

## Chapter 7 Governmental Immunity Act of Utah

### Part 1 General Provisions

#### **63G-7-101 Title -- Scope of waivers and retentions of immunity.**

- (1) This chapter is known as the "Governmental Immunity Act of Utah."
- (2) The scope of the waivers and retentions of immunity found in this comprehensive chapter:
  - (a) applies to all functions of government, no matter how labeled; and
  - (b) governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee's duties, within the scope of employment, or under color of authority.
- (3) A governmental entity and an employee of a governmental entity retain immunity from suit unless that immunity has been expressly waived in this chapter.
- (4) A governmental entity and an employee of a governmental entity retain immunity from suit if an injury arises out of or in connection with, or results from, conduct or a condition described in Subsection 63G-7-201(3) or (4), even if immunity from suit for the injury is waived under Section 63G-7-301.

Amended by Chapter 300, 2017 General Session

#### **63G-7-102 Definitions.**

As used in this chapter:

- (1) "Arises out of or in connection with, or results from," when used to describe the relationship between conduct or a condition and an injury, means that:
  - (a) there is some causal relationship between the conduct or condition and the injury;
  - (b) the causal relationship is more than any causal connection but less than proximate cause; and
  - (c) the causal relationship is sufficient to conclude that the injury originates with, flows from, or is incident to the conduct or condition.
- (2) "Claim" means any asserted demand for or cause of action for money or damages, whether arising under the common law, under state constitutional provisions, or under state statutes, against a governmental entity or against an employee in the employee's personal capacity.
- (3)
  - (a) "Employee" includes:
    - (i) a governmental entity's officers, employees, servants, trustees, or commissioners;
    - (ii) members of a governing body;
    - (iii) members of a government entity board;
    - (iv) members of a government entity commission;
    - (v) members of an advisory body, officers, and employees of a Children's Justice Center created in accordance with Section 67-5b-102;
    - (vi) student teachers holding a license issued by the State Board of Education;
    - (vii) educational aides;
    - (viii) students engaged in internships under Section 53B-16-402 or 53G-7-902;
    - (ix) volunteers as defined by Subsection 67-20-2(3); and
    - (x) tutors.

- (b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or not the individual holding that position receives compensation.
- (c) "Employee" does not include an independent contractor.
- (4) "Governmental entity" means:
  - (a) the state and its political subdivisions; and
  - (b) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.
- (5)
  - (a) "Governmental function" means each activity, undertaking, or operation of a governmental entity.
  - (b) "Governmental function" includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.
  - (c) "Governmental function" includes a governmental entity's failure to act.
- (6) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to the person or estate, that would be actionable if inflicted by a private person or the private person's agent.
- (7) "Personal injury" means an injury of any kind other than property damage.
- (8) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.
- (9) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.
- (10) "State" means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, Children's Justice Center, or other instrumentality of the state.
- (11) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's conduct will probably result in injury.

Amended by Chapter 280, 2019 General Session

## **Part 2**

### **Governmental Immunity - Statement, Scope, and Effect**

#### **63G-7-201 Immunity of governmental entities and employees from suit.**

- (1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.
- (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit:
  - (a) as provided in Section 78B-4-517; and
  - (b) for any injury or damage resulting from the implementation of or the failure to implement measures to:

- (i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
  - (ii) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;
  - (iii) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:
    - (A) an emergency shelter;
    - (B) housing;
    - (C) a staging place; or
    - (D) a medical facility; and
  - (iv) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.
- (3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:
- (a) a latent dangerous or latent defective condition of:
    - (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or
    - (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or
  - (b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.
- (4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:
- (a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;
  - (b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;
  - (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;
  - (d) a failure to make an inspection or making an inadequate or negligent inspection;
  - (e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;
  - (f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;
  - (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
  - (h) the collection or assessment of taxes;
  - (i) an activity of the Utah National Guard;
  - (j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;
  - (k) a natural condition on publicly owned or controlled land;
  - (l) a condition existing in connection with an abandoned mine or mining operation;

