

**GOVERNMENTAL IMMUNITY ACT -
TECHNICAL AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill corrects references to the Governmental Immunity Act of Utah.

Highlighted Provisions:

This bill:

- ▶ changes references from Chapter 30 to Chapter 30d; and
- ▶ amends references to sections of the Governmental Immunity Act of Utah.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-2-1905, as last amended by Chapter 4, Laws of Utah 2003, Second Special Session

9-4-917, as last amended by Chapter 319, Laws of Utah 2001

10-8-58.5, as enacted by Chapter 229, Laws of Utah 1988

11-13-222, as last amended by Chapter 38, Laws of Utah 2003

17-53-311, as renumbered and amended by Chapter 133, Laws of Utah 2000

17A-2-1056, as last amended by Chapter 254, Laws of Utah 2000

19-6-321, as renumbered and amended by Chapter 112, Laws of Utah 1991

19-6-427, as renumbered and amended by Chapter 112, Laws of Utah 1991

30-2-11, as enacted by Chapter 163, Laws of Utah 1997

31A-1-103, as last amended by Chapter 225, Laws of Utah 2004

32A-1-118, as last amended by Chapter 1, Laws of Utah 2000
40-10-21, as last amended by Chapter 219, Laws of Utah 1994
41-12a-407, as last amended by Chapter 203, Laws of Utah 1991
41-22-31, as last amended by Chapter 21, Laws of Utah 1989
58-59-308, as last amended by Chapter 260, Laws of Utah 2003
58-73-701, as renumbered and amended by Chapter 253, Laws of Utah 1996
62A-4a-410, as last amended by Chapter 206, Laws of Utah 2002
63-2-802, as last amended by Chapter 280, Laws of Utah 1992
63-30b-3, as last amended by Chapter 20, Laws of Utah 1995
63-46b-1, as last amended by Chapter 235, Laws of Utah 2004
63A-4-204, as last amended by Chapter 266, Laws of Utah 2001
63A-4-204.5, as last amended by Chapter 266, Laws of Utah 2001
67-5b-107, as enacted by Chapter 192, Laws of Utah 1994
72-5-306, as renumbered and amended by Chapter 270, Laws of Utah 1998
73-18c-306, as enacted by Chapter 348, Laws of Utah 1997
73-26-403, as enacted by Chapter 251, Laws of Utah 1991
76-10-1311, as enacted by Chapter 179, Laws of Utah 1993
78-2a-6, as last amended by Chapter 97, Laws of Utah 2002
78-3a-912, as last amended by Chapter 356, Laws of Utah 2004
78-27-37, as last amended by Chapter 131, Laws of Utah 2003
78-27-43, as last amended by Chapter 131, Laws of Utah 2003

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

Section 1. Section **9-2-1905** is amended to read:

9-2-1905. Board members -- Meetings -- Expenses.

- (1) (a) The board shall consist of five members.
- (b) Of the five members:
 - (i) one shall be the state treasurer;

(ii) one shall be the director; and

(iii) three shall be appointed by the governor and confirmed by the Senate.

(c) The three members appointed by the governor shall serve four-year staggered terms with the initial terms of the first three members to be four years for one member, three years for one member, and two years for one member.

(2) When a vacancy occurs in the membership of the board for any reason, the vacancy shall be:

(a) filled in the same manner as the appointment of the original member; and

(b) for the unexpired term of the board member being replaced.

(3) Appointed members of the board may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.

(4) Three members of the board constitute a quorum for conducting business and exercising board power, provided that a minimum of three affirmative votes is required for board action and at least one of the affirmative votes is cast by either the director or the state treasurer.

(5) (a) Members of the board may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the members' official duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members of the board may decline to receive per diem and expenses for their services.

(6) Members of the board shall be selected on the basis of demonstrated expertise and competence in:

(a) the supervision of investment managers;

(b) the fiduciary management of investment funds; or

(c) the management and administration of tax credit allocation programs.

(7) The board and its members are considered to be a governmental entity with all of the rights, privileges, and immunities of a governmental entity of the state, including all of the rights and benefits conferred under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah.

(8) Meetings of the board, except to the extent necessary to protect confidential information with respect to investments in the Utah fund of funds, are subject to Title 52, Chapter 4, Open and Public Meetings.

Section 2. Section **9-4-917** is amended to read:

9-4-917. Notes, bonds, other obligations -- Not debt liability -- Expenses payable from funds provided -- Corporation without authority to incur liability on behalf of state -- Relationship to Governmental Immunity Act of Utah.

(1) (a) Notes, bonds, and other obligations issued under this part do not constitute a debt or liability of this state or of any county, city, town, village, school district, or any other political subdivision of the state, nor shall the notes, bonds, or other obligations constitute the loaning of credit of the state or of any county, city, town, township, district, or any other political subdivision of the state, nor may the notes, bonds, or other obligations be payable from funds other than those of the corporation.

(b) All notes, bonds, or other obligations shall contain on their face a statement to the effect that:

(i) the corporation is obligated to pay the note, bond, or obligation solely from the revenues or other funds of the corporation;

(ii) neither this state nor any political subdivision of it is obligated to pay the note, bond, or obligation; and

(iii) neither the faith and credit nor the taxing power of this state or any political subdivision of it is pledged to the payment of principal, or redemption price of, or the interest on the notes, bonds, or other obligations.

