

**MINUTES OF THE  
SENATE JUDICIARY, LAW ENFORCEMENT, AND CRIMINAL JUSTICE  
STANDING COMMITTEE  
TUESDAY, JANUARY 24, 2006  
Room W130, West Office Building, State Capitol Complex**

Members Present: Sen. Gregory Bell, Committee Vice Chair  
Sen. Patrice M. Arent  
Sen. Mike Dmitrich  
Sen. Lyle Hillyard  
Sen. Mark B. Madsen  
Sen. L. Alma Mansell  
Sen. David L. Thomas

Members Excused: Sen. D. Chris Buttars, Chair

Staff Present: Jerry Howe, Policy Analyst  
Bonnie Brinton, Committee Secretary

Public Speakers Present: Steve Johnson, Attorney  
Karl Hendrickson, Association of Counties

A list of visitors and a copy of handouts are filed with the committee minutes.

Acting Committee Chair Hillyard called the meeting to order at 3:40 p.m.

**1. S.B. 103 Prohibition of Contingent Fees for Expert Witnesses (D. Thomas)**

Sen. Thomas presented the bill and an amendment to the bill.

**MOTION:** Sen. Thomas moved to adopt the following amendment to the bill:

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    {  

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  
35 specifies:  
36 ~~{(f)}~~ **(a)** the payment of compensation to the expert witness for the  
37 testimony, other  
38 evidence, and services is contingent, in whole or in part, upon a judgment being rendered  
39 in  
40 favor of the plaintiff or defendant in a civil action, upon a favorable settlement being  
41 obtained  
42 by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being  
43 awarded in a judgment or settlement damages in at least a specified amount; and  
44 ~~{(f)}~~ **(b)** upon satisfaction of the contingency described in Subsection  
45 (1)(b)(i), the  
46 compensation to be paid to the expert witness is in a fixed amount or an amount to be  
47 determined by a specified formula, including, but not limited to, a percentage of a  
48 judgment  
49 rendered in favor of the plaintiff or a percentage of a favorable settlement obtained by the  
50 plaintiff.  
51 (2) A plaintiff or defendant in a ~~{tort}~~ **civil** action may not engage an  
52 expert witness by means  
53 of a contingent fee agreement **, unless approval is sought and received from the**  
54 **court** .  
55 (3) ~~{If a defendant presents testimony or other evidence in a tort action by~~  
56 ~~means of an~~  
57 ~~expert witness, evidence of a common insurer of liability of the defendant and the~~  
58 ~~expert~~  
59 ~~witness or evidence of a potential financial impact of the action on the amount of~~  
60 ~~liability~~  
61 ~~insurance premiums paid by the expert witness is inadmissible to prove bias, interest,~~  
62 ~~or~~  
63 ~~prejudice of the expert witness unless the party offering the evidence proves that the~~  
64 ~~probative~~  
65 ~~value of the evidence outweighs the evidence's potential prejudicial effect.}~~ **An**  
66 **expert witness may be engaged by the plaintiff or defendant on the contingency that**  
67 **the expert actually qualify as an expert. Once the witness is qualified as an expert**  
68 **Subsection (2) applies to his continued participation in the action.**

The motion passed unanimously with Sens. Bell and Mansell absent for the vote.

Sen. Madsen assumed the Chair.

**2. S.B. 61 Uniform Mediation Act (L. Hillyard)**

Sen. Hillyard presented the bill.

Steve Johnson, Attorney, spoke in favor of the bill.

**MOTION:** Sen. Hillyard moved to pass S.B. 61 out of committee with a favorable recommendation. The motion passed unanimously.

Sen. Hillyard assumed the Chair.

**3. S.B. 133 Liability Protections for Charity Care (P. Knudson)**

At the Sponsor's request, this bill was not considered.

**4. S.B. 149 Providing for Indigent Defense (G. Bell)**

Sen. Bell presented the bill.

Sen. Thomas declared a Conflict of Interest.

Karl Hendrickson, Counsel, Utah Association of Counties, spoke in favor of the bill.

**MOTION:** Sen. Thomas moved to pass S.B. 149 out of committee with a favorable recommendation. The motion passed unanimously.

**MOTION:** Sen. Mansell moved to adjourn. The motion passed unanimously.

Acting Committee Chair Hillyard adjourned the meeting at 4:05 p.m.

Minutes recorded by Bonnie Brinton, Committee Secretary

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Sen. Greg Bell, Committee Vice Chair