- (m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:
  - (i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
  - (ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:
    - (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and
    - (B) the municipality or county where the trail is located; and
  - (iii) the written agreement:
    - (A) contains a plan for operation and maintenance of the trail; and
    - (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
- (o) research or implementation of cloud management or seeding for the clearing of fog;
- (p) the management of flood waters, earthquakes, or natural disasters;
- (q) the construction, repair, or operation of flood or storm systems;
- (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
- (s) the activity of:
  - (i) providing emergency medical assistance;
  - (ii) fighting fire;
  - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
  - (iv) an emergency evacuation;
  - (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service;or
  - (vi) intervening during a dam emergency;
- (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- (u) an unauthorized access to government records, data, or electronic information systems by any person or entity; or
- (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Amended by Chapter 10, 2020 Special Session 5

**63G-7-202 Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability -- Public duty does not create specific duty.**

- (1)
  - (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.
  - (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.

- (c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.
- (2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.
- (3)
  - (a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.
  - (b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.
  - (c) A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless:
    - (i) the employee acted or failed to act through fraud or willful misconduct;
    - (ii) the injury or damage resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:
      - (A) with a blood alcohol content equal to or greater by weight than the established legal limit;
      - (B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or
      - (C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle;
    - (iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform the employee's job function because of:
      - (A) the use of alcohol;
      - (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or
      - (C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4;
    - (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section; or
    - (v) the employee intentionally or knowingly:
      - (A) fabricated evidence; or
      - (B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of others, failed to disclose evidence that:
        - (I) was known to the employee; and
        - (II)
          - (Aa) was known by the employee to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending judicial or administrative proceeding; or
          - (Bb) was known by the employee to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.
  - (d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or pursue a civil action or proceeding against an employee, does not apply if the employee failed to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by law from disclosing the evidence.

- (4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:
  - (a) during the performance of the employee's duties;
  - (b) within the scope of employment; or
  - (c) under color of authority.
- (5) A general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public.

Amended by Chapter 415, 2014 General Session

**63G-7-203 Exemptions for certain actions.**

The requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, and 63G-7-601 do not apply to:

- (1) an action that involves takings law, as defined in Section 63L-3-102; or
- (2) an action filed under Title 67, Chapter 21, Utah Protection of Public Employees Act.

Amended by Chapter 178, 2018 General Session

**Part 3  
Waivers of Immunity**

**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 Subsection 63G-7-302(1), 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) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 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;
  - (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment; and
  - (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:
    - (i) against a student of a public elementary or secondary school, including a charter school; and
    - (ii) by an employee of a public elementary or secondary school or charter school who:
      - (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;
      - (B) is criminally charged in connection with the sexual battery; and
      - (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402.
- (3)
- (a) As used in this Subsection (3):
    - (i) "Code of conduct" means a code of conduct that:
      - (A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);
      - (B) is adopted by the applicable local education governing body;
      - (C) regulates behavior of a school employee toward a student; and
      - (D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.
    - (ii) "Local education agency" means:
      - (A) a school district;
      - (B) a charter school; or
      - (C) the Utah Schools for the Deaf and the Blind.
    - (iii) "Local education governing board" means:
      - (A) for a school district, the local school board;
      - (B) for a charter school, the charter school governing board; or
      - (C) for the Utah Schools for the Deaf and the Blind, the state board.
    - (iv) "Public school" means a public elementary or secondary school.
    - (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

- (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:
  - (i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and
  - (ii) before the sexual battery or sexual abuse occurred, the public school had:
    - (A) provided training on the code of conduct to the employee; and
    - (B) required the employee to sign a statement acknowledging that the employee has read and understands the code of conduct.
- (4)
  - (a) As used in this Subsection (4):
    - (i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.
    - (ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:
      - (A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);
      - (B) regulates behavior of a special trust employee toward a subordinate student;
      - (C) includes a prohibition against any sexual conduct between a special trust 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 76-9-702.1.
    - (iv) "Special trust employee" means an employee of a higher education institution 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 a higher education institution; 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 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 higher education institution 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.

