Chapter 3
Actions and Venue

Part 1
Actions - Right to Sue and Be Sued

78B-3-101 Husband and wife -- Actions -- Defense -- Absent spouse.

(1) If a husband and wife are sued jointly, either or both may defend in each one's own right or for both parties.
(2) Either party to a marriage may sue and be sued in the same manner as if the person is unmarried.
(3) When a spouse has deserted the family, the remaining spouse may prosecute or defend in the absent spouse's name any action which the absent spouse might have prosecuted or defended. All powers and rights the absent spouse might have shall be extended to the remaining spouse.

Enacted by Chapter 3, 2008 General Session

78B-3-102 Injury of a child -- Suit by parent or guardian.

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent or guardian may bring an action for the injury of a minor child when the injury is caused by the wrongful act or neglect of another.
(2) A civil action may be maintained against the person causing the injury or, if the person is employed by another person who is responsible for that person's conduct, also against the employer.
(3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in an action for the injury of a child, a guardian ad litem may be appointed for the injured child according to the procedures outlined in Sections 78A-2-703 and 78A-2-705.

Amended by Chapter 267, 2014 General Session

78B-3-103 Successive actions on same contract.

Successive actions may be maintained upon the same contract or transaction if, after a former action, a new cause of action arises from it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-104 Actions against officers -- Bond required -- Costs and attorney fees.

(1) A person may not file an action against a law enforcement officer acting within the scope of the officer's official duties unless the person has posted a bond in an amount determined by the court.
(2) The bond shall cover all estimated costs and attorney fees the officer may be expected to incur in defending the action, in the event the officer prevails.
(3) The prevailing party shall recover from the losing party all costs and attorney fees allowed by the court.
(4) In the event the plaintiff prevails, the official bond of the officer shall be liable for the plaintiff's costs and attorney fees.

Enacted by Chapter 3, 2008 General Session

78B-3-105 Definition of heirs.

As used in Sections 78B-3-106 and 78B-3-107, "heirs" means the following surviving persons:

(1) the decedent's spouse;

(2) the decedent's children as provided in Section 75-2-114;

(3)

(a) the decedent's natural parents; or

(b) if the decedent was adopted, the decedent's adoptive parents;

(4) the decedent's stepchildren who:

(a) are younger than 18 years old at the time of decedent's death; and

(b)

(i) received financial support from the decedent at the time of decedent's death; or

(ii) resided with the decedent on at least a part-time basis at the time of the decedent's death; or

(5) any blood relative as provided by the law of intestate succession if the decedent is not survived by a person under Subsection (1), (2), or (3).

Amended by Chapter 190, 2022 General Session

78B-3-106 Death of a person -- Suit by heir or personal representative.

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, when the death of a person is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if the person is employed by another person who is responsible for his conduct, then against the other person.

(2) If the adult person has a guardian at the time of his death, only one action may be maintained for the person's injury or death.

(3) The action may be brought by either the personal representatives of the adult deceased person, for the benefit of the person's heirs, or by the guardian for the benefit of the heirs, as defined in Section 78B-3-105.

(4) In every action under this section and Section 78B-3-105 damages may be given as under all the circumstances of the case may be just.

Amended by Chapter 79, 2009 General Session
Amended by Chapter 146, 2009 General Session

78B-3-106.5 Claims brought by presumptive personal representative.

(1) "Presumptive personal representative" means:

(a) the spouse of the decedent not alleged to have contributed to the death of the decedent;

(b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of the decedent is alleged to have contributed to the death of the decedent, then an adult child of the decedent not alleged to have contributed to the death of the decedent; or

(c) if the spouse and all children of the decedent are incapacitated, or are alleged to have contributed to the death of the decedent, then a parent of the decedent.

(2)

(a) Forty-five days after the death of a person, including a minor, caused by the wrongful act or neglect of another, the presumptive personal representative may present to an insurer and resolve with the insurer a claim for policy limits up to $25,000 for liability and uninsured motorist claims, $10,000 for underinsured motorist claims, and execute any applicable release of liability upon presentation of an affidavit, properly notarized, stating that:
(i) the person presenting the affidavit is the presumptive personal representative;
(ii) 45 days have elapsed since the death of the decedent;
(iii) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
(iv) notice of intent to resolve the claim has been sent to the last-known addresses of all heirs as defined by Section 78B-3-105.
(b) Claims for personal injury protection benefits resulting from the death of an insured are exempt from the 45-day waiting requirement, but shall include all information required in Subsections (2)(a)(i), (iii), and (iv).
(3) The presumptive personal representative's claim shall be on behalf of all heirs of the decedent as defined by Section 78B-3-105. The personal representative shall have the same duties toward other heirs as those duties provided in Sections 75-3-701 through 75-3-720.
(4) Any insurer and its insured paying a claim arising out of the wrongful death of a person, including a minor, including but not limited to claims for uninsured or underinsured motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative upon presentation of an affidavit as described in Subsection (2) are discharged and released to the same extent as if the insurer and its insured dealt with a personal representative of the decedent. The insurer and its insured are not required to inquire into the truth of any statement in the affidavit.
(5) Nothing in this section affects or prevents, to the limits of insurance protection only, any claim for first party benefits or a proceeding to establish the liability of a tort feasor insured under any policy of insurance in addition to the policy under which the claim was presented and paid under Subsection (2).
(6) If any heirs are minors, the presumptive personal representative may not distribute more than 50% of the proceeds of the settlement until the distribution has been approved by a court approved settlement in which a conservator is appointed for any minor heirs.

Amended by Chapter 274, 2022 General Session

78B-3-107 Survival of action for injury or death to individual, upon death of wrongdoer or injured individual -- Exception and restriction to out-of-pocket expenses.
(1)
(a) A cause of action arising out of personal injury to an individual, or death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death of the wrongdoer or the injured individual. The injured individual, or the personal representatives or heirs of the individual who died, has a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages, subject to Subsection (1)(b).
(b) If, prior to judgment or settlement, the injured individual dies as a result of a cause other than the injury received as a result of the wrongful act or negligence of the wrongdoer, the personal representatives or heirs of the individual have a cause of action against the wrongdoer or personal representatives of the wrongdoer for special and general damages

which resulted from the injury caused by the wrongdoer and which occurred prior to death of the injured individual from the unrelated cause.

(c) If the death of the injured individual from an unrelated cause occurs more than six months after the incident giving rise to the claim for damages, the claim shall be limited to special damages unless, prior to the injured individual's death:

(i) written notice of intent to hold the wrongdoer responsible has been mailed to or served upon the wrongdoer or the wrongdoer's insurance carrier or the uninsured motorist carrier of the injured individual, and proof of mailing or service can be produced upon request; or

(ii) a claim for damages against the wrongdoer or against the uninsured motorist carrier of the injured individual is the subject of ongoing negotiations between the parties or persons representing the parties or their insurers.

(d) A subsequent claim against an underinsured motorist carrier for which the injured individual was a covered person is not subject to the notice requirement described in Subsection (1)(c).

(2) Under Subsection (1) neither the injured individual nor the personal representatives or heirs of the individual who dies may recover judgment except upon competent satisfactory evidence other than the testimony of the injured individual.

(3) This section may not be construed to be retroactive.

Amended by Chapter 387, 2019 General Session

78B-3-108 Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.

(1) As used in this section:

(a) "Merchandise" has the same meaning as provided in Section 76-6-601.

(b) "Merchant" has the same meaning as provided in Section 76-6-601.

(c) "Minor" has the same meaning as provided in Section 76-6-601.

(d) "Premises" has the same meaning as "retail mercantile establishment" found in Section 76-6-601.

(2)

(a) A merchant may request an individual on the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose.

(b) The merchant may not be criminally or civilly liable for having made the request.

(3)

(a) A merchant who has reason to believe that an individual has committed any of the offenses listed in Subsection 76-6-404(3)(b)(iii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into custody and detain the individual in a reasonable manner and for a reasonable length of time.

(b) Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.

(4)

(a) A merchant may prohibit an individual who has committed any of the offenses listed in Subsection 76-6-404(3)(b)(iii) from reentering the premises on which the individual has committed the offense.

(b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)(a). The notice may be served by:

(i) delivering a copy to the individual personally;

(ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;

(iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or place of business if the individual is absent from the residence or usual place of business; or

(iv) affixing a copy in a conspicuous place at the individual's residence or place of business.

(c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.

(5) An adult who commits any of the offenses listed in Subsection 76-6-404(3)(b)(iii)(A), (B), or (C) is also liable in a civil action for:

(a) actual damages;

(b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed $1,000; and

(c) an additional penalty as determined by the court of not less than $100 nor more than $500, plus court costs and reasonable attorney fees.

(6) A minor who commits any of the offenses listed in Subsection 76-6-404(3)(b)(iii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:

(a) actual damages;

(b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed $500 plus an additional penalty as determined by the court of not less than $50 nor more than $500; and

(c) court costs and reasonable attorney fees.

(7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.

(8) A conviction in a criminal action for any of the offenses listed in Subsection 76-6-404(3)(b)(iii)(A), (B), or (C) is not a condition precedent to a civil action authorized under Subsection (5) or (6).

(9)

(a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall give written notice to the individual or individuals from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

(b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection (5) or (6).

(10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under

Subsection (5) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

Amended by Chapter 111, 2023 General Session

78B-3-109 Right to life -- State policy -- Act or omission preventing abortion not actionable -- Failure or refusal to prevent birth not a defense.

(1) The Legislature finds and declares that it is the public policy of this state to encourage all persons to respect the right to life of all other persons, regardless of age, development, condition, or dependency, including all persons with a disability and all unborn persons.
(2) A cause of action may not arise, and damages may not be awarded, on behalf of any person, based on the claim that but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted.
(3) The failure or refusal of any person to prevent the live birth of a person may not be a defense in any action, and may not be considered in awarding damages or child support, or imposing a penalty, in any action.

Enacted by Chapter 3, 2008 General Session

78B-3-110 Defense to civil action for damages resulting from commission of crime.

