

Senator Todd Weiler proposes the following substitute bill:

**MODIFICATIONS TO GOVERNMENTAL IMMUNITY**

**PROVISIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Deidre M. Henderson

Cosponsors: Brian S. King V. Lowry Snow

Patrice M. Arent Karianne Lisonbee

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to governmental immunity.

**Highlighted Provisions:**

This bill:

▶ waives governmental immunity for an injury claim resulting from a sexual battery or sexual abuse of a child against a student by a school employee unless the school was subject to a specified policy and had taken reasonable steps to implement and enforce the policy; ~~§~~ **and** ~~§~~

▶ waives governmental immunity for an injury claim resulting from a sexual battery of a student by an employee of an institution of higher education, under certain circumstances ~~§~~ **[-and] .** ~~§~~

~~§~~ **[-provides for an award of attorney fees, under certain circumstances.]** ~~§~~

**Money Appropriated in this Bill:**

None

**2nd Sub. H.B. 391**



25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **63G-7-201**, as last amended by Laws of Utah 2016, Chapter 181

30 **63G-7-301**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018

31 ~~§→ [—**63G-7-603**, as last amended by Laws of Utah 2017, Chapter 152] ←§~~



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

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

35 **63G-7-201. Immunity of governmental entities and employees from suit.**

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

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

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

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

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

51 (i) an emergency shelter;

52 (ii) housing;

53 (iii) a staging place; or

54 (iv) a medical facility; and

55 (d) adopt methods or measures, in accordance with Section **26-1-30**, for health care

211 (C) includes a prohibition against any sexual conduct between a special trust employee  
212 and a subordinate student; and

213 (D) includes a prohibition against a special trust employee and subordinate student  
214 sharing any sexually explicit or lewd communication, image, or photograph.

215 (iii) "Sexual battery" means the offense described in Section [76-9-702.1](#).

216 (iv) "Special trust employee" means an employee of a higher education institution who  
217 is in a position of special trust, as defined in Section [76-5-404.1](#), with a higher education  
218 student.

219 (v) "Subordinate student" means a student:

220 (A) of a higher education institution; and

221 (B) whose educational opportunities could be adversely impacted by a special trust  
222 employee.

223 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a  
224 claim for an injury resulting from a sexual battery committed against a subordinate student by a  
225 special trust employee, unless:

226 (i) the institution proves that the special trust employee's behavior that otherwise would  
227 constitute a sexual battery was:

228 (A) with a subordinate student who was at least 18 years old at the time of the  
229 behavior; and

230 (B) with the student's consent; or

231 (ii) (A) at the time of the sexual battery, the higher education institution was subject to  
232 a policy governing behavior; and

233 (B) before the sexual battery occurred, the higher education institution had taken steps  
234 to implement and enforce the policy governing behavior.

235 **§→ [Section 3. Section ~~63G-7-603~~ is amended to read:**

236 ~~— 63G-7-603. Exemplary or punitive damages prohibited -- Governmental entity~~  
237 ~~not subject to execution, attachment, or garnishment -- Exception.~~

238 ~~— (1) (a) A judgment may not be rendered against a governmental entity for exemplary or~~  
239 ~~punitive damages.~~

240 ~~— (b) If a governmental entity would be required to pay the judgment under Section~~  
241 ~~[63G-7-902](#) or [63G-7-903](#), the governmental entity shall pay any judgment or portion of any~~

242 ~~●~~ judgment entered against its employee in the employee's personal capacity even if the judgment  
243 is for or includes exemplary or punitive damages:

244 ~~—— (2) (a) Except as provided in Subsection (2)(b), execution, attachment, or garnishment~~  
245 ~~may not issue against a governmental entity.~~

246 ~~—— (b) A judgment creditor may garnish a state income tax refund owing to the judgment~~  
247 ~~debtor.~~

248 ~~—— (3) In an action to recover for an injury described in Subsection [63G-7-301](#)(3) or (4),~~  
249 ~~the court may award a prevailing plaintiff the plaintiff's reasonable attorney fees and costs,~~  
250 ~~apportioned to the local education agency or higher education institution, as applicable,~~  
251 ~~according to the degree of fault of the local education agency or higher education institution.] ←§~~