

ATTORNEY FEES REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the reimbursement of certain attorney fees and court costs.

Highlighted Provisions:

This bill:

- ▶ prohibits certain state officers or employees from recovering attorney fees and court costs;
- ▶ limits the recovery of certain attorney fees and court costs incurred in an action to recover attorney fees and court costs;
- ▶ requires a state officer or employee to submit a claim for reimbursement of attorney fees and court costs within a specified time;
- ▶ establishes a procedure for:
 - a state officer or employee to submit a claim for reimbursement of attorney fees and court costs to a public entity; and
 - a public entity to respond to a state officer's or employee's claim for reimbursement;
- ▶ requires a state officer or employee to bring an action against a public entity to recover attorney fees within a specified time; 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

34 **52-6-202**, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

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

38 **52-6-201. Indictment or information against officer or employee --**
39 **Reimbursement of attorney fees and court costs incurred in defense -- Exceptions.**

40 (1) (a) [~~H~~] Except as provided in Subsection (2), if a state grand jury indicts, or if an
41 information is filed against, an officer or employee, in connection with or arising out of any act
42 or omission of that officer or employee during the performance of the officer or employee's
43 duties[;] or within the scope of the [officer] officer's or employee's employment, [or under
44 color of the officer or employee's authority, and that] and the indictment or information is
45 quashed or dismissed or results in a judgment of acquittal, [~~unless the indictment or~~
46 ~~information is quashed or dismissed upon application or motion of the prosecuting attorney,~~
47 ~~that] the officer or employee [shall be entitled to recover] may, in accordance with Section
48 52-6-202, submit a claim to the public entity for reimbursement of the officer or employee's
49 reasonable attorney fees and court costs necessarily incurred in the defense of [~~that] the~~
50 ~~indictment or information [from the public entity, unless the officer or employee is found guilty~~
51 ~~of substantially the same misconduct that formed the basis for the indictment or information].~~~~

52 [(2)] (b) [~~H~~] Except as provided in Subsection (2), if the officer or employee is
53 acquitted of [~~some of the charges or counts, or portions] a portion of the indictment or~~
54 information, or a portion of the indictment or information [are] is quashed or dismissed, [~~that]~~
55 the officer or employee [shall be entitled to recover from the public entity] may, in accordance
56 with Section 52-6-202, submit a claim to the public entity for reimbursement of the officer or
57 employee's reasonable attorney fees and court costs necessarily incurred in the defense of
58 [~~those charges, counts, or portions] the portion of the indictment or information that [~~were] is~~~~

59 quashed, dismissed, or ~~[resulted]~~ results in a judgment of acquittal~~[- unless the misconduct~~
 60 ~~covered by those charges, counts, or portions of the indictment or information that were~~
 61 ~~quashed, dismissed, or resulted in a judgment of acquittal is substantially the same misconduct~~
 62 ~~that formed the basis for charges, counts, or portions of the indictment or information of which~~
 63 ~~the officer or employee was found guilty].~~

64 (2) An officer or employee may not recover attorney fees or court costs under this
 65 section if:

66 (a) the indictment or information, or portion of the indictment or information, is
 67 quashed or dismissed upon application or motion of the prosecuting attorney;

68 (b) the officer or employee is found guilty of substantially the same misconduct that
 69 formed the basis for the indictment or information, or portion of the indictment or information,
 70 that is quashed, dismissed, or results in a judgment of acquittal; or

71 (c) the officer or employee:

72 (i) is dismissed from employment by the public entity for substantially the same
 73 misconduct that formed the basis for the indictment or information, or portion of the indictment
 74 or information; and

75 (ii) (A) does not appeal the public entity's decision; or

76 (B) appeals the public entity's decision and the decision is upheld in accordance with
 77 the public entity's grievance and appeals procedures.

78 (3) An officer or employee who [recovers] is entitled to recover attorney fees and court
 79 costs under this section [shall also be] is also entitled to recover reasonable attorney fees and
 80 costs necessarily incurred by the officer or employee in recovering the attorney fees and costs
 81 allowed under this section[- including attorney fees and costs incurred on appeal.] if:

82 (a) the officer or employee complies with Section 52-6-202; and

83 (b) the court determines that the public entity acted in bad faith.

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

88 Section 2. Section 52-6-202 is amended to read:

89 **52-6-202. Claim for reimbursement of attorney fees and court costs -- Procedural**

90 requirements.

91 ~~[(1) A request for reimbursement of attorney fees and court costs shall be filed in the~~
92 ~~manner provided in Sections [63G-7-902](#) and [63G-7-903](#).]~~

93 (1) (a) To recover attorney fees and court costs from a public entity under Section
94 [52-6-201](#), an officer or employee shall submit a written claim for reimbursement to the public
95 entity no later than 30 days after the day on which the indictment or information, or portion of
96 the indictment or information, is quashed, dismissed, or results in a judgment of acquittal.

97 (b) Except as otherwise provided in this section, the officer or employee's claim for
98 reimbursement shall comply with the requirements of Rule 73, Utah Rules of Civil Procedure,
99 Attorney fees.

100 (2) (a) Within 30 days after the day on which a public entity receives a written claim
101 for reimbursement under Subsection (1), the public entity shall notify the officer or employee
102 in writing that:

103 (i) the public entity will:

104 (A) pay the claim in full;

105 (B) adjust the claim; or

106 (C) deny the claim; or

107 (ii) additional information is needed to make a decision regarding the officer or
108 employee's claim, including a description of the additional information.

109 (b) (i) If a public entity requests additional information in accordance with Subsection
110 (2)(a)(ii), the officer or employee shall submit a response in writing within 30 days after the
111 day on which the officer or employee receives the request.

112 (ii) Within 30 days after the day on which the public entity receives the officer or
113 employee's response under Subsection (2)(b)(i), the public entity shall notify the officer or
114 employee in writing that the public entity will:

115 (A) pay the claim in full;

116 (B) adjust the claim; or

117 (C) deny the claim.

118 (c) If a public entity decides to adjust or deny a claim for reimbursement under this
119 section, the public entity shall inform the officer or employee in writing of the basis for the
120 public entity's decision to adjust or deny the claim.

121 (3) An officer or employee who complies with the requirements of Subsections (1) and
122 (2) may bring an action to recover attorney fees and court costs no later than 90 days after the
123 day on which the public entity:

124 (a) notifies the officer or employee in writing of the public entity's decision to adjust or
125 deny a claim for reimbursement in accordance with this section; or

126 (b) fails to comply with the requirements of this section.

127 ~~[(2)]~~ (4) (a) Any reimbursement of attorney fees and court costs filed on behalf of an
128 officer or employee of the state shall be paid from funds appropriated to the department or
129 division that employed the officer or employee at the time of the act or omission that gave rise
130 to the indictment or information.

131 (b) If those funds are unavailable, the reimbursement shall be paid from the General
132 Fund upon approval by the Board of Examiners and legislative appropriation.