(1) A person may not recover from the victim of a crime for personal injury or property damage if:
  (a) the person entered the property of the victim or the victim's family with criminal intent and the injury or damage was inflicted by the victim or occurred while the person was on the victim's property; or
  (b) the person committed a crime against the victim or the victim's family, during which the damage or injury occurred.
(2) The provisions of Subsection (1) do not apply if the person can prove by clear and convincing evidence that the person's actions did not constitute a crime.
(3) Subsection (1) applies to any next-of-kin, heirs, or personal representatives of the person if the person acquires a disability or is killed.
(4) Subsections (1) and (2) do not apply if the person committing or attempting to commit the crime has clearly retreated from the criminal activity.
(5) "Clearly retreated" means that the person committing the criminal act has fully, clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or activity.

Amended by Chapter 36, 2012 General Session

78B-3-111 Cause of action against attorney or law firm for referral fee -- Exceptions.

(1) As used in this section:
  (a) "Attorney" means an individual who is authorized to provide legal services in any state or territory of the United States.
  (b) "Client" means an individual who is provided legal services by an attorney or a law firm.
  (c) "Client referral fee" means any amount paid by an attorney or a law firm to a person that is not an attorney for the purpose of referring the client to receive legal services from the attorney.
  (d) "Law firm" means a person that employs an attorney.
  (e) "Legal services" means any form of legal advice or legal representation that is subject to the laws of this state.

(2) A client may bring a cause of action against an attorney or a law firm to recover a client referral fee if:
(a) the attorney or the law firm pays a client referral fee; and
(b) the client referral fee was not disclosed to the client before the client paid for, or was obligated to pay for, legal services from the attorney or the law firm.
(3) A client may not bring a cause of action under this section if the client referral fee was paid:
(a) as part of a profit-sharing plan that complies with the requirements of Section 401, Internal Revenue Code;
(b) to a person that provides marketing services, including pay-per-click advertising, for the attorney or the law firm, and the client referral fee was not contingent on whether the attorney or the law firm retains a client; or
(c) to a third party debt collection agency, as that term is defined in Section 12-1-11, for the purpose of recovering money owed to the attorney by the client.
(4) Any attorney or law firm that provides legal services to the client in the matter for which the client referral fee was paid shall be jointly and severally liable in a cause of action under Subsection (2).
(5) This section applies to a cause of action described in Subsection (2) that arises on or after May 5, 2021.

Enacted by Chapter 128, 2021 General Session

78B-3-112 Action for mistaken or fraudulent transaction on a reversible blockchain.
(1) As used in this section:
(a) "Blockchain" means a digital ledger of transactions:
(i) that is distributed across multiple nodes;
(ii) that is mathematically verified; and
(iii) where the validity of transactions is maintained by consensus of nodes.
(b) "Blockchain administrator" means a person that is responsible for maintaining and overseeing a blockchain.
(c) "Division" means the Division of Consumer Protection created in Section 13-2-1.
(d) "Fraudulent transaction" means a transaction that a person undertakes with the intent to deceive another person, including a transaction that involves:
(i) false representation;
(ii) omissions of material fact; or
(iii) the use of a false or stolen identity.
(e) "Node" means a computer connected to a blockchain.
(f) "Proof of identity" means government-issued identification that contains the following information:
(i) a person's name;
(ii) an individual's date of birth;
(iii) a person's address, which is:
(A) for an individual, a residential or business street address;
(B) for an individual who does not have a residential or business street address, a Post Office box number or the residential or business street address of next of kin or of another contact individual; or
(C) for a person other than an individual, the principal place of business; and
(iv) an identification number, which is:
(A) for a United States person, a taxpayer identification number; or

(B) for a non-United States person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(g) "Reversible blockchain" means a blockchain that:

(i) requires the blockchain's users to:

(A) provide proof of identity to the blockchain administrator;

(B) acknowledge and agree that all transactions occurring on the blockchain are subject to reversal by a sheriff node; and

(C) agree to be subject to jurisdiction of a court in Utah; and

(ii) requires the blockchain administrator to:

(A) verify a user's identity by checking the user's proof of identity against government-issued identification databases; and

(B) maintain records of a user's proof of identity for a minimum of five years.

(h) "Sheriff node" means the same as that term is defined in Section 67-5-39.

(i) "Transaction" means the transfer of digital assets, rights, privileges, or obligations from one person to another that occurs on a blockchain.

(j)

(i) "User" means a person that interacts with a blockchain.

(ii) "User" includes a person that is:

(A) sending or receiving transactions;

(B) accessing data stored on the blockchain;

(C) participating in consensus or governance mechanisms;

(D) running a node on the blockchain;

(E) interacting with smart contracts or decentralized applications; or

(F) holding or managing digital assets.

(2) A plaintiff may bring a cause of action against a person to reverse:

(a) a fraudulent transaction if:

(i) the transaction occurred on a reversible blockchain;

(ii) the plaintiff entered into the transaction with reasonable reliance on the person's:

(A) fraudulent representation;

(B) omission of material fact; or

(C) use of a false or stolen identity; and

(iii) the plaintiff was injured as a result of that reasonable reliance; or

(b) a mistaken transaction if:

(i) the transaction occurs on a reversible blockchain;

(ii) the transaction resulted in a transfer of assets:

(A) to the wrong recipient; or

(B) in the wrong amount; and

(iii) the recipient's refusal to return the assets resulted in the unjust enrichment of the recipient.

(3) Upon a finding of a mistaken or fraudulent transaction, the court shall issue an order to the Office of the Attorney General to reverse the transaction in accordance with Section 67-5-39.

Enacted by Chapter 365, 2023 General Session

Part 2

Nonresident Jurisdiction Act

78B-3-201 Title -- Purpose.

(1) This part is known as the "Nonresident Jurisdiction Act."

(2) It is declared, as a matter of legislative policy, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who, through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

(3) The provisions of this part, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-202 Definitions.

As used in this part:

(1) The words "any person" mean any individual, firm, company, association, or corporation.

(2) The words "transaction of business within this state" mean activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-204 Effect of failure to appoint registered agent -- Service of process upon nonresident.

If a nonresident person doing business fails to appoint a registered agent within the state in accordance with Title 16, Chapter 17, Model Registered Agents Act, service of process may be made by serving any person employed by or acting as an agent for the nonresident.

Amended by Chapter 43, 2010 General Session

78B-3-205 Acts submitting person to jurisdiction.

Notwithstanding Section 16-10a-1501, any person or personal representative of the person, whether or not a citizen or resident of this state, who, in person or through an agent, does any of the following enumerated acts is subject to the jurisdiction of the courts of this state as to any claim arising out of or related to:

(1) the transaction of any business within this state;

(2) contracting to supply services or goods in this state;

(3) the causing of any injury within this state whether tortious or by breach of warranty;

(4) the ownership, use, or possession of any real estate situated in this state;

(5) contracting to insure any person, property, or risk located within this state at the time of contracting;

(6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or

(7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78B, Chapter 15, Utah Uniform Parentage Act, to determine paternity for the purpose of establishing responsibility for child support.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-206 Service of process.

(1) Service of process on any party outside the state may be made pursuant to the applicable provisions of Rule 4 of the Utah Rules of Civil Procedure.
(2) Service of summons and of a copy of the complaint, if any, may also be made upon any person located without this state by any individual over 21 years of age, not a party to the action, with the same force and effect as though the summons had been personally served within this state. No order of court is required. An affidavit of the server shall be filed with the court stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether proper service has been made.
(3) Nothing contained in this section shall be construed to limit or affect the right to serve process in any other manner provided by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-207 Only claims arising from enumerated acts may be asserted.

Only claims arising from acts enumerated in this part may be asserted against a defendant in an action in which jurisdiction over him is based upon this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-208 Default judgments.

(1) A default judgement may not be entered until the expiration of at least 30 days after service.
(2) A default judgment entered on service may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered on personal service within this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-209 When exercisable.

Subject to the applicable statute of limitations, jurisdiction established under this part may be exercised regardless of when the claim arose.

Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024

Part 3
Place of Trial -- Venue

Renumbered 7/1/2024

78B-3-301 Actions involving real property.

(1) Actions for the following causes involving real property shall be tried in the county in which the subject of the action, or some part, is situated:
  (a) for the recovery of real property, or of an estate or interest in the property;
  (b) for the determination, in any form, of the right or interest in the property;
  (c) for injuries to real property;
  (d) for the partition of real property; and
  (e) for the foreclosure of all liens and mortgages on real property.
(2) If the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county selected is the proper county for the trial of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 7/1/2024

78B-3-302 Actions to recover fines or penalties -- Against public officers.

(1) Actions to recover fines or penalties shall be tried in the county where the cause, or some part of the cause, arose.
(2) If a fine, penalty, or forfeiture imposed by statute is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on the lake, river, or stream opposite to the place where the offense was committed.
(3) Except as otherwise provided by law, an action against a public officer or the public officer's designee shall be tried in the county where the cause arose.

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 7/1/2024

78B-3-303 Actions against a county.

(1) An action against a county may be commenced and tried in the county.
(2) If the action is brought by another county, the action may be commenced and tried in any county not a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 7/1/2024

78B-3-304 Actions on written contracts.

An action on a contract signed in this state to perform an obligation may be commenced and tried in the following venues:

(1) If the action is to enforce an interest in real property securing a consumer's obligation, the action may be brought only in the county where the real property is located or where the defendant resides.
(2) An action to enforce an interest other than under Subsection (1) may be brought in the county where the obligation is to be performed, the contract was signed, or in which the defendant resides.

Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024

78B-3-305 Transitory actions -- Residence of corporations.

(1) All transitory causes of action arising outside the state, except those mentioned in Section 78B-3-306, shall, if action is brought in this state, be brought and tried in the county where any defendant resides.
(2) If any such defendant is a corporation, the action may be brought and tried in any county in which the corporation has an office or place of business.

Repealed by Chapter 401, 2023 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024
78B-3-306 Arising without this state in favor of resident.
All transitory causes of action arising outside the state in favor of residents of this state shall be brought and tried in the county where the plaintiff resides, or in the county where the principal defendant resides. If the principal defendant is a corporation, the action shall be brought in the county where the plaintiff resides or in the county where the corporation has an office or place of business.

