

Ronald M. Winterton 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;

▸ specifies the circumstances in which the affirmative defense described above does not apply, including in an action for products liability;

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

▸ clarifies that lawful authorization to engage in an activity 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

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

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

30 **Part 9. Limitations on Liability Based on Governmental Authorization**

31 **78B-4-901 . Definitions.**

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

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

35 **78B-4-902 . Affirmative defense -- Reliance on governmental authorization --**
36 **Civil actions.**

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

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

41 (i) statute;

42 (ii) ordinance;

43 (iii) administrative rule;

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

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

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

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

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

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

52 (2) The affirmative defense described in Subsection (1) does not apply if the plaintiff
53 proves that the governmental entity that issued the authorization or requirement
54 described in Subsection (1) has determined that:

55 (a) the person materially failed to comply with the terms or conditions of the
56 authorization or requirement;

57 (b) the person's conduct exceeded the scope of the authorization or requirement; or

58 (c) the person procured the authorization or requirement by fraud.

59 (3) This section does not:

60 (a) create a cause of action;

61 (b) affect the availability of another defense in a civil action;

62 (c) apply to a products liability action; or

- 63 (d) abrogate, eliminate, or reduce any common law or statutory duty to exercise
- 64 reasonable care under the circumstances.
- 65 (4) Subject to Subsections (2) and (3), the affirmative defense described in this section
- 66 applies to a civil action regardless of the theory of liability on which the action is based.
- 67 (5) This section abrogates the common law to the extent the common law is inconsistent
- 68 with this section.
- 69 (6) If any provision of this section is held invalid, the invalidity does not affect any other
- 70 provision of this section that can be given effect without the invalid provision.

71 **Section 3. Effective Date.**
72 This bill takes effect on May 6, 2026.