(2) All expenses incurred in carrying out this act shall be payable solely from funds provided under this part, and nothing in this part shall be construed to authorize the corporation to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

(3) (a) Title 63, Chapter ~~[30, the Utah]~~ 30d, Governmental Immunity Act of Utah, shall apply to the corporation.

(b) Notwithstanding Subsection (3)(a), no claim may be brought against the state, any public official or employee of the state, another public entity, or any public official or employee of another public entity, based on or arising from:

- (i) any failure or alleged failure to fulfill a contractual obligation of the corporation;
- (ii) any act or failure to act of the corporation or any of its trustees, officers, employees, agents, or representatives; or
- (iii) any failure of the corporation to comply with the requirements of any law or regulation.

(c) The provisions of Subsection (3)(b) do not apply to a claim of a current or former officer or employee of the corporation for the retirement or insurance benefits.

Section 3. Section **10-8-58.5** is amended to read:

10-8-58.5. Contracting for management, maintenance, operation, or construction of jails.

(1) (a) The governing body of a city or town may contract with private contractors for management, maintenance, operation, and construction of city jails.

(b) The governing body may include a provision in the contract that requires that any jail facility meet any federal, state, or local standards for the construction of jails.

(2) If the governing body contracts only for the management, maintenance, or operation of a jail, the governing body shall include provisions in the contract that:

(a) require the private contractor to post a performance bond in the amount set by the governing body;

(b) establish training standards that must be met by jail personnel;

(c) require the private contractor to provide and fund training for jail personnel so that the personnel meet the standards established in the contract and any other federal, state, or local standards for the operation of jails and the treatment of jail prisoners;

(d) require the private contractor to indemnify the city or town for errors, omissions, defalcations, and other activities committed by the private contractor that result in liability to the city or town;

(e) require the private contractor to show evidence of liability insurance protecting the city or town and its officers, employees, and agents from liability arising from the construction, operation, or maintenance of the jail, in an amount not less than those specified in Title 63, Chapter ~~[30, the]~~ 30d, Governmental Immunity Act of Utah;

(f) require the private contractor to:

(i) receive all prisoners committed to the jail by competent authority; and

(ii) provide them with necessary food, clothing, and bedding in the manner prescribed by the governing body; and

(g) prohibit the use of inmates by the private contractor for private business purposes of any kind.

(3) A contractual provision requiring the private contractor to maintain liability insurance in an amount not less than the liability limits established by Title 63, Chapter ~~[30]~~ 30d, Governmental Immunity Act of Utah, may not be construed as waiving the limitation on damages recoverable from a governmental entity or its employees established by that chapter.

Section 4. Section **11-13-222** is amended to read:

11-13-222. Officers and employees performing services under agreements.

(1) Each officer and employee performing services for two or more public agencies under an agreement under this chapter shall be considered to be:

(a) an officer or employee of the public agency employing the officer or employee's services even though the officer or employee performs those functions outside of the territorial limits of any one of the contracting public agencies; and

(b) an officer or employee of the public agencies under the provisions of Title 63, Chapter ~~[30,]~~ 30d, Governmental Immunity Act of Utah.

(2) Unless otherwise provided in an agreement that creates an interlocal entity, each employee of a public agency that is a party to the agreement shall:

(a) remain an employee of that public agency, even though assigned to perform services for another public agency under the agreement; and

(b) continue to be governed by the rules, rights, entitlements, and status that apply to an

employee of that public agency.

(3) All of the privileges, immunities from liability, exemptions from laws, ordinances, and rules, pensions and relief, disability, workers compensation, and other benefits that apply to an officer, agent, or employee of a public agency while performing functions within the territorial limits of the public agency apply to the same degree and extent when the officer, agent, or employee performs functions or duties under the agreement outside the territorial limits of that public agency.

Section 5. Section **17-53-311** is amended to read:

17-53-311. Contracting for management, maintenance, operation, or construction of jails.

(1) (a) With the approval of the sheriff, a county executive may contract with private contractors for management, maintenance, operation, and construction of county jails.

(b) A county executive may include a provision in the contract that allows use of a building authority created under the provisions of Title 17A, Chapter 3, Part 9, Municipal Building Authorities, to construct or acquire a jail facility.

(c) A county executive may include a provision in the contract that requires that any jail facility meet any federal, state, or local standards for the construction of jails.

(2) If a county executive contracts only for the management, maintenance, or operation of a jail, the county executive shall include provisions in the contract that:

(a) require the private contractor to post a performance bond in the amount set by the county legislative body;

(b) establish training standards that must be met by jail personnel;

(c) require the private contractor to provide and fund training for jail personnel so that the personnel meet the standards established in the contract and any other federal, state, or local standards for the operation of jails and the treatment of jail prisoners;

(d) require the private contractor to indemnify the county for errors, omissions, defalcations, and other activities committed by the private contractor that result in liability to the county;

(e) require the private contractor to show evidence of liability insurance protecting the county and its officers, employees, and agents from liability arising from the construction, operation, or maintenance of the jail, in an amount not less than those specified in Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah;

(f) require the private contractor to:

(i) receive all prisoners committed to the jail by competent authority; and

(ii) provide them with necessary food, clothing, and bedding in the manner prescribed by the governing body; and

(g) prohibit the use of inmates by the private contractor for private business purposes of any kind.