Amended by Chapter 288, 2020 General Session  
Amended by Chapter 338, 2020 General Session  
Amended by Chapter 365, 2020 General Session



**63G-7-302 Specific remedies -- "Takings" actions -- Government Records Access and Management Actions.**

- (1) In any action brought under the authority of Article I, Section 22, of the Utah Constitution 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, compensation and damages shall be assessed according to the requirements of Title 78B, Chapter 6, Part 5, Eminent Domain.
- (2)
  - (a) Notwithstanding Section 63G-7-401, a notice of claim for attorney fees under Subsection 63G-7-301(2)(e) may be filed contemporaneously with a petition for review under Section 63G-2-404.
  - (b) The provisions of Subsection 63G-7-403(1), relating to the governmental entity's response to a claim, and the provisions of Section 63G-7-601, requiring an undertaking, do not apply to a notice of claim for attorney fees filed contemporaneously with a petition for review under Section 63G-2-404.
  - (c) Any other claim under this chapter that is related to a claim for attorney fees under Subsection 63G-7-301(2)(e) may be brought contemporaneously with the claim for attorney fees or in a subsequent action.

Amended by Chapter 3, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

**Part 4**

**Notice of Claim Against a Governmental Entity or a Government Employee**

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

- (1)
  - (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.
  - (b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:
    - (i) that the claimant had a claim against the governmental entity or the governmental entity's employee; and
    - (ii) the identity of the governmental entity or the name of the employee.
  - (c) The burden to prove the exercise of reasonable diligence is upon the claimant.
- (2) Any person having a claim against a governmental entity, or against the governmental entity's employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.
- (3)
  - (a) The notice of claim shall set forth:
    - (i) a brief statement of the facts;
    - (ii) the nature of the claim asserted;
    - (iii) the damages incurred by the claimant so far as the damages are known; and

- (iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63G-7-202(3)(c), the name of the employee.
- (b) The notice of claim shall be:
  - (i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and
  - (ii) directed and delivered by hand or by mail according to the requirements of Section 68-3-8.5 to the office of:
    - (A) the city or town clerk, when the claim is against an incorporated city or town;
    - (B) the county clerk, when the claim is against a county;
    - (C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;
    - (D) the presiding officer or secretary or clerk of the board, when the claim is against a local district or special service district;
    - (E) the attorney general, when the claim is against the state;
    - (F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or
    - (G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).
- (4)
  - (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.
  - (b) If a guardian ad litem is appointed, the time for filing a claim under Section 63G-7-402 begins when the order appointing the guardian ad litem is issued.
- (5)
  - (a) A governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:
    - (i) the name and address of the governmental entity;
    - (ii) the office or agent designated to receive a notice of claim; and
    - (iii) the address at which the notice of claim is to be directed and delivered.
  - (b) A governmental entity shall update the governmental entity's statement as necessary to ensure that the information is accurate.
  - (c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).
  - (d)
    - (i) A newly incorporated municipality shall file the statement required by Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5.
    - (ii) A newly incorporated local district shall file the statement required by Subsection (5)(a) at the time that the written notice is filed with the lieutenant governor under Section 17B-1-215.
  - (e) A governmental entity may, in the governmental entity's statement, identify an agent authorized to accept notices of claim on behalf of the governmental entity.
- (6) The Division of Corporations and Commercial Code shall:
  - (a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and
  - (b) make the indices available to the public both electronically and via hard copy.

