

Nuisance Modifications

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tyler Clancy

Senate Sponsor: Brady Brammer

LONG TITLE**General Description:**

This bill addresses the private right of action for a nuisance claim against a governmental entity.

Highlighted Provisions:

This bill:

- defines terms;
- provides an exception to governmental immunity;
- allows a private individual to bring a public or private nuisance claim against a governmental entity under certain circumstances; and
- provides that governmental immunity is not a defense to a public or private nuisance claim in certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-7-301, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

ENACTS:

78B-6-1102.1, Utah Code Annotated 1953

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

Section 1. Section **63G-7-301** is amended to read:

63G-7-301 . Waivers of immunity.

(1)(a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the

requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

- (c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

- (a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;
- (b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;
- (c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;
- (d) subject to Section 63G-7-302, as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;
- (e) as to any claim for attorney fees or costs under Section 63G-2-209, 63G-2-405, or 63G-2-802;
- (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;
- (g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;
- (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:
- (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
- (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;

- 65 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately
66 caused by a negligent act or omission of an employee committed within the scope of
67 employment;
- 68 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a
69 sexual battery, as provided in Section 76-5-418, committed:
- 70 (i) against a student of a public elementary or secondary school, including a charter
71 school; and
- 72 (ii) by an employee of a public elementary or secondary school or charter school who:
- 73 (A) at the time of the sexual battery, held a position of special trust, as defined in
74 Section 76-5-404.1, with respect to the student;
- 75 (B) is criminally charged in connection with the sexual battery; and
- 76 (C) the public elementary or secondary school or charter school knew or in the
77 exercise of reasonable care should have known, at the time of the employee's
78 hiring, to be a sex offender, a kidnap offender, or a child abuse offender as
79 described in Section 53-29-202, required to register under Title 53, Chapter 29,
80 Sex, Kidnap, and Child Abuse Offender Registry, whose status as a sex
81 offender, kidnap offender, or child abuse offender would have been revealed in
82 a background check under Section 53G-11-402;
- 83 (k) as to any action brought under Section 78B-6-2303;
- 84 (l) as to any action brought to obtain relief under Title 53H, Chapter 7, Part 7, Student
85 Legal Representation;
- 86 (m) as to any action brought under Section 53-30-301; [and]
- 87 (n) as to any action or suit brought under Section 20A-19-301 and as to any
88 compensation or expenses awarded under Subsection 20A-19-301(5)[-] ; and
- 89 (o) as to any action brought under Section 78B-6-1102.1.
- 90 (3)(a) As used in this Subsection (3):
- 91 (i) "Code of conduct" means a code of conduct that:
- 92 (A) is not less stringent than a model code of conduct, created by the State Board
93 of Education, establishing a professional standard of care for preventing the
94 conduct described in Subsection (3)(a)(i)(D);
- 95 (B) is adopted by the applicable local education governing body;
- 96 (C) regulates behavior of a school employee toward a student; and
- 97 (D) includes a prohibition against any sexual conduct between an employee and a
98 student and against the employee and student sharing any sexually explicit or

- 99 lewd communication, image, or photograph.
- 100 (ii) "Local education agency" means:
- 101 (A) a school district;
- 102 (B) a charter school; or
- 103 (C) the Utah Schools for the Deaf and the Blind.
- 104 (iii) "Local education governing board" means:
- 105 (A) for a school district, the local school board;
- 106 (B) for a charter school, the charter school governing board; or
- 107 (C) for the Utah Schools for the Deaf and the Blind, the state board.
- 108 (iv) "Public school" means a public elementary or secondary school.
- 109 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
- 110 (vi) "Sexual battery" means the offense described in Section 76-5-418, considering
- 111 the term "child" in that section to include an individual under 18 years old.
- 112 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
- 113 claim against a local education agency for an injury resulting from a sexual battery or
- 114 sexual abuse committed against a student of a public school by a paid employee of
- 115 the public school who is criminally charged in connection with the sexual battery or
- 116 sexual abuse, unless:
- 117 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
- 118 code of conduct; and
- 119 (ii) before the sexual battery or sexual abuse occurred, the public school had:
- 120 (A) provided training on the code of conduct to the employee; and
- 121 (B) required the employee to sign a statement acknowledging that the employee
- 122 has read and understands the code of conduct.
- 123 (4)(a) As used in this Subsection (4):
- 124 (i) "Institution of higher education" means the same as that term is defined in Section
- 125 53H-1-101.
- 126 (ii) "Policy governing behavior" means a policy adopted by a higher education
- 127 institution or the Utah Board of Higher Education that:
- 128 (A) establishes a professional standard of care for preventing the conduct
- 129 described in Subsections (4)(a)(ii)(C) and (D);
- 130 (B) regulates behavior of a special trust employee toward a subordinate student;
- 131 (C) includes a prohibition against any sexual conduct between a special trust
- 132 employee and a subordinate student; and

- (D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.
- (iii) "Sexual battery" means the offense described in Section 76-5-418.
- (iv) "Special trust employee" means an employee of an institution of higher education who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.
- (v) "Subordinate student" means a student:
- (A) of an institution of higher education; and
- (B) whose educational opportunities could be adversely impacted by a special trust employee.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:
- (i) the institution of higher education proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:
- (A) with a subordinate student who was at least 18 years old at the time of the behavior; and
- (B) with the student's consent; or
- (ii)(A) at the time of the sexual battery, the institution of higher education was subject to a policy governing behavior; and
- (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

Section 2. Section **78B-6-1102.1** is enacted to read:

78B-6-1102.1 . Nuisance -- Private right of action -- Governmental immunity not a defense.

(1) As used in this section:

- (a) "Private individual" means an individual who is a landowner or tenant whose property or business is adjacent to property owned or controlled by a governmental entity.
- (b) "Private nuisance" means a third party's unauthorized use of property owned or controlled by a governmental entity, as that term is defined in Section 63G-7-102, upon whose continuing course of conduct, action, or series of actions constitutes:
- (i) a substantial and unreasonable interference with the private individual's use and comfortable enjoyment of the private individual's life or property; or

(ii) a material interference and obstruction of the lawful operation and use of the private individual's place of business.

(c) "Public nuisance" means the same as the term is defined in Section 76-9-1301.

(2) A private individual may bring a civil action under this section against a governmental entity that, either through action or inaction, permits a third party to create, contribute to, or maintain a public or private nuisance on property owned or controlled by the governmental entity.

(3) A private right of action brought under this section:

(a) is authorized in accordance with Subsection 78B-3-101.3(5);

(b) shall be brought in accordance with Section 78B-6-1102; and

(c) shall be commenced within the time limits applicable to injury or property as provided by law.

(4)(a) A governmental entity may not assert the defense of governmental immunity under Title 63G, Chapter 7, Governmental Immunity Act of Utah, in an action brought under this section.

(b) A governmental entity is liable under this section to the same extent that a private individual is liable for a public or private nuisance claim against another private individual, whether the nuisance is caused by the actions of a third party.

Section 3. Effective Date.

This bill takes effect on May 6, 2026.