

**YEAR 2000 GOVERNMENT IMMUNITY**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Blake D. Chard**

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; PROVIDING DEFINITIONS;  
GRANTING GOVERNMENTAL IMMUNITY IN CERTAIN SITUATIONS FOR YEAR 2000  
PROBLEMS; ~~h [AND] h~~ AMENDING THE WAIVER OF IMMUNITY ~~h~~ ; **DESIGNATING  
REPEAL DATES; AND MAKING TECHNICAL CORRECTIONS h .**

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

AMENDS:

**63-30-3**, as last amended by Chapters 15 and 248, Laws of Utah 1991

**63-30-10**, as last amended by Chapters 159 and 264, Laws of Utah 1996

**h ENACTS:**

**63-55b-163, Utah Code Annotated 1953 h**

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

Section 1. Section **63-30-3** is amended to read:

**63-30-3. Immunity of governmental entities from suit.**

(1) Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally-owned hospital, nursing home, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.

(2) (a) For the purposes of this chapter only, the following state medical programs and services performed at a state-owned university hospital are unique or essential to the core of governmental activity in this state and are considered to be governmental functions:

(i) care of a patient referred by another hospital or physician because of the high risk nature of the patient's medical condition;

(ii) high risk care or procedures available in Utah only at a state-owned university hospital or provided in Utah only by physicians employed at a state-owned university acting in the scope of their employment;

28 (iii) care of patients who cannot receive appropriate medical care or treatment at another  
29 medical facility in Utah; and

30 (iv) any other service or procedure performed at a state-owned university hospital or by  
31 physicians employed at a state-owned university acting in the scope of their employment that a  
32 court finds is unique or essential to the core of governmental activity in this state.

33 (b) If any claim under this subsection exceeds the limits established in Section 63-30-34,  
34 the claimant may submit the excess claim to the Board of Examiners and the Legislature under  
35 Title 63, Chapter 6, Board of Examiners.

36 (3) The management of flood waters and other natural disasters and the construction,  
37 repair, and operation of flood and storm systems by governmental entities are considered to be  
38 governmental functions, and governmental entities and their officers and employees are immune  
39 from suit for any injury or damage resulting from those activities.

40 (4) Officers and employees of a Children's Justice Center are immune from suit for any  
41 injury which results from their joint intergovernmental functions at a center created in Title 62A,  
42 Chapter [4] 4a, Family Services.

43 (5) Governmental entities and their officers and employees are immune from any claim,  
44 demand, cause of action, or lawsuit for any injury or damages arising from, related to or resulting,  
45 in whole or in part, from errors or failures caused by an electronic computing device owned,  
46 controlled, relied upon, or used by a governmental entity arising out of or in connection with the  
47 Year 2000 problem.

48 (a) Nothing in Subsection (5) may be interpreted to interfere with a citizen's rights to  
49 receive statutorily mandated ~~h [services or entitlements] PAYMENTS h~~ from agencies or for a vendor  
49a or contracting  
50 party to receive payments for goods or services provided. In the event of an agency's failure to  
51 deliver such ~~h [services, entitlements, or contract] h~~ payments due to an error or failure associated  
51a with  
52 the Year 2000 problems, the remedies available to the citizen or client shall be the existing  
53 administrative procedures or remedies provided by law.

54 (b) As used in Subsection (5):

55 (i) "electronic computing device" means any computer hardware or software, computer  
56 chip, embedded chip, process control equipment, or other information system used to capture,  
57 store, manipulate, or process data, or that controls, monitors, or assists in the operation of a  
58 physical apparatus that is not primarily used as a computer, but that relies on automation or digital

59 technology to function, including vehicles, aircraft, vessels, buildings, structures, facilities,  
 60 elevators, medical equipment, traffic signals, and factory machinery;

61 (ii) "governmental entity" means the same as defined in Section 63-30-2; and

62 (iii) "Year 2000 problem" means any failure or malfunction which is caused directly or  
 63 indirectly by the failure of an electronic computing device to accurately or properly recognize or  
 64 process the change in date from the year 1999 to the year 2000.