- (7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).
- (8) A governmental entity may not challenge the timeliness, under Section 63G-7-402, of a notice of claim if:
  - (a)
    - (i) the claimant files a notice of claim with the governmental entity:
      - (A) in accordance with the requirements of this section; and
      - (B) within 30 days after the expiration of the time for filing a notice of claim under Section 63G-7-402;
    - (ii) the claimant demonstrates that the claimant previously filed a notice of claim:
      - (A) in accordance with the requirements of this section;
      - (B) with an incorrect governmental entity;
      - (C) in the good faith belief that the claimant was filing the notice of claim with the correct governmental entity;
      - (D) within the time for filing a notice of claim under Section 63G-7-402; and
      - (E) no earlier than 30 days before the expiration of the time for filing a notice of claim under Section 63G-7-402; and
    - (iii) the claimant submits with the notice of claim:
      - (A) a copy of the previous notice of claim that was filed with a governmental entity other than the correct governmental entity; and
      - (B) proof of the date the previous notice of claim was filed; or
  - (b)
    - (i) the claimant delivers by hand or by mail a notice of claim:
      - (A) to an elected official or executive officer of the correct governmental entity but not to the correct office under Subsection (3)(b)(ii); and
      - (B) that otherwise meets the requirements of Subsection (3); and
    - (ii)
      - (A) the claimant contemporaneously sends a hard copy or electronic copy of the notice of claim to the office of the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, representing the correct governmental entity; or
      - (B) the governmental entity does not, within 60 days after the claimant delivers the notice of claim under Subsection (8)(b)(i), provide written notification to the claimant of the delivery defect and of the identity of the correct office to which the claimant is required to deliver the notice of claim.

Amended by Chapter 229, 2019 General Session

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

A claim against a governmental entity, or against an employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the person and according to the requirements of Section 63G-7-401 within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-403 Notifying of the receipt of a notice of claim -- Action in district court -- Time for commencing action -- Commencing action after time limit.**

- (1) Within 60 days after the filing of a notice of claim, the governmental entity, the entity's representative, or the entity's insurance carrier shall inform the claimant in writing:
  - (a) that the notice of claim has been received; and
  - (b) if applicable, that the governmental entity believes it is not the correct governmental entity with which the notice of claim should have been filed.
- (2)
  - (a)
    - (i) Subject to Subsections (2)(a)(ii) and (b), a claimant may pursue an action in the district court against the governmental entity or an employee of the entity.
    - (ii) A claimant may not file an action before the date that is 60 days after the claimant's notice of claim is filed.
  - (b) Subject to Subsection (3), a claimant shall commence the action within two years after the claim arises, as provided in Subsection 63G-7-401(1), regardless of whether or not the function giving rise to the claim is characterized as governmental.
- (3)
  - (a) As used in this Subsection (3), "claimant" includes a representative of an individual:
    - (i) who dies before an action is begun under this section; and
    - (ii) whose cause of action survives the individual's death.
  - (b) A claimant may commence an action after the time limit described in Subsection (2)(b) if:
    - (i) the claimant had commenced a previous action within the time limit of Subsection (2)(b);
    - (ii) the previous action failed or was dismissed for a reason other than on the merits; and
    - (iii) the claimant commences the new action within one year after the previous action failed or was dismissed.
  - (c) A claimant may commence a new action under Subsection (3)(b) only once.

Amended by Chapter 53, 2020 General Session

**Part 5**  
**Legal Actions Under this Chapter - Jurisdiction and Venue**

**63G-7-501 Jurisdiction of district courts over actions.**

- (1) The district courts have exclusive, original jurisdiction over any action brought under this chapter.
- (2) An action brought under this chapter may not be tried as a small claims action.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-502 Venue of actions.**

- (1) Actions against the state may be brought in the county in which the claim arose or in Salt Lake County.
- (2)
  - (a) Actions against a county may be brought in the county in which the claim arose, or in the defendant county.
  - (b)

- (i) A district court judge of the defendant county may transfer venue to any county contiguous to the defendant county.
- (ii) A motion to transfer may be filed ex parte.
- (3) Actions against all other political subdivisions, including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

