

1 **WAIVERS OF IMMUNITY - EXCEPTIONS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory H. Hughes**

5 Senate Sponsor: Dan R. Eastman

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Human Services Code and the Governmental Immunity Act
10 of Utah to provide exceptions to the immunity granted to government employees and
11 certain persons, officials, and institutions.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that the immunity of a person, official, or institution who participates or
15 assists in a child protection matter does not apply if the person intentionally,
16 willfully, or knowingly engages in certain misconduct;

17 ▶ provides that the immunity of a government employee during the performance of an
18 employee's duties, within the scope of employment, or under color of authority does
19 not apply if the employee intentionally or knowingly engages in certain misconduct;
20 and

21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **62A-4a-410**, as last amended by Chapter 102, Laws of Utah 2005

29 **63-30d-202**, as enacted by Chapter 267, Laws of Utah 2004



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

32 Section 1. Section **62A-4a-410** is amended to read:

33 **62A-4a-410. Immunity from liability -- Exceptions.**

34 (1) ~~[Any] Except as provided in Subsection (3), any~~ person, official, or institution
35 participating in good faith in making a report, taking photographs or X-rays, assisting an
36 investigator from the division, serving as a member of a child protection team, or taking a child
37 into protective custody pursuant to this part, is immune from any liability, civil or criminal, that
38 otherwise might result by reason of those actions.

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

42 ~~(3) The immunity described in Subsection (1) does not apply if the person, official, or~~
43 ~~institution:~~

44 ~~(a) acted or failed to act through fraud or willful misconduct;~~

45 ~~(b) in a judicial or administrative proceeding, intentionally or knowingly gave, upon a~~
46 ~~lawful oath or in any form allowed by law as a substitute for an oath, false testimony material~~
47 ~~to the issue or matter of inquiry in the proceeding; or~~

48 ~~(c) intentionally or knowingly:~~

49 ~~(i) fabricated evidence; ~~H→~~ or ~~←H~~~~

50 ~~(ii) with a conscious disregard for the rights of others, failed to disclose~~

50a ~~H→~~ **[exculpatory]** ~~←H~~

51 ~~evidence that:~~

52 ~~(A) was known to the person, official, or institution; and~~

53 ~~(B) was known by the person, official, or institution to be relevant to an issue or matter~~
54 ~~of inquiry in a judicial or administrative proceeding ~~H→~~ [~~;~~ or~~

55 ~~— (iii) obtained testimony by duress or undue influence] ~~←H~~ .~~

56 Section 2. Section **63-30d-202** is amended to read:

57 **63-30d-202. Act provisions not construed as admission or denial of liability --**

58 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**

59 **personal liability.**

60 (1) (a) Nothing contained in this chapter, unless specifically provided, may be
61 construed as an admission or denial of liability or responsibility by or for a governmental entity
62 or its employees.

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

65 (c) No cause of action or basis of liability is created by any waiver of immunity in this
66 chapter, nor may any provision of this chapter be construed as imposing strict liability or
67 absolute liability.

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

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

74 (b) Judgment under this chapter against a governmental entity is a complete bar to any
75 action by the claimant, based upon the same subject matter, against the employee whose act or
76 omission gave rise to the claim.

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

80 (i) the employee acted or failed to act through fraud or willful misconduct;

81 (ii) the injury or damage resulted from the employee driving a vehicle, or being in
82 actual physical control of a vehicle:

83 (A) with a blood alcohol content equal to or greater by weight than the established
84 legal limit;

85 (B) while under the influence of alcohol or any drug to a degree that rendered the
86 person incapable of safely driving the vehicle; or

87 (C) while under the combined influence of alcohol and any drug to a degree that
88 rendered the person incapable of safely driving the vehicle;

89 (iii) injury or damage resulted from the employee being physically or mentally

90 impaired so as to be unable to reasonably perform his or her job function because of:

91 (A) the use of alcohol;

92 (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or

93 (C) the combined influence of alcohol and a nonprescribed controlled substance as

94 defined by Section 58-37-4; [~~or~~]

95 (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly

96 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false

97 testimony material to the issue or matter of inquiry under this section[~~;~~]; or

98 (v) the employee intentionally or knowingly:

99 (A) fabricated evidence; ~~H→~~ or ~~←H~~

100 (B) with a conscious disregard for the rights of others, failed to disclose

100a ~~H→~~ [~~exculpatory~~] ~~←H~~

101 evidence that:

102 (I) was known to the employee; and

103 (II) was known by the employee to be relevant to an issue or matter of inquiry in a

104 judicial or administrative proceeding ~~H→~~ [~~;~~ or

105 ~~(C) obtained testimony by duress or undue influence] ~~←H~~ .~~

106 (4) Except as permitted in Subsection (3)(c), no employee may be joined or held

107 personally liable for acts or omissions occurring:

108 (a) during the performance of the employee's duties;

109 (b) within the scope of employment; or

110 (c) under color of authority.

Legislative Review Note
as of 1-29-07 3:58 PM

Office of Legislative Research and General Counsel

H.B. 395 - Waivers of Immunity - Exceptions

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require an immediate appropriation. Any future costs associated with this bill will be dependent on actions that may be brought against individual state employees.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals and businesses. Any future costs to local governments will be dependent on actions that may be brought against individual employees.