(3) A contractual provision requiring the private contractor to maintain liability insurance in an amount not less than the liability limits established by Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah, may not be construed as waiving the limitation on damages recoverable from a governmental entity or its employees established by that chapter.

Section 6. Section **17A-2-1056** is amended to read:

17A-2-1056. Claims against district -- Procedures.

Any person who believes to have a claim against the district for death, injury, or damage alleged to have been caused by the negligent act or omission of the district shall:

(1) file a written notice of claim with the board of trustees as provided in Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah; and

(2) comply with all the requirements of Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah, in seeking satisfaction of the claim.

Section 7. Section **19-6-321** is amended to read:

19-6-321. Construction with other state and federal laws -- Governmental immunity.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way the obligations or liability of any person under a contract or any other provision of this part or state or federal law, including common law, for damages, indemnification, injury, or loss

associated with a hazardous material or substance release or a substantial threat of a hazardous material or substance release.

(2) In addition to the governmental immunity granted in Title 63, Chapter [~~30, Utah~~ 30d, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

(3) Nothing in this part affects, limits, or modifies in any way the authority granted to the state, any state agency, or any political subdivision under other state or federal law.

Section 8. Section **19-6-427** is amended to read:

19-6-427. Liability of any person under other laws -- Additional state and governmental immunity -- Exceptions.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:

(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or

(b) the liability of any person for costs incurred except as provided in this part.

(2) In addition to the governmental immunity granted in Title 63, Chapter [~~30, Utah~~ 30d, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

Section 9. Section **30-2-11** is amended to read:

30-2-11. Action for consortium due to personal injury.

(1) For purposes of this section:

(a) "injury" or "injured" means a significant permanent injury to a person that substantially changes that person's lifestyle and includes the following:

(i) a partial or complete paralysis of one or more of the extremities;

- (ii) significant disfigurement; or
- (iii) incapability of the person of performing the types of jobs the person performed

before the injury; and

(b) "spouse" means the legal relationship:

- (i) established between a man and a woman as recognized by the laws of this state; and
- (ii) existing at the time of the person's injury.

(2) The spouse of a person injured by a third party on or after May 4, 1997, may maintain an action against the third party to recover for loss of consortium.

(3) A claim for loss of consortium begins on the date of injury to the spouse. The statute of limitations applicable to the injured person shall also apply to the spouse's claim of loss of consortium.

(4) A claim for the spouse's loss of consortium shall be:

(a) made at the time the claim of the injured person is made and joinder of actions shall be compulsory; and

(b) subject to the same defenses, limitations, immunities, and provisions applicable to the claims of the injured person.

(5) The spouse's action for loss of consortium:

(a) shall be derivative from the cause of action existing in behalf of the injured person; and

(b) may not exist in cases where the injured person would not have a cause of action.

(6) Fault of the spouse of the injured person, as well as fault of the injured person, shall be compared with the fault of all other parties, pursuant to Sections 78-27-37 through 78-27-43, for purposes of reducing or barring any recovery by the spouse for loss of consortium.

(7) Damages awarded for loss of consortium, when combined with any award to the injured person for general damages, may not exceed any applicable statutory limit on noneconomic damages, including Section 78-14-7.1.

(8) Damages awarded for loss of consortium which a governmental entity is required to pay, when combined with any award to the injured person which a governmental entity is

required to pay, may not exceed the liability limit for one person in any one occurrence under Title 63, Chapter [30;] 30d, Governmental Immunity Act of Utah.

Section 10. Section **31A-1-103** is amended to read:

31A-1-103. Scope and applicability of title.

(1) This title does not apply to:

(a) a retainer contract made by an attorney-at-law:

(i) with an individual client; and

(ii) under which fees are based on estimates of the nature and amount of services to be provided to the specific client;

(b) a contract similar to a contract described in Subsection (1)(a) made with a group of clients involved in the same or closely related legal matters;

(c) an arrangement for providing benefits that do not exceed a limited amount of consultations, advice on simple legal matters, either alone or in combination with referral services, or the promise of fee discounts for handling other legal matters;

(d) limited legal assistance on an informal basis involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship;

(e) legal assistance by employee organizations to their members in matters relating to employment; or

(f) death, accident, health, or disability benefits provided to a person by an organization or its affiliate if:

(i) the organization is tax exempt under Section 501(c)(3) of the Internal Revenue Code and has had its principal place of business in Utah for at least five years;

(ii) the person is not an employee of the organization; and

(iii) (A) substantially all the person's time in the organization is spent providing voluntary services:

(I) in furtherance of the organization's purposes;

(II) for a designated period of time; and

(III) for which no compensation, other than expenses, is paid; or

(B) the time since the service under Subsection (1)(f)(iii)(A) was completed is no more than 18 months.