Amended by Chapter 33, 2016 General Session

**Part 6**  
**Legal Actions Under this Chapter - Procedures,  
Requirements, Damages, and Limitations on Judgments**

**63G-7-601 Actions governed by Utah Rules of Civil Procedure -- Undertaking required.**

- (1) An action brought under this chapter shall be governed by the Utah Rules of Civil Procedure to the extent that they are consistent with this chapter.
- (2) A plaintiff who files an action under this chapter shall file an undertaking within 20 days after commencement of the action:
  - (a) in the amount of \$300, unless otherwise ordered by the court; and
  - (b) conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.
- (3) If a plaintiff does not file an undertaking as required in Subsection (2), a court may, sua sponte or pursuant to a motion, order the plaintiff to file an undertaking in an amount and by a deadline that the court establishes.
- (4) A defendant waives a defense based on the plaintiff's failure to file an undertaking under this section if the defendant does not raise the plaintiff's failure to file an undertaking as an affirmative defense in the defendant's initial responsive pleading.

Amended by Chapter 229, 2019 General Session

**63G-7-602 Compromise and settlement of claims by political subdivision.**

A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise and settle any action as to the damages or other relief sought.

Amended by Chapter 355, 2015 General Session

**63G-7-603 Exemplary or punitive damages prohibited -- Governmental entity not subject to execution, attachment, or garnishment -- Exception.**

- (1)
  - (a) A judgment may not be rendered against a governmental entity for exemplary or punitive damages.
  - (b) If a governmental entity would be required to pay the judgment under Section 63G-7-902 or 63G-7-903, the governmental entity shall pay any judgment or portion of any judgment entered against its employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages.
- (2)

- (a) Except as provided in Subsection (2)(b), execution, attachment, or garnishment may not issue against a governmental entity.
- (b) A judgment creditor may garnish a state income tax refund owing to the judgment debtor.

Amended by Chapter 152, 2017 General Session

**63G-7-604 Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.**

- (1)
  - (a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.
  - (b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.
  - (c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.
  - (d) Subject to Subsection (3), there is a \$3,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.
- (2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.
- (3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Section 63G-7-605.

Amended by Chapter 229, 2019 General Session

**63G-7-605 Adjustments to limitation of judgment amounts.**

- (1) As used in this section:
  - (a) "Adjusted consumer price factor" means what the consumer price index would be without the medical care component and the medical services component.
  - (b) "Aggregate limit" means the limit on the aggregate amount of personal injury damages claims from a single occurrence, as provided in Subsection 63G-7-604(1)(d).
  - (c) "Applicable index" means:
    - (i) the consumer price index, for a calculation of the percentage change in the consumer price index;
    - (ii) the adjusted consumer price factor, for a calculation of the percentage change in the adjusted consumer price factor;
    - (iii) the medical care component, for a calculation of the percentage change in the medical care component; or
    - (iv) the medical services component, for a calculation of the percentage change in the medical services component.
  - (d) "Base applicable index" means an applicable index for the year that is three years before the year in which the legislative fiscal analyst calculates new limits under this section.

