

GOVERNMENTAL IMMUNITY ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill provides a process for governmental entities and claimants to correct an improperly delivered notice of claim for injury.

Highlighted Provisions:

This bill:

- ▶ requires a governmental entity to notify a claimant in writing within 14 days of having received an improper delivery of a notice of claim;
 - ▶ specifies a 60-day period after receiving notice of an improperly delivered notice of claim for a claimant to refile a notice of claim with the proper governmental entity;
- and
- ▶ provides that the refiled notice of claim is considered filed at the time of the earlier improperly delivered notice, under certain circumstances.

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



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

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

30 **63G-7-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability --**
31 **Appointment of guardian ad litem.**

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

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

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

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

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

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

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

45 (i) a brief statement of the facts;

46 (ii) the nature of the claim asserted;

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

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

50 (b) The notice of claim shall be:

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

53 (ii) directed and delivered by hand or by mail according to the requirements of Section
54 **68-3-8.5** to the office of:

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

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

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

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

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

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

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

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

70 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
71 [63G-7-402](#) begins when the order appointing the guardian is issued.

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

75 (i) the name and address of the governmental entity;

76 (ii) the office or agent designated to receive a notice of claim; and

77 (iii) the address at which it is to be directed and delivered.

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

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

82 (d) (i) A newly incorporated municipality shall file the statement required by
83 Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation
84 under Section [67-1a-6.5](#).

85 (ii) A newly incorporated local district shall file the statement required by Subsection
86 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section
87 [17B-1-215](#).

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

90 (6) The Division of Corporations and Commercial Code shall:
91 (a) maintain an index of the statements required by this section arranged both
92 alphabetically by entity and by county of operation; and
93 (b) make the indices available to the public both electronically and via hard copy.
94 (7) A governmental entity may not challenge the validity of a notice of claim on the
95 grounds that it was not directed and delivered to the proper office or agent if the error is caused
96 by the governmental entity's failure to file or update the statement required by Subsection (5).
97 (8) (a) A governmental entity that receives a notice of claim in its office that the
98 claimant should have properly delivered to another office shall, within 14 days after receiving
99 the notice of claim, notify the claimant in writing of the improper delivery.
100 (b) A claimant who, within 60 days after the date of a notice under Subsection (8)(a),
101 delivers a notice of claim to the proper office is considered to have filed the notice of claim on
102 the date of the improperly delivered notice of claim described in Subsection (8)(a), if the
103 claimant delivered the improperly delivered notice believing in good faith that the claimant was
104 delivering the notice to the proper office.

Legislative Review Note
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Office of Legislative Research and General Counsel