

MODIFICATIONS TO GOVERNMENTAL IMMUNITY

PROVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

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;

▶ waives governmental immunity for an injury claim resulting from a sexual battery of a student by an employee of an institution of higher education, except in specified circumstances; and

▶ authorizes a court to award a prevailing plaintiff the plaintiff's reasonable attorney fees and costs in an action to recover for a claim for which immunity is waived under this bill.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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
56 providers, public health entities, and health care insurers to coordinate among themselves to
57 verify the identity of the individuals they serve.

58 (3) A governmental entity, its officers, and its employees are immune from suit, and

59 immunity is not waived, for any injury if the injury arises out of or in connection with, or
60 results from:

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

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

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

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

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

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

73 (b) except as provided in Subsections 63G-7-301(2)(k) and (j), assault, battery, false
74 imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel,
75 slander, deceit, interference with contract rights, infliction of mental anguish, or violation of
76 civil rights;

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

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

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

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

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

86 (h) the collection or assessment of taxes;

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

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

- 90 (k) a natural condition on publicly owned or controlled land;
- 91 (l) a condition existing in connection with an abandoned mine or mining operation;
- 92 (m) an activity authorized by the School and Institutional Trust Lands Administration
93 or the Division of Forestry, Fire, and State Lands;
- 94 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
95 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
96 if:
 - 97 (i) the trail is designated under a general plan adopted by a municipality under Section
98 10-9a-401 or by a county under Section 17-27a-401;
 - 99 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
100 use as evidenced by a written agreement between:
 - 101 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
102 is located; and
 - 103 (B) the municipality or county where the trail is located; and
 - 104 (iii) the written agreement:
 - 105 (A) contains a plan for operation and maintenance of the trail; and
 - 106 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
107 where the trail is located has, at a minimum, the same level of immunity from suit as the
108 governmental entity in connection with or resulting from the use of the trail;
 - 109 (o) research or implementation of cloud management or seeding for the clearing of fog;
 - 110 (p) the management of flood waters, earthquakes, or natural disasters;
 - 111 (q) the construction, repair, or operation of flood or storm systems;
 - 112 (r) the operation of an emergency vehicle, while being driven in accordance with the
113 requirements of Section 41-6a-212;
 - 114 (s) the activity of:
 - 115 (i) providing emergency medical assistance;
 - 116 (ii) fighting fire;
 - 117 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - 118 (iv) an emergency evacuation;
 - 119 (v) transporting or removing an injured person to a place where emergency medical
120 assistance can be rendered or where the person can be transported by a licensed ambulance

- 121 service; or
- 122 (vi) intervening during a dam emergency;
- 123 (t) the exercise or performance, or the failure to exercise or perform, any function
- 124 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 125 (u) an unauthorized access to government records, data, or electronic information
- 126 systems by any person or entity; or
- 127 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
- 128 public or private road.

129 Section 2. Section 63G-7-301 is amended to read:

130 **63G-7-301. Waivers of immunity.**

131 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual

132 obligation.

133 (b) Actions arising out of contractual rights or obligations are not subject to the

134 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

135 (c) The Division of Water Resources is not liable for failure to deliver water from a

136 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development

137 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

138 condition, or safety condition that causes a deficiency in the amount of available water.

139 (2) Immunity from suit of each governmental entity is waived:

140 (a) as to any action brought to recover, obtain possession of, or quiet title to real or

141 personal property;

142 (b) as to any action brought to foreclose mortgages or other liens on real or personal

143 property, to determine any adverse claim on real or personal property, or to obtain an

144 adjudication about any mortgage or other lien that the governmental entity may have or claim

145 on real or personal property;

146 (c) as to any action based on the negligent destruction, damage, or loss of goods,

147 merchandise, or other property while it is in the possession of any governmental entity or

148 employee, if the property was seized for the purpose of forfeiture under any provision of state

149 law;

150 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of

151 Utah Constitution, Article I, Section 22, for the recovery of compensation from the

152 governmental entity when the governmental entity has taken or damaged private property for
153 public uses without just compensation;

154 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
155 fees under Sections 63G-2-405 and 63G-2-802;

156 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
157 Act;

158 (g) as to any action brought to obtain relief from a land use regulation that imposes a
159 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
160 Land Use Act;

161 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

162 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
163 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

164 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
165 or other public improvement;

166 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
167 proximately caused by a negligent act or omission of an employee committed within the scope
168 of employment; and

169 (j) as to any action or suit brought under Section 20A-19-301 and as to any
170 compensation or expenses awarded under Section 20A-19-301(5).

171 (3) Notwithstanding Subsection 63G-7-104(4), immunity from suit is waived as to a
172 claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, or the
173 sexual abuse of a child, as provided in Section 76-5-405.1, considering the term "child" in that
174 section to include an individual under the age 18, committed against a student of a public
175 elementary or secondary school by an employee of the school, unless:

176 (a) at the time of the sexual battery or sexual abuse, the school was subject to a policy:

177 (i) adopted by the school district board or the State Board of Education;

178 (ii) that regulates behavior of an employee toward a student;

179 (iii) that includes a prohibition against:

180 (A) any sexual conduct between an employee and a student; and

181 (B) the employee and student sharing any sexually explicit or lewd communication,
182 image, or photograph; and

183 (iv) that is reasonably calculated to protect students from a sexual battery or sexual
184 abuse; and

185 (b) before the sexual battery or sexual abuse occurred, the school had taken reasonable
186 steps to implement and enforce the policy.

187 (4) Notwithstanding Subsection 63G-7-104(4), immunity from suit is waived as to a
188 claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1,
189 committed against a student of an institution included within the state system of higher
190 education under Section 53B-1-102 by an employee of the institution, unless:

191 (a) the institution proves that the employee's behavior that otherwise would constitute a
192 sexual battery was:

193 (i) with a student who was at least 18 years old at the time of the behavior; and

194 (ii) with the student's consent; or

195 (b) (i) at the time of the sexual battery, the institution was subject to a policy:

196 (A) adopted by the institution or the State Board of Regents;

197 (B) that regulates behavior of an employee toward a student;

198 (C) that includes a prohibition against any sexual conduct between an employee and a
199 student and against the employee and student sharing any sexually explicit or lewd
200 communication, image, or photograph; and

201 (D) that is reasonably calculated to protect students from a sexual battery; and

202 (ii) before the sexual battery occurred, the institution had taken reasonable steps to
203 implement and enforce the policy.

204 Section 3. Section 63G-7-603 is amended to read:

205 **63G-7-603. Exemplary or punitive damages prohibited -- Governmental entity**
206 **not subject to execution, attachment, or garnishment -- Exception -- Attorney fees and**
207 **costs in certain cases.**

208 (1) (a) A judgment may not be rendered against a governmental entity for exemplary or
209 punitive damages.

210 (b) If a governmental entity would be required to pay the judgment under Section
211 63G-7-902 or 63G-7-903, the governmental entity shall pay any judgment or portion of any
212 judgment entered against its employee in the employee's personal capacity even if the judgment
213 is for or includes exemplary or punitive damages.

214 (2) (a) Except as provided in Subsection (2)(b), execution, attachment, or garnishment
215 may not issue against a governmental entity.

216 (b) A judgment creditor may garnish a state income tax refund owing to the judgment
217 debtor.

218 (3) In an action to recover for an injury described in Subsection [63G-7-301\(2\)\(k\)](#) or (l),
219 the court may award a prevailing plaintiff the plaintiff's reasonable attorney fees and costs.