- (e) "Consumer price index" means the annual index reported by the United States Bureau of Labor Statistics for consumer prices for all urban consumers, not seasonally adjusted.
  - (f) "Individual limit" means the limit on the amount of a judgment for damages for personal injury, as provided in Subsection 63G-7-604(1)(a).
  - (g) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk manager under this section.
  - (h) "Latest individual limit" means the individual limit, as last adjusted by the risk manager under this section.
  - (i) "Latest property damage limit" means the property damage limit, as last adjusted by the risk manager under this section.
  - (j) "Medical care component" means the medical care sub-index of the consumer price index.
  - (k) "Medical services component" means the medical care services sub-index of the consumer price index.
  - (l) "Percentage change" means the amount of change between the base applicable index and the applicable index for the year before the year in which the legislative fiscal analyst calculates new limits under this section, expressed as a percentage of the base applicable index.
  - (m) "Property damage limit" means the limit on the amount of a judgment for property damage, as provided in Subsection 63G-7-604(1)(c).
  - (n) "Risk manager" means the state risk manager appointed under Section 63A-4-101.
- (2) Each even-numbered year, the legislative fiscal analyst shall, subject to Subsection (3):
- (a) calculate a new individual limit by adding to the latest individual limit the sum of:
    - (i) 66.5% of the latest individual limit, multiplied by the percentage change in the adjusted consumer price factor;
    - (ii) 16.75% of the latest individual limit, multiplied by the percentage change in the medical care component; and
    - (iii) 16.75% of the latest individual limit, multiplied by the percentage change in the medical services component;
  - (b) calculate a new aggregate limit by adding to the latest aggregate limit the sum of:
    - (i) 66.5% of the latest aggregate limit, multiplied by the percentage change in the adjusted consumer price factor;
    - (ii) 16.75% of the latest aggregate limit, multiplied by the percentage change in the medical care component; and
    - (iii) 16.75% of the latest aggregate limit, multiplied by the percentage change in the medical services component;
  - (c) calculate a new property damage limit by adding to the latest property damage limit the amount of the latest property damage limit multiplied by the percentage change in the consumer price index;
  - (d) round up to the nearest \$100 the individual limit, aggregate limit, and property damage limit calculated under Subsections (2)(a), (b), and (c); and
  - (e) no later than May 1, communicate the newly calculated limits under Subsections (2)(a), (b), and (c) to the risk manager.
- (3) The newly calculated individual limit, aggregate limit, or property damage limit under Subsection (2) may not be less than the amount of the limit before the new calculation under Subsection (2).
- (4)
- (a) Each even-numbered year, the risk manager shall make rules, to become effective no later than July 1 of that year, that establish a new individual limit, aggregate limit, and property damage limit, as calculated under Subsection (2).

- (b) A newly calculated individual limit, aggregate limit, or property damage limit under this section has prospective effect only from the date the rules establishing the new limit take effect.
- (c) An individual limit, aggregate limit, or property damage limit, as newly calculated under this section, applies only to a claim for injury or loss that occurs after the effective date of the rules that establish the newly calculated limit.

Amended by Chapter 9, 2018 Special Session 2

## **Part 7**

### **Payment Process and Sources for Paying Proved Claims Against Governmental Entities**

#### **63G-7-701 Payment of claim or judgment against state -- Presentment for payment.**

- (1) Each claim that is approved by the state or any final judgment obtained against the state shall be presented for payment to:
  - (a) the state risk manager; or
  - (b) the office, agency, institution, or other instrumentality involved, if payment by that instrumentality is otherwise permitted by law.
- (2) If payment of the claim is not authorized by law, the judgment or claim shall be presented to the board of examiners for action as provided in Section 63G-9-301.
- (3) If a judgment against the state is reduced by the operation of Section 63G-7-604, the claimant may submit the excess claim to the board of examiners.

Amended by Chapter 4, 2020 Special Session 5

#### **63G-7-702 Payment of claim or judgment against political subdivision -- Procedure by governing body -- Payment options.**

- (1)
  - (a) Each claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body of the political subdivision.
  - (b) The governing body shall pay the claim immediately from the general funds of the political subdivision unless:
    - (i) the funds are appropriated to some other use or restricted by law or contract for other purposes;
    - (ii) the political subdivision opts to pay the claim or award in installments under Subsection (2);
    - or
    - (iii) the political subdivision elects to bond for the portion of the claim, judgment, or settlement that exceeds \$3,000,000 in accordance with Subsection 11-14-103(1)(d).
- (2) Except as provided in Subsection (3), if the subdivision is unable to pay the claim or award during the current fiscal year, it may pay the claim or award in not more than 10 ensuing annual installments of equal size or in whatever other installments that are agreeable to the claimant.
- (3) If a political subdivision elects to bond for the portion of a claim, judgment, or settlement that exceeds \$3,000,000 in accordance with Subsection 11-14-103(1)(d), the political subdivision may issue bonds with a maturity date not to exceed 21 years.

