

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT, AND CRIMINAL JUSTICE
STANDING COMMITTEE
TUESDAY, JANUARY 24, 2006
Room W130, West Office Building, State Capitol Complex**

Members Present: Sen. Gregory Bell, Committee Vice Chair
Sen. Patrice M. Arent
Sen. Mike Dmitrich
Sen. Lyle Hillyard
Sen. Mark B. Madsen
Sen. L. Alma Mansell
Sen. David L. Thomas

Members Excused: Sen. D. Chris Buttars, Chair

Staff Present: Jerry Howe, Policy Analyst
Bonnie Brinton, Committee Secretary

Public Speakers Present: Steve Johnson, Attorney
Karl Hendrickson, Association of Counties

A list of visitors and a copy of handouts are filed with the committee minutes.

Acting Committee Chair Hillyard called the meeting to order at 3:40 p.m.

1. S.B. 103 Prohibition of Contingent Fees for Expert Witnesses (D. Thomas)

Sen. Thomas presented the bill and an amendment to the bill.

MOTION: Sen. Thomas moved to adopt the following amendment to the bill:

1. Page 2, Lines 28 through 52

28 78-24-20. Prohibition of expert witness contingent fees in civil actions.

29 (1) As used in this section {

30 ~~—(a) "Civil action" means an action for damages for injury, death, or loss to~~
~~person or~~
31 ~~property, including a product liability claim. It does not include a civil action for~~
~~damages for a~~
32 ~~breach of contract or another agreement between persons.~~
33 ~~—(b)} "Contingent Fee Agreement" means an agreement for the provision of~~
~~testimony or~~

34 other evidence and related services by an expert witness **in a civil action** that
35 specifies:
36 ~~{(f)}~~ **(a)** the payment of compensation to the expert witness for the
37 testimony, other
38 evidence, and services is contingent, in whole or in part, upon a judgment being rendered
39 in
40 favor of the plaintiff or defendant in a civil action, upon a favorable settlement being
41 obtained
42 by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being
43 awarded in a judgment or settlement damages in at least a specified amount; and
44 ~~{(f)}~~ **(b)** upon satisfaction of the contingency described in Subsection
45 (1)(b)(i), the
46 compensation to be paid to the expert witness is in a fixed amount or an amount to be
47 determined by a specified formula, including, but not limited to, a percentage of a
48 judgment
49 rendered in favor of the plaintiff or a percentage of a favorable settlement obtained by the
50 plaintiff.
51 (2) A plaintiff or defendant in a ~~{tort}~~ **civil** action may not engage an
52 expert witness by means
53 of a contingent fee agreement **, unless approval is sought and received from the**
54 **court**.
55 (3) ~~{If a defendant presents testimony or other evidence in a tort action by~~
56 ~~means of an~~
57 ~~expert witness, evidence of a common insurer of liability of the defendant and the~~
58 ~~expert~~
59 ~~witness or evidence of a potential financial impact of the action on the amount of~~
60 ~~liability~~
61 ~~insurance premiums paid by the expert witness is inadmissible to prove bias, interest,~~
62 ~~or~~
63 ~~prejudice of the expert witness unless the party offering the evidence proves that the~~
64 ~~probative~~
65 ~~value of the evidence outweighs the evidence's potential prejudicial effect.}~~ **An**
66 **expert witness may be engaged by the plaintiff or defendant on the contingency that**
67 **the expert actually qualify as an expert. Once the witness is qualified as an expert**
68 **Subsection (2) applies to his continued participation in the action.**

The motion passed unanimously with Sens. Bell and Mansell absent for the vote.

Sen. Madsen assumed the Chair.

2. S.B. 61 Uniform Mediation Act (L. Hillyard)

Sen. Hillyard presented the bill.

Steve Johnson, Attorney, spoke in favor of the bill.

MOTION: Sen. Hillyard moved to pass S.B. 61 out of committee with a favorable recommendation. The motion passed unanimously.

Sen. Hillyard assumed the Chair.

3. S.B. 133 Liability Protections for Charity Care (P. Knudson)

At the Sponsor's request, this bill was not considered.

4. S.B. 149 Providing for Indigent Defense (G. Bell)

Sen. Bell presented the bill.

Sen. Thomas declared a Conflict of Interest.

Karl Hendrickson, Counsel, Utah Association of Counties, spoke in favor of the bill.

MOTION: Sen. Thomas moved to pass S.B. 149 out of committee with a favorable recommendation. The motion passed unanimously.

MOTION: Sen. Mansell moved to adjourn. The motion passed unanimously.

Acting Committee Chair Hillyard adjourned the meeting at 4:05 p.m.

Minutes recorded by Bonnie Brinton, Committee Secretary

Sen. Greg Bell, Committee Vice Chair