Repealed by Chapter 401, 2023 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 7/1/2024
78B-3-307 All other actions.
(1) In all other cases an action shall be tried in the county in which:
(a) the cause of action arises; or
(b) any defendant resides at the commencement of the action.
(2) If the defendant is a corporation, any county in which the corporation has its principal office or a place of business shall be considered the county in which the corporation resides.
(3) If none of the defendants resides in this state, the action may be commenced and tried in any county designated by the plaintiff in the complaint.
(4) If the defendant is about to depart from the state, the action may be tried in any county where any of the parties resides or service is had.

Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024
78B-3-308 Change of venue -- Conditions precedent.
If the county in which the action is commenced is not the proper county for the trial, the action may nevertheless be tried in the county in which it is filed, unless the defendant, at the time the answer is filed or an appearance is made, files a written motion requesting the trial be moved to the proper county.

Repealed by Chapter 401, 2023 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024
78B-3-309 Grounds.
The court may, on motion, change the place of trial in the following cases:
(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint;
(3) when the convenience of witnesses and the ends of justice would be promoted by the change;
(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county.

Repealed by Chapter 401, 2023 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024
78B-3-310 Court to which transfer is to be made.
An action or proceeding which is transferred by order of the court shall be transferred to a court agreed upon by the parties. If the parties do not agree, the action shall be transferred to the nearest court where the objection or reason for transfer does not exist.

Repealed by Chapter 401, 2023 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 7/1/2024
78B-3-311 Duty of clerk -- Fees and costs -- Effect on jurisdiction.
(1) When an order is made transferring an action or proceeding for trial, the court shall transmit all pleadings and papers regarding the transferred action to the court to which it is transferred.
(2) All costs and fees for the transfer and filing the papers anew shall be paid by the party at whose instance the order was made.
(3) Notwithstanding Subsection (2), if the order is made because the action was commenced in the wrong county, the costs of transfer and filing the papers anew shall be paid by the plaintiff in the action within 10 days after the issuance of the order, or the action shall be dismissed for lack of jurisdiction.
(4) The court to which an action or proceeding is transferred shall have and exercise the same jurisdiction as if the action had been originally commenced there.

Repealed by Chapter 401, 2023 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Part 4
Utah Health Care Malpractice Act

78B-3-401 Title.
This part shall be known and may be cited as the "Utah Health Care Malpractice Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-402 Legislative findings and declarations -- Purpose of act.
(1) The Legislature finds and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from health care has increased greatly in recent years. Because of these increases the insurance industry has substantially increased the cost

of medical malpractice insurance. The effect of increased insurance premiums and increased claims is increased health care cost, both through the health care providers passing the cost of premiums to the patient and through the provider's practicing defensive medicine because he views a patient as a potential adversary in a lawsuit. Further, certain health care providers are discouraged from continuing to provide services because of the high cost and possible unavailability of malpractice insurance.

(2) In view of these recent trends and with the intention of alleviating the adverse effects which these trends are producing in the public's health care system, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide health-related malpractice insurance while at the same time establishing a mechanism to ensure the availability of insurance in the event that it becomes unavailable from private companies.

(3) In enacting this act, it is the purpose of the Legislature to provide a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-403 Definitions.

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section 58-69-102.

(7) "Dental care provider" means any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders dental care or professional services as a dentist, dental hygienist, or other person rendering similar care and services relating to or arising out of the practice of dentistry or the practice of dental hygiene, and the officers, employees, or agents of any of the above acting in the course and scope of their employment.

(8) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section 58-69-102.

(9) "Division" means the Division of Professional Licensing created in Section 58-1-103.

(10) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering.

(11)

(a) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(b) "Health care" does not include an act that, based on the totality of the circumstances, is sexual in nature regardless of whether:
(i) the act was committed under the auspice of providing professional diagnosis, counseling, or treatment; or
(ii) at the time the act occurred, the victim believed the act was for medically or professionally appropriate diagnosis, counseling, or treatment.
(12) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.
(13) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.
(14) "Hospital" means a public or private institution licensed under Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
(15) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.
(16) "Licensed direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section 58-77-102.
(17) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.
(18) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.
(19) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.
(20) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section 58-71-102.
(21) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.
(22) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.
(23) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
(24) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.
(25) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(26) "Pharmacist" means a person licensed to practice pharmacy as provided in Section 58-17b-301.
(27) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.
(28) "Physical therapist assistant" means a person licensed to practice physical therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.
(29) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.
(30) "Physician assistant" means a person licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.
(31) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.
(32) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
(33) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.
(34) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.
(35) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.
(36) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.
(37) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.
(38) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.
(39) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.
(40) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

Amended by Chapter 330, 2023 General Session
Amended by Chapter 523, 2023 General Session

78B-3-404 Statute of limitations -- Exceptions -- Application.

(1) A malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed four years after the date of the alleged act, omission, neglect, or occurrence.
(2) Notwithstanding Subsection (1):
(a) in an action where the allegation against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable

diligence should have discovered, the existence of the foreign object wrongfully left in the patient's body, whichever first occurs; or

(b) in an action where it is alleged that a patient has been prevented from discovering misconduct on the part of a health care provider because that health care provider has affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence, should have discovered the fraudulent concealment, whichever first occurs.

Amended by Chapter 384, 2012 General Session

78B-3-405 Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).

(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(4) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:

(a) the name and address of the provider of collateral sources;

(b) the amount of collateral sources paid;

(c) the names and addresses of all persons who received payment; and

(d) the items and purposes for which payment has been made.

(5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Amended by Chapter 330, 2023 General Session

78B-3-406 Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.

(1)

(a) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done.

(b) For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(i) that a provider-patient relationship existed between the patient and health care provider;

(ii) the health care provider rendered health care to the patient;

(iii) the patient suffered personal injuries arising out of the health care rendered;

(iv) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(v) the patient was not informed of the substantial and significant risk;

(vi) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

(vii) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or
(e) the patient or the patient's representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained the patient's condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or the patient's representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.
(5) This act may not be construed to prevent any person 18 years old or over from refusing to consent to health care for the patient's own person upon personal or religious grounds.
(6) Except as provided in Section 76-7-304.5, the following persons are authorized and empowered to consent to any health care not prohibited by law:
(a) any parent, whether an adult or a minor, for the parent's minor child;
(b) any married person, for a spouse;
(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under that person's care and any guardian for the guardian's ward;
(d) any person 18 years old or over for that person's parent who is unable by reason of age, physical or mental condition, to provide such consent;
(e) any patient 18 years old or over;
(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;
(g) in the absence of a parent, any adult for the adult's minor brother or sister;
(h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;
(i) an emancipated minor as provided in Section 80-7-105;
(j) a minor who has contracted a lawful marriage; and
(k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years old or older.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.
(8) Notwithstanding any other provision of this section, if a health care provider fails to comply with the requirement in Section 58-1-509, the health care provider is presumed to have lacked informed consent with respect to the patient examination, as defined in Section 58-1-509.

Amended by Chapter 262, 2021 General Session

78B-3-407 Limitation on actions against health care providers when parent or guardian refuses to consent to health care of child.

(1) A malpractice action against a health care provider may not be brought on the basis of the consequences resulting from the refusal of a child's parent or guardian to consent to the child's health care, if:

(a) the health care is recommended by the health care provider;
(b) the parent or guardian is provided with sufficient information to make an informed decision regarding the recommendation of the health care provider; and
(c) the consent of the parent or guardian is required by law before the health care may be administered.

(2) The sole purpose of this section is to prohibit a malpractice action against a health care provider under the circumstances set forth by this section. This section may not be construed to:
(a) create a new cause of action;
(b) expand an existing cause of action;
(c) impose a new duty on a health care provider; or
(d) expand an existing duty of a health care provider.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-408 Writing required as basis for liability for breach of guarantee, warranty, contract, or assurance of result.

Liability may not be imposed upon any health care provider on the basis of an alleged breach of guarantee, warranty, contract, or assurance of result to be obtained from any health care rendered unless the guarantee, warranty, contract, or assurance is set forth in writing and signed by the health care provider or an authorized agent of the provider.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-409 Ad damnum clause prohibited in complaint.

A dollar amount may not be specified in the prayer of a complaint filed in a malpractice action against a health care provider. The complaint shall merely pray for such damages as are reasonable in the circumstances.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-410 Limitation of award of noneconomic damages in malpractice actions.

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. The amount of damages awarded for noneconomic loss may not exceed:
(a) for a cause of action arising before July 1, 2001, $250,000;
(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000;
(c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and
(d) for a cause of action arising on or after May 15, 2010, $450,000.

(2)
(a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.
(b) By July 15 of each year until July 1, 2009, the state treasurer shall:
(i) certify the inflation-adjusted limit calculated under this Subsection (2); and
(ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:
(i) be rounded to the nearest $10,000; and
(ii) apply to a cause of action arising on or after the date the annual adjustment is made.
(3) As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.
(4) The limit under Subsection (1) does not apply to awards of punitive damages.

Amended by Chapter 97, 2010 General Session

78B-3-411 Limitation on attorney's contingency fee in malpractice action.
(1) In any malpractice action against a health care provider as defined in Section 78B-3-403, an attorney may not collect a contingent fee for representing a client seeking damages in connection with or arising out of personal injury or wrongful death caused by the negligence of another which exceeds 33-1/3% of the amount recovered.
(2) This limitation applies regardless of whether the recovery is by settlement, arbitration, judgment, or whether appeal is involved.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-412 Notice of intent to commence action.
(1) A malpractice action against a health care provider may not be initiated unless and until the plaintiff:
(a) gives the prospective defendant or his executor or successor, at least 90 days' prior notice of intent to commence an action; and
(b) except for an action against a dentist or a dental care provider, the plaintiff receives a certificate of compliance from the division in accordance with Section 78B-3-418.
(2) The notice shall include:
(a) a general statement of the nature of the claim;
(b) the persons involved;
(c) the date, time, and place of the occurrence;
(d) the circumstances surrounding the claim;
(e) specific allegations of misconduct on the part of the prospective defendant; and
(f) the nature of the alleged injuries and other damages sustained.
(3) Notice may be in letter or affidavit form executed by the plaintiff or his attorney. Service shall be accomplished by persons authorized and in the manner prescribed by the Utah Rules of Civil Procedure for the service of the summons and complaint in a civil action or by certified mail, return receipt requested, in which case notice shall be considered served on the date of mailing.
(4) Notice shall be served within the time allowed for commencing a malpractice action against a health care provider. If the notice is served less than 90 days prior to the expiration of the applicable time period, the time for commencing the malpractice action against the health care provider shall be extended to 120 days from the date of service of notice.
(5) This section shall, for purposes of determining its retroactivity, not be construed as relating to the limitation on the time for commencing any action, and shall apply only to causes of action arising on or after April 1, 1976. This section shall not apply to third party actions, counterclaims or crossclaims against a health care provider.

