

**Senator Dan R. Eastman** proposes the following substitute bill:

**WAIVERS OF IMMUNITY - EXCEPTIONS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory H. Hughes**

Senate Sponsor: Dan R. Eastman

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**LONG TITLE**

**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



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

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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; 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 an issue or  
54 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 an issue or matter

57 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  
60 institution:

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

63 (b) (i) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to disclose evidence  
64 described in Subsection (3)(c)(ii) to a person who requested the evidence; and

65 (ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or  
66 responded to a valid court order or valid subpoena received by the person, official, or  
67 institution to disclose the evidence described in Subsection (3)(c)(ii).

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

69 **63-30d-202. Act provisions not construed as admission or denial of liability --**

70 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**  
71 **personal liability.**

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

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

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

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

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

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

88 omission gave rise to the claim.

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

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

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

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

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

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

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

104 (A) the use of alcohol;

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

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

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

111 (v) the employee intentionally or knowingly:

112 (A) fabricated evidence; or

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

115 (I) was known to the employee; and

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

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

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

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

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

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**H.B. 33 1st Sub. (Buff) - Waivers of Immunity - Exceptions**

**Fiscal Note**

2008 General Session

State of Utah

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**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.

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**Individual, Business and/or Local Impact**

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

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