(2) (a) This title restricts otherwise legitimate business activity.

(b) What this title does not prohibit is permitted unless contrary to other provisions of Utah law.

(3) Except as otherwise expressly provided, this title does not apply to:

(a) those activities of an insurer where state jurisdiction is preempted by Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended;

(b) ocean marine insurance;

(c) death, accident, health, or disability benefits provided by an organization if the organization:

(i) has as its principal purpose to achieve charitable, educational, social, or religious objectives rather than to provide death, accident, health, or disability benefits;

(ii) does not incur a legal obligation to pay a specified amount; and

(iii) does not create reasonable expectations of receiving a specified amount on the part of an insured person;

(d) other business specified in rules adopted by the commissioner on a finding that:

(i) the transaction of the business in this state does not require regulation for the protection of the interests of the residents of this state; or

(ii) it would be impracticable to require compliance with this title;

(e) except as provided in Subsection (4), a transaction independently procured through negotiations under Section 31A-15-104;

(f) self-insurance;

(g) reinsurance;

(h) subject to Subsection (5), employee and labor union group or blanket insurance covering risks in this state if:

(i) the policyholder exists primarily for purposes other than to procure insurance;

- (ii) the policyholder:
 - (A) is not a resident of this state;
 - (B) is not a domestic corporation; or
 - (C) does not have its principal office in this state;
- (iii) no more than 25% of the certificate holders or insureds are residents of this state;
- (iv) on request of the commissioner, the insurer files with the department a copy of the policy and a copy of each form or certificate; and
 - (v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were authorized to do business in this state; and
 - (B) the insurer provides the commissioner with the security the commissioner considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted Insurers;
 - (i) to the extent provided in Subsection (6):
 - (i) a manufacturer's or seller's warranty; and
 - (ii) a manufacturer's or seller's service contract; or
 - (j) except to the extent provided in Subsection (7), a public agency insurance mutual.
 - (4) A transaction described in Subsection (3)(e) is subject to taxation under Section 31A-3-301.
 - (5) (a) After a hearing, the commissioner may order an insurer of certain group or blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer.
 - (b) If the commissioner finds that the conditions required for the exemption of a group or blanket insurer are not satisfied or that adequate protection to residents of this state is not provided, the commissioner may require:
 - (i) the insurer to be authorized to do business in this state; or
 - (ii) that any of the insurer's transactions be subject to this title.
 - (6) (a) As used in Subsection (3)(i) and this Subsection (6):
 - (i) "manufacturer's or seller's service contract" means a service contract:

- (A) made available by:
 - (I) a manufacturer of a product;
 - (II) a seller of a product; or
 - (III) an affiliate of a manufacturer or seller of a product;
- (B) made available:
 - (I) on one or more specific products; or
 - (II) on products that are components of a system; and
- (C) under which the person described in Subsection (6)(a)(i)(A) is liable for services to be provided under the service contract including, if the manufacturer's or seller's service contract designates, providing parts and labor;
 - (ii) "manufacturer's or seller's warranty" means the guaranty of:
 - (A) (I) the manufacturer of a product;
 - (II) a seller of a product; or
 - (III) an affiliate of a manufacturer or seller of a product;
 - (B) (I) on one or more specific products; or
 - (II) on products that are components of a system; and
 - (C) under which the person described in Subsection (6)(a)(ii)(A) is liable for services to be provided under the warranty, including, if the manufacturer's or seller's warranty designates, providing parts and labor; and
- (iii) "service contract" is as defined in Section 31A-6a-101.
- (b) A manufacturer's or seller's warranty may be designated as:
 - (i) a warranty;
 - (ii) a guaranty; or
 - (iii) a term similar to a term described in Subsection (6)(b)(i) or (ii).
- (c) This title does not apply to:
 - (i) a manufacturer's or seller's warranty;
 - (ii) a manufacturer's or seller's service contract paid for with consideration that is in addition to the consideration paid for the product itself; and

(iii) a service contract that is not a manufacturer's or seller's warranty or manufacturer's or seller's service contract if:

(A) the service contract is paid for with consideration that is in addition to the consideration paid for the product itself;

(B) the service contract is for the repair or maintenance of goods;

(C) the cost of the product is equal to an amount determined in accordance with Subsection (6)(e); and

(D) the product is not a motor vehicle.

(d) This title does not apply to a manufacturer's or seller's warranty or service contract paid for with consideration that is in addition to the consideration paid for the product itself regardless of whether the manufacturer's or seller's warranty or service contract is sold:

(i) at the time of the purchase of the product; or

(ii) at a time other than the time of the purchase of the product.

(e) (i) For fiscal year 2001-02, the amount described in Subsection (6)(c)(iii)(C) shall be equal to \$3,700 or less.

(ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually determine whether the amount described in Subsection (6)(c)(iii)(C) should be adjusted in accordance with changes in the Consumer Price Index published by the United States Bureau of Labor Statistics selected by the commissioner by rule, between:

(A) the Consumer Price Index for the February immediately preceding the adjustment; and

(B) the Consumer Price Index for February 2001.

