

1 **GOVERNMENTAL IMMUNITY - EXCEPTION**
2 **FOR PERJURY**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Matt Throckmorton**

6 **This act modifies the Utah Governmental Immunity Act. The act clarifies provisions**
7 **regarding the exception to employee immunity for driving under the influence of alcohol.**
8 **The act provides an exception to the immunity of a governmental employee for perjury.**

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

10 AMENDS:

11 **63-30-4**, as last amended by Chapter 76, Laws of Utah 1991

12 **63-30-36**, as last amended by Chapter 76, Laws of Utah 1991

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

14 Section 1. Section **63-30-4** is amended to read:

15 **63-30-4. Act provisions not construed as admission or denial of liability -- Effect of**
16 **waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal**
17 **liability.**

18 (1) (a) Nothing contained in this chapter, unless specifically provided, may be construed
19 as an admission or denial of liability or responsibility by or for governmental entities or their
20 employees.

21 (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and
22 liability of the entity shall be determined as if the entity were a private person.

23 (c) No cause of action or basis of liability is created by any waiver of immunity in this
24 chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute
25 liability.

26 (2) Nothing in this chapter may be construed as adversely affecting any immunity from suit
27 that a governmental entity or employee may otherwise assert under state or federal law.



28 (3) (a) Except as provided in Subsection (3)(b), an action under this chapter against a
29 governmental entity or its employee for an injury caused by an act or omission that occurs during
30 the performance of the employee's duties, within the scope of employment, or under color of
31 authority is a plaintiff's exclusive remedy.

32 (b) A plaintiff may not bring or pursue any other civil action or proceeding based upon the
33 same subject matter against the employee or the estate of the employee whose act or omission gave
34 rise to the claim, unless:

35 (i) the employee acted or failed to act through fraud or malice; [or]

36 (ii) the injury or damage resulted from the conditions set forth in Subsection 63-30-36

37 (3)(c)[-]; or

38 (iii) in a judicial or administrative proceeding the employee intentionally or knowingly
39 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony
40 material to the issue or matter of inquiry under this section.

41 (4) An employee may be joined in an action against a governmental entity in a
42 representative capacity if the act or omission complained of is one for which the governmental
43 entity may be liable, but no employee may be held personally liable for acts or omissions occurring
44 during the performance of the employee's duties, within the scope of employment, or under color
45 of authority, unless it is established that:

46 (a) the employee acted or failed to act due to fraud or malice[-];

47 (b) the injury or damage resulted from the conditions set forth in Subsection

48 63-30-36(3)(c); or

49 (c) in a judicial or administrative proceeding the employee intentionally or knowingly
50 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony
51 material to the issue or matter of inquiry under this section.

52 Section 2. Section **63-30-36** is amended to read:

53 **63-30-36. Defending government employee -- Request -- Cooperation -- Payment of**
54 **judgment.**

55 (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any
56 action brought against its employee arising from an act or omission occurring:

57 (a) during the performance of the employee's duties;

58 (b) within the scope of the employee's employment; or

59 (c) under color of authority.

60 (2) (a) Before a governmental entity may defend its employee against a claim, the
61 employee shall make a written request to the governmental entity to defend him:

62 (i) within ten days after service of process upon him; or

63 (ii) within a longer period that would not prejudice the governmental entity in maintaining
64 a defense on his behalf; or

65 (iii) within a period that would not conflict with notice requirements imposed on the entity
66 in connection with insurance carried by the entity relating to the risk involved.

67 (b) If the employee fails to make a request, or fails to reasonably cooperate in the defense,
68 the governmental entity need not defend or continue to defend the employee, nor pay any
69 judgment, compromise, or settlement against the employee in respect to the claim.

70 (3) The governmental entity may decline to defend, or subject to any court rule or order,
71 decline to continue to defend, an action against an employee if it determines:

72 (a) that the act or omission in question did not occur:

73 (i) during the performance of the employee's duties;

74 (ii) within the scope of his employment; or

75 (iii) under color of authority;

76 (b) that the injury or damage resulted from the fraud or malice of the employee; or

77 (c) that the injury or damage on which the claim was based resulted from:

78 (i) the employee driving a vehicle, or being in actual physical control of a vehicle:

79 (A) with a blood alcohol content equal to or greater by weight than the established legal
80 limit;

81 (B) while under the influence of alcohol or any drug to a degree that rendered the person
82 incapable of safely driving the vehicle; or

83 (C) while under the combined influence of alcohol and any drug to a degree that rendered
84 the person incapable of safely driving the vehicle; or

85 (ii) the employee being physically or mentally impaired so as to be unable to reasonably
86 perform his job function because of the use of alcohol, because of the nonprescribed use of a
87 controlled substance as defined in Section 58-37-4, or because of the combined influence of
88 alcohol and a nonprescribed controlled substance as defined by Section 58-37-4[:]; or

89 (d) that in a judicial or administrative proceeding the employee intentionally or knowingly

90 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony
91 to the issue or matter of inquiry under this section.

92 (4) (a) Within ten days of receiving a written request to defend an employee, the
93 governmental entity shall inform the employee whether or not it shall provide a defense, and, if
94 it refuses to provide a defense, the basis for its refusal.

95 (b) A refusal by the entity to provide a defense is not admissible for any purpose in the
96 action in which the employee is a defendant.

97 (5) Except as provided in Subsection (6), if a governmental entity conducts the defense
98 of an employee, the governmental entity shall pay any judgment based upon the claim.

99 (6) A governmental entity may conduct the defense of an employee under a reservation
100 of rights under which the governmental entity reserves the right not to pay a judgment, if the
101 conditions set forth in Subsection (3) are established.

102 (7) (a) Nothing in this section or Section 63-30-37 affects the obligation of a governmental
103 entity to provide insurance coverage according to the requirements of Subsection 41-12a-301 (3)
104 and Section 63-30-29.5.

105 (b) When a governmental entity declines to defend, or declines to continue to defend, an
106 action against its employee under the conditions set forth in Subsection (3), it shall still provide
107 coverage up to the amount specified in Sections 31A-22-304 and 63-30-29.5.

Legislative Review Note
as of 2-5-02 11:34 AM

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

Office of Legislative Research and General Counsel