

By: Representative Baker

To: Judiciary A

HOUSE BILL NO. 738

1 AN ACT TO AMEND SECTIONS 7-5-1 AND 7-5-8, MISSISSIPPI CODE OF
2 1972, TO REQUIRE APPROVAL OF THE OUTSIDE COUNSEL OVERSIGHT
3 COMMISSION IN CERTAIN ACTIONS BROUGHT BY THE ATTORNEY GENERAL; AND
4 FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 7-5-1, Mississippi Code of 1972, is
7 amended as follows:

8 7-5-1. The Attorney General provided for by Section 173 of
9 the Mississippi Constitution shall be elected at the same time and
10 in the same manner as the Governor is elected. His term of office
11 shall be four (4) years and his compensation shall be fixed by the
12 Legislature. He shall be the chief legal officer and advisor for
13 the state, both civil and criminal, and is charged with managing
14 all litigation on behalf of the state, except as otherwise
15 specifically provided by law. No arm or agency of the state
16 government shall bring or defend a suit against another arm or
17 agency without prior written approval of the Attorney General. He
18 shall have the powers of the Attorney General at common law and,
19 except as otherwise provided by law, is given the sole power to



20 bring or defend a lawsuit on behalf of a state agency, the subject
21 matter of which is of statewide interest, except that in matters
22 wherein the amount reasonably sought to be recovered by the state
23 or arm or agency thereof exceeds the sum of Two Hundred Fifty
24 Thousand Dollars (\$250,000.00) inclusive of attorney's fees,
25 interest and costs, the Attorney General shall not file suit or
26 otherwise assert such a claim or cause of action or employ special
27 or outside counsel to file such suit or otherwise assert such a
28 claim or cause or action, without the prior written approval of
29 the Outside Counsel Oversight Commission. He shall intervene and
30 argue the constitutionality of any statute when notified of a
31 challenge thereto, pursuant to the Mississippi Rules of Civil
32 Procedure. His qualifications for office shall be as provided for
33 chancery and circuit judges in Section 154 of the Mississippi
34 Constitution.

35 **SECTION 2.** Section 7-5-8, Mississippi Code of 1972, is
36 amended as follows:

37 7-5-8. (1) Before entering into a contingency fee contract
38 with outside counsel, the state, an arm or agency of the state, or
39 a statewide elected officer acting in his official capacity must
40 first make a written determination that contingency fee
41 representation is both cost-effective and in the public interest.
42 The required written determination shall include specific findings
43 for each of the following factors:



44 (a) Whether there exist sufficient and appropriate
45 legal and financial resources within the Attorney General's office
46 to handle the matter.

47 (b) The time and labor required; the novelty,
48 complexity, and difficulty of the questions involved; and the
49 skill requisite to perform the attorney services properly.

50 (c) The geographic area where the attorney services are
51 to be provided.

52 (d) The amount of experience desired for the particular
53 kind of attorney services to be provided and the nature of the
54 outside attorney's experience with similar issues or cases.

55 (2) (a) The state, an arm or agency of the state, or a
56 statewide elected officer acting in his official capacity may not
57 enter into a contingency fee contract that provides for the
58 outside attorney to receive a contingency fee, exclusive of
59 reasonable costs and expenses incurred in connection with the
60 case, which is in excess of the following:

61 (i) Twenty-five percent (25%) of any recovery of
62 up to Ten Million Dollars (\$10,000,000.00); plus

63 (ii) Twenty percent (20%) of any portion of such
64 recovery between Ten Million Dollars (\$10,000,000.00) and Fifteen
65 Million Dollars (\$15,000,000.00); plus

66 (iii) Fifteen percent (15%) of any portion of such
67 recovery between Fifteen Million Dollars (\$15,000,000.00) and
68 Twenty Million Dollars (\$20,000,000.00); plus



69 (iv) Ten percent (10%) of any portion of such
70 recovery between Twenty Million Dollars (\$20,000,000.00) and
71 Twenty-five Million Dollars (25,000,000.00); plus

72 (v) Five percent (5%) of any portion of such
73 recovery exceeding Twenty-five Million Dollars (\$25,000,000.00).