(iii) If under Subsection (6)(e)(ii) the commissioner determines that an adjustment should be made, the commissioner shall make the adjustment by rule.

(7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an entity formed by two or more political subdivisions or public agencies of the state:

(i) under Title 11, Chapter 13, Interlocal Cooperation Act; and

(ii) for the purpose of providing for the political subdivisions or public agencies:

- (A) subject to Subsection (7)(b), insurance coverage; or
- (B) risk management.

(b) Notwithstanding Subsection (7)(a)(ii)(A), a public agency insurance mutual may not provide health insurance unless the public agency insurance mutual provides the health insurance using:

- (i) a third party administrator licensed under Chapter 25, Third Party Administrators;
- (ii) an admitted insurer; or
- (iii) a program authorized by Title 49, Chapter 20, Public Employees' Benefit and

Insurance Program Act.

(c) Except for this Subsection (7), a public agency insurance mutual is exempt from this title.

(d) A public agency insurance mutual is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity or political subdivision of the state including all the rights and benefits of Title 63, Chapter [30] 30d, Governmental Immunity Act of Utah.

Section 11. Section **32A-1-118** is amended to read:

32A-1-118. Liability insurance -- Governmental immunity.

(1) The department shall maintain insurance against loss on each motor vehicle operated by it on any public highway. Each motor vehicle shall be covered for:

(a) any liability imposed by law upon the department for damages from bodily injuries suffered by any person or persons by reason of the ownership, maintenance, or use of the motor vehicle; and

(b) any liability or loss from damage to or destruction of property of any description, including liability of the department for the resultant loss of use of the property, which results from accident due to the ownership, maintenance, or use of the motor vehicle.

(2) The department is liable to respond in damages in all cases if a private corporation under the same circumstances would be liable.

(3) The provisions of Title 63, Chapter [30] 30d, Governmental Immunity Act of Utah,

apply in all actions commenced against the department in any action for damages sustained as a result of department ownership, maintenance, or use of motor vehicles under Subsections (1) and (2). Immunity from suit against the commission or any member of the commission, is in all respects retained in any such action.

Section 12. Section **40-10-21** is amended to read:

40-10-21. Civil action to compel compliance with chapter -- Jurisdiction -- Venue -- Division and board as parties -- Court costs -- Security when temporary restraining order or injunction sought -- Other rights not affected -- Action for damages.

(1) (a) Except as provided in Subsection (2), any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter against:

(i) the state or any other governmental instrumentality or agency to the extent permitted by the 11th Amendment to the United States Constitution or Title 63, Chapter [~~30, Utah~~] 30d, Governmental Immunity Act of Utah, which is alleged to be in violation of the provisions of this chapter or of any rule, order, or permit issued pursuant to it;

(ii) any person who is alleged to be in violation of any rule, order, or permit issued pursuant to this chapter; or

(iii) the division or board where there is alleged a failure of the division or board to perform any act or duty under this chapter which is not discretionary with the division or with the board.

(b) The district courts shall have jurisdiction without regard to the amount in controversy or the citizenship of the parties.

(2) No action may be commenced:

(a) under Subsection (1)(a)(i) or (ii):

(i) prior to 60 days after the plaintiff has given notice in writing of the violation to the division and to any alleged violator; or

(ii) if the attorney general has commenced and is diligently prosecuting a civil action in a court of the state to require compliance with the provisions of this chapter, or any rule, order, or

permit issued pursuant to this chapter; or

(b) under Subsection (1)(a)(iii) prior to 60 days after the plaintiff has given notice in writing of the action to the board, in the manner as the board prescribes by rule, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) (a) Any action concerning a violation of this chapter or the rules promulgated under it may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(b) In the action, the division and board, if not a party, may intervene as a matter of right.

(4) (a) The court, in issuing any final order in any action brought pursuant to Subsection (1) may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines that award is appropriate.

(b) The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Utah Rules of Civil Procedure.

(5) Nothing in this section may restrict any right which any person, or class of persons, has under any statute or common law to seek enforcement of any of the provisions of this chapter and the rules promulgated under it, or to seek any other relief, including relief against the division and board.

(6) Any person who is injured in his person or property through the violation by an operator of any rule, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this Subsection (6) shall affect the rights established by or limits imposed under Utah workmen's compensation laws.

Section 13. Section **41-12a-407** is amended to read:

41-12a-407. Certificate of self-funded coverage as proof of owner's or operator's security.

(1) The department may, upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has:

(a) more than 24 motor vehicles; and

(b) deposits, in a form approved by the department, securities in an amount of \$200,000 plus \$100 for each motor vehicle up to and including 1,000 motor vehicles and \$50 for every motor vehicle over 1,000 motor vehicles.

(2) Persons holding a certificate of self-funded coverage under this chapter shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motor vehicles as would an insurer issuing a policy to the self-funded person containing the coverages under Section 31A-22-302.

(3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, the department may, upon reasonable grounds, cancel the certificate. Failure to pay any judgment up to the limit under Subsection 31A-22-304(2) within 30 days after the judgment is final is a reasonable ground to cancel the certificate.

