

LEGAL NOTICE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to notices of claim against governmental entities and their employees.

Highlighted Provisions:

This bill:

- ▶ modifies duties of the Division of Archives and Records Service related to the Utah Public Notice Website;
- ▶ provides an alternative method of submitting a notice of claim against a governmental entity for a claim against the entity or its employee;
- ▶ provides for the posting of a notice of claim against a governmental entity on the Utah Public Notice Website; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63F-1-701, as last amended by Laws of Utah 2013, Chapter 63

63G-7-401, as last amended by Laws of Utah 2014, Chapter 210



28 [63G-7-402](#), as renumbered and amended by Laws of Utah 2008, Chapter 382



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

31 Section 1. Section **63F-1-701** is amended to read:

32 **63F-1-701. Utah Public Notice Website -- Establishment and administration.**

33 (1) As used in this part:

34 (a) "Division" means the Division of Archives and Records Service of the Department
35 of Administrative Services.

36 (b) "Public body" has the same meaning as provided under Section [52-4-103](#).

37 (c) "Public information" means a public body's public notices, minutes, audio
38 recordings, and other materials that are required to be posted to the website under Title 52,
39 Chapter 4, Open and Public Meetings Act, or other statute or state agency rule.

40 (d) "Website" means the Utah Public Notice Website created under this section.

41 (2) There is created the Utah Public Notice Website to be administered by the Division
42 of Archives and Records Service.

43 (3) The website shall consist of an Internet website provided to assist the public to find
44 posted public information and to allow the posting of notices required under Section
45 [63G-7-401](#) for a claim against a governmental entity or its employee.

46 (4) The division, with the technical assistance of the Department of Technology
47 Services, shall create the website which shall:

48 (a) allow a public body, or other certified entity, to easily post any public information;

49 (b) allow the public to search the public information by:

50 (i) public body name;

51 (ii) date of posting of the notice;

52 (iii) date of any meeting or deadline included as part of the public information; and

53 (iv) any other criteria approved by the division;

54 (c) allow the public to search and view past, archived public information;

55 (d) allow a person to subscribe to receive updates and notices associated with a public
56 body or a particular type of public information;

57 (e) be easily accessible by the public from the State of Utah home page;

58 (f) have a unique and simplified website address;

59 (g) be directly accessible via a link from the main page of the official state website;

60 [~~and~~]

61 (h) include other links, features, or functionality that will assist the public in obtaining
62 and reviewing public information posted on the website, as may be approved by the division[~~;~~];

63 and

64 (i) be a repository of notices of claim submitted under Section 63G-7-401.

65 (5) The division shall be responsible for:

66 (a) establishing and maintaining the website, including the provision of equipment,
67 resources, and personnel as is necessary;

68 (b) providing a mechanism for public bodies or other certified entities to have access to
69 the website for the purpose of posting and modifying public information; [~~and~~]

70 (c) maintaining an archive of all public information posted to the website[~~;~~]; and

71 (d) accepting, posting, and indexing, by governmental entity, notices of claim
72 submitted for posting under Section 63G-7-401.

73 (6) The timing for posting and the content of the public information posted to the
74 website shall be the responsibility of the public body or other entity posting the public
75 information.

76 (7) The division may charge a person posting a notice of claim against a governmental
77 entity under Section 63G-7-401 a reasonable fee to cover the division's cost of fulfilling its
78 responsibilities under this section with respect to those notices of claim.

79 Section 2. Section 63G-7-401 is amended to read:

80 **63G-7-401. When a claim arises -- Notice of claim requirements -- Governmental**
81 **entity statement -- Limits on challenging validity or timeliness of notice of claim.**

82 (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of
83 limitations that would apply if the claim were against a private person begins to run.

84 (b) The statute of limitations does not begin to run until a claimant knew, or with the
85 exercise of reasonable diligence should have known:

86 (i) that the claimant had a claim against the governmental entity or its employee; and

87 (ii) the identity of the governmental entity or the name of the employee.

88 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

89 (2) Any person having a claim against a governmental entity, or against its employee

90 for an act or omission occurring during the performance of the employee's duties, within the
91 scope of employment, or under color of authority, shall ~~[file a written notice of claim with the~~
92 ~~entity]~~, before maintaining an action, regardless of whether or not the function giving rise to
93 the claim is characterized as governmental[-]:

- 94 (a) file a written notice of claim with the governmental entity; or
- 95 (b) submit a notice of claim against the governmental entity for posting on the Utah
96 Public Notice Website, created in Section 63F-1-701.

97 (3) (a) ~~[The]~~ A notice of claim under Subsection (2) shall set forth:

- 98 (i) a brief statement of the facts;
- 99 (ii) the nature of the claim asserted;
- 100 (iii) the damages incurred by the claimant so far as they are known; and
- 101 (iv) if the claim is being pursued against a governmental employee individually as
102 provided in Subsection 63G-7-202(3)(c), the name of the employee.

