

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**

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**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:

- ▶ defines prevailing party;
- ▶ 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



26 78-52-102, Utah Code Annotated 1953  
27 78-52-103, Utah Code Annotated 1953  
28 78-52-104, Utah Code Annotated 1953

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

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

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

33 **78-52-101. Title.**

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

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

36 **78-52-102. Definitions.**

37 As used in this chapter:

38 (1) "Fee recoverable claim" means a claim in a civil action or proceeding in any court  
39 in this state or a claim in a civil action or proceeding in any court in which the laws of this state  
40 supply the rule of decision except those excluded under Section 78-52-104.

41 (2) "Prevailing party" means any party to a civil action or proceeding who prevails on a  
42 claim. A party may not be treated as a prevailing party if the other party's position in the  
43 proceeding or action was substantially justified.

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

45 **78-52-103. Attorney fees recoverable by prevailing party.**

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

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

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

56 (b) The judge may not award attorney fees in excess of the amount that the prevailing

57 party paid or agreed to pay for services rendered.

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

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

64 (e) The judge may consider the merits of each claim in the context of the totality of the  
65 claims in the action.

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

67 **78-52-104. Exclusions.**

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

69 (1) a claim for wrongful death or bodily injury;

70 (2) any action involving:

71 (a) a governmental entity as defined in Section 63-30d-102;

72 (b) a claim for monetary damages against a governmental entity employee as defined in  
73 Section 63-30d-102 where the governmental entity would have the duty to pay claims on his or  
74 her behalf pursuant to Title 63, Chapter 30d, Governmental Immunity Act of Utah; or

75 (c) any other action or claim not for monetary damages against a governmental entity  
76 employee as defined in Section 63-30d-102 where the employee is sued because of his position  
77 as a public employee or for actions or omissions arising from or occurring during the  
78 performance of the employee's duties, within the scope of the employee's employment, or under  
79 color of authority;

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

82 (4) a claim in small claims court;

83 (5) a class action lawsuit; and

84 (6) a claim in which the nonprevailing party is:

85 (a) a nominal party;

86 (b) has no substantial interest; or

87 (c) does not substantially participate.

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**Fiscal Note**  
**Bill Number SB0092s02**

**Utah Attorney's Fees Recovery Act**

*04-Feb-05*

*12:51 PM*

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**State Impact**

No state or local government fiscal impact.

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**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.

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**Office of the Legislative Fiscal Analyst**