

1 **GOVERNMENTAL IMMUNITY AMENDMENTS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Jackie Biskupski**

5 **This act modifies statutes governing governmental immunity. The act clarifies the**
6 **application and waiver of governmental immunity in certain circumstances, including**
7 **assault and battery. The act modifies requirements governing extensions of notices of**
8 **claim. The act provides for prospective application and makes technical changes.**

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

10 AMENDS:

11 **63-30-4**, as last amended by Chapter 206, Laws of Utah 2002

12 **63-30-10**, as last amended by Chapter 185, Laws of Utah 2001

13 **63-30-11**, as last amended by Chapter 157, Laws of Utah 2000

14 **63-30-12**, as last amended by Chapter 164, Laws of Utah 1998

15 **63-30-13**, as last amended by Chapter 164, Laws of Utah 1998

16 This act enacts uncodified material.

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

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

19 **63-30-4. Act provisions not construed as admission or denial of liability -- Effect**
20 **of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**
21 **personal liability.**

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

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

27 (c) No cause of action or basis of liability is created by any waiver of immunity in this



chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.

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

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

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

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

(ii) the injury or damage resulted from the conditions set forth in Subsection 63-30-36(3)(c); or

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

(4) (a) An ~~[employee]~~ action for money or damages may not be ~~[joined in an action]~~ maintained against an employee of a governmental entity in a representative or official capacity ~~[if the act or omission complained of is one for which the governmental entity may be liable, but no]~~.

(b) An employee may not be held personally liable for acts or omissions occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, unless it is established that:

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

~~[(b)]~~ (ii) the injury or damage resulted from the conditions set forth in Subsection 63-30-36(3)(c); or

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

Section 2. 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 act or omission of an employee committed within the scope of employment except that immunity is not waived if the injury 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 mental anguish, or violation of civil rights;

(3) (a) assault or battery, except that immunity is waived when:

(i) the governmental entity knew or reasonably should have known of a risk of assault or battery to a specific claimant;

(ii) the assault or battery was committed by someone other than an employee of a governmental entity; and

(iii) a law enforcement agency is not alleged to be at fault; or

(b) the governmental entity was negligent in hiring or retaining the employee that committed the assault or battery;

~~[(3)]~~ (4) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

~~[(4)]~~ (5) a failure to make an inspection or by making an inadequate or negligent inspection;

~~[(5)]~~ (6) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

~~[(6)]~~ (7) a misrepresentation by an employee whether or not it is negligent or intentional;

~~[(7)]~~ (8) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

~~[(8)]~~ (9) the collection of and assessment of taxes;

[~~(9)~~] (10) the activities of the Utah National Guard;

[~~(10)~~] (11) the incarceration of any person in or the escape of any person from any state prison, county or city jail, medical treatment facility, or other place of legal confinement;

[~~(11)~~] (12) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State Lands;

[~~(12)~~] (13) research or implementation of cloud management or seeding for the clearing of fog;

[~~(13)~~] (14) the management of flood waters, earthquakes, or natural disasters;

[~~(14)~~] (15) the construction, repair, or operation of flood or storm systems;

[~~(15)~~] (16) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

[~~(16)~~] (17) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;

[~~(17)~~] (18) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement;

[~~(18)~~] (19) the activities of:

- (a) providing emergency medical assistance;
- (b) fighting fire;
- (c) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- (d) emergency evacuations;
- (e) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
- (f) intervening during dam emergencies; or

[~~(19)~~] (20) the exercise or performance or the failure to exercise or perform any function pursuant to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water Resources - Division of Water Resources, which immunity is in addition to all other immunities granted by law.

Section 3. 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.]~~ for leave to file a notice of claim any time within four years from the time the claim arose, but no later than one year after:

(i) the claimant reaches the age of majority;

(ii) the claimant is declared to be mentally competent; or

(iii) a legal guardian is appointed to represent the minor claimant or the mentally incompetent claimant.

(b) ~~(i)~~ After hearing and notice to the governmental entity in the manner prescribed by Subsection (3) and Section 63-30-12 or 63-30-13, the court may ~~[extend the time for service of notice of claim.]~~ grant permission to file a notice of claim if:

(i) less than four years have elapsed since the claim arose; and

(ii) less than one year has elapsed since:

(A) the claimant reached the age of majority;

(B) the claimant is declared to be mentally competent; or

(C) a legal guardian is appointed to represent the minor claimant or the mentally incompetent claimant.

~~[(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]~~ permission to file a notice of claim more than one year after the claim arose, the court shall consider whether the delay in ~~[serving]~~ filing 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 4. Section **63-30-12** is amended to read:

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

A claim against the state, 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, is barred unless notice of claim is filed with the attorney general and the individual alleged to be at fault within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the

function giving rise to the claim is characterized as governmental.

Section 5. Section **63-30-13** is amended to read:

63-30-13. Claim against political subdivision or its employee -- Time for filing notice.

A claim against a political subdivision, 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, is barred unless notice of claim is filed with the governing body of the political subdivision according to the requirements of Section 63-30-11 and the individual alleged to be a fault within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Section 6. **Application of act -- Prospective operation.**

This act has prospective effect only and any changes to the law caused by this act do not apply to any claims based upon injuries or losses that occurred before the effective date of this act.

Legislative Review Note

as of 2-4-03 7:38 AM

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

Office of Legislative Research and General Counsel

State Impact

Risk Management receives approximately twenty claims per year similar to those described in this bill. At this time the claims are summarily dismissed due to the governmental immunity clause.

This bill would require some evidentiary proceedings to determine facts in any action. The primary defendant would likely be school districts. If one claim per district were filed each year, the trial costs would be \$15,000 each, or \$600,000 total.

Assuming the state is half of the twenty currently filed, the cost to the state would be \$150,000 per year. In subsequent years the actions would drive a premium increase for agencies, although it is not possible to quantify that amount at this time.

At minimum, School District premiums (through dedicated credits) would increase by the amount of the cost (\$600,000). State costs would see a general fund increase of \$150,000.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$150,000	\$150,000	\$0	\$0
Dedicated Credits Revenue	\$600,000	\$600,000	\$0	\$0
TOTAL	<u>\$750,000</u>	<u>\$750,000</u>	<u>\$0</u>	<u>\$0</u>

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst