

**Representative Quinn Kotter** proposes the following substitute bill:

**GOVERNMENTAL IMMUNITY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Quinn Kotter**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to governmental immunity.

**Highlighted Provisions:**

This bill:

- ▶ modifies the requirements for causation in relation to waiving a local education agency's governmental immunity for sexual battery or abuse committed by an employee against a student;

- ▶ removes a local education agency's immunity from suit if the local education agency has failed to provide assurances of employee compliance with a code of conduct's prohibition of sexual conduct or sexual relations; and

- ▶ requires a local education agency to perform certain actions to provide required assurances.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 **63G-7-301**, as last amended by Laws of Utah 2022, Chapters 388, 428

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

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

30 **63G-7-301. Waivers of immunity.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 (k) as to any action brought under Section 78B-6-2303.

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

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

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

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

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

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

92 (ii) "Local education agency" means:

93 (A) a school district;

94 (B) a charter school; or

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

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

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

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

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

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

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

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

104 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
105 claim against a local education agency for ~~[an injury resulting from]~~ a personal injury that  
106 arises out of, in connection with, or results from:

107 (i) a sexual battery or sexual abuse committed against a student of a public school by a  
108 paid employee of the public school who is criminally charged in connection with the sexual  
109 battery or sexual abuse, unless:

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

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

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

114 [(B)] (II) required the employee to sign a statement acknowledging that the employee  
115 has read and understands the code of conduct[-]; or

116 (ii) failure of a local education agency to provide assurances of employee compliance  
117 with a code of conduct's prohibition of sexual conduct or sexual relations, which include:

118 (A) emailing a communication to the parent and guardian of each student of the local

119 education agency at the start and mid-point of each school year, which communication includes  
120 the following:

121 (I) a copy of the code of conduct, as described in Subsection (3)(b)(i)(A);

122 (II) a copy of educator standards adopted by the local education agency;

123 (III) an explanation of what is required for a paid employee to comply with the  
124 provisions of the code of conduct and the educator standards;

125 (IV) clear instructions on how to file a notification of alleged educator misconduct with  
126 the Utah Professional Practices Advisory Commission;

127 (V) a link to the local education agency's webpage described in Subsection  
128 (3)(b)(ii)(B); and

129 (B) maintaining a webpage, that is visibly linked on the local education agency's home  
130 page, that is updated in real-time with a record of all notifications of alleged educator  
131 misconduct filed with the Utah Professional Practices Advisory Commission by the local  
132 education agency or by an individual, and that includes the following for each notification of  
133 alleged educator misconduct:

134 (I) the date that each notification of alleged educator misconduct was received by the  
135 Utah Professional Practices Advisory Commission;

136 (II) the name of each school at which the alleged misconduct is alleged to have  
137 occurred at;

138 (III) the name of the local education agency that employs the paid employee who is the  
139 subject of the notification of alleged educator misconduct;

140 (IV) whether the notification of alleged educator misconduct was filed by a local  
141 education agency or an individual;

142 (V) the educator standards that are implicated by the alleged misconduct; and

143 (VI) the current status, and a history of status updates listed by date, of the Utah  
144 Professional Practices Advisory Commission's investigation of the notification of alleged  
145 educator misconduct.

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

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

149 (ii) "Policy governing behavior" means a policy adopted by a higher education

150 institution or the Utah Board of Higher Education that:

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

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

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

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

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

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

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

163 (A) of a higher education institution; and

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

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

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

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

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

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

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