(4) Any government entity with self-funded coverage for government-owned motor vehicles under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah, meets the requirements of this section.

Section 14. Section **41-22-31** is amended to read:

41-22-31. Board to set standards for safety program -- Safety certificates issued -- Cooperation with public and private entities -- State immunity from suit.

(1) The board shall establish curriculum standards for a comprehensive off-highway vehicle safety education and training program and shall implement this program.

(a) The program shall be designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the safe operation of an off-highway vehicle.

(b) Components of the program shall include the preparation and dissemination of off-highway vehicle information and safety advice to the public and the training of off-highway vehicle operators.

(c) Off-highway vehicle safety certificates shall be issued to those who successfully

complete training or pass the knowledge and skills test established under the program.

(2) The division shall cooperate with appropriate private organizations and associations, private and public corporations, and local government units to implement the program established under this section.

(3) In addition to the governmental immunity granted in Title 63, Chapter [~~30, Utah~~] 30d, Governmental Immunity Act of Utah, the state is immune from suit for any act, or failure to act, in any capacity relating to the off-highway vehicle safety education and training program. The state is also not responsible for any insufficiency or inadequacy in the quality of training provided by this program.

Section 15. Section **58-59-308** is amended to read:

58-59-308. No guarantee.

By registering and regulating professional employer organizations under this chapter, the state:

(1) does not guarantee any right, claim, or defense of any professional employer organization, client company, coemployee, or other person;

(2) does not guarantee the financial responsibility or solvency of any professional employer organization; and

(3) does not waive any right, claim, or defense of immunity that it may have under Title 63, Chapter [~~30, Utah~~] 30d, Governmental Immunity Act of Utah, or other law.

Section 16. Section **58-73-701** is amended to read:

58-73-701. Persons immune from liability.

(1) Employees of the division, members of the board or its committees, and professional consultants serving the division or the board, are not subject to civil damages, when acting under the authority of this chapter for any act or omission performed in good faith within the scope of their functions as an employee of the division or member of the board.

(2) Employees, board members, committee members, and professional consultants are indemnified by the state. The state has full responsibility for providing legal and financial protection for employees, board members, committee members, and consultants to the board or

division.

(3) Nothing in this section may be construed to adversely limit any provision of Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah.

Section 17. Section **62A-4a-410** is amended to read:

62A-4a-410. Immunity from liability.

(1) Any person, official, or institution participating in good faith in making a report, taking photographs or X-rays, assisting an investigator from the division, serving as a member of a child protection team, or taking a child into protective custody pursuant to this part, is immune from any liability, civil or criminal, that otherwise might result by reason of those actions.

(2) This section does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah.

Section 18. Section **63-2-802** is amended to read:

63-2-802. Injunction -- Attorneys' fees.

(1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.

(2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.

(b) In determining whether to award attorneys' fees under this section, the court shall consider:

- (i) the public benefit derived from the case;
- (ii) the nature of the requester's interest in the records; and
- (iii) whether the governmental entity's or political subdivision's actions had a reasonable basis.

(c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.

(3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during

administrative proceedings.

(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.

(5) Claims for attorneys' fees as provided in this section or for damages are subject to Title 63, Chapter ~~[30]~~ 30d, Governmental Immunity Act of Utah.

Section 19. Section **63-30b-3** is amended to read:

63-30b-3. Action under Governmental Immunity Act of Utah permitted.

Nothing in this chapter shall preclude legal action against a public entity for any injury occurring as a result of the decisions or actions taken by a person performing services on a voluntary basis for that entity, where such action would otherwise be permitted under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah.

Section 20. Section **63-46b-1** is amended to read:

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Chapter 3a, Architect Licensing Act, Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional Land ~~Surveyor~~ Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55, Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah, or

judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water

measuring devices, or judicial review of the action;

(s) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities pursuant to a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1); and

(t) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action.

(3) This chapter does not affect a legal remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63-46b-21 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63-46b-21 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the

procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

Section 21. Section **63A-4-204** is amended to read:

63A-4-204. School district participation in Risk Management Fund.

(1) (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of the school district's board of education.

(b) (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund and may permit a foundation established under Section 53A-4-205 to participate in the Risk Management Fund.

(ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3) (a) The state risk manager shall treat each participating public school district as a

state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

(4) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:

- (i) by the Risk Management Fund;
- (ii) under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah; and
- (iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers and

Employees.

(b) (i) The information described in Subsection (4)(a) shall include:

- (A) the eligibility requirements, if any, to receive the coverage;
- (B) the basic nature of the coverage for a school district employee; and
- (C) whether the coverage is primary or in excess of any other coverage the risk manager

knows is commonly available to a school district employee in this state.

(ii) The information described in Subsection (4)(a) may include:

- (A) comparisons the risk manager considers beneficial to a school district employee

between:

- (I) the coverage described in Subsection (4)(a); and
- (II) other coverage the risk manager knows is commonly available to a school district

employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund.

(d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district:

- (i) within 30 days of the day the school district employee is hired by the school district;

and

(ii) by no later than April 15 of each calendar year.

Section 22. Section **63A-4-204.5** is amended to read:

63A-4-204.5. Charter school participation in Risk Management Fund.