Amended by Chapter 356, 2022 General Session

78B-3-413 Professional liability insurance coverage for providers -- Insurance commissioner may require joint underwriting authority.

(1) The commissioner may, after a public hearing, find that professional liability insurance coverage for health care providers is not readily available in the voluntary market in a specific part of this state, and that the public interest requires that action be taken.

(2) The commissioner may promulgate rules and implement plans to provide insurance coverage through all insurers issuing professional liability policies and individual and group accident and sickness policies providing medical, surgical or hospital expense coverage on either a prepaid or an expense incurred basis, including personal injury protection and medical expense coverage issued incidental to liability insurance policies.

Amended by Chapter 146, 2009 General Session

78B-3-414 Periodic payment of future damages in malpractice actions.

(1) In any malpractice action against a health care provider, as defined in Section 78B-3-403, the court shall, at the request of any party, order that future damages which equal or exceed $100,000, less amounts payable for attorney fees and other costs which are due at the time of judgment, shall be paid by periodic payments rather than by a lump sum payment.

(2) In rendering a judgment which orders the payment of future damages by periodic payments, the court shall order periodic payments to provide a fair correlation between the sustaining of losses and the payment of damages.

(a) Lost future earnings shall be paid over the judgment creditor's work life expectancy.

(b) The court shall also order, when appropriate, that periodic payments increase at a fixed rate, equal to the rate of inflation which the finder of fact used to determine the amount of future damages, or as measured by the most recent Consumer Price Index applicable to Utah for all goods and services.

(c) The present cash value of all periodic payments shall equal the fact finder's award of future damages, less any amount paid for attorney fees and costs.

(d) The present cash value of periodic payments shall be determined by discounting the total amount of periodic payments projected over the judgment creditor's life expectancy, by the rate of interest which the finder of fact used to reduce the amount of future damages to present value, or the rate of interest available at the time of trial on one year U.S. Government Treasury Bills.

(3) Before periodic payments of future damages may be ordered, the court shall require a judgment debtor to post security which assures full payment of those damages. Security for payment of a judgment of periodic payments may be in one or more of the following forms:

(a) a bond executed by a qualified insurer;

(b) an annuity contract executed by a qualified insurer;

(c) evidence of applicable and collectable liability insurance with one or more qualified insurers;

(d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or

(e) any other form of security approved by the court.

(4) Security which complies with this section may also serve as a supersedeas bond, where one is required.

(5) A judgment which orders payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall

be made. Those payments may only be modified in the event of the death of the judgment creditor.

(6) If the court finds that the judgment debtor, or the assignee of his obligation to make periodic payments, has failed to make periodic payments as ordered by the court, it shall, in addition to the required periodic payments, order the judgment debtor or his assignee to pay the judgment creditor all damages caused by the failure to make payments, including court costs and attorney fees.

(7) The obligation to make periodic payments for all future damages, other than damages for loss of future earnings, shall cease upon the death of the judgment creditor. Damages awarded for loss of future earnings may not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In that case the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(8) If security is posted in accordance with Subsection (3), and approved by a final judgment entered under this section, the judgment is considered to be satisfied, and the judgment debtor on whose behalf the security is posted shall be discharged.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-415 Actions under Utah Governmental Immunity Act.

The provisions of this part shall apply to malpractice actions against health care providers which are brought under the Utah Governmental Immunity Act if applicable. This part may not affect the requirements for filing notices of claims, times for commencing actions and limitations on amounts recoverable under the Utah Governmental Immunity Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-416 Division to provide panel -- Exemption -- Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license fees.

(1)

(a) The division shall provide a hearing panel in alleged medical liability cases against health care providers as defined in Section 78B-3-403, except dentists or dental care providers.

(b)

(i) The division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care.

(ii) The division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections 78B-3-416 through 78B-3-420.

(c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing litigation.

(d) Proceedings conducted under authority of this section are confidential, privileged, and immune from civil process.

(e) The division may not provide more than one hearing panel for each alleged medical liability case against a health care provider.

(2)

(a) The party initiating a medical liability action shall file a request for prelitigation panel review with the division within 60 days after the service of a statutory notice of intent to commence action under Section 78B-3-412.

(b) The request shall include a copy of the notice of intent to commence action. The request shall be mailed to all health care providers named in the notice and request.

(3)

(a) As used in this Subsection (3):

(i) "Court-appointed therapist" means a mental health therapist ordered by a court to provide psychotherapeutic treatment to an individual, a couple, or a family in a domestic case.

(ii) "Domestic case" means a proceeding under:

(A)Title 30, Chapter 3, Divorce;

(B)Title 30, Chapter 4, Separate Maintenance;

(C)Title 30, Chapter 5, Grandparents;

(D)Title 30, Chapter 5a, Custody and Visitation for Individuals Other than Parents Act;

(E)Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;

(F)Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act; or

(G)Title 78B, Chapter 15, Utah Uniform Parentage Act.

(iii) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(b) If a court appoints a court-appointed therapist in a domestic case, a party to the domestic case may not file a request for a prelitigation panel review for a malpractice action against the court-appointed therapist during the pendency of the domestic case, unless:

(i) the party has requested that the court release the court-appointed therapist from appointment; and

(ii) the court finds good cause to release the court-appointed therapist from the appointment.

(c) If a party is prohibited from filing a request for a prelitigation panel review under Subsection (3)(b), the applicable statute of limitations tolls until the earlier of:

(i) the court releasing the court-appointed therapist from appointment as described in Subsection (3)(b); or

(ii) the court entering a final order in the domestic case.

(4)

(a) The filing of a request for prelitigation panel review under this section tolls the applicable statute of limitations until the later of:

(i) 60 days following the division's issuance of:

(A) an opinion by the prelitigation panel; or

(B) a certificate of compliance under Section 78B-3-418; or

(ii) the expiration of the time for holding a hearing under Subsection (4)(b)(ii).

(b) The division shall:

(i) send any opinion issued by the panel to all parties by regular mail; and

(ii) complete a prelitigation hearing under this section within:

(A) 180 days after the filing of the request for prelitigation panel review; or

(B) any longer period as agreed upon in writing by all parties to the review.

(c) If the prelitigation hearing has not been completed within the time limits established in Subsection (4)(b)(ii), the claimant shall:

(i) file an affidavit of merit under the provisions of Section 78B-3-423; or

(ii) file an affidavit with the division within 180 days of the request for pre-litigation review, in accordance with Subsection (4)(d), alleging that the respondent has failed to reasonably cooperate in scheduling the hearing.

(d) If the claimant files an affidavit under Subsection (4)(c)(ii):

(i) within 15 days of the filing of the affidavit under Subsection (4)(c)(ii), the division shall determine whether either the respondent or the claimant failed to reasonably cooperate in the scheduling of a pre-litigation hearing; and

(ii)

(A) if the determination is that the respondent failed to reasonably cooperate in the scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division shall, issue a certificate of compliance for the claimant in accordance with Section 78B-3-418; or

(B) if the division makes a determination other than the determination in Subsection (4)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section 78B-3-423, within 30 days of the determination of the division under this Subsection (4).

(e)

(i) The claimant and any respondent may agree by written stipulation that no useful purpose would be served by convening a prelitigation panel under this section.

(ii) When the stipulation is filed with the division, the division shall within 10 days after receipt issue a certificate of compliance under Section 78B-3-418, as it concerns the stipulating respondent, and stating that the claimant has complied with all conditions precedent to the commencement of litigation regarding the claim.

(5) The division shall provide for and appoint an appropriate panel or panels to hear complaints of medical liability and damages, made by or on behalf of any patient who is an alleged victim of medical liability. The panels are composed of:

(a) one member who is a resident lawyer currently licensed and in good standing to practice law in this state and who shall serve as chairman of the panel, who is appointed by the division from among qualified individuals who have registered with the division indicating a willingness to serve as panel members, and a willingness to comply with the rules of professional conduct governing lawyers in the state, and who has completed division training regarding conduct of panel hearings;

(b)

(i) one or more members who are licensed health care providers listed under Section 78B-3-403, who are practicing and knowledgeable in the same specialty as the proposed defendant, and who are appointed by the division in accordance with Subsection (6); or

(ii) in claims against only a health care facility or the facility's employees, one member who is an individual currently serving in a health care facility administration position directly related to health care facility operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, and who is appointed by the division; and

(c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care provider, and who is a responsible citizen of the state, selected and appointed by the division from among individuals who have completed division training with respect to panel hearings.

(6)

(a) Each person listed as a health care provider in Section 78B-3-403 and practicing under a license issued by the state, is obligated as a condition of holding that license to participate as a member of a medical liability prelitigation panel at reasonable times, places, and intervals, upon issuance, with advance notice given in a reasonable time frame, by the division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

(b) A licensee may be excused from appearance and participation as a panel member upon the division finding participation by the licensee will create an unreasonable burden or hardship upon the licensee.

(c) A licensee whom the division finds failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000.
(d) A licensee whom the division finds intentionally or repeatedly failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000, and is guilty of unprofessional conduct.
(e) All fines collected under Subsections (6)(c) and (d) shall be deposited into the Physicians Education Fund created in Section 58-67a-1.
(f) The director of the division may collect a fine that is not paid by:
(i) referring the matter to a collection agency; or
(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.
(g) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a fine.
(h) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a fine.
(7) Each person selected as a panel member shall certify, under oath, that he has no bias or conflict of interest with respect to any matter under consideration.
(8) A member of the prelitigation hearing panel may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(9)
(a) In addition to the actual cost of administering the licensure of health care providers, the division may set license fees of health care providers within the limits established by law equal to their proportionate costs of administering prelitigation panels.
(b) The claimant bears none of the costs of administering the prelitigation panel except under Section 78B-3-420.

