

IN THE SENATE

SENATE BILL NO. 1324

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ATTORNEY'S FEES IN CIVIL ACTIONS; AMENDING SECTION 12-120, IDAHO
2 CODE, TO PROVIDE THAT THERE SHALL BE TAXED AND ALLOWED TO THE PREVAILING
3 PARTY A REASONABLE AMOUNT FIXED BY THE COURT AS ATTORNEY'S FEES IN CER-
4 TAIN ACTIONS WHERE THE AMOUNT PLEADED IS THIRTY-FIVE THOUSAND DOLLARS
5 OR LESS.
6

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

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

10 12-120. ATTORNEY'S FEES IN CIVIL ACTIONS. (1) Except as provided in
11 subsections (3) and (4) of this section, in any action where the amount
12 pleaded is ~~twenty-five~~ thirty-five thousand dollars (~~\$25~~35,000) or less,
13 there shall be taxed and allowed to the prevailing party, as part of the costs
14 of the action, a reasonable amount to be fixed by the court as attorney's
15 fees. For the plaintiff to be awarded attorney's fees, for the prosecution
16 of the action, written demand for the payment of such claim must have been
17 made on the defendant not less than ten (10) days before the commencement of
18 the action; provided, that no attorney's fees shall be allowed to the plain-
19 tiff if the court finds that the defendant tendered to the plaintiff, prior
20 to the commencement of the action, an amount at least equal to ninety-five
21 percent (95%) of the amount awarded to the plaintiff.

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

26 (3) In any civil action to recover on an open account, account stated,
27 note, bill, negotiable instrument, guaranty, or contract relating to the
28 purchase or sale of goods, wares, merchandise, or services and in any com-
29 mercial transaction unless otherwise provided by law, the prevailing party
30 shall be allowed a reasonable attorney's fee to be set by the court, to be
31 taxed and collected as costs.

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

36 (4) In actions for personal injury, where the amount of plaintiff's
37 claim for damages does not exceed twenty-five thousand dollars (\$25,000),
38 there shall be taxed and allowed to the claimant, as part of the costs of
39 the action, a reasonable amount to be fixed by the court as attorney's fees.
40 For the plaintiff to be awarded attorney's fees for the prosecution of the
41 action, written demand for payment of the claim and a statement of claim
42 must have been served on the defendant's insurer, if known, or if there is no

1 known insurer, then on the defendant, not less than sixty (60) days before
2 the commencement of the action; provided that no attorney's fees shall be
3 allowed to the plaintiff if the court finds that the defendant tendered to
4 the plaintiff, prior to the commencement of the action, an amount at least
5 equal to ninety percent (90%) of the amount awarded to the plaintiff.

6 The term "statement of claim" shall mean a written statement signed
7 by the plaintiff's attorney, or if no attorney, by the plaintiff which in-
8 cludes:

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

16 (b) Legible copies of all medical records, bills and other documenta-
17 tion pertinent to the plaintiff's alleged damages.

18 If the plaintiff includes in the complaint filed to commence the action,
19 or in evidence offered at trial, a different alleged injury or a signifi-
20 cant new item of damage not set forth in the statement of claim, the plaintiff
21 shall be deemed to have waived any entitlement to attorney's fees under this
22 section.

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

29 (6) In any small claims case resulting in entry of a money judgment or
30 judgment for recovery of specific property, the party in whose favor the
31 judgment is entered shall be entitled to reasonable postjudgment attorney's
32 fees and costs incurred in attempting to collect on the judgment. Such at-
33 torney's fees and costs shall be set by the court following the filing of
34 a memorandum of attorney's fees and costs with notice to all parties and
35 an opportunity for hearing. The amount of such attorney's fees shall be
36 determined by the court after consideration of the factors set out in rule
37 54(e)(3) of the Idaho rules of civil procedure, or any future rule that
38 the supreme court of the state of Idaho may promulgate, but the court shall
39 not base its determination of such fees upon any contingent fees arrange-
40 ment between attorney and client, or any arrangement setting such fees as
41 a percentage of the judgment or the amount recovered. In no event shall
42 postjudgment attorney's fees exceed the principal amount of the judgment or
43 value of property recovered.