

Colin W. Jack proposes the following substitute bill:

Liability Limitations Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor: Ronald M. Winterton

LONG TITLE

General Description:

This bill creates an affirmative defense.

Highlighted Provisions:

This bill:

- ▶ creates an affirmative defense in a civil action for conduct, an omission, or a condition authorized or required by a governmental entity;

- ▶ provides that the affirmative defense does not apply if a person fails to comply with, or exceeds the scope of, a governmental entity's authorization or requirement, or causes harm through a defective product;

- ▶ clarifies when conduct, an omission, or a condition is considered to have occurred for purposes of the affirmative defense;

- ▶ clarifies that lawful authorization is not a defense to harm caused by negligent, reckless, fraudulent, or deceptive conduct and does not eliminate a duty to exercise reasonable care;

- ▶ specifies that the affirmative defense applies regardless of the theory of liability; and

- ▶ abrogates the common law to the extent the common law is inconsistent with the affirmative defense.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-4-901, Utah Code Annotated 1953

78B-4-902, Utah Code Annotated 1953

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

Section 1. Section **78B-4-901** is enacted to read:

Part 9. Limitations on Liability Based on Governemtal Authorization

78B-4-901 . Definitions.

As used in this part, "governmental entity" means the same as that term is defined in Section 63G-7-102.

Section 2. Section **78B-4-902** is enacted to read:

78B-4-902 . Affirmative defense -- Reliance on governmental authorization -- Civil actions.

(1) Except as provided in Subsection (2) or (3)(c), a person has an affirmative defense in a civil action if:

(a) the conduct, omission, or condition alleged to have caused the plaintiff harm was authorized or required by:

(i) statute;

(ii) ordinance;

(iii) administrative rule;

(iv) a permit, license, or order; or

(v) another written instrument that has the force of law and is issued by a governmental entity; and

(b) the authorization or requirement described in Subsection (1)(a) was in effect at the time the conduct, omission, or condition occurred, which is:

(i) for conduct, when the conduct is undertaken;

(ii) for an omission, when the omission occurs; and

(iii) for a condition, when the condition initially arises.

(2) The affirmative defense described in Subsection (1) does not apply if the plaintiff proves that:

(a) the person materially failed to comply with the terms or conditions of the authorization or requirement described in Subsection (1);

(b) the person's conduct exceeded the scope of the authorization or requirement described in Subsection (1); or

(c) the plaintiff's harm was proximately caused by negligent, reckless, fraudulent, or deceptive conduct in obtaining or carrying out the authorized activity or requirement described in Subsection (1), including a failure to disclose known material risks, and

- 63 not by the authorization or requirement itself.
- 64 (3) This section does not:
- 65 (a) create a cause of action;
- 66 (b) affect the availability of another defense in a civil action;
- 67 (c) apply to any action for damages for personal injury, death, or property damages
68 allegedly caused by a defect, dangerous condition, or failure to warn of a defect or
69 dangerous condition in a product; or
- 70 (d) abrogate, eliminate, or reduce any common law or statutory duty to exercise
71 reasonable care under the circumstances.
- 72 (4) The affirmative defense described in this section applies in a civil action regardless of
73 whether the civil action is based on negligence, strict liability, nuisance, or another
74 theory of liability.
- 75 (5) This section abrogates the common law to the extent the common law is inconsistent
76 with this section.
- 77 (6) If any provision of this section is held invalid, the invalidity does not affect any other
78 provision of this section that can be given effect without the invalid provision.

79 Section 3. **Effective Date.**

80 This bill takes effect on May 6, 2026.