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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-52-101** is enacted to read:

CHAPTER 52. UTAH ATTORNEY'S FEE RECOVERY ACT

78-52-101. Title.

This chapter is known as the "Utah Attorney's Fee Recovery Act."

Section 2. Section **78-52-102** is enacted to read:

78-52-102. Definitions.

As used in this chapter, "fee recoverable action" means a civil action or proceeding in any court in this state or a civil action or proceeding in any court in which the laws of this state supply the rule of decision except those excluded under Section 78-52-104.

Section 3. Section **78-52-103** is enacted to read:

78-52-103. Attorney fees recoverable by prevailing party.

(1) In all fee recoverable actions based in tort, the court may award the prevailing party reasonable attorney fees, including the attorney's expenses of litigation that the client reasonably reimbursed as part of the attorney's fee.

(2) If the court awards attorney fees pursuant to Subsection (1), the court shall fix the award of fees in the amount of the fair market value of the services for which the award is made, subject to the following adjustments and limitations:

(a) The prevailing party's attorney has reasonably rendered the services, reasonably incurred the expense, acted in good faith, and in courteous pursuit of the truthful, economical, and lawful resolution of the action or in reasonable response to actions by the nonprevailing party.

(b) The judge may not award attorney fees in excess of the amount that the prevailing party paid or agreed to pay for services rendered.

(c) If the services that were rendered in the action exceed what are otherwise reasonable for the matter in controversy, the court shall award the prevailing party the fair market value of the legal services rendered to the extent that the nonprevailing party or the nonprevailing party's attorney caused the services to exceed what are otherwise reasonable.

(d) The judge may not adjust the value of the services for or give other consideration to the contingent nature of the attorney's right to payment from the prevailing party.

59 Section 4. Section **78-52-104** is enacted to read:

60 **78-52-104. Exclusions.**

61 This chapter shall not apply to the following actions:

62 (1) an action for wrongful death or bodily injury;

63 (2) any action involving a governmental entity;

64 (3) an action for divorce or separate maintenance under the provisions of Title 30,

65 Husband and Wife, seeking attorney's fees;

66 (4) a class action lawsuit; and

67 (5) an action in which the nonprevailing party is:

68 (a) a nominal party;

69 (b) has no substantial interest; or

70 (c) does not substantially participate.

Legislative Review Note

as of 11-27-04 2:27 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0092

Utah Attorney's Fees Recovery Act

17-Jan-05

12:33 PM

State Impact

No significant state or local government fiscal impact.

Individual and Business Impact

This legislation could financially impact individuals involved in civil cases depending on the outcome of the case and the attorney fees involved.

Office of the Legislative Fiscal Analyst