74 (b) Except as provided in subsection (3) of this
75 section, a contingency fee shall not exceed an aggregate of Fifty
76 Million Dollars (\$50,000,000.00), exclusive of reasonable costs
77 and expenses incurred in connection with the case, and
78 irrespective of the number of lawsuits filed or the number of
79 attorneys retained to achieve the recovery.

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

83 (3) The limits on fees set forth in subsection (2) of this
84 section shall not apply if:

85 (a) The state, an arm or agency of the state, or a
86 statewide elected officer acting in his official capacity makes a
87 written determination stating the reasons why a greater fee is
88 necessary, proper, and in the best interests of the state in a
89 particular case; and

90 (b) The Outside Counsel Oversight Commission approves
91 any terms of the contingency contract that exceed the limits set
92 forth in subsection (2) of this section.



93 (4) The Outside Counsel Oversight Commission shall consist
94 of the Governor, the Lieutenant Governor, and the Secretary of
95 State; actions of the commission shall be taken by majority vote.
96 Appeal from a decision of the Outside Counsel Oversight Commission
97 shall be to any court of competent jurisdiction.

98 (5) (a) Copies of any executed contingency fee contract and
99 the applicable written determination to enter into a contingency
100 fee contract with the outside attorney shall be posted on the
101 Attorney General's website for public inspection within five (5)
102 business days after the date the contract is executed unless the
103 state, arm or agency of the state, or statewide elected officer
104 retaining outside counsel makes a determination, subject to the
105 approval of the Outside Counsel Oversight Commission, that to do
106 so would negatively affect the state's interest, and shall remain
107 posted on the website for the duration of the contingency fee
108 contract, including any extensions or amendments to the contract.

109 (b) If the determination is made and duly approved that
110 posting the contract will negatively affect the interests of the
111 state, the contract will be posted on the Attorney General's
112 website within five (5) days of the occurrence of the earliest of
113 the following:

114 (i) Filing of the lawsuit for which the contract
115 was executed;

116 (ii) Entry of appearance for any pending matter
117 for which the contract was executed; or



118 (iii) From the time the outside attorney engages
119 in any substantive action on behalf of the state relative to the
120 subject matter for which the contract was executed.

121 (c) Any payment of contingency fees shall be posted on
122 the Attorney General's website within fifteen (15) days after the
123 payment of the contingency fees to the outside attorney and shall
124 remain posted on the website for at least one (1) year after the
125 date payment is made.

126 (6) An outside attorney under contract to provide services
127 to the state on a contingency fee basis shall, from the inception
128 of the contract until not less than four (4) years after the
129 contract expires or is terminated, maintain detailed current
130 records, including documentation of all expenses, disbursements,
131 charges, credits, underlying receipts and invoices, and other
132 financial transactions that concern the providing of attorney
133 services. In addition, the outside attorney shall maintain
134 detailed contemporaneous time records for the attorneys and
135 paralegals working on the matter in increments of no greater than
136 one-tenth (1/10) of an hour, and shall promptly provide these
137 records to the Attorney General upon request.

138 (7) (a) If an arm or agency of the state or a statewide
139 elected officer contracts for outside legal counsel pursuant to
140 Section 7-5-39(3) on a contingency fee basis, the arm or agency of
141 the state or the statewide elected officer shall provide complete
142 and timely information to the Office of the Attorney General as to



143 every requirement of this section for inclusion in the report
144 under this section. The Office of the Attorney General shall post
145 the information as received on its website within five (5) days of
146 receipt.

147 (b) The arm or agency of the state or statewide elected
148 official responsible for retaining outside counsel shall provide
149 complete and timely information to the Office of the Attorney
150 General as to every requirement of Section 7-5-21 for inclusion in
151 the docket required by that section.

152 (8) Approval of the Outside Counsel Oversight Commission is
153 required for any claim or cause of action where the amount sought,
154 inclusive of attorney's fees, cost and interest, exceeds Two
155 Hundred Fifty Thousand Dollars (\$250,000.00) as required in
156 Section 7-5-1.

157 **SECTION 3.** This act shall take effect and be in force from
158 and after July 1, 2016.

