

PREVENTION OF RETALIATORY LAWSUITS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Rebecca D. Lockhart

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,



28 employee, agent, or other person acting under color of law of the United States, a state, or
 29 subdivision of a state or other public authority.

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

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

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

36 (6) "Responding party" means any person against whom the motion described in Section
 37 78-58-103 is filed.

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

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

40 **78-58-103. Applicability.**

41 (1) A defendant in an action who believes that the action is primarily based on, relates to,
 42 or is in response to an act of the defendant while participating in the process of government § **AND**
 42a **IS DONE PRIMARILY TO HARASS THE DEFENDANT** § , may
 43 file:

44 (a) § [~~a verified answer~~] **AN ANSWER SUPPORTED BY AN AFFIDAVIT OF THE DEFENDANT** §
 44a detailing his belief that the action is designed to prevent, interfere
 45 with, or chill public participation in the process of government, and specifying in detail the conduct
 46 asserted to be the participation in the process of government believed to give rise to the complaint;
 47 and

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

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

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

53 **78-58-104. Procedures.**

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

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

57 (b) the trial court shall hear and determine the motion as expeditiously as possible § **WITH**
 57a **THE MOVING PARTY PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE PRIMARY**
 57b **REASON FOR THE FILING OF THE COMPLAINT WAS TO INTERFERE WITH THE FIRST AMENDMENTS**
 57c **RIGHTS OF THE DEFENDANT** § ; and

58 (c) the moving party shall have a right § [~~of~~] **TO SEEK** § interlocutory appeal from a trial
 58a court order

59 denying the motion or from a trial court failure to rule on the motion in expedited fashion.

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

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

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

66 **78-58-105. Counter actions -- Attorney's fees -- Damages.**

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

69 (a) costs and § REASONABLE § attorney's fees, upon a demonstration that the action
 69a involving public

70 participation in the process of government was commenced or continued without a substantial
 71 basis in fact and law and could not be supported by a substantial argument for the extension,
 72 modification, or reversal of existing law; and

73 (b) other compensatory damages § [~~including treble actual damages.~~] § upon an additional
 74 demonstration that the action involving public participation in the process of government was
 75 commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise
 76 maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S.
 77 Constitution.

78 (2) Nothing in this section shall affect or preclude the right of any party to any recovery
 79 otherwise authorized by § [~~any other statute~~] LAW § .

Legislative Review Note

as of 1-19-01 10:07 AM

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

Office of Legislative Research and General Counsel