

Senator Daniel Hemmert proposes the following substitute bill:

PRIVATE ATTORNEY GENERAL DOCTRINE

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows for the awarding of attorney fees to a prevailing party under the private attorney general doctrine.

Highlighted Provisions:

This bill:

- ▶ allows attorney fees to be awarded to a prevailing, nongovernmental entity party when an important and significant public interest is determined to substantially outweigh the underlying private interest in a lawsuit;
 - ▶ shifts the burden to the governmental entity to rebut the awarding of attorney fees;
- and
- ▶ provides that the running of attorney fees may be cut off if the governmental entity makes a good faith offer of judgment.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 78B-5-825.5, as enacted by Laws of Utah 2009, Chapter 373

27

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

29 Section 1. Section **78B-5-825.5** is amended to read:

30 **78B-5-825.5. Attorney fees -- Private attorney general doctrine.**

31 (1) As used in this section, "governmental entity" means:

32 (a) the state or any department, division, agency, or other instrumentality of the state;

33 or

34 (b) a political subdivision of the state.

35 (2) In an action involving a governmental entity, a court may enter an award of attorney
36 fees to a private prevailing party if the resolution of a significant and important public interest
37 through a lawsuit substantially outweighs the underlying private interest for which relief was
38 originally sought.

39 (3) If the plaintiff establishes a prima facie case for attorney fees in accordance with
40 Subsection (2), the governmental entity defendant may, in rebuttal, demonstrate:

41 (a) that there was a substantial and reasonable justification for its action, even if the
42 action is determined to be incorrect by the trier of fact; or

43 (b) any other exceptional or extraordinary basis to deny the fee request.

44 (4) A court may not enter an award of attorney fees against a private entity under the
45 private attorney general doctrine [in any action filed after May 12, 2009].

46 (5) The rejection of a good faith offer of judgment under Rule 68, Utah Rules of Civil
47 Procedure, by a private plaintiff shall have the effect of ending the accumulation of fees as of
48 the date of the rejection of the offer.