

GOVERNMENT ATTORNEY FEES AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill allows a private party to recover attorney and expert fees as the prevailing party in certain civil actions adverse to a governmental entity.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a court to award reasonable attorney fees to a private party who prevails in certain civil actions adverse to a governmental entity;
- ▶ permits a court to award reasonable expert fees to a private party who prevails in certain civil actions adverse to a governmental entity; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-301, as last amended by Laws of Utah 2022, Chapters 388, 428

ENACTS:

78B-5-826.5, Utah Code Annotated 1953



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

Section 1. Section **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

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

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

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

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

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

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

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

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

(e) as to any claim for attorney fees or costs under Sections [63G-2-405](#) and [63G-2-802](#);

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

(g) as to any action brought to obtain relief from a land use regulation that imposes a

59 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
60 Land Use Act;

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

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

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

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

69 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
70 a sexual battery, as provided in Section 76-9-702.1, committed:

71 (i) against a student of a public elementary or secondary school, including a charter
72 school; and

73 (ii) by an employee of a public elementary or secondary school or charter school who:

74 (A) at the time of the sexual battery, held a position of special trust, as defined in
75 Section 76-5-404.1, with respect to the student;

76 (B) is criminally charged in connection with the sexual battery; and

77 (C) the public elementary or secondary school or charter school knew or in the exercise
78 of reasonable care should have known, at the time of the employee's hiring, to be a sex
79 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
80 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
81 background check under Section 53G-11-402; ~~and~~

82 (k) as to a claim to recover attorney fees or expert fees under Section 78B-5-826.5; and

83 ~~[(k)]~~ (l) as to any action brought under Section 78B-6-2303.

84 (3) (a) As used in this Subsection (3):

85 (i) "Code of conduct" means a code of conduct that:

86 (A) is not less stringent than a model code of conduct, created by the State Board of
87 Education, establishing a professional standard of care for preventing the conduct described in
88 Subsection (3)(a)(i)(D);

89 (B) is adopted by the applicable local education governing body;

90 (C) regulates behavior of a school employee toward a student; and

91 (D) includes a prohibition against any sexual conduct between an employee and a
92 student and against the employee and student sharing any sexually explicit or lewd
93 communication, image, or photograph.

94 (ii) "Local education agency" means:

95 (A) a school district;

96 (B) a charter school; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

123 (B) regulates behavior of a special trust employee toward a subordinate student;

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

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

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

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

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

133 (A) of a higher education institution; and

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

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

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

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

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

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

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

148 Section 2. Section 78B-5-826.5 is enacted to read:

149 **78B-5-826.5. Attorney and expert fees -- Definitions -- Award against**
150 **governmental entity.**

151 (1) As used in this section:

152 (a) "Attorney fees" means attorney fees reasonably incurred in a civil action on behalf
153 of the prevailing party.

154 (b) "Civil action" means a judicial or arbitration proceeding, other than an action
155 sounding in contract or tort, in which a party seeks monetary or equitable relief at common law
156 our pursuant to statute, including an action for judicial review of agency or administrative
157 proceedings.

158 (c) "Expert fees" means fees reasonably incurred in a civil action by an expert retained
159 by or on behalf of the prevailing party.

160 (d) "Governmental entity" means the same as that term is defined in Section
161 [63G-7-102](#).

162 (e) "Prevailing party" means a party that receives, by a final judgment, substantially the
163 relief requested in the party's pleadings.

164 (f) "Private party "means a person that is not a governmental entity.

165 (2) In a civil action brought by or against a governmental entity, a court:

166 (a) shall award attorney fees to a prevailing party other than a governmental entity; and

167 (b) may, in the court's discretion, award expert fees to a prevailing party other than a
168 governmental entity.

169 (3) A claim for attorney fees or expert fees under this section is not subject to Title
170 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government
171 Employee.