



UTAH STATE SENATE

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January 24, 2006

Mr. President:

The Judiciary, Law Enforcement, and Criminal Justice Committee reports a favorable recommendation on **S.B. 103**, PROHIBITION OF CONTINGENT FEES FOR EXPERT WITNESSES, by Senator D. Thomas, with the following amendments:

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 ~~is~~ {~~:~~
- 30 ~~— (a) "Civil action" means an action for damages for injury, death, or loss to~~
- 31 ~~person or~~
- 31 ~~property, including a product liability claim. It does not include a civil action for~~
- 32 ~~damages for a~~
- 32 ~~breach of contract or another agreement between persons.~~
- 33 ~~— (b) } "Contingent Fee Agreement" means an agreement for the provision of~~
- 34 ~~testimony or~~
- 34 ~~other evidence and related services by an expert witness in a civil action that~~
- 35 ~~specifies:~~
- 35 {~~(f)~~} (a) ~~the payment of compensation to the expert witness for the~~
- 36 ~~testimony, other~~
- 36 ~~evidence, and services is contingent, in whole or in part, upon a judgment being rendered~~
- 37 ~~in~~
- 37 ~~favor of the plaintiff or defendant in a civil action, upon a favorable settlement being~~
- 38 ~~obtained~~
- 38 ~~by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being~~

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39 awarded in a judgment or settlement damages in at least a specified amount; and
40 {~~(ii)~~ (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 witness by
46 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 engaged by the plaintiff or defendant on the contingency that the expert actually qualify as
an expert. Once the witness is qualified as an expert Subsection (2) applies to his continued
participation in the action.

Respectfully,

D. Chris Buttars
Committee Chair

Voting: 5-0-3

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