

LIMITS OF MUNICIPAL LIABILITY

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

AN ACT RELATING TO CITIES AND TOWNS; LIMITING THE LIABILITY OF A MUNICIPALITY THAT MAKES FACILITIES AVAILABLE FOR CERTAIN SPORTS OR RECREATIONAL ACTIVITIES; PROVIDING DEFINITIONS; PROVIDING AN EXCEPTION; AND MAKING CONFORMING CHANGES TO IMMUNITY PROVISIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-30-8, as last amended by Chapter 76, Laws of Utah 1991

63-30-9, as last amended by Chapter 76, Laws of Utah 1991

ENACTS:

10-1-401, Utah Code Annotated 1953

10-1-402, Utah Code Annotated 1953

10-1-403, Utah Code Annotated 1953

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

Section 1. Section **10-1-401** is enacted to read:

Part 4. Limitation on Municipal Liability

10-1-401. Definitions.

As used in this part:

(1) "Person" includes any person, regardless of age, maturity, ability, capability, or experience.

(2) (a) "Recreational facilities" means land, structures, buildings, equipment, or improvements of any kind owned or operated by a municipality and made available after May 4, 1998, to the public for use in a sport or recreational activity that inherently involves a relatively high degree of risk of injury to persons engaged in the activity.

1 (b) Examples of a sport or recreational activity that inherently involves a relatively high
2 degree of risk of injury to persons engaged in the activity include skateboarding, roller blading,
3 and snow sledding.

4 (3) (a) "Without charge" means that the municipality does not require a person to pay any
5 sum of money for the use of the recreational facilities.

6 (b) The determination under Subsection (3)(a) of whether the municipality provides the
7 use of recreational facilities without charge is made without regard to tax revenues that a
8 municipality collects and uses to acquire, develop, and maintain the recreational facilities.

9 Section 2. Section **10-1-402** is enacted to read:

10 **10-1-402. Limitation on liability -- Exception.**

11 (1) Except as provided in Subsection (2) and notwithstanding Sections 63-30-8 and
12 63-30-9, a municipality that, after May 4, 1998, makes available recreational facilities for use by
13 the public without charge may not be held liable for any personal injury or property damage
14 resulting from a person's use of the recreational facilities.

15 (2) Nothing in Subsection (1) shall limit a municipality's liability that would, in the
16 absence of Subsection (1), exist for:

17 (a) a willful or malicious failure to guard or warn against a dangerous condition, use,
18 structure, or activity; or

19 (b) deliberate, willful, or malicious injury to a person or property.

20 Section 3. Section **10-1-403** is enacted to read:

21 **10-1-403. No affect on person's obligation to use due care.**

22 Nothing in this part may be construed to relieve a person using the recreational facilities
23 from an obligation that the person would have in the absence of this part to exercise due care in
24 the use of the recreational facilities or from the legal consequences of a failure to use due care.

25 Section 4. Section **63-30-8** is amended to read:

26 **63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous**
27 **condition of highways, bridges, or other structures.**

28 Unless the injury arises out of one or more of the exceptions to waiver set forth in Section
29 63-30-10 and except as provided in Section 10-1-402, immunity from suit of all governmental
30 entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any
31 highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure

1 located on them.

2 Section 5. Section **63-30-9** is amended to read:

3 **63-30-9. Waiver of immunity for injury from dangerous or defective public building,**
4 **structure, or other public improvement -- Exception.**

5 Unless the injury arises out of one or more of the exceptions to waiver set forth in Section
6 63-30-10 and except as provided in Section 10-1-402, immunity from suit of all governmental
7 entities is waived for any injury caused from a dangerous or defective condition of any public
8 building, structure, dam, reservoir, or other public improvement.

Legislative Review Note
as of 1-6-98 2:45 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel