

## HB0079S02 compared with HB0079S01

~~{deleted text}~~ shows text that was in HB0079S01 but was deleted in HB0079S02.

Inserted text shows text that was not in HB0079S01 but was inserted into HB0079S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative Brian M. Greene}~~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: \_\_\_\_\_

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#### LONG TITLE

#### General Description:

This bill ~~{amends}~~allows for the awarding of attorney fees to a ~~{provision relating to}~~prevailing party under the private attorney general doctrine.

#### Highlighted Provisions:

This bill:

- ▶ ~~{amends the provision relating to private attorney general fees}~~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

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- ▶ 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:

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

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

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

**78B-5-825.5. Attorney fees -- Private attorney general doctrine**~~{disavowed}~~.

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

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

or

(b) a political subdivision of the state.

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

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

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

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

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

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

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