(1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, may participate in the Risk Management Fund upon the approval of the state risk manager and the governing body of the charter school.

(2) (a) For purposes of administration, the state risk manager shall treat each charter school participating in the fund as a state agency.

(b) Each charter school participating in the fund shall comply with the provisions of this part that affect state agencies.

(3) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah; and

(iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (3)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a charter school employee; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.

(ii) The information described in Subsection (3)(a) may include:

(A) comparisons the risk manager considers beneficial to a charter school employee between:

(I) the coverage described in Subsection (3)(a); and

(II) other coverage the risk manager knows is commonly available to a charter school

employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund.

(d) A charter school that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school:

(i) within 30 days of the day the charter school employee is hired by the charter school; and

(ii) by no later than April 15 of each calendar year.

Section 23. Section **67-5b-107** is amended to read:

67-5b-107. Immunity -- Limited liability.

(1) Officers and employees performing services for two or more public agencies pursuant to contracts executed under the provisions of this part are considered to be officers and employees of the public agency employing their services, even though performing those functions outside of the territorial limits of any one of the contracting public agencies, and are considered to be officers and employees of public agencies in accordance with Title 63, Chapter [30] 30d, Governmental Immunity Act of Utah.

(2) The officers and employees of the center, while acting within the scope of their authority, are not subject to any personal or civil liability resulting from carrying out any of the purposes of a center under the provisions of Title 63, Chapter [30] 30d, Governmental Immunity Act of Utah.

(3) A volunteer is considered a government employee in accordance with Section 67-20-3 and entitled to immunity under the provisions of Title 63, Chapter [30] 30d, Governmental Immunity Act of Utah.

(4) A volunteer, other than one considered a government employee in accordance with Section 67-20-3, may not incur any personal financial liability for any tort claim or other action seeking damage for an injury arising from any act or omission of the volunteer while providing

services for the nonprofit organization if:

(a) the individual was acting in good faith and reasonably believed he was acting within the scope of his official functions and duties with the center; and

(b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal or wanton misconduct.

(5) The center is not liable for the acts or omissions of its volunteers in any circumstance where the acts of its volunteers are not as described in Section (4) unless:

(a) the center had, or reasonably should have had, reasonable notice of the volunteer's unfitness to provide services to the center under circumstances that make the center's use of the volunteer reckless or wanton in light of that notice; or

(b) a business employer would be liable under the laws of this state if the act or omission were the act or omission of one of its employees.

Section 24. Section **72-5-306** is amended to read:

72-5-306. Assumption of risk -- Immunity -- Public safety.

(1) An R.S. 2477 right-of-way not designated under Section 72-3-102, 72-3-103, or 72-3-104 as a Class A, B, or C road is traveled at the risk of the user.

(2) The state and its political subdivisions do not waive immunity under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah, for injuries or damages occurring in or associated with any R.S. 2477 right-of-way.

(3) The state and its political subdivisions assume no liability for injury or damage resulting from a failure to maintain any:

(a) R.S. 2477 right-of-way for vehicular travel; or

(b) highway sign on an R.S. 2477 right-of-way.

(4) If the state or any political subdivision of the state chooses to maintain an R.S. 2477 right-of-way, the basic governmental objective involved in providing the improvements is the consistent promotion of public safety.

(5) (a) The state recognizes that there are limited funds available to upgrade all R.S. 2477 rights-of-way to applicable safety standards.

(b) A decision by the state or a political subdivision of the state to allocate funds for maintaining an R.S. 2477 right-of-way is the result of evaluation and assigning of priorities for the promotion of public safety.

(c) The state or a political subdivision of the state must use its judgment and expertise to evaluate which safety feature improvements should be made first. In making this policy determination the state or a political subdivision of the state may:

(i) perform on-site inspections and weigh all factors relating to safety, including the physical characteristics and configuration of the R.S. 2477 right-of-way and the volume and type of traffic on the R.S. 2477 right-of-way; and

(ii) consult with transportation experts who have expertise to make an evaluation of the relative dangerousness of R.S. 2477 rights-of-way within their jurisdiction.

Section 25. Section **73-18c-306** is amended to read:

73-18c-306. Certificate of self-funded coverage as proof of owner's or operator's security.

(1) The division may, upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has:

(a) more than 24 personal watercraft; and

(b) deposits, in a form approved by the division, securities in an amount of \$200,000 plus \$100 for each personal watercraft up to and including 1,000 personal watercraft and \$50 for each personal watercraft over 1,000 personal watercraft.

(2) Persons holding a certificate of self-funded coverage under this chapter shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of personal watercraft as would an insurer issuing a policy to the self-funded person containing the coverages under Sections 31A-22-1502 and 31A-22-1503.

(3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, the division may, upon reasonable grounds, cancel the certificate. Failure to pay any judgment up to the limit under Subsection 31A-22-1503(2) within 30 days after the judgment is final is a reasonable ground to cancel the certificate.

(4) Any government entity with self-funded coverage for government-owned personal watercraft under Title 63, Chapter [~~30, Utah~~] 30d, Governmental Immunity Act of Utah, meets the requirements of this section.

