

**IMMUNITY AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: Curtis Oda

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**LONG TITLE**

**General Description:**

This bill modifies the General Government code by amending immunity provisions.

**Highlighted Provisions:**

This bill:

- ▶ provides that a governmental entity's officers and employees' immunity from suit for an injury or damage resulting from the implementation of or failure to implement measures to respond to emergency or public health conditions includes the use, provision, operation, and management of certain facilities;

- ▶ provides that a person or business entity owning a building or other facility and an operator of or an employee in a building or facility is immune from liability with respect to any decisions or actions related to emergency or public health conditions while acting under the general supervision of or on behalf of any public entity; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-7-201**, as last amended by Laws of Utah 2015, Chapter 342



28 **63G-8-201**, as last amended by Laws of Utah 2013, Chapter 249



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

31 Section 1. Section **63G-7-201** is amended to read:

32 **63G-7-201. Immunity of governmental entities and employees from suit.**

33 (1) Except as otherwise provided in this chapter, each governmental entity and each  
34 employee of a governmental entity are immune from suit for any injury that results from the  
35 exercise of a governmental function.

36 (2) Notwithstanding the waiver of immunity provisions of Section **63G-7-301**, a  
37 governmental entity, its officers, and its employees are immune from suit for any injury or  
38 damage resulting from the implementation of or the failure to implement measures to:

39 (a) control the causes of epidemic and communicable diseases and other conditions  
40 significantly affecting the public health or necessary to protect the public health as set out in  
41 Title 26A, Chapter 1, Local Health Departments;

42 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,  
43 Chapter 23b, Detection of Public Health Emergencies Act;

44 (c) respond to a national, state, or local emergency, a public health emergency as  
45 defined in Section **26-23b-102**, or a declaration by the President of the United States or other  
46 federal official requesting public health related activities[; and], including the use, provision,  
47 operation, and management of:

48 (i) an emergency shelter;

49 (ii) housing;

50 (iii) a staging place; or

51 (iv) a medical facility; and

52 (d) adopt methods or measures, in accordance with Section **26-1-30**, for health care  
53 providers, public health entities, and health care insurers to coordinate among themselves to  
54 verify the identity of the individuals they serve.

55 (3) A governmental entity, its officers, and its employees are immune from suit, and  
56 immunity is not waived, for any injury if the injury arises out of or in connection with, or  
57 results from:

58 (a) a latent dangerous or latent defective condition of:

59 (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or  
60 viaduct; or

61 (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

62 (b) a latent dangerous or latent defective condition of any public building, structure,  
63 dam, reservoir, or other public improvement.

64 (4) A governmental entity, its officers, and its employees are immune from suit, and  
65 immunity is not waived, for any injury proximately caused by a negligent act or omission of an  
66 employee committed within the scope of employment, if the injury arises out of or in  
67 connection with, or results from:

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

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

73 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,  
74 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar  
75 authorization;

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

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

79 (f) a misrepresentation by an employee whether or not the misrepresentation is  
80 negligent or intentional;

81 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

82 (h) the collection or assessment of taxes;

83 (i) an activity of the Utah National Guard;

84 (j) the incarceration of a person in a state prison, county or city jail, or other place of  
85 legal confinement;

86 (k) a natural condition on publicly owned or controlled land;

87 (l) a condition existing in connection with an abandoned mine or mining operation;

88 (m) an activity authorized by the School and Institutional Trust Lands Administration  
89 or the Division of Forestry, Fire, and State Lands;

90 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,  
91 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,  
92 if:

93 (i) the trail is designated under a general plan adopted by a municipality under Section  
94 10-9a-401 or by a county under Section 17-27a-401;

95 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public  
96 use as evidenced by a written agreement between:

97 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail  
98 is located; and

99 (B) the municipality or county where the trail is located; and

100 (iii) the written agreement:

101 (A) contains a plan for operation and maintenance of the trail; and

102 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way  
103 where the trail is located has, at a minimum, the same level of immunity from suit as the  
104 governmental entity in connection with or resulting from the use of the trail;

105 (o) research or implementation of cloud management or seeding for the clearing of fog;

106 (p) the management of flood waters, earthquakes, or natural disasters;

107 (q) the construction, repair, or operation of flood or storm systems;

108 (r) the operation of an emergency vehicle, while being driven in accordance with the  
109 requirements of Section 41-6a-212;

110 (s) the activity of:

111 (i) providing emergency medical assistance;

112 (ii) fighting fire;

113 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

114 (iv) an emergency evacuation;

115 (v) transporting or removing an injured person to a place where emergency medical  
116 assistance can be rendered or where the person can be transported by a licensed ambulance  
117 service; or

118 (vi) intervening during a dam emergency;

119 (t) the exercise or performance, or the failure to exercise or perform, any function  
120 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

121 (u) an unauthorized access to government records, data, or electronic information  
122 systems by any person or entity; or

123 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a  
124 public or private road.

125 Section 2. Section 63G-8-201 is amended to read:

126 **63G-8-201. Voluntary services -- Immunity from liability -- Exceptions.**

127 (1) A person performing services on a voluntary basis, without compensation, under  
128 the general supervision of, and on behalf of any public entity, is immune from liability with  
129 respect to any decisions or actions, other than in connection with the operation of a motor  
130 vehicle, taken during the course of those services, unless it is established that such decisions or  
131 actions were grossly negligent, not made in good faith, or were made maliciously.

132 (2) A volunteer facilitator is immune from liability to the extent provided in Subsection  
133 67-20-3(4).

134 (3) A person or business entity owning a building or other facility and an operator of or  
135 an employee in a building or facility is immune from liability with respect to any decisions or  
136 actions related to emergency or public health conditions, as described in Subsection  
137 63G-7-201(2)(c), while acting under the general supervision of or on behalf of any public  
138 entity.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**