

1 **EXCESS DAMAGES CLAIMS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jani Iwamoto**

5 House Sponsor: V. Lowry Snow

6 Cosponsors: Howard A. Stephenson

7 Lyle W. Hillyard

8
9 **LONG TITLE**

10 **General Description:**

11 This bill addresses claims for damages for personal injury that are subject to a statutory
12 limit.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ modifies the inflationary adjustment formula for personal injury damages caps;
- 16 ▶ modifies the board of examiner process for reporting claims; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63G-7-604**, as renumbered and amended by Laws of Utah 2008, Chapter 382

25 **63G-9-304**, as renumbered and amended by Laws of Utah 2008, Chapter 382

26 ENACTS:

27 **63G-7-605**, Utah Code Annotated 1953

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

Section 1. Section **63G-7-604** is amended to read:

**63G-7-604. Limitation of judgments against governmental entity or employee --
Process for adjustment of limits.**

(1) (a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(d) Subject to Subsection (3), there is a \$2,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in ~~[Subsection (4)]~~ [Section 63G-7-605](#).

~~[(4) (a) Each even-numbered year, the risk manager shall:]~~

~~[(i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code;]~~

55 ~~[(ii) calculate the increase or decrease in the limitation of judgment amounts~~
56 ~~established in this section as a percentage equal to the percentage change in the Consumer~~
57 ~~Price Index since the previous adjustment made by the risk manager or the Legislature; and]~~

58 ~~[(iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the~~
59 ~~limitation of judgment amounts established in Subsection (1) to the nearest \$100.]~~

60 ~~[(b) Each even-numbered year, the risk manager shall make rules, which become~~
61 ~~effective no later than July 1, that establish the new limitation of judgment amounts calculated~~
62 ~~under Subsection (4)(a).]~~

63 ~~[(c) Adjustments made by the risk manager to the limitation of judgment amounts~~
64 ~~established by this section have prospective effect only from the date the rules establishing the~~
65 ~~new limitation of judgment take effect and those adjusted limitations of judgment apply only to~~
66 ~~claims for injuries or losses that occur after the effective date of the rules that establish those~~
67 ~~new limitations of judgment.]~~

68 Section 2. Section **63G-7-605** is enacted to read:

69 **63G-7-605. Adjustments to limitation of judgment amounts.**

70 (1) As used in this section:

71 (a) "Adjusted consumer price factor" means what the consumer price index, as
72 provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code, would be without the medical
73 care component and the medical services component.

74 (b) "Aggregate limit" means the limit on the aggregate amount of personal injury
75 damages claims from a single occurrence, as provided in Subsection [63G-7-604\(1\)\(d\)](#).

76 (c) "Individual limit" means the limit on the amount of a judgment for damages for
77 personal injury, as provided in Subsection [63G-7-604\(1\)\(a\)](#).

78 (d) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk
79 manager under this section.

80 (e) "Latest individual limit" means the individual limit, as last adjusted by the risk
81 manager under this section.

82 (f) "Latest property damage limit" means the property damage limit, as last adjusted by
83 the risk manager under this section.

84 (g) "Medical care component" means the medical care sub-index of the consumer price
85 index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

86 (h) "Medical services component" means the medical services sub-index of the
87 consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

88 (i) "Property damage limit" means the limit on the amount of a judgment for property
89 damage, as provided in Subsection 63G-7-604(1)(c).

90 (2) (a) Each even-numbered year, the legislative fiscal analyst shall, subject to
91 Subsection (3):

92 (i) adjust the individual limit by an amount equal to the sum of:

93 (A) 66.5% of the latest individual limit, multiplied by the adjusted consumer price
94 factor;

95 (B) 16.75% of the latest individual limit, multiplied by the medical care component;
96 and

97 (C) 16.75% of the latest individual limit, multiplied by the medical services
98 component;

99 (ii) adjust the aggregate limit by an amount equal to the sum of:

100 (A) 66.5% of the latest aggregate limit, multiplied by the adjusted consumer price
101 factor;

102 (B) 16.75% of the latest aggregate limit, multiplied by the medical care component;
103 and

104 (C) 16.75% of the latest aggregate limit, multiplied by the medical services component;

105 (iii) adjust the property damage limit as a percentage equal to the percentage increase
106 or decrease in the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal
107 Revenue Code; and

108 (iv) no later than June 1, communicate the adjusted limits under Subsections (2)(a)(i),

109 (ii), and (iii) to the risk manager.

110 (b) The legislative fiscal analyst shall round up to the nearest \$100 the individual limit,
111 aggregate limit, and property damage limit adjusted under Subsection (2)(a).

112 (3) The legislative fiscal analyst may not adjust an individual limit or aggregate limit
113 under Subsection (2) if the adjustment results in a decrease in the amount of the limit.

114 (4) (a) Each even-numbered year, the risk manager shall make rules, to become
115 effective no later than July 1 of that year, that establish a new individual limit, aggregate limit,
116 and property damage limit, as adjusted under Subsection (2).

117 (b) An adjustment to the individual limit, aggregate limit, or property damage limit
118 under this section has prospective effect only from the date the rules establishing the new limit
119 take effect.

120 (c) An individual limit, aggregate limit, or property damage limit, as adjusted under
121 this section, applies only to a claim for injury or loss that occurs after the effective date of the
122 rules that establish the adjusted limit.

123 Section 3. Section **63G-9-304** is amended to read:

124 **63G-9-304. Adjustment of claims -- Recommendations to Executive**
125 **Appropriations Committee.**

126 (1) The board [~~must~~] shall, at the time designated, proceed to examine and adjust all
127 claims referred to in Section **63G-9-302**, and may hear evidence in support of or against [~~them~~]
128 the claims, and shall report to the [~~Legislature~~] Executive Appropriations Committee the facts
129 and recommendations concerning [~~them as it may think~~] the claims as the board considers
130 proper.

131 (2) In making its recommendations, the board may state and use any official or
132 personal knowledge which any member of the board may have touching [~~such~~] the claims.

133 (3) The board [~~shall~~] may not pass upon or send to the [~~Legislature~~] Executive
134 Appropriations Committee any claim for which the state or a political subdivision would not
135 otherwise be liable were it not for its sovereign immunity.

136 (4) Notwithstanding Subsection (3), claims wherein the state or a political subdivision
137 would be liable, were it not for its sovereign immunity, whether recommended by the board for
138 approval or disapproval, shall be reported by the board to the Legislature with appropriate
139 findings and recommendations as [~~above~~] provided in this section.