

WAIVERS OF IMMUNITY - EXCEPTIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Dan R. Eastman

LONG TITLE

Committee Note:

The Child Welfare Legislative Oversight Panel recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

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

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

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

(1) ~~[Any]~~ Except as provided in Subsection (3), 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 30d, Governmental Immunity Act of Utah.

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

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

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

(c) intentionally or knowingly:

(i) fabricated evidence; or

(ii) ~~H→~~ except as provided in Subsection (4), ~~←H~~ with a conscious disregard for the rights of others, failed to disclose evidence that:

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

(B) was known by the person, official, or institution to be relevant to an issue or matter of inquiry in a judicial or administrative proceeding.

~~H→~~ (4) **Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or institution:**

(a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person, official, or institution is prohibited by law from disclosing the evidence; or

(b) (i) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to

55f disclose evidence described in Subsection (3)(c)(ii) to a person who requested the evidence; and
55g (ii) after refusing to disclose the evidence under Subsection (4)(b)(i),
55h complied with or responded to a valid court order or valid subpoena received by the person,
55i official, or institution to disclose the evidence described in Subsection (3)(c)(ii). ←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**

personal liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

impaired so as to be unable to reasonably perform ~~[his or her]~~ the employee's job function because of:

(A) the use of alcohol;

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

(C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4; ~~[or]~~

(iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section~~[-]; or~~

(v) the employee intentionally or knowingly:

(A) fabricated evidence; or

(B) ~~Ĥ→~~ except as provided in Subsection (3)(d), ~~←Ĥ~~ with a conscious disregard for the rights of others, failed to disclose evidence that:

(I) was known to the employee; and

(II) was known by the employee to be relevant to an issue or matter of inquiry in a judicial or administrative proceeding.

Ĥ→ (d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or pursue a civil action or proceeding against an employee, does not apply if the employee ~~[-]~~

(i)] failed to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by law from disclosing the evidence ~~[-; or~~

—— (ii) (A) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to disclose evidence described in Subsection (3)(c)(v)(B) to a person who requested the evidence; and

—— (B) after refusing to disclose the evidence under Subsection (3)(d)(ii)(A), complied

with or responded to a valid court order or valid subpoena received by the employee to

disclose the evidence described in Subsection (3)(c)(v)(B).] ~~←Ĥ~~

(4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:

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

(b) within the scope of employment; or

(c) under color of authority.

Legislative Review Note

as of 11-6-07 11:21 AM

H.B. 33

12-10-07 9:10 AM

Office of Legislative Research and General Counsel

H.B. 33 - Waivers of Immunity - Exceptions

Fiscal Note

2008 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, businesses, or local governments.