

**GOVERNMENTAL IMMUNITY ACT**

**AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

**This act modifies the Utah Governmental Immunity Act. This act redefines governmental function. This act establishes governmental immunity protection for injuries arising from unauthorized access to government records, data, or electronic information systems.**

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

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

*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) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees, commissioners, members of a governing body, members of a board, members of a commission, or members of an advisory body, officers and employees in accordance with Section 67-5b-104, student teachers holding a letter of authorization in accordance with Sections 53A-6-103 and 53A-6-104, educational aides, students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program, volunteers, and tutors, but does not include an independent contractor.

(b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or



28 not the individual holding that position receives compensation.

29 (3) "Governmental entity" means the state and its political subdivisions as defined in  
30 this chapter.

31 (4) (a) "Governmental function" means [~~any act, failure to act, operation, function, or~~  
32 ~~undertaking of a governmental entity whether or not the act, failure to act, operation, function,~~  
33 ~~or undertaking is characterized as governmental, proprietary, a core governmental function,~~  
34 ~~unique to government, undertaken in a dual capacity, essential to or not essential to a~~  
35 ~~government or governmental function, or could be performed by private enterprise or private~~  
36 ~~persons] each and every activity, undertaking, or operation of a government entity.~~

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

39 (5) "Injury" means death, injury to a person, damage to or loss of property, or any other  
40 injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a  
41 private person or his agent.

42 (6) "Personal injury" means an injury of any kind other than property damage.

43 (7) "Political subdivision" means any county, city, town, school district, public transit  
44 district, redevelopment agency, special improvement or taxing district, or other governmental  
45 subdivision or public corporation.

46 (8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in  
47 real or personal property.

48 (9) "State" means the state of Utah, and includes any office, department, agency,  
49 authority, commission, board, institution, hospital, college, university, or other instrumentality  
50 of the state.

51 Section 2. Section **63-30-10** is amended to read:

52 **63-30-10. Waiver of immunity for injury caused by negligent act or omission of**  
53 **employee -- Exceptions.**

54 Immunity from suit of all governmental entities is waived for injury proximately caused  
55 by a negligent act or omission of an employee committed within the scope of employment  
56 except if the injury arises out of, in connection with, or results from:

57 (1) the exercise or performance or the failure to exercise or perform a discretionary  
58 function, whether or not the discretion is abused;

59 (2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional  
60 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of  
61 mental anguish, or violation of civil rights;

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

65 (4) a failure to make an inspection or by making an inadequate or negligent inspection;

66 (5) the institution or prosecution of any judicial or administrative proceeding, even if  
67 malicious or without probable cause;

68 (6) a misrepresentation by an employee whether or not it is negligent or intentional;

69 (7) riots, unlawful assemblies, public demonstrations, mob violence, and civil  
70 disturbances;

71 (8) the collection of and assessment of taxes;

72 (9) the activities of the Utah National Guard;

73 (10) the incarceration of any person in any state prison, county or city jail, or other  
74 place of legal confinement;

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

79 (12) research or implementation of cloud management or seeding for the clearing of  
80 fog;

81 (13) the management of flood waters, earthquakes, or natural disasters;

82 (14) the construction, repair, or operation of flood or storm systems;

83 (15) the operation of an emergency vehicle, while being driven in accordance with the  
84 requirements of Section 41-6-14;

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

87 (17) a latent dangerous or latent defective condition of any public building, structure,  
88 dam, reservoir, or other public improvement;

89 (18) the activities of:

- 90 (a) providing emergency medical assistance;
- 91 (b) fighting fire;
- 92 (c) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 93 (d) emergency evacuations;
- 94 (e) transporting or removing injured persons to a place where emergency medical
- 95 assistance can be rendered or where the person can be transported by a licensed ambulance
- 96 service; or
- 97 (f) intervening during dam emergencies; [or]
- 98 (19) the exercise or performance or the failure to exercise or perform any function
- 99 pursuant to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water
- 100 Resources - Division of Water Resources, which immunity is in addition to all other
- 101 immunities granted by law[-]; or
- 102 (20) unauthorized access to government records, data, or electronic information
- 103 systems by any person or entity.

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**Legislative Review Note****as of 2-12-03 12:31 PM**

In *Laney v. Fairview City*, 2002 Utah 59, the Utah Supreme Court declared unconstitutional under the "open courts" clause (Art. I, Sec. 11) of the Utah Constitution a definition in statute that provided that all functions of government, whether proprietary or governmental, are subject to the Governmental Immunity Act. This act re-enacts that definition in different words. Under the court's analysis in *Laney*, the changes made by this bill are unconstitutional. However, the intent language justifying re-enactment of the definition, which is intended to be adopted by the Legislature if this bill is approved, may provide the court with a basis for declaring the newly enacted language to be constitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0219**

**Governmental Immunity Act Amendments**

*20-Feb-03*

*4:59 PM*

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**State Impact**

This bill could provide an increased level of protection for the government from lawsuits. However, the constitutional note indicates the State might face litigation expenses.

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**Individual and Business Impact**

None

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**Office of the Legislative Fiscal Analyst**