

**2006 ID S 1357**

**AUTHOR:** Senate Committee on Judiciary and Rules

**VERSION:** Amended

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LEGISLATURE OF THE STATE OF IDAHO

Fifty-eighth Legislature  
- 2006

Second Regular Session

IN THE SENATE

SENATE BILL NO. 1357, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO ATTORNEY'S FEES IN CIVIL ACTIONS; AMENDING SECTION 12-120, IDAHO CODE, TO INCREASE THE MAXIMUM DOLLAR AMOUNT PLEADED OR CLAIMED FOR PURPOSES OF ALLOWED COSTS, TO CLARIFY EXCEPTIONS AND TO PROVIDE CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 12-120, Idaho Code, be, and the same is hereby amended to read as follows:

12-120. ATTORNEY'S FEES IN CIVIL ACTIONS. (1) Except as provided in for personal injury cases and those cases subject to the provisions of subsection s-(3) and (4) of this section, in any action where the amount pleaded is ~~twenty-five~~ fifty thousand dollars (\$ ~~25~~ 0,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

(2) The provisions of subsection (1) of this section shall also apply to any counterclaims, cross-claims or third party claims which may be filed after the initiation of the original action. Except that a ten (10) day written demand letter shall not be required in the case of a counterclaim.

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise

provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(4) In actions for personal injury, where the amount of ~~plaintiff's claimant's~~ claim for damages does not exceed twenty-five thousand dollars (\$25,000), there shall be taxed and allowed to the claimant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the claimant who files suit and becomes a plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the ~~plaintiff-claimant~~ if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

The term "statement of claim" shall mean a written statement signed by the ~~plaintiff's~~ claimant's attorney, or if no attorney, by the ~~plaintiff-claimant~~ which includes:

(a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the ~~plaintiff's claimant's~~ demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the ~~plaintiff's claimant's~~ demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the ~~plaintiff-claimant~~ has not been paid.

(b) Legible copies of all medical records, bills and other documentation pertinent to the ~~plaintiff's claimant's~~ alleged damages. If the ~~plaintiff-claimant~~ includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the ~~plaintiff claimant~~ shall be deemed to have waived any entitlement to attorney's fees under this section.

(5) In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

(6) In any small claims case resulting in entry of a money judgment or judgment for recovery of specific property, the party in whose favor the judgment is entered shall be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to

collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and an opportunity for hearing. The amount of such attorney's fees shall be determined by the court after consideration of the factors set out in rule 54(e)(3) of the Idaho rules of civil procedure, or any future rule that the supreme court of the state of Idaho may promulgate, but the court shall not base its determination of such fees upon any contingent fees arrangement between attorney and client, or any arrangement setting such fees as a percentage of the judgment or the amount recovered. In no event shall postjudgment attorney's fees exceed the principal amount of the judgment or value of property recovered.

Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE

RS 15892C1

To amend Idaho Code 12-120 relating to Attorney's fees, to increase the maximum dollar amount pleaded or claimed for purposes of allowed costs.

#### FISCAL IMPACT

There is no fiscal impact to the General Fund or Local Government.

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