

**PREVENTION OF RETALIATORY LAWSUITS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Rebecca D. Lockhart**

Ralph Becker

David L. Hogue

**This act modifies the Judicial Code by creating the Citizen Participation in Government Act. The act creates a summary procedure for the courts to use to determine whether a suit is a retaliatory lawsuit for participation by the defendant in the government process. The act also allows for "slapback" suits and specifies damages.**

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

**78-58-101**, Utah Code Annotated 1953

**78-58-102**, Utah Code Annotated 1953

**78-58-103**, Utah Code Annotated 1953

**78-58-104**, Utah Code Annotated 1953

**78-58-105**, Utah Code Annotated 1953

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

Section 1. Section **78-58-101** is enacted to read:

**CHAPTER 58. CITIZEN PARTICIPATION IN GOVERNMENT ACT**

**78-58-101. Title.**

This chapter is known as the "Citizen Participation in Government Act."

Section 2. Section **78-58-102** is enacted to read:

**78-58-102. Definitions.**

As used in this chapter:

(1) "Action involving public participation in the process of government" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief to which this act applies.

(2) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or

subdivision of a state or other public authority.

(3) "Moving party" means any person on whose behalf the motion is filed.

(4) "Person" means the same as defined in Section 68-3-12.

(5) "Process of government" means the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution.

(6) "Responding party" means any person against whom the motion described in Section 78-58-103 is filed.

(7) "State" means the same as defined in Section 68-3-12.

Section 3. Section **78-58-103** is enacted to read:

**78-58-103. Applicability.**

(1) A defendant in an action who believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

Section 4. Section **78-58-104** is enacted to read:

**78-58-104. Procedures.**

(1) On the filing of a motion for judgment on the pleadings:

(a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;

(b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant; and

(c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.

(2) The court shall grant the motion and dismiss the action upon a finding that the primary purpose of the action is to prevent, interfere with, or chill the moving party's proper participation in the process of government.

(3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

Section 5. Section **78-58-105** is enacted to read:

**78-58-105. Counter actions -- Attorney's fees -- Damages.**

(1) A defendant in an action involving public participation in the process of government may maintain an action, claim, cross-claim, or counterclaim to recover:

(a) costs and reasonable attorney's fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and

(b) other compensatory damages upon an additional demonstration that the action involving public participation in the process of government was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.

(2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.