

**WAIVER OF GOVERNMENTAL IMMUNITY BY
GOVERNMENTAL ENTITIES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: James M. Evans

This act modifies the Governmental Immunity Act to provide for a waiver of immunity by state and local entities in the case of certain misrepresentations or withholdings of information by an officer or employee. The act also makes technical changes.

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

AMENDS:

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

ENACTS:

63-30-10.7, Utah Code Annotated 1953

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 act or omission of an employee committed within the scope of employment except 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) 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



- 28 authorization;
- 29 (4) a failure to make an inspection or by making an inadequate or negligent inspection;
- 30 (5) the institution or prosecution of any judicial or administrative proceeding, even if
- 31 malicious or without probable cause;
- 32 (6) except as provided in Section 63-30-10.7, a misrepresentation by an employee
- 33 whether or not it is negligent or intentional;
- 34 (7) riots, unlawful assemblies, public demonstrations, mob violence, and civil
- 35 disturbances;
- 36 (8) the collection of and assessment of taxes;
- 37 (9) the activities of the Utah National Guard;
- 38 (10) the incarceration of any person in any state prison, county or city jail, or other
- 39 place of legal confinement;
- 40 (11) any natural condition on publicly owned or controlled lands, any condition
- 41 existing in connection with an abandoned mine or mining operation, or any activity authorized
- 42 by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire
- 43 and State Lands;
- 44 (12) research or implementation of cloud management or seeding for the clearing of
- 45 fog;
- 46 (13) the management of flood waters, earthquakes, or natural disasters;
- 47 (14) the construction, repair, or operation of flood or storm systems;
- 48 (15) the operation of an emergency vehicle, while being driven in accordance with the
- 49 requirements of Section 41-6-14;
- 50 (16) a latent dangerous or latent defective condition of any highway, road, street, alley,
- 51 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;
- 52 (17) a latent dangerous or latent defective condition of any public building, structure,
- 53 dam, reservoir, or other public improvement;
- 54 (18) the activities of:
 - 55 (a) providing emergency medical assistance;
 - 56 (b) fighting fire;
 - 57 (c) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - 58 (d) emergency evacuations;

59 (e) transporting or removing injured persons to a place where emergency medical
60 assistance can be rendered or where the person can be transported by a licensed ambulance
61 service; or

62 (f) intervening during dam emergencies; or

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

67 Section 2. Section **63-30-10.7** is enacted to read:

68 **63-30-10.7. Waiver of immunity for certain misrepresentations or withholding of**
69 **information.**

70 (1) As used in this section, "claimant" means a person who claims to have suffered an
71 injury proximately caused by a misrepresentation or withholding of information as described in
72 Subsection (2).

73 (2) Immunity from suit of all governmental entities is waived for injury proximately
74 caused by a misrepresentation or withholding of information by an officer or employee of a
75 governmental entity if:

76 (a) the misrepresentation or withholding of information:

77 (i) was intentional;

78 (ii) was made in order to gain the public's approval of a proposed action of the
79 governmental entity; and

80 (iii) materially advanced the governmental entity's effort to gain the public's approval
81 of the proposed action;

82 (b) the governmental entity actually carries out the proposed action; and

83 (c) the claimant reasonably relied on the misrepresentation or on the absence of the
84 withheld information.

Legislative Review Note

as of 1-16-03 9:46 AM

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

Office of Legislative Research and General Counsel