Amended by Chapter 139, 2023 General Session

78B-3-417 Proceedings -- Authority of panel -- Rights of parties to proceedings.
(1) No record of the proceedings is required and all evidence, documents, and exhibits are returned to the parties or witnesses who provided the evidence, documents, and exhibits at the end of the proceedings upon the request of the parties or witnesses who provided the evidence.
(2) The division may issue subpoenas for medical records directly related to the claim of medical liability in accordance with division rule and in compliance with the following:
(a) the subpoena shall be prepared by the requesting party in proper form for issuance by the division; and
(b) the subpoena shall be accompanied by:
(i) an affidavit prepared by the person requesting the subpoena attesting to the fact the medical record subject to subpoena is believed to be directly related to the medical liability claim to which the subpoena is related; or

(ii) by a written release for the medical records to be provided to the person requesting the subpoena, signed by the individual who is the subject of the medical record or by that individual's guardian or conservator.

(3) Per diem reimbursement to panel members and expenses incurred by the panel in the conduct of prelitigation panel hearings shall be paid by the division. Expenses related to subpoenas are paid by the requesting party, including witness fees and mileage.

(4) The proceedings are informal and formal rules of evidence are not applicable. There is no discovery or perpetuation of testimony in the proceedings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(5)

(a) A party is entitled to attend, personally or with counsel, and participate in the proceedings, except upon special order of the panel and unanimous agreement of the parties. The proceedings are confidential and closed to the public.

(b) No party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects.

(c) Communications between the panel and the parties, except the testimony of the parties on the merits of the dispute, are disclosed to all other parties.

(6) The division shall appoint a panel to consider the claim and set the matter for panel review as soon as practicable after receipt of a request.

(7) Parties may be represented by counsel in proceedings before a panel.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-418 Decision and recommendations of panel -- No judicial or other review.

(1)

(a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this section.

(b) A certificate of compliance issued in accordance with this section is proof that the claimant has complied with all conditions precedent under this part prior to the commencement of litigation as required in Subsection 78B-3-412(1).

(2)

(a) The panel shall render its opinion in writing not later than 30 days after the end of the proceedings, and determine on the basis of the evidence whether:

(i) each claim against each health care provider has merit or has no merit; and

(ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) There is no judicial or other review or appeal of the panel's decision or recommendations.

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the intent to file a claim under this part, if:

(a) for a named respondent, the panel issues an opinion of merit under Subsections (2)(a)(i) and (ii);

(b) for a named respondent, the claimant files an affidavit of merit in accordance with Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either Subsection (2)(a)(i) or (ii);

(c) the claimant has complied with the provisions of Subsections 78B-3-416(4)(c) and (d); or

(d) the parties submitted a stipulation under Subsection 78B-3-416(4)(e).

Amended by Chapter 212, 2022 General Session

78B-3-419 Evidence of proceedings not admissible in subsequent action -- Panelist may not be compelled to testify -- Immunity of panelist from civil liability -- Information regarding professional conduct.

(1) Evidence of the proceedings conducted by the medical review panel and its results, opinions, findings, and determinations are not admissible as evidence in any civil action or arbitration proceeding subsequently brought by the claimant against any respondent and are not reportable to any health care facility or health care insurance carrier as a part of any credentialing process.

(2) No panelist may be compelled to testify in a civil action subsequently filed with regard to the subject matter of the panel's review. A panelist has immunity from civil liability arising from participation as a panelist and for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this section.

(3) Nothing in this chapter may be interpreted to prohibit the division from considering any information contained in a statutory notice of intent to commence action, request for prelitigation panel review, or written findings of a panel with respect to the division's determining whether a licensee engaged in unprofessional or unlawful conduct.

Amended by Chapter 275, 2013 General Session

78B-3-420 Proceedings considered a binding arbitration hearing upon written agreement of parties -- Compensation to members of panel.

Upon written agreement by all parties, the proceeding may be considered a binding arbitration hearing and proceed under Title 78B, Chapter 11, Utah Uniform Arbitration Act, except for the selection of the panel, which is done as set forth in Subsection 78B-3-416(5). If the proceeding is considered an arbitration proceeding, the parties are equally responsible for compensation to the members of the panel for services rendered.

Amended by Chapter 212, 2022 General Session

78B-3-421 Arbitration agreements.

(1) After May 2, 1999, for a binding arbitration agreement between a patient and a health care provider to be validly executed or, if the requirements of this Subsection (1) have not been previously met on at least one occasion, renewed:

(a) the patient shall be given, in writing, the following information on:

(i) the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury;

(ii) the role of an arbitrator and the manner in which arbitrators are selected under the agreement;

(iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;

(iv) the right of the patient to decline to enter into the agreement and still receive health care if Subsection (3) applies;

(v) the automatic renewal of the agreement each year unless the agreement is canceled in writing before the renewal date;

(vi) the right of the patient to have questions about the arbitration agreement answered;

(vii) the right of the patient to rescind the agreement within 10 days of signing the agreement; and

(viii) the right of the patient to require mediation of the dispute prior to the arbitration of the dispute;

(b) the agreement shall require that:

(i) except as provided in Subsection (1)(b)(ii), a panel of three arbitrators shall be selected as follows:

(A) one arbitrator collectively selected by all persons claiming damages;

(B) one arbitrator selected by the health care provider; and

(C) a third arbitrator:

(I) jointly selected by all persons claiming damages and the health care provider; or

(II) if both parties cannot agree on the selection of the third arbitrator, the other two arbitrators shall appoint the third arbitrator from a list of individuals approved as arbitrators by the state or federal courts of Utah; or

(ii) if both parties agree, a single arbitrator may be selected;

(iii) all parties waive the requirement of Section 78B-3-416 to appear before a hearing panel in a malpractice action against a health care provider;

(iv) the patient be given the right to rescind the agreement within 10 days of signing the agreement;

(v) the term of the agreement be for one year and that the agreement be automatically renewed each year unless the agreement is canceled in writing by the patient or health care provider before the renewal date;

(vi) the patient has the right to retain legal counsel;

(vii) the agreement only apply to:

(A) an error or omission that occurred after the agreement was signed, provided that the agreement may allow a person who would be a proper party in court to participate in an arbitration proceeding;

(B) the claim of:

(I) a person who signed the agreement;

(II) a person on whose behalf the agreement was signed under Subsection (6); and

(III) the unborn child of the person described in this Subsection (1)(b)(vii)(B), for 12 months from the date the agreement is signed; and

(C) the claim of a person who is not a party to the contract if the sole basis for the claim is an injury sustained by a person described in Subsection (1)(b)(vii)(B); and

(c) the patient shall be verbally encouraged to:

(i) read the written information required by Subsection (1)(a) and the arbitration agreement; and

(ii) ask any questions.

(2) When a medical malpractice action is arbitrated, the action shall:

(a) be subject to Chapter 11, Utah Uniform Arbitration Act; and

(b) include any one or more of the following when requested by the patient before an arbitration hearing is commenced:

(i) mandatory mediation;

(ii) retention of the jointly selected arbitrator for both the liability and damages stages of an arbitration proceeding if the arbitration is bifurcated; and

(iii) the filing of the panel's award of damages as a judgement against the provider in the appropriate district court.

(3) Notwithstanding Subsection (1), a patient may not be denied health care on the sole basis that the patient or a person described in Subsection (6) refused to enter into a binding arbitration agreement with a health care provider.

(4) A written acknowledgment of having received a written explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim that the patient did not receive a written explanation of the agreement as required by Subsection (1) unless the patient:
  (a) proves that the person who signed the agreement lacked the capacity to do so; or
  (b) shows by clear and convincing evidence that the execution of the agreement was induced by the health care provider's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.
(5) The requirements of Subsection (1) do not apply to a claim governed by a binding arbitration agreement that was executed or renewed before May 3, 1999.
(6) A legal guardian or a person described in Subsection 78B-3-406(6), except a person temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement on behalf of a patient.
(7) This section does not apply to any arbitration agreement that is subject to the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

Amended by Chapter 189, 2014 General Session

78B-3-422 Evidence of disclosures -- Civil proceedings -- Unanticipated outcomes -- Medical care.
(1) As used in this section:
  (a) "Defendant" means the defendant in a malpractice action against a health care provider.
  (b) "Health care provider" includes an agent of a health care provider.
  (c) "Patient" includes any person associated with the patient.
(2) In any civil action or arbitration proceeding relating to an unanticipated outcome of medical care, any unsworn statement, affirmation, gesture, or conduct made to the patient by the defendant shall be inadmissible as evidence of an admission against interest or of liability if it:
  (a) expresses:
    (i) apology, sympathy, commiseration, condolence, or compassion; or
    (ii) a general sense of benevolence; or
  (b) describes:
    (i) the sequence of events relating to the unanticipated outcome of medical care;
    (ii) the significance of events; or
    (iii) both.
(3) Except as provided in Subsection (2), this section does not alter any other law or rule that applies to the admissibility of evidence in a medical malpractice action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-423 Affidavit of merit.
(1)
  (a) For a cause of action that arises on or after July 1, 2010, before a claimant may receive a certificate of compliance under Sections 78B-3-416 and 78B-3-418, a claimant shall file an affidavit of merit under this section.
  (b) The claimant shall file an affidavit of merit:
    (i) within 60 days after the day on which the pre-litigation panel issues an opinion, if the claimant receives a finding from the pre-litigation panel in accordance with Section 78B-3-418 of non-meritorious for either:

