The purpose of this Act is to require the loser of a civil suit to pay the prevailing party’s attorney’s fees and costs. Also known as the “English Rule,” this legislation restores fairness to the system by establishing a strong deterrent against baseless claims. Where the English rule operates, it also prompts more realistic case evaluation – the obligating to pay the winner’s fees encourages litigants to more carefully evaluate their cases before initiating a frivolous claim.

Specifically, the prevailing party shall be entitled to attorneys’ fees from the non-prevailing party with respect to any claim advanced during the litigation. Or, reasonable attorney fees will be awarded to a party making a written settlement offer if the other party has rejected the written settlement and a judgment is entered which is less favorable than the rejected settlement offer. The attorneys’ fees awarded to the winner are limited however, by the amount expanded by the losing party. If the losing party received services under a contingent fee agreement, the reasonable value of those services is the award limit. The court may, in its discretion, limit the fees recovered if such payment of fees is deemed unjust. This provision prevents the prevailing party from penalizing the loser by incurring disproportionate expenses.

Model Legislation

Section 1. This Act shall be known and may be cited as the Award of Attorneys’ Fees to Prevailing Party Act.

Section 2. “Prevailing party” means a party to an action who obtains a final judgment other than by settlement, exclusive of interest and all, or a portion of, the claims asserted during the litigation.

Section 3. (A) The prevailing party shall be entitled to attorneys’ fees from the non-prevailing party with respect to any claim advanced during the litigation, except that the sum of the entitled attorneys’ fees shall not exceed the attorneys’ fees to the non-prevailing party with regard to such claim; or

(B) Reasonable attorney fees shall be awarded to a party making a written statement offer if a party has rejected the written settlement offer and a judgment is entered that is less favorable to the rejecting party than the rejected settlement offer.

(C) The court may, in its discretion, limit the fees recovered under paragraph (A) of this Section if such payment of fees is deemed unjust.

(D) Counsel of record in actions under this Section shall maintain accurate, up-to-date records of hours worked on the matter regardless of the fee arrangement with the client.

Section 4. (Severability Clause)

Section 5. (Repealer Clause)

Section 6. (Effective Date)