64a **ĥ (c) THIS SUBSECTION (5) IS REPEALED DECEMBER 31, 2007. ĥ**

65 Section 2. Section **63-30-10** is amended to read:

66 **63-30-10. Waiver of immunity for injury caused by negligent act or omission of**  
 67 **employee -- Exceptions.**

68 Immunity from suit of all governmental entities is waived for injury proximately caused  
 69 by a negligent act or omission of an employee committed within the scope of employment except  
 70 if the injury arises out of, in connection with, or results from:

71 (1) the exercise or performance or the failure to exercise or perform a discretionary  
 72 function, whether or not the discretion is abused;

73 (2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional  
 74 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of  
 75 mental anguish, or violation of civil rights;

76 (3) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue,  
 77 deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

78 (4) a failure to make an inspection or by making an inadequate or negligent inspection;

79 (5) the institution or prosecution of any judicial or administrative proceeding, even if  
 80 malicious or without probable cause;

81 (6) a misrepresentation by an employee whether or not it is negligent or intentional;

82 (7) riots, unlawful assemblies, public demonstrations, mob violence, and civil  
 83 disturbances;

84 (8) the collection of and assessment of taxes;

85 (9) the activities of the Utah National Guard;

86 (10) the incarceration of any person in any state prison, county or city jail, or other place  
 87 of legal confinement;

88 (11) any natural condition on publicly owned or controlled lands, any condition existing  
 89 in connection with an abandoned mine or mining operation, or any activity authorized by the

90 School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State  
91 Lands;

92 (12) research or implementation of cloud management or seeding for the clearing of fog;

93 (13) the management of flood waters, earthquakes, or natural disasters;

94 (14) the construction, repair, or operation of flood or storm systems;

95 (15) the operation of an emergency vehicle, while being driven in accordance with the  
96 requirements of Section 41-6-14;

97 (16) a latent dangerous or latent defective condition of any highway, road, street, alley,  
98 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;

99 (17) a latent dangerous or latent defective condition of any public building, structure, dam,  
100 reservoir, or other public improvement;

101 (18) the activities of:

102 (a) providing emergency medical assistance;

103 (b) fighting fire;

104 (c) regulating, mitigating, or handling hazardous materials or hazardous wastes;

105 (d) emergency evacuations; or

106 (e) intervening during dam emergencies; [~~or~~]

107 (19) the exercise or performance or the failure to exercise or perform any function pursuant  
108 to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water Resources - Division  
109 of Water Resources,

110 which immunity is in addition to all other immunities granted by law[-]; or

111 (20) the use, implementation, operation, management of, or reliance upon electronic

112 computing devices, defined in Section 63-30-3, where an error results from or is cause in whole

113 or in part by the Year 2000 problem, defined in Section 63-30-3 h ; AND THIS SUBSECTION (20) IS

113a REPEALED DECEMBER 31, 2007 h .

113b h Section 3. Section 63-55b-163 is enacted to read:

113c 63-55b-163. Repeal date.

113d (1) SUBSECTION 63-30-3(5) REGARDING YEAR 2000 PROBLEM IMMUNITY IS REPEALED

113e DECEMBER 31, 2007.

113f (2) SUBSECTION 63-30-10(20) REGARDING YEAR 2000 PROBLEM IMMUNITY IS REPEALED

113g DECEMBER 31, 2007. h

**Legislative Review Note**  
**as of 12-4-98 2:49 PM**

This legislation raises the following constitutional or statutory concerns:

There is a possibility that this law could be challenged as a violation of the constitutional guarantee of open court's access for redress of injuries under Article 1, Section 11 of the Utah Constitution. There is no clear precedent as to how a court would rule on this issue.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Public Utilities and Technology Interim Committee recommended this bill.