

Senator Howard A. Stephenson proposes to substitute the following bill:

GOVERNMENT TORT LIABILITY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

Lyle W. Hillyard
Terry R. Spencer

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AN ACT RELATING TO STATE AFFAIRS IN GENERAL; MODIFYING PROVISIONS TO THE GOVERNMENT'S WAIVERS OF IMMUNITY; CHANGING THE TIME PERIOD FOR FILING CLAIMS; MODIFYING THE DAMAGE CAPS; ALLOWING A GOVERNMENT ENTITY TO SEEK APPOINTMENT OF A GUARDIAN AD LITEM FOR MINOR CLAIMANTS; MODIFYING THE TIME FOR CLAIMS; INCREASING THE AMOUNT REQUIRED FOR UNDERTAKINGS; MODIFYING A STATUTE OF LIMITATIONS REQUIREMENT; MAKING TECHNICAL CORRECTIONS; PROVIDING A TRANSITIONAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

63-30-11, as last amended by Chapter 164, Laws of Utah 1998

63-30-19, as enacted by Chapter 139, Laws of Utah 1965

63-30-34, as last amended by Chapter 76, Laws of Utah 1991

78-12-28, as last amended by Chapter 153, Laws of Utah 1997

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

Section 1. Section **63-30-11** is amended to read:

63-30-11. Claim for injury -- Notice -- Contents -- Service -- Legal disability.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

26 (2) Any person having a claim for injury against a governmental entity, or against its
27 employee for an act or omission occurring during the performance of the employee's duties, within
28 the scope of employment, or under color of authority shall file a written notice of claim with the
29 entity before maintaining an action, regardless of whether or not the function giving rise to the
30 claim is characterized as governmental.

31 (3) (a) The notice of claim shall set forth:

32 (i) a brief statement of the facts;

33 (ii) the nature of the claim asserted; and

34 (iii) the damages incurred by the claimant so far as they are known.

35 (b) The notice of claim shall be:

36 (i) signed by the person making the claim or that person's agent, attorney, parent, or legal
37 guardian; and

38 (ii) directed and delivered to:

39 (A) the city or town recorder, when the claim is against an incorporated city or town;

40 (B) the county clerk, when the claim is against a county;

41 (C) the superintendent or business administrator of the board, when the claim is against
42 a school district or board of education;

43 (D) the president or secretary of the board, when the claim is against a special district;

44 (E) the attorney general, when the claim is against the State of Utah; or

45 (F) a member of the governing board, the executive director, or executive secretary, when
46 the claim is against any other public board, commission, or body.

47 (4) (a) If the claimant is under the age of majority, or mentally incompetent and without
48 a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time
49 for service of notice of claim.

50 (b) (i) After hearing and notice to the governmental entity, the court may extend the time
51 for service of notice of claim.

52 (ii) The court may not grant an extension that exceeds the applicable statute of limitations.

53 (c) In determining whether or not to grant an extension, the court shall consider whether
54 the delay in serving the notice of claim will substantially prejudice the governmental entity in
55 maintaining its defense on the merits.

56 (d) (i) If an injury that may reasonably be expected to result in a claim against a

57 governmental entity is sustained by a potential claimant described in Subsection (4)(a), that
58 government entity may file a request with the court for the appointment of a guardian ad litem for
59 the potential claimant.

60 (ii) If a guardian ad litem is appointed under this Subsection (4)(d), the time for filing a
61 claim under Sections 63-30-12 and 63-30-13 begins when the order appointing the guardian is
62 issued.

63 Section 2. Section **63-30-19** is amended to read:

64 **63-30-19. Undertaking required of plaintiff in action.**

65 At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the
66 court, but in no case less than the sum of [~~\$300~~] \$600, conditioned upon payment by the plaintiff
67 of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute
68 the action or fails to recover judgment.

