

REIMBURSEMENT OF LEGAL FEES AND COSTS TO OFFICERS AND EMPLOYEES ACT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Reimbursement of Legal Fees and Costs to Officers and Employees Act by amending provisions related to reimbursement of attorney fees to an officer or employee of a public entity.

Highlighted Provisions:

This bill:

▶ provides that an officer or employee is not entitled to recover attorney fees and court costs on an indictment or information if, in a court or in an administrative hearing to terminate the officer or employee, the public entity of the officer or employee proves that the officer or employee engaged in the misconduct that formed the basis of the indictment or information;

▶ allows a public entity to dispute an officer's or employee's entitlement to attorney fees if the officer or employee engaged in the misconduct that formed the basis of the indictment or information;

▶ provides, under certain circumstances, that the public entity has the burden of establishing the facts of a dispute related to an officer's or employee's entitlement to attorney fees by a preponderance of the evidence; and

▶ makes technical changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **52-6-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

36 Section 1. Section **52-6-201** is amended to read:

37 **52-6-201. Indictment or information against officer or employee --**

38 **Reimbursement of attorney fees and court costs incurred in defense -- Exceptions.**

39 (1) [~~¶~~] (a) Except as provided under Subsection (1)(b), if a state grand jury indicts, or
40 if an information is filed against, an officer or employee, in connection with or arising out of
41 any act or omission of that officer or employee during the performance of the officer or
42 employee’s duties, within the scope of the officer or employee’s employment, or under color of
43 the officer or employee’s authority, and that indictment or information is quashed [~~or~~],
44 dismissed, or results in a judgment of acquittal, [~~unless the indictment or information is~~
45 quashed or dismissed upon application or motion of the prosecuting attorney, that] the officer
46 or employee [~~shall be~~] is entitled to recover from the public entity reasonable attorney fees and
47 court costs necessarily incurred in the defense of that indictment or information [~~from the~~
48 public entity, unless].

49 (b) An officer or employee is not entitled to recover reasonable attorney fees and court
50 costs under Subsection (1)(a) if:

51 (i) in a court, the officer or employee is found guilty of substantially the same
52 misconduct that formed the basis for the indictment or information[;]; or

53 (ii) in an administrative hearing to terminate the officer or employee, the public entity
54 of the officer or employee proves by a preponderance of the evidence that the officer or
55 employee engaged in the misconduct that formed the basis of the indictment or information.

56 (2) [~~¶~~] (a) Except as provided under Subsection (2)(b), if the officer or employee is
57 acquitted of some of the charges or counts, or if portions of the indictment or information are
58 quashed or dismissed, [~~that~~] the officer or employee [~~shall be~~] is entitled to recover from the

59 public entity reasonable attorney fees and court costs necessarily incurred in the defense of
60 those charges, counts, or portions of the indictment or information that were quashed,
61 dismissed, or resulted in a judgment of acquittal[~~-, unless the~~].

62 (b) An officer or employee is not entitled to recover reasonable attorney fees and court
63 costs under Subsection (2)(a), if:

64 (i) in a court, the officer or employee is found guilty of substantially the same
65 misconduct covered by those charges, counts, or portions of the indictment or information that
66 were quashed, dismissed, or resulted in a judgment of acquittal [is substantially the same
67 misconduct that formed the basis for charges, counts, or portions of the indictment or
68 information of which the officer or employee was found guilty.]; or

69 (ii) in an administrative hearing to terminate the officer or employee, the public entity
70 proves by a preponderance of the evidence that the officer or employee engaged in the
71 misconduct that formed the basis of the portions of the indictment or information that were
72 quashed, dismissed, or resulted in an acquittal.

73 (3) (a) An officer or employee who recovers under this section [~~shall also be~~] is also
74 entitled to recover reasonable attorney fees and court costs necessarily incurred by the officer
75 or employee in recovering the attorney fees and court costs allowed under this section,
76 including attorney fees and court costs incurred on appeal.

77 (b) (i) In a proceeding to recover attorney fees and court costs brought under
78 Subsection (3)(a), a public entity may dispute the officer's or employee's entitlement to attorney
79 fees and court costs incurred for the defense of the indictment or information, in recovering
80 attorney fees, or on appeal on the basis that the officer or employee engaged in the misconduct
81 that formed the basis of the indictment or information described in Subsection (1)(a).

82 (ii) The public entity has the burden of establishing the facts of the dispute under
83 Subsection (3)(b)(i) by a preponderance of the evidence.

84 (4) Notwithstanding any other provision of this section, an officer or employee may not
85 recover for the attorney fees or court costs incurred in defense of any charge, count, or portion
86 of the indictment or information that is quashed or dismissed upon application or motion of the
87 prosecuting attorney.

Legislative Review Note
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Office of Legislative Research and General Counsel