

Part 8 Miscellaneous

78B-5-801 Public and private statutes defined.

Statutes are public and private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-802 Tender -- Offer in writing sufficient -- Objection -- Must be specific or waived.

- (1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.
- (2) The person to whom a tender is made shall, at the time, specify any objection to the money, instrument, or property, or it is considered waived.
- (3) If the objection is to the amount of money, the terms of the instrument or the amount or kind of property, the person shall specify the amounts, terms, or kind which is required, or be precluded from objection afterwards.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-803 Receipt may be demanded as condition to payment or deposit.

A person who pays money, or delivers an instrument or property, is entitled to a receipt from the person to whom the payment or delivery is made, and may demand a proper signature to the receipt as a condition of the payment or delivery.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-804 Money deposited in court.

- (1)
 - (a) Any person depositing money in court, to be held in trust, shall pay it to the court clerk.
 - (b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city recorder to be held subject to the order of the court.
- (2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and the disposition of interest earnings on those trust funds.
- (3)
 - (a) Any interest earned on trust funds in the courts of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted account. Any interest earned on trust funds in the courts not of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in the general fund of the county or municipality.
 - (b) The Legislature shall appropriate funds from the restricted account of the courts of record to the Judicial Council to:
 - (i) offset costs to the courts for collection and maintenance of court trust funds; and
 - (ii) provide accounting and auditing of all court revenue and trust accounts.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-805 State, state officers, and political subdivisions not required to give bond.

- (1) In any civil action or proceeding in which the state is a party plaintiff, or any state officer in an official capacity or on behalf of the state, or any county or city or other public corporation is a party plaintiff or defendant, no bond, written undertaking, or security may be required of the state, or any state officer, or of any county, city, or other public corporation.
- (2) Upon compliance with the other provisions of the law, the state or any state officer acting in an official capacity, or any county, city, or other public corporation, has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by law.

Repealed and Re-enacted by Chapter 153, 2015 General Session

78B-5-806 Payment of costs by state.

When a state is a party and costs are awarded against it, the costs shall be paid out of the state treasury. The auditor shall draw a warrant on the General Fund for payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-807 Payment of costs by county.

When a county is a party and costs are awarded against it, the costs shall be paid out of the county treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-808 Salaries of public officers subject to garnishment.

The state and any subdivision, agency, or institution of the state which has in its possession or under its control any credits or other personal property of, or owing any debt to, the defendant in any action, whether as salary or wages, as a public official or employee may be subject to attachment, garnishment, and execution in accordance with any rights, remedies, and procedures applicable to attachment, garnishment, and execution, respectively, except as provided in Section 78B-5-809.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-809 Service of process.

Process for a garnishment under Section 78B-5-808 shall be served only upon the auditor of the legal subdivision garnished. If there is no auditor, then process shall be served on the clerk of the subdivision, agency, or institution. The answer of the auditor or clerk shall be final and conclusive.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-810 Sureties on stay bonds entitled to subrogation.

If a surety on an appeal executed to stay proceedings upon a money judgment pays the judgment, either with or without action, after its affirmance by the appellate court, the surety is subrogated to the rights of the judgment creditor, and entitled to control, enforce, and satisfy the judgment in all respects as if the surety had recovered the same.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-811 Provisions as to depositions made applicable to nonjudicial proceedings.

The provisions of law relating to the taking of depositions in actions pending before the courts of this state are applicable to commissions, boards and officers authorized to subpoena witnesses and take testimony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-812 Release or settlement of personal injury claim -- When voidable.

- (1) Any release of liability or settlement agreement entered into within a period of 15 days from the date of an occurrence causing physical injury to any person, or entered into prior to the initial discharge of the person from any hospital or sanitarium in which the injured person is confined as a result of the injuries sustained in the occurrence, is voidable by the injured person, as provided in Sections 78B-5-812 through 78B-5-816.
- (2) Notice of cancellation of the release or settlement agreement, together with any payment or other consideration received in connection with the release or agreement shall be mailed or delivered to the party to whom the release or settlement agreement was given, by the later of the following dates:
 - (a) within 15 days from the date of the occurrence causing the injuries which are subject of the settlement agreement or liability release; or
 - (b) within 15 days after the date of the injured person's discharge from the hospital or sanitarium in which the person has been confined continuously since the date of the occurrence causing the injury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-813 Statement of injured person -- When inadmissible as evidence.

Except as otherwise provided in Sections 78B-5-812 through 78B-5-816, any statement, either written or oral, obtained from an injured person within 15 days of an occurrence or while the person is confined in a hospital or sanitarium as a result of injuries sustained in the occurrence, and which statement is obtained by a person whose interest is adverse or may become adverse to the injured person, except a peace officer, is not admissible as evidence in any civil proceeding brought by or against the injured person for damages sustained as a result of the occurrence, unless:

- (1) a written verbatim copy of the statement has been left with the injured party at the time the statement was taken; and
- (2) the statement has not been disavowed in writing within 15 days of the date of the statement or within 15 days after the date of the injured person's initial discharge from the hospital or sanitarium in which the person has been confined, whichever date is later.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-814 Release, settlement, or statement by injured person -- When rescission or disavowal provisions inapplicable.