69 Section 3. Section **63-30-34** is amended to read:

70 **63-30-34. Limitation of judgments against governmental entity or employee --**
71 **Insurance coverage exception.**

72 (1) (a) Except as provided in [~~Subsection~~] Subsections (2) and (3), if a judgment for
73 damages for personal injury against a governmental entity, or an employee whom a governmental
74 entity has a duty to indemnify, exceeds [~~\$250,000~~] \$500,000 for one person in any one occurrence,
75 or [~~\$500,000~~] \$1,000,000 for two or more persons in any one occurrence, the court shall reduce
76 the judgment to that amount.

77 (b) A court may not award judgment of more than [~~\$250,000~~] \$500,000 for injury or death
78 to one person regardless of whether or not the function giving rise to the injury is characterized as
79 governmental.

80 (c) Except as provided in Subsection (2), if a judgment for property damage against a
81 governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds
82 \$100,000 in any one occurrence, the court shall reduce the judgment to that amount, regardless of
83 whether or not the function giving rise to the damage is characterized as governmental.

84 (2) The damage limits established in this section do not apply to damages awarded as
85 compensation when a governmental entity has taken or damaged private property for public use
86 without just compensation.

87 (3) The limitations of judgments established in Subsection (1) shall be adjusted annually

88 according to the methodology set forth in Subsection (4).

89 (4) (a) Beginning in 2002, and each year after that year, the risk manager shall:

90 (i) make rules, which become effective no later than July 1, that increase or decrease the
91 limitation of judgment amounts established in this section in a percentage equal to the percentage
92 difference between the consumer price index for the preceding calendar year and the consumer
93 price index for calendar year 1999; and

94 (ii) after making an increase or decrease under Subsection (3), round up the limitation of
95 judgment amounts established in Subsection (1) to the nearest \$100.

96 (b) For purposes of this Subsection (3), the risk manager shall calculate the consumer price
97 index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

98 (c) Adjustments made by the risk manager to the limitation of judgment amounts
99 established by this section have prospective effect only from the date the rules establishing the new
100 limitation of judgment take effect and those adjusted limitations of judgment apply only to claims
101 for injuries or losses that occur after the effective date of the rules that establish those new
102 limitations of judgement.

103 Section 4. Section **78-12-28** is amended to read:

104 **78-12-28. Within two years.**

105 An action may be brought within two years:

106 (1) against a marshal, sheriff, constable, or other officer for liability incurred by the doing
107 of an act in his official capacity, and by virtue of his office, or by the omission of an official duty,
108 including the nonpayment of money collected upon an execution;

109 (2) for recovery of damages for a death caused by the wrongful act or neglect of another;
110 [or]

111 (3) in causes of action against the state and its employees, for injury to the personal rights
112 of another if not otherwise provided by state or federal law[-]; or

113 (4) in causes of action against a political subdivision of the state and its employees, for
114 injury to the personal rights of another arising after July 1, 2001, if not otherwise provided by state
115 or federal law.

116 Section 5. **Transitional clause.**

117 This act has prospective effect only and any changes to the law caused by this act do not
118 apply to any claims based upon injuries or losses that occurred before July 1, 2001.

119 Section 6. **Effective date.**
120 This act takes effect on July 1, 2001.

Legislative Review Note
as of 2-2-00 11:03 AM

This legislation raises the following constitutional or statutory concerns:

Article I, Section 11 of Utah's constitution guarantees open courts. It also requires that injured persons "have remedy by due course of law." In applying that provision to laws passed by the Legislature that abrogate an existing legal remedy, the Utah Supreme Court has required the Legislature to either: provide "an effective and reasonable alternative remedy by due course of law"; or to identify the clear social and economic evil to be eliminated and demonstrate that the law is not an arbitrary or unreasonable means for achieving the objective.

By placing caps on the amount of damages an injured person can recover from a government entity, the Governmental Immunity Act arguably abrogates an existing legal remedy. In *Condemarin v. University Hospital* (1989), held that caps on recovery for medical malpractice were unconstitutional because they violated the open courts provision. This bill raises the existing statutory caps significantly and provides for an automatic adjustment to the amount of the caps to reflect inflation or deflation. These changes strengthen the likelihood that the governmental immunity caps will withstand a constitutional challenge.

Office of Legislative Research and General Counsel