

**PAYMENT OF LEGAL FEES AND COSTS OF  
FRIVOLOUS LAWSUITS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Dennis H. Iverson**

AN ACT RELATING TO THE JUDICIAL CODE; ALLOWING THE COURT TO AWARD  
REASONABLE ATTORNEY'S FEES TO A PARTY IN A CIVIL ACTION WHO WAS  
SUBJECT TO FRIVOLOUS CONDUCT.

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

REPEALS AND REENACTS:

**78-27-56**, as last amended by Chapter 92, Laws of Utah 1988

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

Section 1. Section **78-27-56** is repealed and reenacted to read:

**78-27-56. Attorney's fees -- Award where action or defense is frivolous.**

(1) As used in this section:

(a) "Conduct" means filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.

(b) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that:

(i) obviously serves merely to harass or maliciously injure another party to the civil action,  
or;

(ii) is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2) In civil actions, the court shall award reasonable attorney's fees to **h** [a-prevailing]

**EITHER h** party

if the court determines that the other party's conduct during the action was frivolous.

(3) The court **h** [shall] **MAY h** , upon motion of either party, hold a hearing to determine whether

particular conduct of a party was frivolous. Notice of the hearing shall be given to all parties to

1 the civil action in which the conduct alleged to be frivolous occurred.

2 (4) In connection with the hearing, the court may order each party who may be awarded  
3 reasonable attorney's fees and his counsel of record to submit to the court for consideration an  
4 itemized list of the legal services necessitated by the alleged frivolous conduct, the time expended  
5 in rendering the services, and the attorney's fees associated with those services.

6 (5) The amount of an award made pursuant to this section may not exceed the attorney's  
7 fees that were both reasonably incurred by a party and necessitated by the frivolous conduct.

8 (6) An award of reasonable attorney's fees pursuant to this section may be made against  
9 a party, his counsel of record, or both.

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**Legislative Review Note**  
**as of 1-8-98 11:06 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**