

**Senator J. Stuart Adams** proposes the following substitute bill:

**GOVERNMENTAL IMMUNITY AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts language creating an exemption from waiver of governmental immunity for certain injuries arising from the operation of a law enforcement vehicle in pursuit.

**Highlighted Provisions:**

This bill:

▶ enacts language creating an exemption from waiver of governmental immunity for certain injuries arising from the operation of a law enforcement vehicle in pursuit;

and

▶ makes technical and conforming corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-7-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382

**63G-7-401**, as last amended by Laws of Utah 2009, Chapter 350

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

27 Section 1. Section **63G-7-301** is amended to read:

28 **63G-7-301. Waivers of immunity -- Exceptions.**

29 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
30 obligation.

31 (b) Actions arising out of contractual rights or obligations are not subject to the  
32 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

33 (c) The Division of Water Resources is not liable for failure to deliver water from a  
34 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
35 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
36 condition, or safety condition that causes a deficiency in the amount of available water.

37 (2) Immunity from suit of each governmental entity is waived:

38 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
39 personal property;

40 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
41 property, to determine any adverse claim on real or personal property, or to obtain an  
42 adjudication about any mortgage or other lien that the governmental entity may have or claim  
43 on real or personal property;

44 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
45 merchandise, or other property while it is in the possession of any governmental entity or  
46 employee, if the property was seized for the purpose of forfeiture under any provision of state  
47 law;

48 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of  
49 Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the  
50 governmental entity when the governmental entity has taken or damaged private property for  
51 public uses without just compensation;

52 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney  
53 fees under Sections 63G-2-405 and 63G-2-802;

54 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
55 Act; or

56 (g) as to any action brought to obtain relief from a land use regulation that imposes a

57 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
58 Land Use Act.

59 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each  
60 governmental entity is waived as to any injury caused by:

61 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
62 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

63 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
64 or other public improvement.

65 (b) Immunity from suit of each governmental entity is not waived if the injury arises  
66 out of, in connection with, or results from:

67 (i) a latent dangerous or latent defective condition of any highway, road, street, alley,  
68 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

69 (ii) a latent dangerous or latent defective condition of any public building, structure,  
70 dam, reservoir, or other public improvement.

71 (4) Immunity from suit of each governmental entity is waived as to any injury  
72 proximately caused by a negligent act or omission of an employee committed within the scope  
73 of employment.

74 (5) Immunity from suit of each governmental entity is not waived under Subsections  
75 (3) and (4) if the injury arises out of, in connection with, or results from:

76 (a) the exercise or performance, or the failure to exercise or perform, a discretionary  
77 function, whether or not the discretion is abused;

78 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional  
79 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of  
80 mental anguish, or violation of civil rights;

81 (c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to  
82 issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar  
83 authorization;

84 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

85 (e) the institution or prosecution of any judicial or administrative proceeding, even if  
86 malicious or without probable cause;

87 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

- 88 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil
- 89 disturbances;
- 90 (h) the collection of and assessment of taxes;
- 91 (i) the activities of the Utah National Guard;
- 92 (j) the incarceration of any person in any state prison, county or city jail, or other place
- 93 of legal confinement;
- 94 (k) any natural condition on publicly owned or controlled lands;
- 95 (l) any condition existing in connection with an abandoned mine or mining operation;
- 96 (m) any activity authorized by the School and Institutional Trust Lands Administration
- 97 or the Division of Forestry, Fire, and State Lands;
- 98 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
- 99 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
- 100 if:
  - 101 (i) the trail is designated under a general plan adopted by a municipality under Section
  - 102 10-9a-401 or by a county under Section 17-27a-401;
  - 103 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
  - 104 use as evidenced by a written agreement between the owner or operator of the trail
  - 105 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
  - 106 where the trail is located; and
  - 107 (iii) the written agreement:
    - 108 (A) contains a plan for operation and maintenance of the trail; and
    - 109 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
    - 110 where the trail is located has, at minimum, the same level of immunity from suit as the
    - 111 governmental entity in connection with or resulting from the use of the trail.
  - 112 (o) research or implementation of cloud management or seeding for the clearing of fog;
  - 113 (p) the management of flood waters, earthquakes, or natural disasters;
  - 114 (q) the construction, repair, or operation of flood or storm systems;
  - 115 (r) the operation of an emergency vehicle, while being driven in accordance with the
  - 116 requirements of Section 41-6a-212;
  - 117 (s) the activities of:
    - 118 (i) providing emergency medical assistance;