103 (b) ~~[The]~~ A notice of claim filed with a governmental entity under Subsection (2)(a)
104 shall be:

- 105 (i) signed by the person making the claim or that person's agent, attorney, parent, or
106 legal guardian; and
- 107 (ii) directed and delivered by hand or by mail according to the requirements of Section
108 68-3-8.5 to the office of:
 - 109 (A) the city or town clerk, when the claim is against an incorporated city or town;
 - 110 (B) the county clerk, when the claim is against a county;
 - 111 (C) the superintendent or business administrator of the board, when the claim is against
112 a school district or board of education;
 - 113 (D) the presiding officer or secretary/clerk of the board, when the claim is against a
114 local district or special service district;
 - 115 (E) the attorney general, when the claim is against the state;
 - 116 (F) a member of the governing board, the executive director, or executive secretary,
117 when the claim is against any other public board, commission, or body; or
 - 118 (G) the agent authorized by a governmental entity to receive the notice of claim by the
119 governmental entity under Subsection (5)(e).

120 (4) (a) If an injury that may reasonably be expected to result in a claim against a

121 governmental entity is sustained by a claimant who is under the age of majority or mentally
122 incompetent, that governmental entity may file a request with the court for the appointment of a
123 guardian ad litem for the potential claimant.

124 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
125 63G-7-402 begins when the order appointing the guardian is issued.

126 (5) (a) Each governmental entity subject to suit under this chapter shall file a statement
127 with the Division of Corporations and Commercial Code within the Department of Commerce
128 containing:

129 (i) the name and address of the governmental entity;

130 (ii) the office or agent designated to receive a notice of claim; and

131 (iii) the address at which it is to be directed and delivered.

132 (b) Each governmental entity shall update its statement as necessary to ensure that the
133 information is accurate.

134 (c) The Division of Corporations and Commercial Code shall develop a form for
135 governmental entities to complete that provides the information required by Subsection (5)(a).

136 (d) (i) A newly incorporated municipality shall file the statement required by
137 Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation
138 under Section 67-1a-6.5.

139 (ii) A newly incorporated local district shall file the statement required by Subsection
140 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section
141 17B-1-215.

142 (e) A governmental entity may, in its statement, identify an agent authorized by the
143 entity to accept notices of claim on its behalf.

144 (6) The Division of Corporations and Commercial Code shall:

145 (a) maintain an index of the statements required by this section arranged both
146 alphabetically by entity and by county of operation; and

147 (b) make the indices available to the public both electronically and via hard copy.

148 (7) A governmental entity may not challenge the validity of a notice of claim filed
149 under Subsection (2)(a) on the grounds that it was not directed and delivered to the proper
150 office or agent if the error is caused by the governmental entity's failure to file or update the
151 statement required by Subsection (5).

152 (8) A governmental entity may not challenge the timeliness, under Section [63G-7-402](#),
153 of a notice of claim filed under Subsection (2)(a) if:

154 (a) the claimant files a notice of claim with the governmental entity:

155 (i) in accordance with the requirements of this section; and

156 (ii) within 30 days after the expiration of the time for filing a notice of claim under
157 Section [63G-7-402](#);

158 (b) the claimant demonstrates that the claimant previously filed a notice of claim:

159 (i) in accordance with the requirements of this section;

160 (ii) with an incorrect governmental entity;

161 (iii) in the good faith belief that the claimant was filing the notice of claim with the
162 correct governmental entity;

163 (iv) within the time for filing a notice of claim under Section [63G-7-402](#); and

164 (v) no earlier than 30 days before the expiration of the time for filing a notice of claim
165 under Section [63G-7-402](#); and

166 (c) the claimant submits with the notice of claim:

167 (i) a copy of the previous notice of claim that was filed with a governmental entity
168 other than the correct governmental entity; and

169 (ii) proof of the date the previous notice of claim was filed.

170 Section 3. Section **63G-7-402** is amended to read:

171 **63G-7-402. Time for filing notice of claim.**

172 A claim against a governmental entity, or against an employee for an act or omission
173 occurring during the performance of the employee's duties, within the scope of employment, or
174 under color of authority, is barred unless notice of claim is filed under Subsection
175 [63G-7-401\(2\)\(a\)](#) with the person or is submitted for posting on the Utah Public Notice Website
176 under Subsection [63G-7-401\(2\)\(b\)](#) and according to the requirements of Section [63G-7-401](#)
177 within one year after the claim arises regardless of whether or not the function giving rise to the
178 claim is characterized as governmental.

Legislative Review Note
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Office of Legislative Research and General Counsel