

Senator David L. Gladwell proposes the following substitute bill:

**NOTICE OF CLAIM OF GOVERNMENTAL
IMMUNITY**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Gladwell

This act modifies the Utah Governmental Immunity Act. This act provides for actual or mail delivery to the office of a government entity to provide notice of a legal claim against a government entity. This act makes technical changes.

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

AMENDS:

63-30-2, as last amended by Chapter 224, Laws of Utah 2000

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

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

Section 1. Section **63-30-2** is amended to read:

63-30-2. Definitions.

As used in this chapter:

(1) "Claim" means any claim or cause of action for money or damages against a governmental entity or against an employee.

(2) "Direct and deliver" means:

(a) actual delivery of a notice of claim to the person identified in Section 63-30-11 as the proper recipient of the notice of claim, addressed to the person by name or title; or

(b) mailing a notice of claim in accordance with Section 68-3-8.5 to the person identified in Section 63-30-11 as the proper recipient of the notice of claim, addressed to the person by name or title.

~~(2)~~ (3) (a) "Employee" includes a governmental entity's officers, employees, servants,



26 trustees, commissioners, members of a governing body, members of a board, members of a
27 commission, or members of an advisory body, officers and employees in accordance with
28 Section 67-5b-104, student teachers holding a letter of authorization in accordance with
29 Sections 53A-6-103 and 53A-6-104, educational aides, students engaged in providing services
30 to members of the public in the course of an approved medical, nursing, or other professional
31 health care clinical training program, volunteers, and tutors, but does not include an
32 independent contractor.

33 (b) "Employee" includes all of the positions identified in Subsection [~~(2)~~] (3)(a),
34 whether or not the individual holding that position receives compensation.

35 [~~(3)~~] (4) "Governmental entity" means the state and its political subdivisions as defined
36 in this chapter.

37 [~~(4)~~] (5) (a) "Governmental function" means any act, failure to act, operation, function,
38 or undertaking of a governmental entity whether or not the act, failure to act, operation,
39 function, or undertaking is characterized as governmental, proprietary, a core governmental
40 function, unique to government, undertaken in a dual capacity, essential to or not essential to a
41 government or governmental function, or could be performed by private enterprise or private
42 persons.

43 (b) A "governmental function" may be performed by any department, agency,
44 employee, agent, or officer of a governmental entity.

45 [~~(5)~~] (6) "Injury" means death, injury to a person, damage to or loss of property, or any
46 other injury that a person may suffer to his person, or estate, that would be actionable if
47 inflicted by a private person or his agent.

48 [~~(6)~~] (7) "Personal injury" means an injury of any kind other than property damage.

49 [~~(7)~~] (8) "Political subdivision" means any county, city, town, school district, public
50 transit district, redevelopment agency, special improvement or taxing district, or other
51 governmental subdivision or public corporation.

52 [~~(8)~~] (9) "Property damage" means injury to, or loss of, any right, title, estate, or
53 interest in real or personal property.

54 [~~(9)~~] (10) "State" means the state of Utah, and includes any office, department, agency,
55 authority, commission, board, institution, hospital, college, university, or other instrumentality
56 of the state.

57 Section 2. Section **63-30-11** is amended to read:

58 **63-30-11. Claim for injury -- Notice -- Contents -- Service -- Legal disability --**
59 **Appointment of guardian ad litem.**

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

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

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

68 (i) a brief statement of the facts;

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

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

71 (b) (i) The notice of claim shall be~~[-(i)]~~ signed by the person making the claim or that
72 person's agent, attorney, parent, or legal guardian~~[-and]~~.

73 (ii) ~~[directed and delivered]~~ The claimant shall direct and deliver the notice of claim to:

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

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

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

78 (D) the ~~[president]~~ chair or secretary of the board of trustees, when the claim is against
79 a special district;

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

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

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

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

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

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

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

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