Amended by Chapter 386, 2016 General Session



**63G-7-703 Reserve funds for payment of claims or purchase of insurance created by political subdivisions.**

Any political subdivision may create and maintain a reserve fund or, may jointly with one or more other political subdivisions, make contributions to a joint reserve fund, for the purpose of:

- (1) making payment of claims against the cooperating subdivisions when they become payable under this chapter; or
- (2) for the purpose of purchasing liability insurance to protect the cooperating subdivisions from any or all risks created by this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-704 Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.**

- (1) Notwithstanding any provision of law to the contrary, a political subdivision may levy an annual property tax sufficient to pay:
  - (a) any claim, settlement, or judgment, including interest payments and issuance costs for bonds issued under Subsection 11-14-103(1)(d) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000;
  - (b) the costs to defend against any claim, settlement, or judgment; or
  - (c) for the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments that may be reasonably anticipated.
- (2)
  - (a) The payments authorized to pay for punitive damages or to pay the premium for authorized insurance is money spent for a public purpose within the meaning of this section and Utah Constitution, Article XIII, Sec. 5, even though, as a result of the levy, the maximum levy as otherwise restricted by law is exceeded.
  - (b)
    - (i) Except as provided in Subsection (2)(b)(ii), a levy under this section may not exceed .0001 per dollar of taxable value of taxable property.
    - (ii) A levy under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000 may not exceed .001 per dollar of taxable value of taxable property.
  - (c) Except as provided in Subsection 17-36-29(1), the revenues derived from this levy may not be used for any purpose other than those specified in this section.
- (3) Beginning January 1, 2012, a local school board may not levy a tax in accordance with this section.
- (4) A political subdivision that levies an annual property tax under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000:
  - (a) shall comply with the notice and public hearing requirements under Section 59-2-919; and
  - (b) may levy the annual property tax until the bonds' maturity dates expire.

Amended by Chapter 453, 2017 General Session

**Part 8**  
**Self-Insurance and Purchase of Liability Insurance by Governmental Entities**

**63G-7-801 Insurance -- Self-insurance or purchase of liability insurance by governmental entity authorized -- Establishment of trust accounts for self-insurance.**

- (1) Any governmental entity within the state may self-insure, purchase commercial insurance, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against:
  - (a) any risk created or recognized by this chapter; or
  - (b) any action for which a governmental entity or its employee may be held liable.
- (2)
  - (a) In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establishing a trust account.
  - (b) In creating the trust account, the governmental entity shall ensure that:
    - (i) the trust account is managed by an independent private trustee; and
    - (ii) the independent private trustee has authority, with respect to claims covered by the trust, to:
      - (A) expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and
      - (B) pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon.
  - (c) Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to:
    - (i) employ counsel to defend actions against the entity and its employees;
    - (ii) protect and safeguard the assets of the trust;
    - (iii) provide for claims investigation and adjustment services;
    - (iv) employ expert witnesses and consultants; and
    - (v) provide other services and functions that are necessary and proper to carry out the purposes of the trust.
  - (d) The money and interest earned on the trust fund may be invested by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are subject to audit by the state auditor.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-802 Insurance -- Liability insurance -- Government vehicles operated by employees outside scope of employment.**

- (1) A governmental entity that owns vehicles driven by an employee of the governmental entity with the express or implied consent of the entity, but which, at the time liability is incurred as a result of an automobile accident, is not being driven and used within the course and scope of the driver's employment is, subject to Subsection (2), considered to provide the driver with the insurance coverage required by Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act.
- (2) The liability coverages considered provided are the minimum limits under Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-803 Liability insurance -- Construction of policy not in compliance with act.**

