

GOVERNMENT TORT LIABILITY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

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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; 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

63-30-34, 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 -- Appointment of guardian ad litem.

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

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

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

- (i) a brief statement of the facts;
- (ii) the nature of the claim asserted; and

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

(b) The notice of claim shall be:

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

(ii) directed and delivered to:

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

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

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

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

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

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

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

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

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

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

(d) (i) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a potential claimant described in Subsection (4)(a), that government entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

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

Section 2. Section **63-30-34** is amended to read:

63-30-34. Limitation of judgments against governmental entity or employee --

Insurance coverage exception -- Process for adjustment of limits.

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

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

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

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

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

(4) (a) Each year, the risk manager shall:

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

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

(iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the limitation of judgment amounts established in Subsection (1) to the nearest \$100.

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

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

Section 3. Section **78-12-28** is amended to read:

78-12-28. Within two years.

An action may be brought within two years:

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

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

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

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

Section 4. **Transitional clause.**

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

Section 5. **Effective date.**

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