

Senator Todd D. Weiler proposes the following substitute bill:

GOVERNMENTAL IMMUNITY ACT NOTICE OF CLAIM

AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill modifies provisions relating to notices of claim under the Governmental Immunity Act of Utah.

Highlighted Provisions:

This bill:

- ▶ allows, for a notice of claim, the use of any form of signature recognized by law as binding;
- ▶ allows a notice of claim to be sent by email;
- ▶ requires a governmental entity to provide an email address; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-401, as last amended by Laws of Utah 2019, Chapter 229



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

Section 1. Section **63G-7-401** is amended to read:

63G-7-401. When a claim arises -- Notice of claim requirements -- Governmental entity statement -- Limits on challenging validity or timeliness of notice of claim.

(1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:

(i) that the claimant had a claim against the governmental entity or the governmental entity's employee; and

(ii) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against the governmental entity's employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as the damages are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection **63G-7-202(3)(c)**, the name of the employee.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian, using any form of signature recognized by law as binding; and

(ii) ~~[directed and delivered by hand or by mail according to the requirements of Section **68-3-8.5**]~~ delivered, transmitted, or sent, as provided in Subsection (3)(c), to the office of:

(A) the city or town clerk, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

57 (C) the superintendent or business administrator of the board, when the claim is against
58 a school district or board of education;

59 (D) the presiding officer or secretary or clerk of the board, when the claim is against a
60 local district or special service district;

61 (E) the attorney general, when the claim is against the state;

62 (F) a member of the governing board, the executive director, or executive secretary,
63 when the claim is against any other public board, commission, or body; or

64 (G) the agent authorized by a governmental entity to receive the notice of claim by the
65 governmental entity under Subsection (5)(e).

66 (c) A notice of claim shall be:

67 (i) delivered by hand to the physical address provided under Subsection (5)(a)(iii)(A);

68 (ii) transmitted by mail to the physical address provided under Subsection

69 (5)(a)(iii)(A), according to the requirements of Section 68-3-8.5; or

70 (iii) sent by electronic mail to the email address provided under Subsection

71 (5)(a)(iii)(B).

72 (d) A claimant who submits a notice of claim by electronic mail under Subsection
73 (3)(c)(iii) shall contemporaneously send a copy of the notice of claim by electronic mail to the
74 city attorney, district attorney, county attorney, attorney general, or other attorney, as the case
75 may be, who represents the governmental entity.

76 (4) (a) If an injury that may reasonably be expected to result in a claim against a
77 governmental entity is sustained by a claimant who is under the age of majority or mentally
78 incompetent, that governmental entity may file a request with the court for the appointment of a
79 guardian ad litem for the potential claimant.

80 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
81 63G-7-402 begins when the order appointing the guardian ad litem is issued.

82 (5) (a) A governmental entity subject to suit under this chapter shall file a statement
83 with the Division of Corporations and Commercial Code within the Department of Commerce
84 containing:

85 (i) the name and address of the governmental entity;

86 (ii) the office or agent designated to receive a notice of claim; and

87 (iii) (A) the physical address [~~at which the~~] to which a notice of claim is to be ~~directed~~

88 ~~and]~~ delivered by hand or transmitted by mail, for a notice of claim that a claimant chooses to
89 hand deliver or transmit by mail; and

90 (B) the email address to which a notice of claim is to be sent, for a notice of claim that
91 a claimant chooses to send by email, and the email address of the city attorney, district
92 attorney, county attorney, attorney general, or other attorney, as the case may be, who
93 represents the governmental entity.

94 (b) A governmental entity shall update the governmental entity's statement as necessary
95 to ensure that the information is accurate.

96 (c) The Division of Corporations and Commercial Code shall develop a form for
97 governmental entities to complete that provides the information required by Subsection (5)(a).

98 (d) (i) A newly incorporated municipality shall file the statement required by
99 Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation
100 under Section 67-1a-6.5.

101 (ii) A newly incorporated local district shall file the statement required by Subsection
102 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section
103 17B-1-215.

104 (e) A governmental entity may, in the governmental entity's statement, identify an
105 agent authorized to accept notices of claim on behalf of the governmental entity.

106 (6) The Division of Corporations and Commercial Code shall:

107 (a) maintain an index of the statements required by this section arranged both
108 alphabetically by entity and by county of operation; and

109 (b) make the indices available to the public both electronically and via hard copy.

110 (7) A governmental entity may not challenge the validity of a notice of claim on the
111 grounds that it was not directed and delivered to the proper office or agent if the error is caused
112 by the governmental entity's failure to file or update the statement required by Subsection (5).

113 (8) A governmental entity may not challenge the timeliness, under Section 63G-7-402,
114 of a notice of claim if:

115 (a) (i) the claimant files a notice of claim with the governmental entity:

116 (A) in accordance with the requirements of this section; and

117 (B) within 30 days after the expiration of the time for filing a notice of claim under
118 Section 63G-7-402;

- 119 (ii) the claimant demonstrates that the claimant previously filed a notice of claim:
120 (A) in accordance with the requirements of this section;
121 (B) with an incorrect governmental entity;
122 (C) in the good faith belief that the claimant was filing the notice of claim with the
123 correct governmental entity;
124 (D) within the time for filing a notice of claim under Section 63G-7-402; and
125 (E) no earlier than 30 days before the expiration of the time for filing a notice of claim
126 under Section 63G-7-402; and
127 (iii) the claimant submits with the notice of claim:
128 (A) a copy of the previous notice of claim that was filed with a governmental entity
129 other than the correct governmental entity; and
130 (B) proof of the date the previous notice of claim was filed; or
131 (b) (i) the claimant delivers by hand [~~or~~], transmits by mail, or sends by email a notice
132 of claim:
133 (A) to an elected official or executive officer of the correct governmental entity but not
134 to the correct office under Subsection (3)(b)(ii); and
135 (B) that otherwise meets the requirements of Subsection (3); and
136 (ii) (A) the claimant contemporaneously sends a hard copy or electronic copy of the
137 notice of claim to the office of the city attorney, district attorney, county attorney, attorney
138 general, or other attorney, as the case may be, representing the correct governmental entity; or
139 (B) the governmental entity does not, within 60 days after the claimant delivers the
140 notice of claim under Subsection (8)(b)(i), provide written notification to the claimant of the
141 delivery defect and of the identity of the correct office to which the claimant is required to
142 deliver the notice of claim.