- (1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of this chapter, that policy, rider,

or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

- (2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before July 1, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-804 Liability insurance -- Methods for purchase or renewal.**

- (1) Except as provided in Subsection (2), a contract or policy of insurance may be purchased or renewed under this chapter only upon public bid to be let to the lowest and best bidder.
- (2) The purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session

**63G-7-805 Liability insurance -- Insurance for employees authorized -- No right to indemnification or contribution from governmental agency.**

- (1)
  - (a) A governmental entity may insure any or all of its employees against liability, in whole or in part, for injury or damage resulting from an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority, regardless of whether or not that entity is immune from suit for that act or omission.
  - (b) Any expenditure for that insurance is for a public purpose.
  - (c) Under any contract or policy of insurance providing coverage on behalf of a governmental entity or employee for any liability defined by this section, regardless of the source of funding for the coverage, the insurer has no right to indemnification or contribution from the governmental entity or its employee for any loss or liability covered by the contract or policy.
- (2) Any surety covering a governmental entity or its employee under any faithful performance surety bond has no right to indemnification or contribution from the governmental entity or its employee for any loss covered by that bond based on any act or omission for which the governmental entity would be obligated to defend or indemnify under the provisions of Section 63G-7-902.

Renumbered and Amended by Chapter 382, 2008 General Session

**Part 9**  
**Coverage and Representation of State Entities and Employees**

**63G-7-901 Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.**

- (1)
  - (a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where coverage under the Risk Management Fund created by Section 63A-4-201 applies.
  - (b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims.
  - (c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims in those cases lies with the attorney general and the state risk manager.
- (2)
  - (a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.
  - (b) If the general counsel for the state judiciary undertakes independent legal representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
  - (c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.
- (3)
  - (a) If the Legislative Management Committee, after consultation with the general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.
  - (b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
  - (c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.
- (4)
  - (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the Utah Code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Administrative Services for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising state agencies and employees regarding any of those claims.
  - (b) The risk manager shall draw funds from the Risk Management Fund for this purpose.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-902 Defending government employee -- Request -- Cooperation -- Payment of judgment.**

- (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:
  - (a) during the performance of the employee's duties;
  - (b) within the scope of the employee's employment; or
  - (c) under color of authority.
- (2)
  - (a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend the employee:
    - (i) within 10 days after service of process upon the employee; or
    - (ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on the employee's behalf; or
    - (iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.
  - (b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.
- (3) The governmental entity may decline to defend, or, subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:
  - (a) that the act or omission in question did not occur:
    - (i) during the performance of the employee's duties;
    - (ii) within the scope of the employee's employment; or
    - (iii) under color of authority; or
  - (b) that the injury or damage on which the claim was based resulted from conditions set forth in Subsection 63G-7-202(3)(c).
- (4)
  - (a) Within 10 days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.
  - (b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.
- (5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.
- (6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment if any of the conditions set forth in Subsection (3) are established.
- (7)
  - (a) Nothing in this section or Section 63G-7-903 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63G-7-802.
  - (b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under any of the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-903 Recovery of judgment paid and defense costs by government employee.**

(1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, that the governmental entity is required to pay under Section 63G-7-902, the employee may recover from the governmental entity the amount of the payment and the reasonable costs incurred in the employee's defense.

- (2)
- (a) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under a reservation of rights as provided in Subsection 63G-7-902(6), the employee may recover from the governmental entity under Subsection (1) if the employee can prove that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.
  - (b) The employee has the burden of proof that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-7-904 Indemnification of governmental entity by employee not required.**

If a governmental entity pays all or part of a judgment, compromise, or settlement based on a claim against the governmental entity or an employee, the employee is not required to indemnify the governmental entity for the payment.

Renumbered and Amended by Chapter 382, 2008 General Session