

Representative John E. Swallow proposes to substitute the following bill:

GOVERNMENT TORT LIABILITY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

Lyle W. Hillyard

John L. Valentine

Ed P. Mayne

Terry R. Spencer

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; MODIFYING PROVISIONS TO THE GOVERNMENT'S WAIVERS OF IMMUNITY; CHANGING THE TIME PERIOD FOR FILING CLAIMS; MODIFYING THE DAMAGE CAPS; ALLOWING A GOVERNMENT ENTITY TO SEEK APPOINTMENT OF A GUARDIAN AD LITEM FOR MINOR CLAIMANTS; MODIFYING THE TIME FOR CLAIMS; INCREASING THE AMOUNT REQUIRED FOR UNDERTAKINGS; MODIFYING A STATUTE OF LIMITATIONS REQUIREMENT; MAKING TECHNICAL CORRECTIONS; PROVIDING A TRANSITIONAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

63-30-11, as last amended by Chapter 164, Laws of Utah 1998

63-30-19, as enacted by Chapter 139, Laws of Utah 1965

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

78-12-28, as last amended by Chapter 153, Laws of Utah 1997

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

Section 1. Section **63-30-11** is amended to read:

63-30-11. Claim for injury -- Notice -- Contents -- Service -- Legal disability.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

26 (2) Any person having a claim for injury against a governmental entity, or against its
27 employee for an act or omission occurring during the performance of the employee's duties, within
28 the scope of employment, or under color of authority shall file a written notice of claim with the
29 entity before maintaining an action, regardless of whether or not the function giving rise to the
30 claim is characterized as governmental.

31 (3) (a) The notice of claim shall set forth:

32 (i) a brief statement of the facts;

33 (ii) the nature of the claim asserted; and

34 (iii) the damages incurred by the claimant so far as they are known.

35 (b) The notice of claim shall be:

36 (i) signed by the person making the claim or that person's agent, attorney, parent, or legal
37 guardian; and

38 (ii) directed and delivered to:

39 (A) the city or town recorder, when the claim is against an incorporated city or town;

40 (B) the county clerk, when the claim is against a county;

41 (C) the superintendent or business administrator of the board, when the claim is against
42 a school district or board of education;

43 (D) the president or secretary of the board, when the claim is against a special district;

44 (E) the attorney general, when the claim is against the State of Utah; or

45 (F) a member of the governing board, the executive director, or executive secretary, when
46 the claim is against any other public board, commission, or body.

47 (4) (a) If the claimant is under the age of majority, or mentally incompetent and without
48 a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time
49 for service of notice of claim.

50 (b) (i) After hearing and notice to the governmental entity, the court may extend the time
51 for service of notice of claim.

52 (ii) The court may not grant an extension that exceeds the applicable statute of limitations.

53 (c) In determining whether or not to grant an extension, the court shall consider whether
54 the delay in serving the notice of claim will substantially prejudice the governmental entity in
55 maintaining its defense on the merits.

56 (d) (i) If an injury that may reasonably be expected to result in a claim against a

57 governmental entity is sustained by a potential claimant described in Subsection (4)(a), that
 58 government entity may file a request with the court for the appointment of a guardian ad litem for
 59 the potential claimant.

60 (ii) If a guardian ad litem is appointed under this Subsection (4)(d), the time for filing a
 61 claim under Sections 63-30-12 and 63-30-13 begins when the order appointing the guardian is
 62 issued.

63 Section 2. Section **63-30-19** is amended to read:

64 **63-30-19. Undertaking required of plaintiff in action.**

65 At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the
 66 court, but in no case less than the sum of [~~\$300~~] ~~h~~ ~~[\$600]~~ **\$300 h** , conditioned upon payment by the
 66a plaintiff

67 of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute
 68 the action or fails to recover judgment.

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

70 **63-30-34. Limitation of judgments against governmental entity or employee --**
 71 **Insurance coverage exception.**

72 (1) (a) Except as provided in [~~Subsection~~] Subsections (2) and (3), if a judgment for
 73 damages for personal injury against a governmental entity, or an employee whom a governmental
 74 entity has a duty to indemnify, exceeds [~~\$250,000~~] \$500,000 for one person in any one occurrence,
 75 or [~~\$500,000~~] \$1,000,000 for two or more persons in any one occurrence, the court shall reduce
 76 the judgment to that amount.

77 (b) A court may not award judgment of more than [~~\$250,000~~] \$500,000 for injury or death
 78 to one person regardless of whether or not the function giving rise to the injury is characterized as
 79 governmental.

80 (c) Except as provided in Subsection (2), if a judgment for property damage against a
 81 governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds
 82 [~~\$100,000~~] \$200,000 in any one occurrence, the court shall reduce the judgment to that amount,
 83 regardless of whether or not the function giving rise to the damage is characterized as
 84 governmental.

85 (2) The damage limits established in this section do not apply to damages awarded as
 86 compensation when a governmental entity has taken or damaged private property for public use
 87 without just compensation.

88 (3) The limitations of judgments established in Subsection (1) shall be adjusted according
89 to the methodology set forth in Subsection (4).

90 (4) (a) Each year, the Risk Manager shall:

91 (i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal
92 Revenue Code;

93 (ii) calculate the increase or decrease in the limitation of judgment amounts established
94 in this section as a percentage equal to the percentage difference between the consumer price index
95 for the preceding calendar year and the consumer price index for calendar year 1999; and

96 (iii) after making an increase or decrease under Subsection (3)(a)(ii), round up the
97 limitation of judgment amounts established in Subsection (1) to the nearest \$100.

98 (b) Each even numbered year, the Risk Manager shall make rules, which become effective
99 no later than July 1, that establish the new limitation of judgment amounts.

100 (c) Adjustments made by the risk manager to the limitation of judgment amounts
101 established by this section have prospective effect only from the date the rules establishing the new
102 limitation of judgment take effect and those adjusted limitations of judgment apply only to claims
103 for injuries or losses that occur after the effective date of the rules that establish those new
104 limitations of judgement.

105 Section 4. Section **78-12-28** is amended to read:

106 **78-12-28. Within two years.**

107 An action may be brought within two years:

108 (1) against a marshal, sheriff, constable, or other officer for liability incurred by the doing
109 of an act in his official capacity, and by virtue of his office, or by the omission of an official duty,
110 including the nonpayment of money collected upon an execution;

111 (2) for recovery of damages for a death caused by the wrongful act or neglect of another;

112 [or]

113 (3) in causes of action against the state and its employees, for injury to the personal rights
114 of another if not otherwise provided by state or federal law[-]; or

115 (4) in causes of action against a political subdivision of the state and its employees, for
116 injury to the personal rights of another arising after May 1, 2000, if not otherwise provided by state
117 or federal law.

118 Section 5. **Transitional clause.**

119 This act has prospective effect only and any changes to the law caused by the amendments
120 to Section 78-12-28 do not apply to any claims based upon injuries or losses that occurred before
121 May 1, 2000, and any changes to the law caused by other sections amended by this act do not apply
122 to any claims based upon injuries or losses that occurred before July 1, 2001.

123 Section 6. **Effective date.**

124 This act takes effect on July 1, 2001, except that Section 78-12-28 takes effect May 1,
125 2000.