Sections 78B-5-812 through 78B-5-816 do not apply if at least five days prior to signing the settlement agreement, liability release, or statement, the injured person signed a statement in

writing indicating willingness and agreement to the settlement agreement, liability release, or statement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-815 Release, settlement, or statement by injured person -- Notice of rescission or disavowal.

Notice of cancellation or notice disavowing a statement, if given by mail, is given when it is deposited in a mailbox, properly addressed with postage prepaid. Notice of cancellation given by the injured person need not take a particular form. It is sufficient if it indicates by any form of written expression the intention of the injured person not to be bound by the settlement agreement, liability release, or disavowed statement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-816 Right of rescission or disavowal of release, settlement, or statement by injured person in addition to other provisions.

The rights provided by Sections 78B-5-812 through 78B-5-816 are intended to be in addition to, and not in lieu of, any rights of rescission, rules of evidence, or provisions otherwise existing in the law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-817 Definitions.

As used in Sections 78B-5-817 through 78B-5-823:

- (1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.
- (2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.
- (3) "Person immune from suit" means:
 - (a) an employer immune from suit under Title 34A, Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act; and
 - (b) a governmental entity or governmental employee immune from suit pursuant to Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- (4) "Person seeking recovery" means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-818 Comparative negligence.

- (1) The fault of a person seeking recovery may not alone bar recovery by that person.
- (2) A person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the person seeking recovery prior to any reallocation of fault made under Subsection 78B-5-819(2).

(3) No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant under Section 78B-5-819.

- (4)
- (a) The fact finder may, and when requested by a party shall, allocate the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault. In the case of a motor vehicle accident involving an unidentified motor vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which may consist solely of one person's testimony.
 - (b) Any fault allocated to a person immune from suit is considered only to accurately determine the fault of the person seeking recovery and a defendant and may not subject the person immune from suit to any liability, based on the allocation of fault, in this or any other action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-819 Separate special verdicts on total damages and proportion of fault.

- (1) The trial court may, and when requested by any party shall, direct the jury, if any, to find separate special verdicts determining the total amount of damages sustained and the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault.
- (2)
 - (a) If the combined percentage or proportion of fault attributed to all persons immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of fault to zero and reallocate that percentage or proportion of fault to the other parties and those identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault in proportion to the percentage or proportion of fault initially attributed to each by the fact finder. After this reallocation, cumulative fault shall equal 100% with the persons immune from suit being allocated no fault.
 - (b) If the combined percentage or proportion of fault attributed to all persons immune from suit is 40% or more, that percentage or proportion of fault attributed to persons immune from suit may not be reduced under Subsection (2)(a).
 - (c)
 - (i) The jury may not be advised of the effect of any reallocation under Subsection (2).
 - (ii) The jury may be advised that fault attributed to persons immune from suit may reduce the award of the person seeking recovery.
- (3) A person immune from suit may not be held liable, based on the allocation of fault, in this or any other action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-820 Amount of liability limited to proportion of fault -- No contribution.

- (1) Subject to Section 78B-5-818, the maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant.
- (2) A defendant is not entitled to contribution from any other person.

- (3) A defendant or person seeking recovery may not bring a civil action against any person immune from suit to recover damages resulting from the allocation of fault under Section 78B-5-818.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-821 Joinder of defendants.

- (1) A person seeking recovery, or any defendant who is a party to the litigation, may join as a defendant, in accordance with the Utah Rules of Civil Procedure, any person other than a person immune from suit alleged to have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.
- (2) A person immune from suit may not be named as a defendant, but fault may be allocated to a person immune from suit solely for the purpose of accurately determining the fault of the person seeking recovery and all defendants. A person immune from suit is not subject to any liability, based on the allocation of fault, in this or any other action.
- (3)
 - (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules of Civil Procedure, regardless of whether or not money damages are sought.
 - (b) A person immune from suit who intervenes in an action may not be held liable for any fault allocated to that person under Section 78B-5-818.
- (4) Fault may not be allocated to a non-party unless a party timely files a description of the factual and legal basis on which fault can be allocated and information identifying the non-party, to the extent known or reasonably available to the party, including name, address, telephone number and employer. The party shall file the description and identifying information in accordance with Rule 9, Utah Rules of Civil Procedure or as ordered by the court but in no event later than 90 days before trial as provided in Rule 9, Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-822 Release to one defendant does not discharge other defendants.

A release given by a person seeking recovery to one or more defendants does not discharge any other defendant unless the release so provides.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-823 Effect on immunity, exclusive remedy, indemnity, and contribution.

Nothing in Sections 78B-5-817 through 78B-5-822 affects or impairs any common law or statutory immunity from liability, including, but not limited to, governmental immunity as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah, and the exclusive remedy provisions of Title 34A, Chapter 2, Workers' Compensation Act. Nothing in Sections 78B-5-817 through 78B-5-822 affects or impairs any right to indemnity or contribution arising from statute, contract, or agreement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-824 Personal injury judgments -- Interest authorized.

