency fee paid.

30 (ii) The copies of written determinations made under

1           subsection (b).

2       (g) Definitions.--As used in this section, the following  
3 words and phrases shall have the meanings given to them in this  
4 subsection unless the context clearly indicates otherwise:

5       "Commonwealth attorney." An attorney at law employed by the  
6 purchasing agency who is eligible to participate in the  
7 retirement system established under 71 Pa.C.S. Pt. XXV (relating  
8 to retirement for State employees and officers).

9       "Legal entity." A private attorney at law, law firm,  
10 partnership, association or professional corporation.

11       "Securities class action" An action brought as a class  
12 action that includes a claim for a violation of the Securities  
13 Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or the  
14 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a  
15 et seq.).

16       Section 2. This act shall take effect in 60 days.