(A) the claim of breach of applicable standard of care; or
(B) that the breach of care was the proximate cause of injury;
(ii) within 60 days after the day on which the time limit in Subsection 78B-3-416(4)(b)(ii) expires, if a pre-litigation hearing is not held within the time limits under Subsection 78B-3-416(4)(b)(ii); or
(iii) within 30 days after the day on which the division makes a determination under Subsection 78B-3-416(4)(d)(ii)(B), if the division makes a determination under Subsection 78B-3-416(4)(d)(ii)(B).
(c) A claimant who is required to file an affidavit of merit under Subsection (1)(a) shall:
(i) file the affidavit of merit with the division; and
(ii) serve each defendant with the affidavit of merit in accordance with Subsection 78B-3-412(3).
(2) The affidavit of merit shall:
(a) be executed by the claimant's attorney or the claimant if the claimant is proceeding pro se, stating that the affiant has consulted with and reviewed the facts of the case with a health care provider who has determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action; and
(b) include an affidavit signed by a health care provider who meets the requirements of Subsection (4):
(i) stating that in the health care provider's opinion, there are reasonable grounds to believe that the applicable standard of care was breached;
(ii) stating that in the health care provider's opinion, the breach was a proximate cause of the injury claimed in the notice of intent to commence action; and
(iii) stating the reasons for the health care provider's opinion.
(3) The statement required in Subsection (2)(b)(i) shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).
(4) A health care provider who signs an affidavit under Subsection (2)(b) shall:
(a) if none of the respondents is a physician or an osteopathic physician, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state in the same specialty or of the same class of license as the respondents; or
(b) if at least one of the respondents is a physician or an osteopathic physician, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state to practice medicine in all its branches.
(5) A claimant's attorney or claimant may obtain up to a 60-day extension to file the affidavit of merit if:
(a) the claimant or the claimant's attorney submits a signed affidavit for extension with notice to the division attesting to the fact that the claimant is unable to submit an affidavit of merit as required by this section because:
(i) a statute of limitations would impair the action; and
(ii) the affidavit of merit could not be obtained before the expiration of the statute of limitations; and
(b) the claimant or claimant's attorney submits the affidavit for extension to each named respondent in accordance with Subsection 78B-3-412(3) no later than 60 days after the date specified in Subsection (1)(b)(i).
(6)
(a) A claimant or claimant's attorney who submits allegations in an affidavit of merit that are found to be without reasonable cause and untrue, based on information available to the plaintiff at

the time the affidavit was submitted to the division, is liable to the defendant for the payment of reasonable expenses and reasonable attorney fees actually incurred by the defendant or the defendant's insurer.

(b) An affidavit of merit is not admissible, and cannot be used for any purpose, in a subsequent lawsuit based on the claim that is the subject of the affidavit, except for the purpose of establishing the right to recovery under Subsection (6)(c).

(c) A court, or arbitrator under Section 78B-3-421, may award costs and attorney fees under Subsection (6)(a) if the defendant files a motion for costs and attorney fees within 60 days of the judgment or dismissal of the action in favor of the defendant. The person making a motion for attorney fees and costs may depose and examine the health care provider who prepared the affidavit of merit under Subsection (2)(b).

(7) If a claimant or the claimant's attorney does not file an affidavit of merit as required by this section, the division may not issue a certificate of compliance for the claimant and the malpractice action shall be dismissed by the court.

(8) For each request for prelitigation panel review under Subsection 78B-3-416(2)(b), the division shall compile the following information:

(a) whether the cause of action arose on or after July 1, 2010;

(b) the number of respondents named in the request; and

(c) for each respondent named in the request:

(i) the respondent's license class;

(ii) if the respondent has a professional specialty, the respondent's professional specialty;

(iii) if the division does not issue a certificate of compliance at the conclusion of the prelitigation process, the reason a certificate was not issued;

(iv) if the division issues a certificate of compliance, the reason the certificate of compliance was issued;

(v) if an affidavit of merit was filed by the claimant, for each health care provider who submitted an affidavit under Subsection (2)(b):

(A) the health care provider's license class and professional specialty; and

(B) whether the health care provider meets the requirements of Subsection 78B-3-416(5)(b); and

(vi) whether the claimant filed an action in court against the respondent.

(9) The division may require the following persons to submit the information to the division necessary for the division to comply with Subsection (8):

(a) a claimant;

(b) a respondent;

(c) a health care provider who submits an affidavit under Subsection (2)(b); and

(d) a medical liability pre-litigation panel.

Amended by Chapter 212, 2022 General Session

78B-3-424 Limitation of liability for ostensible agent.

(1) For purposes of this section:

(a) "Agent" means a person who is an "employee," "worker," or "operative," as defined in Section 34A-2-104, of a health care provider.

(b) "Ostensible agent" means a person:

(i) who is not an agent of the health care provider; and

(ii) who the plaintiff reasonably believes is an agent of the health care provider because the health care provider intentionally, or as a result of a lack of ordinary care, caused the plaintiff to believe that the person was an agent of the health care provider.

(2) A health care provider named as a defendant in a medical malpractice action is not liable for the acts or omissions of an ostensible agent if:

(a) the ostensible agent has privileges with the health care provider, but is not an agent of the health care provider;

(b) the health care provider has, by policy or practice, ensured that a person providing professional services has insurance of a type and amount required, if any is required, by the rules or regulations as established in:

(i) medical staff by-laws for a health care facility; or

(ii) other health care facility contracts, indemnification agreements, rules or regulations;

(c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or omission of the ostensible agent; and

(d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to commence an action, the health care provider, within 60 days of the service of the notice of intent to commence an action, lists each person identified by the plaintiff who the provider claims is not an agent or ostensible agent of the provider.

(3) This section applies to a cause of action that arises on or after July 1, 2010.

Enacted by Chapter 97, 2010 General Session

78B-3-425 Prohibition on cause of action for negligent credentialing.

It is the policy of this state that the question of negligent credentialing, as applied to health care providers in malpractice suits, is not recognized as a cause of action.

Enacted by Chapter 430, 2011 General Session

78B-3-426 Nonpatient plaintiffs.

(1) For purposes of this section, a nonpatient plaintiff does not include a patient, as defined in Subsection 78B-3-403(23).

(2) This section does not apply to a health care malpractice action brought or seeking recovery under Section 30-2-11, 78B-3-106, 78B-3-107, or 78B-3-502.

(3) To establish a malpractice action against a health care provider, a nonpatient plaintiff shall be required to show that:

(a) the health care provider owes a duty to the nonpatient plaintiff;

(b) the nonpatient plaintiff suffered a foreseeable injury;

(c) the nonpatient plaintiff's injury was proximately caused by an act or omission of the health care provider; and

(d) the health care provider's act or omission was conduct that manifests a knowing and reckless indifference toward, and a disregard of, the injury suffered by the nonpatient plaintiff.

Amended by Chapter 440, 2018 General Session

78B-3-427 Transgender procedures upon a minor -- Right of action -- Informed consent requirements -- Statute of limitations.

(1) As used in this section:

(a) "Hormonal transgender treatment" means the same as that term is defined in Section 58-1-603.
(b) "Minor" means the same as that term is defined in Section 58-1-603.
(2)
(a) Notwithstanding any other provision of law, a malpractice action against a health care provider may be brought against a health care provider for damages arising from:
(i) providing a hormonal transgender treatment to a minor without complying with the requirements described in Section 58-1-603;
(ii) negligence in providing a hormonal transgender treatment to a minor; or
(iii) providing a treatment or procedure described in Subsection (2)(b)(ii) to a minor without the minor's consent including if the minor disaffirms consent under Subsection (3).
(3)
(a) Notwithstanding any other provision of law, an individual who gave informed consent as a minor or for whom consent was given under Section 78B-3-406, may disaffirm the consent if:
(i) the treatment at issue began after January 28, 2023;
(ii) the consent was provided for any of the following:
(A) a hormonal transgender treatment;
(B) a primary sex characteristic surgical procedure as defined in Section 58-67-102; or
(C) a secondary sex characteristic surgical procedure as defined in Section 58-67-102;
(iii) under the totality of the circumstances, a health care provider would have reason to believe that the minor, or a similarly situated minor, could later regret having given consent;
(iv) the individual suffered a permanent physical injury; and
(v) the consent is disaffirmed in writing before the individual reaches the age of 25 years old.
(b) A disaffirmation of consent under this Subsection (3) relates back to the day the original consent was given.
(4) Notwithstanding any other provision of law, a malpractice action against a health care provider described in Subsection (2)(a) may be brought before the patient is 25 years old if the treatment at issue in the malpractice action began, occurred, or continued on or after January 28, 2023.
(5) Sections 78B-3-404 and 78B-3-406 do not apply to an action described in this section.

Revisor instructions Chapter 2, 2023 General Session
Enacted by Chapter 2, 2023 General Session

78B-3-428 Breach of duty for deviating from established practices.
(1) A health care provider does not breach the duty of care the health care provider owes to a patient:
(a) to the extent any alleged breach is based on actions related to the health care provider's deviation from medical norms or established practices; and
(b) if the conditions described in Subsection 58-1-501(5) have been met.
(2) A health care facility is not vicariously liable for an action or claim described in Subsection (1)
(a) if the conditions described in Subsection 58-1-501(5) have been met.

Enacted by Chapter 321, 2023 General Session

78B-3-450 Definitions.
As used in this part:
(1) "Adverse event" means an injury or suspected injury that is associated with a health care process rather than an underlying condition of a patient or a disease.

(2) "Affected party" means:
(a) a patient; and
(b) any representative of a patient.
(3) "Communication" means any written or oral communication created for or during a medical candor process.
(4) "Governmental entity" means the same as that term is defined in Section 63G-7-102.
(5) "Health care" means the same as that term is defined in Section 78B-3-403.
(6) "Health care provider" means the same as that term is defined in Section 78B-3-403.
(7) "Malpractice action against a health care provider" means the same as that term is defined in Section 78B-3-403.
(8) "Medical candor process" means the process described in Section 78B-3-451.
(9) "Patient" means the same as that term is defined in Section 78B-3-403.
(10) "Public employee" means the same as the term "employee" as defined in Section 63G-7-102.
(11)
(a) Except as provided in Subsection (11)(c), "representative" means the same as that term is defined in Section 78B-3-403.
(b) "Representative" includes:
(i) a parent of a child regardless of whether the parent is the custodial or noncustodial parent;
(ii) a legal guardian of a child;
(iii) a person designated to make decisions on behalf of a patient under a power of attorney, an advanced health care directive, or a similar legal document;
(iv) a default surrogate as defined in Section 75-2a-108; and
(v) if the patient is deceased, the personal representative of the patient's estate or the patient's heirs as defined in Sections 75-1-201 and 78B-3-105.
(c) "Representative" does not include a parent of a child if the parent's parental rights have been terminated by a court.
(12) "State" means the same as that term is defined in Section 63G-7-102.

Amended by Chapter 139, 2023 General Session

78B-3-454 Confidentiality and effect of medical candor process -- Recording of medical candor process -- Exception for deidentified information or data.

