

SB0267S01 compared with SB0267

~~{deleted text}~~ shows text that was in SB0267 but was deleted in SB0267S01.

inserted text shows text that was not in SB0267 but was inserted into SB0267S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Todd Weiler proposes the following substitute bill:

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}~~ modifies a provision relating to the filing of a notice of claim ~~{for injury}~~.

Highlighted Provisions:

This bill:

- ▶ ~~{requires}~~ provides that a governmental entity ~~{to notify a claimant in writing within 14 days of having received an improper delivery}~~ may not challenge the timeliness 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}~~ filed within a specified time if the claimant had in good faith previously filed a notice of claim with ~~{the proper}~~ another governmental

SB0267S01 compared with SB0267

entity ~~}, and~~

→ provides that the refiled notice of claim is considered filed at the time of the earlier ~~improperly delivered notice, under certain circumstances},~~ 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 --

Appointment of guardian ad litem.

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

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

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

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

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

- (i) a brief statement of the facts;
- (ii) the nature of the claim asserted;

SB0267S01 compared with SB0267

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

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

(b) The notice of claim shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0267S01 compared with SB0267

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

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

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

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

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

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

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

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

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

(8) ~~{(a)}~~ A governmental entity ~~{that receives}~~ may not challenge the timeliness, under Section 63G-7-402, of a notice of claim if:

(a) the claimant files a notice of claim {in its office that the claimant should have properly delivered to another office shall, within 14 days after receiving the notice of claim, notify the claimant in writing of the improper delivery.

~~—— (b) A claimant who,}~~ with the governmental entity:

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

(ii) within 60 days after the {date of a notice under Subsection (8)(a)} ~~delivers}~~ expiration of the time for filing a notice of claim {to the proper office is considered to have filed the} under Section 63G-7-402;

(b) the claimant demonstrates that the claimant previously filed a notice of claim {on the date of the improperly delivered notice of claim described in Subsection (8)(a), if the

SB0267S01 compared with SB0267

~~claimant delivered the improperly delivered notice believing in good faith~~:

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

~~(ii) with an incorrect governmental entity;~~

~~(iii) in the good faith belief that the claimant was ~~delivering~~ filing the notice ~~to the proper office.~~~~

Legislative Review Note

— as of ~~3-3-14 7:08 PM~~

~~Office of Legislative Research and General Counsel~~ of claim with the correct governmental entity;

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

~~(v) no earlier than 60 days before the expiration of the time for filing a notice of claim under Section 63G-7-402; and~~

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

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

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