

Senator David L. Thomas proposes the following substitute bill:

UTAH ATTORNEY'S FEES RECOVERY ACT

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill provides for the recovery of attorney fees by the prevailing party in a civil lawsuit.

Highlighted Provisions:

This bill:

- ▶ provides that the prevailing party in a civil lawsuit may be awarded reasonable attorney's fees;
- ▶ provides that the award be set at the fair market value of the services received;
- ▶ prohibits awarding fees in excess of the amount the prevailing party would have paid; and
- ▶ provides for the exclusion of certain types of suits.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78-52-101, Utah Code Annotated 1953

78-52-102, Utah Code Annotated 1953



26 78-52-103, Utah Code Annotated 1953
27 78-52-104, Utah Code Annotated 1953



28
29 *Be it enacted by the Legislature of the state of Utah:*

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

31 **CHAPTER 52. UTAH ATTORNEY'S FEE RECOVERY ACT**

32 **78-52-101. Title.**

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

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

35 **78-52-102. Definitions.**

36 As used in this chapter, "fee recoverable claim" means a claim in a civil action or
37 proceeding in any court in this state or a claim in a civil action or proceeding in any court in
38 which the laws of this state supply the rule of decision except those excluded under Section
39 78-52-104.

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

41 **78-52-103. Attorney fees recoverable by prevailing party.**

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

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

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

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

54 (c) If the services that were rendered in pursuing the claim exceed what are otherwise
55 reasonable for the matter in controversy, the court shall award the prevailing party the fair
56 market value of the legal services rendered to the extent that the nonprevailing party or the

57 nonprevailing party's attorney caused the services to exceed what are otherwise reasonable.

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

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

61 **78-52-104. Exclusions.**

62 This chapter does not apply to claims in the following actions:

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

64 (2) any action involving a governmental entity or employee as defined in Section
65 63-30d-102, where the governmental entity would have the duty to pay claims pursuant to Title
66 63, Chapter 30d, Governmental Immunity Act of Utah;

67 (3) an action for divorce or separate maintenance under the provisions of Title 30,
68 Husband and Wife, seeking attorney's fees;

69 (4) an action in small claims court;

70 (5) a class action lawsuit; and

71 (6) an action in which the nonprevailing party is:

72 (a) a nominal party;

73 (b) has no substantial interest; or

74 (c) does not substantially participate.

Fiscal Note
Bill Number SB0092s01

Utah Attorney's Fees Recovery Act

28-Jan-05

10:59 AM

State Impact

No 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