(1) Except as provided in Subsections (2), (3), and (4), all communications, materials, and information in any form specifically created for or during a medical candor process, including the findings or conclusions of the investigation and any offer of compensation, are confidential and privileged in any administrative, judicial, or arbitration proceeding.
(2) Any communication, material, or information in any form that is made or provided in the ordinary course of business, including a medical record or a business record, that is otherwise discoverable or admissible and is not specifically created for or during a medical candor process is not privileged by the use or disclosure of the communication, material, or information during a medical candor process.
(3)
(a) Any information that is required to be documented in a patient's medical record under state or federal law is not privileged by the use or disclosure of the information during a medical candor process.
(b) Information described in Subsection (3)(a) does not include an individual's mental impressions, conclusions, or opinions that are formed outside the course and scope of the patient's care and treatment and are used or disclosed in a medical candor process.

(4)
(a) Any communication, material, or information in any form that is provided to an affected party before the affected party's written agreement to participate in a medical candor process is not privileged by the use or disclosure of the communication, material, or information during a medical candor process.
(b) Any communication, material, or information described in Subsection (4)(a) does not include a written notice described in Section 78B-3-452.
(5) A communication or offer of compensation made in preparation for or during a medical candor process does not constitute an admission of liability.
(6) Nothing in this part alters or limits the confidential, privileged, or protected nature of communications, information, memoranda, work product, documents, and other materials under other provisions of law.
(7)
(a) Notwithstanding Section 77-23a-4, a party to a medical candor process may not record any communication without the mutual consent of all parties to the medical candor process.
(b) A recording made without mutual consent of all parties to the medical candor process may not be used for any purpose.
(8)
(a) Notwithstanding any other provision of law, any communication, material, or information created for or during a medical candor process:
(i) is not subject to reporting requirements by a health care provider; and
(ii) does not create a reporting requirement for a health care provider.
(b) If there are reporting requirements independent of, and supported by, information or evidence other than any communication, material, or information created for or during a medical candor process, the reporting shall proceed as if there were no communication, material, or information created for or during the medical candor process.
(c) This Subsection (8) does not release an individual or a health care provider from complying with a reporting requirement.
(9)
(a) A health care provider that participates in a medical candor process may provide deidentified information or data about the adverse event to an agency, company, or organization for the purpose of research, education, patient safety, quality of care, or performance improvement.
(b) Disclosure of deidentified information or data under Subsection (9)(a):
(i) does not constitute a waiver of a privilege or protection of any communication, material, or information created for or during a medical candor process as provided in this section or any other provision of law; and
(ii) is not a violation of the confidentiality requirements of this section.

Amended by Chapter 139, 2023 General Session

Part 4a
Utah Medical Candor Act

78B-3-451 Medical candor process.

In accordance with this part, a health care provider may engage an affected party in a process where the health care provider and any other health care provider notified in Subsection 78B-3-452(1)(b) that chooses to participate in the process that:
(1) conducts an investigation into an adverse event involving a patient and the health care provided to the patient;
(2) communicates information to the affected party regarding information gathered during an investigation described in Subsection (1);
(3) communicates to the affected party the steps that the health care provider will take to prevent future occurrences of the adverse event; and
(4) determines whether to make an offer of compensation to the affected party for the adverse event.

Enacted by Chapter 366, 2022 General Session

78B-3-452 Notice of medical candor process.
(1) If a health care provider wishes to engage an affected party in a medical candor process, the health care provider shall:
  (a) provide a written notice described in Subsection (2) to the affected party within 365 days after the day on which the health care provider knew of the adverse event involving a patient;
  (b) provide a written notice, in a timely manner, to any other health care provider involved in the adverse event that invites the health care provider to participate in a medical candor process; and
  (c) inform, in a timely manner, any health care provider described in Subsection (1)(b) of an affected party's decision of whether to participate in a medical candor process.
(2) A written notice under Subsection (1)(a) shall:
  (a) include an explanation of:
    (i) the patient's right to receive a copy of the patient's medical records related to the adverse event; and
    (ii) the patient's right to authorize the release of the patient's medical records related to the adverse event to any third party;
  (b) include a statement regarding the affected party's right to seek legal counsel at the affected party's expense and to have legal counsel present throughout a medical candor process;
  (c) notify the affected party that there are time limitations for a malpractice action against a health care provider and that a medical candor process does not alter or extend the time limitations for a malpractice action against a health care provider;
  (d) if the health care provider is a public employee or a governmental entity, notify the affected party that participation in a medical candor process does not alter or extend the deadline for filing the notice of claim required under Section 63G-7-401;
  (e) notify the affected party that if the affected party chooses to participate in a medical candor process with a health care provider:
    (i) any communication, material, or information created for or during the medical candor process, including a communication to participate in the medical candor process, is confidential, not discoverable, and inadmissible as evidence in a judicial, administrative, or arbitration proceeding arising out of the adverse event; and
    (ii) a party to the medical candor process may not record any communication without the mutual consent of all parties to the medical candor process; and

(f) advise the affected party that the affected party, the health care provider, and any other person that participates in a medical candor process must agree, in writing, to the terms and conditions of the medical candor process in order to participate.

(3) If, after receiving a written notice, an affected party wishes to participate in a medical candor process, the affected party must agree, in writing, to the terms and conditions provided in the written notice described in Subsection (2).

(4) If an affected party agrees to participate in a medical candor process, the affected party and the health care provider may include another person in the medical candor process if:

(a) the person receives written notice in accordance with this section; and

(b) the person agrees, in writing, to the terms and conditions provided in the written notice described in Subsection (2).

Enacted by Chapter 366, 2022 General Session

78B-3-453 Nonparticipating health care providers -- Offer of compensation -- Payment.

(1) If any communications, materials, or information in any form during a medical candor process involve a health care provider that was notified under Subsection 78B-3-452(1)(b) but the health care provider is not participating in the medical candor process, a participating health care provider:

(a) may provide only materials or information from the medical record to the affected party regarding any health care provided by the nonparticipating health care provider;

(b) may not characterize, describe, or evaluate health care provided or not provided by the nonparticipating health care provider;

(c) may not attribute fault, blame, or responsibility for the adverse event to the nonparticipating health care provider; and

(d) shall inform the affected party of the limitations and requirements described in Subsections (1)(a), (b), and (c) on any communications, materials, or information made or provided by the participating health care provider in regard to a nonparticipating health care provider.

(2)

(a) If a health care provider determines that no offer of compensation is warranted during a medical candor process, the health care provider may orally communicate that decision to the affected party.

(b) If a health care provider determines that an offer of compensation is warranted during a medical candor process, the health care provider shall provide the affected party with a written offer of compensation.

(3) If a health care provider makes an offer of compensation to an affected party during a medical candor process and the affected party is not represented by legal counsel, the health care provider shall:

(a) advise the affected party of the affected party's right to seek legal counsel, at the affected party's expense, regarding the offer of compensation; and

(b) notify the affected party that the affected party may be legally required to repay medical and other expenses that were paid by a third party, including private health insurance, Medicare, or Medicaid.

(4)

(a) All parties to an offer of compensation shall negotiate the form of the relevant documents.

(b) As a condition of an offer of compensation under this section, a health care provider may require an affected party to:

(i) execute any document that is necessary to carry out an agreement between the parties regarding the offer of compensation; and
(ii) if court approval is required for compensation to a minor, obtain court approval for the offer of compensation.
(5) If an affected party did not present a written claim or demand for payment before the affected party accepts and receives an offer of compensation as part of a medical candor process, the payment of compensation to the affected party is not a payment resulting from:
(a) a written claim or demand for payment; or
(b) a professional liability claim or a settlement for purposes of Sections 58-67-302, 58-67-302.7, 58-68-302, and 58-71-302.

Enacted by Chapter 366, 2022 General Session

Part 5
Limitation of Therapist's Duty to Warn

78B-3-501 Definitions.

As used in this part, "therapist" means:
(1) a psychiatrist licensed to practice medicine under Section 58-67-301, Utah Medical Practice Act or under Section 58-68-301, Utah Osteopathic Medical Practice Act;
(2) a psychologist licensed to practice psychology under Section 58-61-301;
(3) a marriage and family therapist licensed to practice marriage and family therapy under Section 58-60-304;
(4) a social worker licensed to practice social work under Section 58-60-204;
(5) a psychiatric and mental health nurse specialist licensed to practice advanced psychiatric nursing under Title 58, Chapter 31b, Nurse Practice Act; and
(6) a clinical mental health counselor licensed to practice professional counseling under Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act.

Amended by Chapter 179, 2012 General Session

78B-3-502 Limitation of therapist's duty to warn.

(1) A therapist has no duty to warn or take precautions to provide protection from any violent behavior of his client or patient, except when that client or patient communicated to the therapist an actual threat of physical violence against a clearly identified or reasonably identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to communicate the threat to the victim, and notifies a law enforcement officer or agency of the threat.
(2) An action may not be brought against a therapist for breach of trust or privilege, or for disclosure of confidential information, based on a therapist's communication of information to a third party in an effort to discharge his duty in accordance with Subsection (1).
(3) This section does not limit or affect a therapist's duty to report child abuse or neglect in accordance with Section 80-2-602.

Amended by Chapter 335, 2022 General Session

Part 6
Compensation for Harm Caused by Nuclear Incidents

78B-3-601 Purpose.

(1) The purpose of this part is to facilitate the compensation of injured parties from financial protection funds established pursuant to the Price Anderson Act, 42 U.S.C. Sec. 2210.

(2) Nothing in this part may be construed to impose liability for harm from nuclear incidents for which financial protection is not afforded under the Price Anderson Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-602 Definitions.

As used in this part:

(1) "Harm" means:

(a) personal injury, death, or illness, except an injury, death, or illness that is a basis for a claim under either a state or federal workmen's compensation act by an employee of a person liable pursuant to Section 78B-3-603;

(b) damage to, destruction of, or loss of the use of property other than property at the situs of and used in connection with the activity giving rise to a nuclear incident;

(c) economic loss due to:

(i) damage to or loss of the use of property; or

(ii) environmental degradation; or

(d) expenses reasonably incurred by the state, its political subdivisions, or the agencies of either in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident, including, but not limited to, precautionary evacuations, emergency response measures, and, after reasonable opportunity for performance of cleanup measures by persons liable pursuant to Section 78B-3-603, decontamination or other clean-up measures. These expenses must be documented by the state, its political subdivisions, or agencies of either.

