

**Senator Jani Iwamoto** proposes the following substitute bill:

**EXCESS DAMAGES CLAIMS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jani Iwamoto**

House Sponsor: V. Lowry Snow

Cosponsors: Howard A. Stephenson

Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**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



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

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

31 **63G-7-604. Limitation of judgments against governmental entity or employee --**  
32 **Process for adjustment of limits.**

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

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

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

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

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

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

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

53 [~~(i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5),~~  
54 ~~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 Legislature.**

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

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

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

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