

HB0459S01 compared with HB0459

~~{deleted text}~~ shows text that was in HB0459 but was deleted in HB0459S01.

inserted text shows text that was not in HB0459 but was inserted into HB0459S01.

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Representative Quinn Kotter proposes the following substitute bill:

GOVERNMENTAL IMMUNITY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Quinn Kotter

Senate Sponsor: _____

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 ~~{ongoing supervision}~~ assurances of ~~{employees for}~~ employee compliance with a code of ~~{conduct}~~ conduct's prohibition of sexual conduct or sexual relations; and
- ▶ requires a local education agency to ~~{pay any attorney fees and court costs incurred}~~

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~~by an injured student if immunity is waived;~~ perform certain actions to provide required assurances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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background check under Section 53G-11-402; and

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

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

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

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

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

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

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

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

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

(iii) "Local education governing board" means:

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

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

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

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

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

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

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

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

~~(+)~~ (A) at the time of the sexual battery or sexual abuse, the public school was subject

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to a code of conduct; and

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

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

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

(ii) failure of a local education agency to provide ~~ongoing supervision~~ assurances of ~~paid employees to ensure~~ employee compliance with a code of conduct's prohibition of sexual conduct or sexual relations[-].

~~— (c) A court shall order that~~, which include:

(A) emailing a communication to the parent and guardian of each student of the local education agency at the start and mid-point of each school year, which communication includes the following:

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

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

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

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

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

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

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

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

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

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(IV) whether the notification of alleged educator misconduct was filed by a local education agency ~~to pay any attorney fees and court costs incurred by an injured student if the court determines that immunity has been waived under the provisions of this Subsection (3)~~ or an individual;

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

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

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

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

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

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

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

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

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

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

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

(v) "Subordinate student" means a student:

(A) of a higher education institution; and

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

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

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

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

(B) with the student's consent; or

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

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