(2) "Nuclear incident" means an incident which does not arise from an act of war and involves the release of nuclear material which results in personal injury, loss of use of property, or damage due to the radioactive, toxic, explosive, or other hazardous properties of the nuclear material.

(3) "Nuclear material" means radioactive material used or handled in connection with:

(a) a utilization facility or production facility licensed by the United States Nuclear Regulatory Commission in accordance with 42 U.S.C. Secs. 2133 or 2134;

(b) a utilization or production facility constructed or operated under a contract for the benefit of the United States where there is a risk of a substantial nuclear incident as determined by the United States Department of Energy or the Nuclear Regulatory Commission; or

(c) disposal, storage, and other activities undertaken pursuant to the Nuclear Waste Policy Act, 42 U.S.C. Secs. 10101 through 10225.

(4) "Radioactive material" means:

(a) source material as defined in 42 U.S.C. Sec. 2014 (z);

(b) special nuclear material as defined in 42 U.S.C. Sec. 2014 (aa); or

(c) by-product material as defined in 42 U.S.C. Sec. 2014 (e).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-603 Liability imposed and limitations -- Defenses -- Limitations on damages.

(1) Except as provided in this section, any person who owns, holds under license, transports, ships, stores, or disposes of nuclear material is liable, without regard to the conduct of any other person, for harm from nuclear incidents arising in connection with or resulting from such ownership, transportation, shipping, storage, or disposal.

(2) Except as provided in this section, any person who owns, designs, constructs, operates, or maintains facilities, structures, vehicles, or equipment used for handling, transportation, shipment, storage, or disposal of nuclear material is liable, without regard to the conduct of any other person, for harm from nuclear incidents arising in connection with or resulting from such ownership, design, construction, operation, and maintenance.

(3) Liability established by this part shall only be imposed if a court of competent jurisdiction finds that:

(a) the nuclear incident which is the basis for the suit is covered by existing financial protection undertaken pursuant to 42 U.S.C. Sec. 2210; and

(b) a person who is liable under this part is a person indemnified as defined in 42 U.S.C. Sec. 2014.

(4) Immunity of the state, its political subdivisions, or the agencies of either from suit are only waived with respect to a suit arising from a nuclear incident:

(a) in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah; or

(b) when brought by a person suffering harm.

(5) The conduct of the person suffering harm is not a defense to liability, except that this section does not preclude any defense based on:

(a) the claimant's knowing failure to mitigate damages related to any injury or damage to the claimant or the claimant's property; or

(b) an incident involving nuclear material that is knowingly and wrongfully caused by the claimant.

(6) A person may not collect punitive or exemplary damages under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-604 Determination of causation -- Compensation allowed.

(1) Causation of radiological injury from a nuclear incident shall be determined by the trier of fact, taking into account epidemiological studies, statistical probabilities, and other pertinent medical and scientific evidence.

(2) A claimant under this part shall be entitled to full compensation of the claimant's radiological injuries if the trier of fact determines that it is more likely than not that the claimant's injuries resulted from the nuclear incident.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 7
Damages Regarding Injury to or Theft of Assistance Animal

78B-3-701 Definitions.

As used in this part:

(1) "Disability" has the same meaning as defined in Section 26B-6-801.

(2) "Search and rescue dog" means a dog:
(a) with documented training to locate persons who are:
(i) lost, missing, or injured; or
(ii) trapped under debris as the result of a natural or man-made event; and
(b) affiliated with an established search and rescue dog organization.
(3) "Service animal" means:
(a) a service animal, as defined in Section 26B-6-801; or
(b) a search and rescue dog.

Amended by Chapter 330, 2023 General Session

78B-3-702 Damages recoverable for harm to or theft of service animal.
(1) A person with a disability who uses a service animal, or the owner of a service animal has a cause of action for economic and noneconomic damages against:
(a) any person who steals or, without provocation, attacks the service animal; and
(b) the owner or keeper of any animal that without provocation attacks a service animal due to the owner's or keeper's negligent failure to exercise sufficient control over the animal to prevent the attack.
(2) The action authorized by this section maybe brought by a person with a disability who uses the service animal, or the owner of the service animal.
(3) The measure of economic damages in an action brought under Subsection (1) regarding a service animal that is not returned or is killed or injured due to an unprovoked attack so that the service animal is unable to function again as a service animal includes:
(a) the replacement value of an equally trained service animal, without any differentiation for the age or experience of the animal; and
(b) costs and expenses incurred by the person with a disability or the owner, including:
(i) costs of temporary replacement assistance services, whether provided by another service animal or by a person;
(ii) reasonable costs incurred in efforts to recover a stolen service animal; and
(iii) court and attorney costs incurred in bringing an action under this section.
(4) If the unprovoked attack on a service animal results in injuries from which the animal recovers so it is able to again function as a service animal for the person with a disability, or if the theft of the service animal results in the recovery of the service animal and the animal is again able to function as a service animal for the person with a disability, the measure of economic damages is the costs and expenses incurred by the person with a disability or the owner as a result of the theft of or injury to the service animal, and includes:
(a) veterinary medical expenses;
(b) costs of temporary replacement assistance services, whether provided by another service animal or a person;
(c) costs incurred in recovering the service animal, such as a reward; and
(d) court and attorney costs incurred in bringing an action under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-703 Limitation on cause of action.
A cause of action does not exist under this section if the person with a disability who uses the service animal or the person having custody or supervision of the service animal was committing a civil or criminal trespass at the time of the:

(1) theft of, or the chasing or harassment of the service animal by a person who owns or exercises control over the property upon which the trespass is committed; or
(2) attack upon, or the chasing or harassment of a service animal by an animal that is currently kept or maintained on the property where the trespass is committed.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 8
Death from Illegal Drug Use

78B-3-801 Cause of action for death or addiction caused by use or ingestion of illegal controlled substances -- Damages.

(1) As used in this section, "substance" means any illegal controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.
(2) A person is subject to a civil action by a person or an estate under Subsection (3) who:
  (a) unlawfully provided to or administered to the deceased person or the addicted person any substance that caused or contributed to the person's addiction or to the death of the deceased person; or
  (b) unlawfully provided any substance to any person in the chain of transfer of the substance that connects directly to the person who subsequently provided or administered the illegal controlled substance to the addicted person or to the deceased person under Subsection (2)(a).
(3)
  (a) A civil action for treble damages and punitive damages may be brought against any person under Subsection (2) by the estate of a person whose death was caused in whole or in part by ingestion or other exposure to any illegal controlled substance.
  (b) A civil action for treble damages, punitive damages, and costs of addiction treatment or rehabilitation may be brought against any person under Subsection (2) by a person who has become or is addicted to any illegal controlled substance and the addiction was caused in whole or in part by ingestion of any illegal controlled substance.
(4) The burden is on the estate or the addicted person to prove the causal connection between the death or addiction, any substances provided or administered to the deceased or addicted person, and the defendant.
(5) This section does not establish liability of or create a cause of action regarding:
  (a) a parent or guardian of a person younger than 18 years of age who acts in violation of this section, unless the parent or guardian acts in violation of this section; or
  (b) a person who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, and who acts in accordance with the act.

Amended by Chapter 345, 2010 General Session

Part 10
Liability for Publishers and Distributors of Material Harmful to Minors

78B-3-1001 Definitions.

As used in this chapter:

(1) "Commercial entity" includes corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

(2) "Digitized identification card" means a data file available on any mobile device which has connectivity to the Internet through a state-approved application that allows the mobile device to download the data file from a state agency or an authorized agent of a state agency that contains all of the data elements visible on the face and back of a license or identification card and displays the current status of the license or identification card.

(3) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(4) "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

(5) "Material harmful to minors" is defined as all of the following:

(a) any material that the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(b) material that exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of any of the following, in a manner patently offensive with respect to minors:

(i) pubic hair, anus, vulva, genitals, or nipple of the female breast;

(ii) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

(iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

(c) the material taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(6) "Minor" means any person under 18 years old.

(7) "News-gathering organization" means any of the following:

(a) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this subsection, who can provide documentation of such employment with the newspaper, news publication, or news source; or

(b) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee as provided in this subsection, who can provide documentation of such employment.

(8) "Publish" means to communicate or make information available to another person or entity on a publicly available Internet website.

(9) "Reasonable age verification methods" means verifying that the person seeking to access the material is 18 years old or older by using any of the following methods:

(a) use of a digitized information card as defined in this section;

(b) verification through an independent, third-party age verification service that compares the personal information entered by the individual who is seeking access to the material that is available from a commercially available database, or aggregate of databases, that is regularly used by government agencies and businesses for the purpose of age and identity verification; or

(c) any commercially reasonable method that relies on public or private transactional data to verify the age of the person attempting to access the material.

(10) "Substantial portion" means more than 33-1/3% of total material on a website, which meets the definition of "material harmful to minors" as defined in this section.

(11)
(a) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event.
(b) "Transactional data" includes records from mortgage, education, and employment entities.

Enacted by Chapter 262, 2023 General Session

78B-3-1002 Liability for publishers and distributors -- Age verification -- Retention of data -- Exceptions.

(1) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the Internet from a website that contains a substantial portion of such material shall be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material.
(2) A commercial entity or third party that performs the required age verification shall not retain any identifying information of the individual after access has been granted to the material.
(3) A commercial entity that is found to have violated this section shall be liable to an individual for damages resulting from a minor's accessing the material, including court costs and reasonable attorney fees as ordered by the court.
(4) A commercial entity that is found to have knowingly retained identifying information of the individual after access has been granted to the individual shall be liable to the individual for damages resulting from retaining the identifying information, including court costs and reasonable attorney fees as ordered by the court.
(5) This section shall not apply to any bona fide news or public interest broadcast, website video, report, or event and shall not be construed to affect the rights of a news-gathering organization.
(6) No Internet service provider, affiliate or subsidiary of an Internet service provider, search engine, or cloud service provider shall be held to have violated the provisions of this section solely for providing access or connection to or from a website or other information or content on the Internet, or a facility, system, or network not under that provider's control, including transmission, downloading, storing, or providing access, to the extent that such provider is not responsible for the creation of the content of the communication that constitutes material harmful to minors.

Enacted by Chapter 262, 2023 General Session