

GOVERNMENTAL IMMUNITY AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO STATE AFFAIRS IN GENERAL; ELIMINATING CERTAIN EXCEPTIONS TO THE GOVERNMENT'S WAIVERS OF IMMUNITY; CHANGING THE TIME PERIOD FOR FILING CLAIMS; MODIFYING THE DAMAGE CAPS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

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

63-30-12, as last amended by Chapter 164, Laws of Utah 1998

63-30-34, as last amended by Chapter 76, Laws of Utah 1991

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

Section 1. Section **63-30-10** is amended to read:

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

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

(1) the exercise or performance or the failure to exercise or perform a discretionary function[~~-, whether or not the discretion is abused~~];

~~[(2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of~~

28 ~~mental anguish, or violation of civil rights;]~~

29 ~~[(3)]~~ (2) the issuance, denial, suspension, or revocation of or by the failure or refusal to
30 issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar
31 authorization;

32 ~~[(4)]~~ (3) a failure to make an inspection or by making an inadequate ~~[or negligent]~~
33 inspection;

34 ~~[(5)]~~ (4) the institution or prosecution of any judicial or administrative proceeding, even
35 if malicious or without probable cause;

36 ~~[(6)] a misrepresentation by an employee whether or not it is negligent or intentional;]~~

37 ~~[(7)]~~ (5) riots, unlawful assemblies, public demonstrations, mob violence, and civil
38 disturbances;

39 ~~[(8)]~~ (6) the collection of and assessment of taxes;

40 ~~[(9)]~~ (7) the activities of the Utah National Guard;

41 ~~[(10)]~~ (8) the incarceration of any person in any state prison, county or city jail, or other
42 place of legal confinement, except in cases where gross negligence or recklessness can be
43 demonstrated;

44 ~~[(11)]~~ (9) any natural condition on publicly owned or controlled lands, any condition
45 existing in connection with an abandoned mine or mining operation, or any activity authorized by
46 the School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State
47 Lands;

48 ~~[(12)]~~ (10) research or implementation of cloud management or seeding for the clearing
49 of fog;

50 ~~[(13)]~~ (11) the management of flood waters, earthquakes, or natural disasters;

51 ~~[(14)]~~ (12) the construction, repair, or operation of flood or storm systems;

52 ~~[(15)]~~ (13) the operation of an emergency vehicle, while being driven in accordance with
53 the requirements of Section 41-6-14;

54 ~~[(16)]~~ (14) a latent dangerous or latent defective condition of any highway, road, street,
55 alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;

56 ~~[(17)]~~ (15) a latent dangerous or latent defective condition of any public building,
57 structure, dam, reservoir, or other public improvement;

58 ~~[(18)]~~ (16) the activities of:

- 59 (a) providing emergency medical assistance;
 60 (b) fighting fire;
 61 (c) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 62 (d) emergency evacuations; or
 63 (e) intervening during dam emergencies; or

64 [(19)] (17) the exercise or performance or the failure to exercise or perform any function
 65 pursuant to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water Resources
 66 - Division of Water Resources, which immunity is in addition to all other immunities granted by
 67 law.

68 Section 2. Section **63-30-12** is amended to read:

69 **63-30-12. Claim against state or its employee -- Time for filing notice.**

70 A claim against the state, or against its employee for an act or omission occurring during
 71 the performance of the employee's duties, within the scope of employment, or under color of
 72 authority, is barred unless notice of claim is filed with the attorney general within [~~one year~~] two
 73 years after the claim arises, or before the expiration of any extension of time granted under Section
 74 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as
 75 governmental.

76 Section 3. Section **63-30-34** is amended to read:

77 **63-30-34. Limitation of judgments against governmental entity or employee --**
 78 **Insurance coverage exception.**

79 (1) (a) [~~Except as provided in Subsection (2), if~~] If a judgment for general noneconomic
 80 damages for personal injury against a governmental entity, or an employee whom a governmental
 81 entity has a duty to indemnify, exceeds [~~\$250,000~~] \$500,000 for one person in any one occurrence,
 82 [~~or \$500,000 for two or more persons in any one occurrence,~~] the court shall reduce the judgment
 83 for general noneconomic damages to that amount.

84 (b) A court may not award judgment of more than [~~\$250,000~~] \$500,000 in general
 85 noneconomic damages for injury or death to one person regardless of whether or not the function
 86 giving rise to the injury is characterized as governmental.

87 (c) Except as provided in Subsection (2), if a judgment for property damage against a
 88 governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds
 89 [~~\$100,000~~] \$500,000 in any one occurrence, the court shall reduce the judgment to that amount,

90 regardless of whether or not the function giving rise to the damage is characterized as
91 governmental.

92 (2) The damage limits established in this section do not apply to:

93 (a) damages awarded as compensation when a governmental entity has taken or damaged
94 private property for public use without just compensation[-]; or

95 (b) awards for economic losses in personal injury or wrongful death cases.

Legislative Review Note

as of 2-5-99 2:56 PM

This legislation raises the following constitutional or statutory concerns:

The Utah Supreme Court in *Condemarin v. University Hospital (1989)* held the cap in the Governmental Immunity Act unconstitutional. At that time the cap was at \$100,000 for the entire claim. This bill raises that cap significantly and also limits the cap to noneconomic damages. With these changes the statute may withstand a constitutional attack.

Office of Legislative Research and General Counsel