

1 **ATTORNEY FEES AND COURT COSTS AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Benjamin M. McAdams**

5 House Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill modifies the Reimbursement of Legal Fees and Costs to Officers and
9 Employees Act by amending provisions related to reimbursement of attorney fees to an
10 officer or employee of a public entity.
11

12 **Highlighted Provisions:**

13 This bill:

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

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

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

25 ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **52-6-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

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

36 **52-6-201. Indictment or information against officer or employee --**

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

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

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

50 (i) the indictment or information is quashed or dismissed upon application or motion of
51 the prosecuting attorney;

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

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

57 (2) [H] (a) Except as provided under Subsection (2)(b), if the officer or employee is
58 acquitted of some of the charges or counts, or if portions of the indictment or information are

59 quashed or dismissed, ~~[that]~~ the officer or employee ~~[shall be]~~ is entitled to recover from the
60 public entity reasonable attorney fees and court costs necessarily incurred in the defense of
61 those charges, counts, or portions of the indictment or information that were quashed,
62 dismissed, or resulted in a judgment of acquittal~~[, unless the]~~.

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

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

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

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

78 (b) (i) In a proceeding brought under this Subsection (3), a public entity may dispute
79 the officer's or employee's entitlement to attorney fees described in Subsection (3)(a) on the
80 basis that the officer or employee engaged in the misconduct that formed the basis of the
81 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 costs incurred in defense of any charge, count, or portion of the indictment or
86 information that is quashed or dismissed upon application or motion of the prosecuting
87 attorney.

Legislative Review Note
as of 2-7-11 10:13 AM

Office of Legislative Research and General Counsel