

**PRIVATE SCHOOL LIABILITY PROTECTIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses a nonprofit private school's liability.

**Highlighted Provisions:**

This bill:

- ▶ provides legislative findings;
  - ▶ defines terms;
  - ▶ provides immunity for claims of physical injury on a nonprofit private school's school related property;
  - ▶ establishes exemption for intentional or gross negligence with caps on judgments;
- and
- ▶ addresses application of workers' compensation.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-4-516**, Utah Code Annotated 1953

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



28 Section 1. Section **78B-4-516** is enacted to read:

29 **78B-4-516. Nonprofit private school immunity.**

30 (1) The Legislature finds the following:

31 (a) Nonprofit private schools serve the same functions as public schools and provide  
32 important benefits to their communities, including open and park spaces and community  
33 meeting spaces. By allowing members of the community to use the nonprofit private schools'  
34 premises and facilities it exposes the nonprofit private schools to risk of potential lawsuits and  
35 legal claims.

36 (b) Nonprofit private schools educate children who would otherwise be educated at the  
37 expense of the state and save the state education system a substantial amount of money. The  
38 state has an interest in ensuring the viability of nonprofit private schools, which offer  
39 educational options, spur innovation, and educate thousands of students who would otherwise  
40 use the public school system.

41 (c) While public schools benefit from protections under Title 63G, Chapter 7,  
42 Governmental Immunity Act of Utah, nonprofit private schools, which serve almost identical  
43 functions, have no such legal protections. In recognition of the economic and other substantial  
44 benefits that nonprofit private schools provide to the state and their communities, it is  
45 appropriate to protect nonprofit private schools from liability for simple negligence for  
46 incidents happening on their property and to cap damages for the intentional acts or gross  
47 negligence.

48 (2) As used in this section:

49 (a) "Nonprofit private school" means a nonprofit school that:

50 (i) provides elementary educational services, secondary educational services, or both;

51 and

52 (ii) is not part of the public education system.

53 (b) "Physical injury" means harm to the body of an individual.

54 (c) "School related property" means property within the boundaries of a nonprofit  
55 private school, including a facility used by the nonprofit private school for school purposes.

56 (3) A nonprofit private school is immune from suit for physical injury to an individual  
57 arising out of or related to the injured individual's presence on school related property.

58 (4) (a) This section does not prohibit an action against a nonprofit private school for

59 physical injury intentionally caused by the nonprofit private school or resulting from gross  
 60 negligence by the nonprofit private school.

61 (b) (i) In an action taken against a nonprofit private school under this Subsection (4), a  
 62 court may not award a judgment of more than \$1,000,000 for injury to one individual or  
 63 \$2,000,000 in total for injuries from a single incident.

64 (ii) The limitations of judgments established under Subsection (4)(b)(i) shall increase  
 65 by 1.5% per year.

66 (5) This section does not modify the application of Title 34A, Chapter 2, Workers'  
 67 Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act, to physical injury  
 68 to an employee.

### Legislative Review Note

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.

This bill eliminates a nonprofit private school's liability for physical injury caused by negligence on a nonprofit private school's property and caps the recovery amounts for physical injury caused intentionally or by gross negligence. These provisions raise constitutional issues including Utah Constitution, Article 1, Section 11, which is called the "open courts provision," that prohibits the Legislature from abrogating a cause of action under certain circumstances. See Waite v. Utah Labor Comm'n, 2017 UT 86, ¶ 19. For a plaintiff to prevail in an open courts challenge, the plaintiff must demonstrate that the legislation abrogates a legal remedy, and does so: (1) without providing an effective and reasonable alternative remedy; or (2) without eliminating a clear social or economic evil. Id. (quoting the "Berry test," Berry ex rel. v. Beech Aircraft Corp., 717 P.2d 670, 680 (Utah 1985)). In the case of this bill, there is no alternative remedy provided. Therefore, it falls under the second prong of eliminating a clear social or economic evil. If the reviewing court finds that the legislation eliminates a clear social or economic evil, it must also find that the elimination of an existing legal remedy is not an arbitrary or unreasonable means for achieving that objective. Id. The Utah Supreme Court has granted deference to the Legislature, explaining that "[w]hen an issue is fairly debatable, we cannot say that the legislature overstepped its constitutional bounds when it determined that there was a crisis needing a remedy." Id. at ¶¶ 22-24 (citations omitted)

Types of social or economic evils rejected by the court include generalized "concern about increased damages awards against governmental entities" operating electrical systems, Laney v. Fairview City, 2002 UT 79, ¶ 66, 57 P.3d 1007; and "a rash of frivolous lawsuits in California . . . but not particularly in Utah," see Day v. State, 980 P.2d 1171, 1186 (Utah 1999). Types of social or economic evils recognized by the courts include encouraging medical professionals to render aid in emergency situations, see Hirpa v. IHC Hosps., Inc., 948 P.2d 785, 793 (Utah 1997); and stemming overwhelming medical care costs, see Judd v. Drezga, 2004 UT 91, ¶ 15, 103 P.3d 135 (upholds a cap on limited quality of life damages but distinguishes this from a "cap on all damages" which has been struck down). The social and economic evil argued for this bill is that, if a nonprofit private school is frequently held liable for physical injury or if there is a catastrophic accident, the nonprofit private school could close, which would create a hardship for the public school system absorbing the impact of the students who could no longer attend private school and the loss of important benefits to communities such as open and park spaces. There is a high probability that a court would reject this argument and find that the Legislature is not responding to a social or economic evil because it has not alleged any evidence of actual costs or of an existing crisis needing a remedy; rather, the Legislature has alleged concern for the possibility that nonprofit private schools will be frequently liable for negligence, or will face a catastrophic accident. Although the courts defer to the Legislature when the Legislature determines that a crisis needs a remedy, this legislation is not "fairly debatable" in the absence of an existing crisis needing a remedy. Assuming a court continues to follow Berry precedent, there is a high probability that the court would find the proposed legislation unconstitutional.

**Office of Legislative Research and General Counsel**