

SENATE FILE NO. SF0121

Modified English rule-attorney fees.

Sponsored by: Senator(s) Meier, Devin and Scott

A BILL

for

1 AN ACT relating to civil actions; amending the award of  
2 attorneys fees in civil actions involving death or personal  
3 injury as specified; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 1-14-126(a) and by creating new  
8 subsections (c) through (h) is amended to read:

9

10 **1-14-126. Costs in discretion of court.**

11

12 (a) Except as provided in subsections (c) through (h)  
13 of this section, in other actions the court may award and  
14 tax costs and apportion them between the parties on the  
15 same or adverse sides as it deems right and equitable. When  
16 a civil case is settled too late for the clerk of court to  
17 advise the jury panel that the jurors should not appear on

1 the date summoned the court may order that any or all  
 2 parties reimburse the proper fund for the fees and mileage  
 3 paid to the jurors and bailiffs for their appearance.

4  
 5 (c) In actions seeking to recover monetary damages  
 6 for causing the death of, or injury to, any person, the  
 7 court shall award attorney fees and costs to the prevailing  
 8 party subject to the following:

9  
 10 (i) In determining the prevailing party where  
 11 there has been a bona fide offer of settlement, the  
 12 plaintiff is the prevailing party if the judgment exceeds  
 13 the offer of settlement and the defendant is the prevailing  
 14 party if the judgment is less than or equal to the offer of  
 15 settlement;

16  
 17 (ii) The court shall adhere to the following  
 18 schedule when fixing the award of attorney's fees to a  
 19 party recovering a money judgment in an action within the  
 20 provisions of this subsection:

21

22 <u>Judgment and, if</u>		
23 <u>Awarded,</u>	<u>Contested</u>	<u>Non-</u>
24 <u>Prejudgment</u>	<u>With Trial</u>	<u>Contested</u>
25 <u>Interest</u>		

26

1 First \$25,000 20% 10%

2

3 Next \$75,000 10% 3%

4

5 Next \$400,000 10% 1%

6

7 Over \$500,000 10% 1%

8

9 (iii) In cases in which the prevailing party  
10 recovers no money judgment, the court shall award the  
11 prevailing party in a case which goes to trial thirty  
12 percent (30%) of the prevailing party's reasonable actual  
13 attorney's fees which were necessarily incurred, and shall  
14 award the prevailing party in a case resolved without trial  
15 twenty percent (20%) of its actual attorney's fees which  
16 were necessarily incurred. The actual fees shall include  
17 fees for legal work customarily performed by an attorney  
18 but which was delegated to and performed by an  
19 investigator, paralegal or law clerk.

20

21 (d) In an action seeking to recover monetary damages  
22 for causing the death of, or injury to, any person and upon  
23 entry of judgment by default, the plaintiff may recover an  
24 award calculated under subsection (c) of this section or

1 its reasonable actual fees which were necessarily incurred,  
2 whichever is less. Actual fees include fees for legal work  
3 performed by an investigator, paralegal or law clerk, as  
4 provided in paragraph (c)(iii) of this section.

5  
6 (e) In an action seeking to recover monetary damages  
7 for causing the death of, or injury to, any person, a  
8 motion is required for an award of attorney's fees under  
9 this section or pursuant to a contract, statute, regulation  
10 or law. The motion shall be filed within ten (10) days  
11 after the entry of judgment. Failure to move for attorney's  
12 fees within ten (10) days, or such additional time as the  
13 court may allow, shall be construed as a waiver of the  
14 party's right to recover attorney's fees. A motion for  
15 attorney's fees in a default case shall specify actual  
16 fees.

17  
18 (f) Attorney's fees upon entry of judgment by default  
19 pursuant to a motion filed under subsection (e) of this  
20 section may be determined by the clerk of court. In all  
21 other matters, the court shall determine attorney's fees.

22  
23 (g) In an action seeking to recover monetary damages  
24 for causing the death of, or injury to, any person, in

1 which damages are apportioned among the parties under W.S.  
2 1-1-109, the fees awarded to the plaintiff under subsection  
3 (c) of this section shall also be apportioned among the  
4 parties according to their respective percentages of fault.  
5 If the plaintiff did not assert a direct claim against a  
6 third party defendant brought into the action under rule  
7 14(c) of the Wyoming Rules of Civil Procedure, then:

8  
9 (i) The plaintiff shall not be entitled to  
10 recover the portion of the fee award apportioned to that  
11 party;

12  
13 (ii) The court shall award attorney's fees  
14 between the third party plaintiff and the third party  
15 defendant as follows:

16  
17 (A) If no fault was apportioned to the  
18 third party defendant, the third party defendant shall be  
19 entitled to recover attorney's fees as provided in  
20 subsection (c) of this section;

21  
22 (B) If fault was apportioned to the third  
23 party defendant, the third party plaintiff shall be  
24 entitled to recover under subsection (c) of this section,

1 as appropriate, thirty percent (30%) or twenty percent  
2 (20%) of that party's actual attorney's fees incurred in  
3 asserting the claim against the third party defendant.

4  
5 (h) In an action seeking to recover monetary damages  
6 for causing the death of, or injury to, any person, the  
7 allowance of attorney's fees by the court in conformance  
8 with this section shall not be construed as fixing the fees  
9 between attorney and client.

10

11 **Section 2.** This act is effective July 1, 2003.

12

13

(END)