Section 26. Section **73-26-403** is amended to read:

73-26-403. Immunity from suit -- Exception.

Activities engaged in under authority of this chapter are governmental functions. The state and its officers and employees are immune from suit for any injury or damage resulting from those activities, except as provided in Section [~~63-30-9~~] 63-30d-301.

Section 27. Section **76-10-1311** is amended to read:

76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil liability.

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

- (a) the HIV infection test results;
- (b) a copy of the written notice as provided in Section 76-10-1312;
- (c) photographic identification; and
- (d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63-2-302(1)(b) or a controlled record pursuant to Section 63-2-303.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or ~~[malice]~~ willful misconduct as provided in Section ~~[63-30-4]~~ 63-30d-202.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63-2-801.

(10) When the medical file is released as provided in Section 63-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Section 28. Section **78-2a-6** is amended to read:

**78-2a-6. Appellate Mediation Office -- Protected records and information --
Governmental immunity.**

(1) Unless a more restrictive rule of court is adopted pursuant to Subsection 63-2-201(3)(b), information and records relating to any matter on appeal received or generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a result of any

party's participation or lack of participation in the settlement program shall be maintained as protected records pursuant to Subsections 63-2-304(16), (17), (18), and (33).

(2) In addition to the access restrictions on protected records provided in Section 63-2-202, the information and records may not be disclosed to judges, staff, or employees of any court of this state.

(3) The Chief Appellate Mediator may disclose statistical and other demographic information as may be necessary and useful to report on the status and to allow supervision and oversight of the Appellate Mediation Office.

(4) When acting as mediators, the Chief Appellate Mediator and other professional staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63, Chapter [30, Utah] 30d. Governmental Immunity Act of Utah.

(5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

Section 29. Section **78-3a-912** is amended to read:

78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court and shall consider only the best interest of a minor in determining whether to appoint a guardian ad litem.

(2) An attorney guardian ad litem shall represent the best interest of each minor who may become the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is removed from the minor's home by the division, or the date the petition is filed, whichever occurs earlier.

(3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad litem, shall:

- (a) represent the best interest of the minor in all proceedings;
- (b) be trained in applicable statutory, regulatory, and case law, and in accordance with

the United States Department of Justice National Court Appointed Special Advocate Association guidelines, prior to representing any minor before the court;

(c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child;

(d) (i) personally meet with the minor;

(ii) personally interview the minor if the minor is old enough to communicate;

(iii) determine the minor's goals and concerns regarding placement; and

(iv) personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement;

(e) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a minor;

(f) personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case;

(g) participate in all appeals unless excused by order of the court;

(h) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's parent;

(i) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status of the minor's case, all court and administrative proceedings, discussions, and proposals made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(j) review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and the minor's family; and

(k) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and attempt

to assess whether they are accomplishing their intended goal.

(4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court. An attorney guardian ad litem may not, however, delegate the attorney's responsibilities described in Subsection (3).

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(c) The court may use volunteers trained in accordance with the requirements of Subsection (4)(b) to assist in investigation and preparation of information regarding the cases of individual minors within the jurisdiction.

(d) When possible and appropriate, the court may use a volunteer who is a peer of the minor appearing before the court, in order to provide assistance to that minor, under the supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or other trained staff.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from duties by the court.

(6) (a) The juvenile court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(b) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent who is found to be impecunious. If a person claims to be

impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 78-7-36 and the court shall follow the procedures and make the determinations as provided in Section 78-7-36.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest. A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) An attorney guardian ad litem shall maintain current and accurate records regarding the number of times the attorney has had contact with each minor and the actions the attorney has taken in representation of the minor's best interest.

(11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

(b) All records of an attorney guardian ad litem are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the Legislature.

(c) Records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature. The Office of the Legislative Auditor General may, however,

include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) Because of the unique role of an attorney guardian ad litem described in Subsection (8), and the state's role and responsibility to provide a guardian ad litem program and, as *parens patriae*, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

(e) The Office of the Guardian Ad Litem shall present an annual report to the Child Welfare Legislative Oversight Panel detailing:

- (i) the development, policy, and management of the statewide guardian ad litem program;
- (ii) the training and evaluation of attorney guardians ad litem and volunteers; and
- (iii) the number of children served by the Office of the Guardian Ad Litem.

Section 30. Section **78-27-37** is amended to read:

78-27-37. Definitions.

As used in Sections 78-27-37 through Section 78-27-43:

(1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

(3) "Person immune from suit" means:

(a) an employer immune from suit under Title 34A, Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act; and

(b) a governmental entity or governmental employee immune from suit pursuant to Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of Utah.

(4) "Person seeking recovery" means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

Section 31. Section **78-27-43** is amended to read:

78-27-43. Effect on immunity, exclusive remedy, indemnity, contribution.

Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any common law or statutory immunity from liability, including, but not limited to, governmental immunity as provided in Title 63, Chapter [30] 30d, and the exclusive remedy provisions of Title 34A, Chapter 2, Workers' Compensation Act. Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any right to indemnity or contribution arising from statute, contract, or agreement.