

**PROHIBITION OF CONTINGENT FEES FOR  
EXPERT WITNESSES**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David L. Thomas**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill prohibits contingent fee agreements for expert witnesses in civil actions.

**Highlighted Provisions:**

This bill:

- ▶ defines contingent fee agreement;
- ▶ defines civil action;
- ▶ prohibits contingent fee agreements for expert witnesses in civil actions; and
- ▶ prohibits introduction of evidence of a common insurer between the party and its

expert witness to demonstrate bias.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78-24-20**, Utah Code Annotated 1953

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

Section 1. Section **78-24-20** is enacted to read:



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 specifies:~~

35 ~~§ ~~→~~ [(fi)] (a) ~~←~~§ the payment of compensation to the expert witness for the testimony, other~~  
 36 ~~evidence, and services is contingent, in whole or in part, upon a judgment being rendered in~~  
 37 ~~favor of the plaintiff or defendant in a civil action, upon a favorable settlement being obtained~~  
 38 ~~by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being~~  
 39 ~~awarded in a judgment or settlement damages in at least a specified amount; and~~

40 ~~§ ~~→~~ [(fii)] (b) ~~←~~§ upon satisfaction of the contingency described in Subsection (1)(b)(i), the~~  
 41 ~~compensation to be paid to the expert witness is in a fixed amount or an amount to be~~  
 42 ~~determined by a specified formula, including, but not limited to, a percentage of a judgment~~  
 43 ~~rendered in favor of the plaintiff or a percentage of a favorable settlement obtained by the~~  
 44 ~~plaintiff.~~

45 (2) A plaintiff or defendant in a ~~§~~ ~~→~~ [tort] civil ~~←~~§ action may not engage an expert  
 45a witness by means

46 of a contingent fee agreement ~~§~~ ~~→~~ , unless approval is sought and received from the court ~~←~~§ .

47 (3) ~~§~~ ~~→~~ [If a defendant presents testimony or other evidence in a tort action by means of an  
 48 expert witness, evidence of a common insurer of liability of the defendant and the expert  
 49 witness or evidence of a potential financial impact of the action on the amount of liability  
 50 insurance premiums paid by the expert witness is inadmissible to prove bias, interest, or  
 51 prejudice of the expert witness unless the party offering the evidence proves that the probative  
 52 value of the evidence outweighs the evidence's potential prejudicial effect.] An expert witness may be  
 52a engaged by the plaintiff or defendant on the contingency that the expert actually qualify as an expert.  
 52b Once the witness is qualified as an expert Subsection (2) applies to his continued participation in the  
 52c action. ~~←~~§

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**Legislative Review Note**

as of 11-22-05 6:59 AM

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**

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**Fiscal Note**  
**Bill Number SB0103**

**Prohibition of Contingent Fees for Expert Witnesses**

*14-Jan-06*

*7:29 PM*

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**State Impact**

No Fiscal Impact.

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**Individual and Business Impact**

May increase individual or business costs.

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**Office of the Legislative Fiscal Analyst**