- (1) In all actions brought to recover damages for personal injuries sustained by any person, caused by the negligence or willful intent of another person, corporation, association, or partnership, and whether the injury was fatal or otherwise, the plaintiff, including a counterclaim plaintiff or a crossclaim plaintiff, in the complaint may claim interest on special damages actually incurred.
- (2) A plaintiff, including a counterclaim plaintiff or a crossclaim plaintiff, seeking to recover damages for personal injury or wrongful death may claim prejudgment interest if for cases classified as tier 1, pursuant to the Utah Rules of Civil Procedure, the plaintiff tenders:
 - (a) a written settlement demand, including settlement demands under Utah Rule of Civil Procedure 68; and
 - (b) the amount of the demand does not exceed 1-1/3 of the amount of the judgment eventually awarded at trial.
- (3) For purposes of this statute, the determining offer and counteroffer shall be the last written offer or counteroffer timely tendered by a party, provided that the offer or counteroffer is tendered at least 60 days before trial.
- (4) Cases classified as tier 2 or tier 3 by the Utah Rules of Civil Procedure or submitted to binding arbitration in accordance with Sections 18-1-4 and 31A-22-321 are not subject to the requirements outlined in Subsection (2).
- (5)
 - (a) Any prejudgment interest shall be computed as simple interest. For first special damages incurred during the year of the occurrence of the act giving rise to the cause of action, any prejudgment interest shall be computed as simple interest accruing from the date on which the first date special damages were actually incurred.
 - (b) For special damages incurred in successive years, prejudgment interest shall be calculated from January 1 of each year special damages were incurred. The court shall calculate prejudgment interest using a per annum rate, which is two percentage points above the prime rate, as published by the Board of Governors of the Federal Reserve System on the first business day in January of the calendar year in which the judgment is entered. The prejudgment interest rate applied to all cases may not be lower than 5% or higher than 10%.
- (6) As used in this section, "special damages actually incurred" does not include damages for future medical expenses, loss of future wages, or loss of future earning capacity.
- (7) This section applies to any cause of action arising on or after July 1, 2014.

Amended by Chapter 257, 2014 General Session

78B-5-825 Attorney fees -- Award where action or defense in bad faith -- Exceptions.

- (1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).
- (2) The court, in the court's discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:
 - (a) finds the party has filed an affidavit of indigency under Section 78A-2-302 in the action before the court; or
 - (b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

Amended by Chapter 272, 2022 General Session

78B-5-825.5 Attorney fees -- Private attorney general doctrine disavowed.

A court may not award attorney fees under the private attorney general doctrine in any action filed after May 12, 2009.

Enacted by Chapter 373, 2009 General Session

78B-5-826 Attorney fees -- Reciprocal rights to recover attorney fees.

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-827 Attorney fees awarded to state funded agency in action against state or subdivision -- Forfeit of appropriated money.

An agency or organization receiving state funds which, as a result of its suing the state, or political subdivision of the state, receives attorney fees and costs as all or part of a settlement or award, shall forfeit to the General Fund, from its appropriated money, an amount equal to the attorney fees received.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-828 Bond required in an environmental action.

(1) As used in this section:

- (a) "Administrative stay" means a stay or other temporary remedy issued by an agency under Section 63G-4-405.
- (b)
 - (i) "Environmental action" means a cause of action that:
 - (A) is filed on or after May 10, 2011; and
 - (B) seeks judicial review of a final agency action to issue a permit by the Department of Natural Resources, the Department of Transportation, or the School and Institutional Trust Lands Administration.
 - (ii) "Environmental action" does not include a cause of action that seeks judicial review of a final agency action to issue a permit by the Division of Oil, Gas, and Mining under Title 40, Chapter 10, Coal Mining and Reclamation.
- (c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in the plaintiff's favor on at least one cause of action.

(2) A plaintiff who obtains a preliminary injunction or administrative stay in an environmental action, but does not ultimately prevail on the merits of the environmental action, is liable for damages sustained by a defendant who:

- (a) opposed the preliminary injunction or administrative stay; and
- (b) was harmed by the preliminary injunction.

(3) A court may not issue a preliminary injunction and an agency may not grant an administrative stay in an environmental action until the plaintiff posts with the court or the agency a surety bond or cash equivalent:

- (a) in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay;

- (b) written by a surety licensed to do business in the state; and
 - (c) payable to each defendant opposing the preliminary injunction or administrative stay in the event the plaintiff does not prevail on the merits of the environmental action.
- (4) If there is more than one plaintiff, the court or agency shall establish the amount of the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.
- (5)
- (a) If the plaintiff does not ultimately prevail on the merits of the environmental action, the court shall execute the bond and award damages to each defendant who:
 - (i) opposed the preliminary injunction or administrative stay; and
 - (ii) was harmed as a result of its issuance.
 - (b) If the amount of money secured by the surety bond or cash equivalent:
 - (i) exceeds the damages awarded, the court or agency shall return the excess to the plaintiff; and
 - (ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay the remaining damages.
- (6) Notwithstanding any other provision of law, a court's or agency's refusal to require the posting of a surety bond or cash equivalent as required by this section is subject to immediate appeal.

Amended by Chapter 149, 2025 General Session