

Senator Todd Weiler proposes the following substitute bill:

GOVERNMENTAL IMMUNITY ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill modifies a provision relating to the filing of a notice of claim.

Highlighted Provisions:

This bill:

► provides that a governmental entity may not challenge the timeliness of a notice of claim filed within a specified time if the claimant had in good faith previously filed a notice of claim with another governmental entity and if other conditions are met.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. Section **63G-7-401** is amended to read:

63G-7-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability --



26 **Appointment of guardian ad litem.**

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

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

31 (i) that the claimant had a claim against the governmental entity or its employee; and

32 (ii) the identity of the governmental entity or the name of the employee.

33 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

34 (2) Any person having a claim against a governmental entity, or against its employee
35 for an act or omission occurring during the performance of the employee's duties, within the
36 scope of employment, or under color of authority shall file a written notice of claim with the
37 entity before maintaining an action, regardless of whether or not the function giving rise to the
38 claim is characterized as governmental.

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

40 (i) a brief statement of the facts;

41 (ii) the nature of the claim asserted;

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

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

45 (b) The notice of claim shall be:

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

48 (ii) directed and delivered by hand or by mail according to the requirements of Section
49 68-3-8.5 to the office of:

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

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

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

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

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

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

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

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

65 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
66 63G-7-402 begins when the order appointing the guardian is issued.

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

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

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

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

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

80 (ii) A newly incorporated local district shall file the statement required by Subsection
81 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section
82 17B-1-215.

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

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

86 (a) maintain an index of the statements required by this section arranged both
87 alphabetically by entity and by county of operation; and

88 (b) make the indices available to the public both electronically and via hard copy.

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

92 (8) A governmental entity may not challenge the timeliness, under Section [63G-7-402](#),
93 of a notice of claim if:

94 (a) the claimant files a notice of claim with the governmental entity:

95 (i) in accordance with the requirements of this section; and

96 (ii) within ~~60~~ 30 ~~60~~ days after the expiration of the time for filing a notice of claim
96a under

97 Section [63G-7-402](#);

98 (b) the claimant demonstrates that the claimant previously filed a notice of claim:

99 (i) in accordance with the requirements of this section;

100 (ii) with an incorrect governmental entity;

101 (iii) in the good faith belief that the claimant was filing the notice of claim with the
102 correct governmental entity;

103 (iv) within the time for filing a notice of claim under Section [63G-7-402](#); and

104 (v) no earlier than ~~60~~ 30 ~~60~~ days before the expiration of the time for filing a notice
104a of claim

105 under Section [63G-7-402](#); and

106 (c) the claimant submits with the notice of claim:

107 (i) a copy of the previous notice of claim that was filed with a governmental entity
108 other than the correct governmental entity; and

109 (ii) proof of the date the previous notice of claim was filed.