

**PUBLIC DUTY DOCTRINE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Kay L. McIff

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**LONG TITLE**

**General Description:**

This bill enacts a provision relating to the duty of a governmental entity or employee.

**Highlighted Provisions:**

This bill:

► provides that a general duty that a governmental entity or employee owes to the public does not create a specific duty to an individual member of the public unless there is a special relationship between the governmental entity or employee and the individual member of the public.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-7-202**, as last amended by Laws of Utah 2008, Chapter 395 and renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **63G-7-202** is amended to read:

**63G-7-202. Act provisions not construed as admission or denial of liability --**



28 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**  
29 **personal liability.**

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

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

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

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

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

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

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

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

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

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

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

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

- 59 (iii) injury or damage resulted from the employee being physically or mentally  
60 impaired so as to be unable to reasonably perform the employee's job function because of:
- 61 (A) the use of alcohol;
- 62 (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or
- 63 (C) the combined influence of alcohol and a nonprescribed controlled substance as  
64 defined by Section 58-37-4;
- 65 (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly  
66 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false  
67 testimony material to the issue or matter of inquiry under this section; or
- 68 (v) the employee intentionally or knowingly:
- 69 (A) fabricated evidence; or
- 70 (B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of  
71 others, failed to disclose evidence that:
- 72 (I) was known to the employee; and
- 73 (II) (Aa) was known by the employee to be relevant to a material issue or matter of  
74 inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending  
75 judicial or administrative proceeding; or
- 76 (Bb) was known by the employee to be relevant to a material issue or matter of inquiry  
77 in a judicial or administrative proceeding, if disclosure of the evidence was requested of the  
78 employee by a party to the proceeding or counsel for a party to the proceeding.
- 79 (d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or  
80 pursue a civil action or proceeding against an employee, does not apply if the employee failed  
81 to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited  
82 by law from disclosing the evidence.
- 83 (4) Except as permitted in Subsection (3)(c), no employee may be joined or held  
84 personally liable for acts or omissions occurring:
- 85 (a) during the performance of the employee's duties;
- 86 (b) within the scope of employment; or
- 87 (c) under color of authority.
- 88 (5) A general duty that a governmental entity or an employee owes to the public does  
89 not create a specific duty to an individual member of the public, unless the individual member

90 of the public stands so far apart from the general public that there is a special relationship  
91 between the governmental entity or employee and the individual member of the public.

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**Legislative Review Note**  
as of 2-25-14 6:29 AM

**Office of Legislative Research and General Counsel**