

1 **WAIVERS OF IMMUNITY - EXCEPTIONS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: Dan R. Eastman

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Human Services Code and the Governmental Immunity Act of
10 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 Laws of Utah 2005, Chapter 102

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

30

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 to
47 the issue or matter of inquiry in the proceeding; or

48 (c) intentionally or knowingly:

49 (i) fabricated evidence; or

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

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

53 (B) (I) was known by the person, official, or institution to be relevant to a material issue
54 or matter of inquiry in a pending judicial or administrative proceeding if the person, official, or
55 institution knew of the pending judicial or administrative proceeding; or

56 (II) was known by the person, official, or institution to be relevant to a material issue or
57 matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was

58 requested of the employee by a party to the proceeding or counsel for a party to the proceeding.
59 (4) Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or institution:
60 (a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person,
61 official, or institution is prohibited by law from disclosing the evidence; or
62 (b) (i) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to disclose evidence
63 described in Subsection (3)(c)(ii) to a person who requested the evidence; and
64 (ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or
65 responded to a valid court order or valid subpoena received by the person, official, or institution
66 to disclose the evidence described in Subsection (3)(c)(ii).

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

68 **63-30d-202. Act provisions not construed as admission or denial of liability --**
69 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**
70 **personal liability.**

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

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

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

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

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

85 (b) Judgment under this chapter against a governmental entity is a complete bar to any

86 action by the claimant, based upon the same subject matter, against the employee whose act or
87 omission gave rise to the claim.

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

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

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

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

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

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

100 (iii) injury or damage resulted from the employee being physically or mentally impaired
101 so as to be unable to reasonably perform ~~[his or her]~~ the employee's job function because of:

102 (A) the use of alcohol;

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

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

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

109 (v) the employee intentionally or knowingly:

110 (A) fabricated evidence; or

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

113 (I) was known to the employee; and

114 (II) (Aa) was known by the employee to be relevant to a material issue or matter of
115 inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending
116 judicial or administrative proceeding; or

117 (Bb) was known by the employee to be relevant to a material issue or matter of inquiry
118 in a judicial or administrative proceeding, if disclosure of the evidence was requested of the
119 employee by a party to the proceeding or counsel for a party to the proceeding.

120 (d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or
121 pursue a civil action or proceeding against an employee, does not apply if the employee failed to
122 disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by
123 law from disclosing the evidence.

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

- 126 (a) during the performance of the employee's duties;
- 127 (b) within the scope of employment; or
- 128 (c) under color of authority.