

1 **POLITICAL SUBDIVISION CIVIL LIABILITY**

2 **AMENDMENTS**

3 2021 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brady Brammer**

6 Senate Sponsor: Kirk A. Cullimore

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to civil liability for political subdivisions.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ provides that a political subdivision is liable for injury or damage resulting from a
15 riot or civil disturbance if the political subdivision's chief executive officer directed
16 law enforcement officers not to protect private property or individuals during the
17 riot or civil disturbance; and
- 18 ▶ establishes an affirmative defense for political subdivision liability.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

26 ENACTS:

27 **11-65-101**, Utah Code Annotated 1953



28 [11-65-102](#), Utah Code Annotated 1953

29 [11-65-201](#), Utah Code Annotated 1953



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

32 Section 1. Section **11-65-101** is enacted to read:

33 **CHAPTER 65. POLITICAL SUBDIVISION RIOT LIABILITY ACT**

34 **Part 1. General Provisions**

35 **11-65-101. Title.**

36 This chapter is known as "Political Subdivision Riot Liability Act."

37 Section 2. Section **11-65-102** is enacted to read:

38 **11-65-102. Definitions.**

39 As used in this chapter:

40 (1) "Chief executive officer" means the same as that term is defined in Section

41 [11-51-102](#).

42 (2) "Political subdivision" means a county, city, town, or metro township.

43 Section 3. Section **11-65-201** is enacted to read:

44 **Part 2. Political Subdivision Riot Liability**

45 **11-65-201. Political subdivision civil liability for injury or damage resulting from**
46 **riot -- Affirmative defense.**

47 (1) A political subdivision is liable in a civil action for personal injury or property
48 damage resulting from a riot or civil disturbance that occurs within the boundaries of the
49 political subdivision if a plaintiff shows by clear and convincing evidence that:

50 (a) the chief executive officer of the political subdivision, acting within the scope of
51 chief executive officer's official duties, directed law enforcement officers not to protect private
52 property or individuals during the riot or civil disturbance; and

53 (b) the plaintiff suffered the injury or damages as a result of the riot or civil
54 disturbance.

55 (2) It is an affirmative defense to liability under Subsection (1) that the chief executive
56 officer directed law enforcement not to protect private property or individuals during the riot or
57 civil disturbance to prevent an imminent threat to the safety of law enforcement officers.

58 Section 4. Section **63G-7-301** is amended to read:

59 **63G-7-301. Waivers of immunity.**

60 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
61 obligation.

62 (b) Actions arising out of contractual rights or obligations are not subject to the
63 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

64 (c) The Division of Water Resources is not liable for failure to deliver water from a
65 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
66 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
67 condition, or safety condition that causes a deficiency in the amount of available water.

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

69 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
70 personal property;

71 (b) as to any action brought to foreclose mortgages or other liens on real or personal
72 property, to determine any adverse claim on real or personal property, or to obtain an
73 adjudication about any mortgage or other lien that the governmental entity may have or claim
74 on real or personal property;

75 (c) as to any action based on the negligent destruction, damage, or loss of goods,
76 merchandise, or other property while it is in the possession of any governmental entity or
77 employee, if the property was seized for the purpose of forfeiture under any provision of state
78 law;

79 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of
80 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
81 governmental entity when the governmental entity has taken or damaged private property for
82 public uses without just compensation;

83 (e) subject to Subsection [63G-7-302](#)(2), as to any action brought to recover attorney
84 fees under Sections [63G-2-405](#) and [63G-2-802](#);

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

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

- 90 (h) except as provided in Subsection [63G-7-201\(3\)](#), as to any injury caused by:
- 91 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
92 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
- 93 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
94 or other public improvement;
- 95 (i) subject to Subsections [63G-7-101\(4\)](#) and [63G-7-201\(4\)](#), as to any injury
96 proximately caused by a negligent act or omission of an employee committed within the scope
97 of employment; [~~and~~]
- 98 (j) notwithstanding Subsection [63G-7-101\(4\)](#), as to a claim for an injury resulting from
99 a sexual battery, as provided in Section [76-9-702.1](#), committed:
- 100 (i) against a student of a public elementary or secondary school, including a charter
101 school; and
- 102 (ii) by an employee of a public elementary or secondary school or charter school who:
- 103 (A) at the time of the sexual battery, held a position of special trust, as defined in
104 Section [76-5-404.1](#), with respect to the student;
- 105 (B) is criminally charged in connection with the sexual battery; and
- 106 (C) the public elementary or secondary school or charter school knew or in the exercise
107 of reasonable care should have known, at the time of the employee's hiring, to be a sex
108 offender, as defined in Section [77-41-102](#), required to register under Title 77, Chapter 41, Sex
109 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
110 background check under Section [53G-11-402](#)[~~;~~]; and
- 111 (k) as to a claim against a political subdivision for personal injury or property damage
112 resulting from a riot or civil disturbance, as provided in Section [11-65-201](#).
- 113 (3) (a) As used in this Subsection (3):
- 114 (i) "Code of conduct" means a code of conduct that:
- 115 (A) is not less stringent than a model code of conduct, created by the State Board of
116 Education, establishing a professional standard of care for preventing the conduct described in
117 Subsection (3)(a)(i)(D);
- 118 (B) is adopted by the applicable local education governing body;
- 119 (C) regulates behavior of a school employee toward a student; and
- 120 (D) includes a prohibition against any sexual conduct between an employee and a

121 student and against the employee and student sharing any sexually explicit or lewd
122 communication, image, or photograph.

123 (ii) "Local education agency" means:

124 (A) a school district;

125 (B) a charter school; or

126 (C) the Utah Schools for the Deaf and the Blind.

127 (iii) "Local education governing board" means:

128 (A) for a school district, the local school board;

129 (B) for a charter school, the charter school governing board; or

130 (C) for the Utah Schools for the Deaf and the Blind, the state board.

131 (iv) "Public school" means a public elementary or secondary school.

132 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

133 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
134 the term "child" in that section to include an individual under age 18.

135 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
136 claim against a local education agency for an injury resulting from a sexual battery or sexual
137 abuse committed against a student of a public school by a paid employee of the public school
138 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

139 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
140 code of conduct; and

141 (ii) before the sexual battery or sexual abuse occurred, the public school had:

142 (A) provided training on the code of conduct to the employee; and

143 (B) required the employee to sign a statement acknowledging that the employee has
144 read and understands the code of conduct.

145 (4) (a) As used in this Subsection (4):

146 (i) "Higher education institution" means an institution included within the state system
147 of higher education under Section 53B-1-102.

148 (ii) "Policy governing behavior" means a policy adopted by a higher education
149 institution or the Utah Board of Higher Education that:

150 (A) establishes a professional standard of care for preventing the conduct described in
151 Subsections (4)(a)(ii)(C) and (D);

152 (B) regulates behavior of a special trust employee toward a subordinate student;
153 (C) includes a prohibition against any sexual conduct between a special trust employee
154 and a subordinate student; and

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

157 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

158 (iv) "Special trust employee" means an employee of a higher education institution who
159 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
160 student.

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

162 (A) of a higher education institution; and

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

165 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
166 claim for an injury resulting from a sexual battery committed against a subordinate student by a
167 special trust employee, unless:

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

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

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

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

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