- 119 (ii) fighting fire;
- 120 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 121 (iv) emergency evacuations;
- 122 (v) transporting or removing injured persons to a place where emergency medical
- 123 assistance can be rendered or where the person can be transported by a licensed ambulance
- 124 service; or
- 125 (vi) intervening during dam emergencies;
- 126 (t) the exercise or performance, or the failure to exercise or perform, any function
- 127 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 128 [~~or~~]
- 129 (u) unauthorized access to government records, data, or electronic information systems
- 130 by any person or entity[-];
- 131 (v) in the case of an injured suspect, a suspect fleeing a motor vehicle after a law
- 132 enforcement officer has activated the emergency lights on the officer's vehicle to effect a stop:
- 133 or
- 134 (w) in the case of an injury of a person other than a suspect, a suspect fleeing a motor
- 135 vehicle:
- 136 (i) after a law enforcement officer has activated the emergency lights on the officer's
- 137 vehicle to effect a stop; and
- 138 (ii) the officer has operated the officer's vehicle reasonably in the pursuit.

139 Section 2. Section **63G-7-401** is amended to read:

140 **63G-7-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability --**  
141 **Appointment of guardian ad litem.**

142 (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of  
143 limitations that would apply if the claim were against a private person begins to run.

144 (b) The statute of limitations does not begin to run until a claimant knew, or with the  
145 exercise of reasonable diligence should have known:

- 146 (i) that the claimant had a claim against the governmental entity or its employee; and
- 147 (ii) the identity of the governmental entity or the name of the employee.
- 148 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

149 (2) Any person having a claim against a governmental entity, or against its employee

150 for an act or omission occurring during the performance of the employee's duties, within the  
151 scope of employment, or under color of authority shall file a written notice of claim with the  
152 entity before maintaining an action, regardless of whether or not the function giving rise to the  
153 claim is characterized as governmental.

154 (3) (a) The notice of claim shall set forth:

155 (i) a brief statement of the facts;

156 (ii) the nature of the claim asserted;

157 (iii) the damages incurred by the claimant so far as they are known; and

158 (iv) if the claim is being pursued against a governmental employee individually as  
159 provided in Subsection 63G-7-202(3)(c), the name of the employee.

160 (b) The notice of claim shall be:

161 (i) signed by the person making the claim or that person's agent, attorney, parent, or  
162 legal guardian; and

163 (ii) directed and delivered by hand or by mail according to the requirements of Section  
164 68-3-8.5 to the office of:

165 (A) the city recorder or town clerk, when the claim is against an incorporated city or  
166 town;

167 (B) the county clerk, when the claim is against a county;

168 (C) the superintendent or business administrator of the board, when the claim is against  
169 a school district or board of education;

170 (D) the presiding officer or secretary/clerk of the board, when the claim is against a  
171 local district or special service district;

172 (E) the attorney general, when the claim is against the state;

173 (F) a member of the governing board, the executive director, or executive secretary,  
174 when the claim is against any other public board, commission, or body; or

175 (G) the agent authorized by a governmental entity to receive the notice of claim by the  
176 governmental entity under Subsection (5)(e).

177 (4) (a) If an injury that may reasonably be expected to result in a claim against a  
178 governmental entity is sustained by a claimant who is under the age of majority or mentally  
179 incompetent, that governmental entity may file a request with the court for the appointment of a  
180 guardian ad litem for the potential claimant.

181 (b) If a guardian ad litem is appointed, the time for filing a claim under Section  
182 63G-7-402 begins when the order appointing the guardian is issued.

183 (5) (a) Each governmental entity subject to suit under this chapter shall file a statement  
184 with the Division of Corporations and Commercial Code within the Department of Commerce  
185 containing:

- 186 (i) the name and address of the governmental entity;
- 187 (ii) the office or agent designated to receive a notice of claim; and
- 188 (iii) the address at which it is to be directed and delivered.

189 (b) Each governmental entity shall update its statement as necessary to ensure that the  
190 information is accurate.

191 (c) The Division of Corporations and Commercial Code shall develop a form for  
192 governmental entities to complete that provides the information required by Subsection (5)(a).

193 (d) (i) A newly incorporated municipality shall file the statement required by  
194 Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation  
195 under Section 67-1a-6.5.

196 (ii) A newly incorporated local district shall file the statement required by Subsection  
197 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section  
198 17B-1-215.

199 (e) A governmental entity may, in its statement, identify an agent authorized by the  
200 entity to accept notices of claim on its behalf.

201 (6) The Division of Corporations and Commercial Code shall:

- 202 (a) maintain an index of the statements required by this section arranged both  
203 alphabetically by entity and by county of operation; and
- 204 (b) make the indices available to the public both electronically and via hard copy.

205 (7) A governmental entity may not challenge the validity of a notice of claim on the  
206 grounds that it was not directed and delivered to the proper office or agent if the error is caused  
207 by the governmental entity's failure to file or update the statement required by Subsection (5).