

1                                   **GOVERNMENTAL IMMUNITY AMENDMENTS**

2   2017 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: V. Lowry Snow**

5                                   Senate Sponsor: Curtis S. Bramble

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies provisions relating to governmental immunity.

10 **Highlighted Provisions:**

11           This bill:

12           ▶ provides that governmental immunity is preserved for an injury arising out of or in  
13 connection with, or resulting from, certain conduct or conditions even if immunity  
14 would otherwise be waived;

15           ▶ enacts language specifying the relationship between an injury and certain conduct or  
16 conditions in determining whether immunity applies;

17           ▶ allows a claimant to begin an action after the applicable time limit if a previous  
18 timely action failed or was dismissed, other than on the merits, and other conditions  
19 are met; and

20           ▶ modifies language relating to a plaintiff's undertaking in an action against a  
21 governmental entity.

22 **Money Appropriated in this Bill:**

23           None

24 **Other Special Clauses:**

25           None

26 **Utah Code Sections Affected:**

27 AMENDS:

28           **63G-7-101**, as last amended by Laws of Utah 2015, Chapter 342

29           **63G-7-102**, as last amended by Laws of Utah 2016, Chapter 350

30 **63G-7-301**, as last amended by Laws of Utah 2015, Chapter 342

31 **63G-7-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382

32 **63G-7-601**, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

35 Section 1. Section **63G-7-101** is amended to read:

36 **63G-7-101. Title -- Scope of waivers and retentions of immunity.**

37 (1) This chapter is known as the "Governmental Immunity Act of Utah."

38 (2) The scope of the waivers and retentions of immunity found in this comprehensive  
39 chapter:

40 (a) applies to all functions of government, no matter how labeled; and

41 (b) governs all claims against governmental entities or against their employees or agents  
42 arising out of the performance of the employee's duties, within the scope of employment, or  
43 under color of authority.

44 (3) A governmental entity and an employee of a governmental entity retain immunity  
45 from suit unless that immunity has been expressly waived in this chapter.

46 (4) A governmental entity and an employee of a governmental entity retain immunity  
47 from suit if an injury arises out of or in connection with, or results from, conduct or a condition  
48 described in Subsection 63G-7-201(3) or (4), even if immunity from suit for the injury is  
49 waived under Section 63G-7-301.

50 Section 2. Section **63G-7-102** is amended to read:

51 **63G-7-102. Definitions.**

52 As used in this chapter:

53 (1) "Arises out of or in connection with, or results from," when used to describe the  
54 relationship between conduct or a condition and an injury, means that:

55 (a) there is some causal relationship between the conduct or condition and the injury;

56 (b) the causal relationship is more than any causal connection but less than proximate  
57 cause; and

58 (c) the causal relationship is sufficient to conclude that the injury originates with, flows  
59 from, or is incident to the conduct or condition.

60 [~~(1)~~] (2) "Claim" means any asserted demand for or cause of action for money or  
61 damages, whether arising under the common law, under state constitutional provisions, or  
62 under state statutes, against a governmental entity or against an employee in the employee's  
63 personal capacity.

64 [~~(2)~~] (3) (a) "Employee" includes:

65 (i) a governmental entity's officers, employees, servants, trustees, or commissioners;

66 (ii) members of a governing body;

67 (iii) members of a government entity board;

68 (iv) members of a government entity commission;

69 (v) members of an advisory body, officers, and employees of a Children's Justice  
70 Center created in accordance with Section [~~67-5b-104~~] [67-5b-102](#);

71 (vi) student teachers holding a letter of authorization in accordance with Sections  
72 [53A-6-103](#) and [53A-6-104](#);

73 (vii) educational aides;

74 (viii) students engaged in providing services to members of the public in the course of  
75 an approved medical, nursing, or other professional health care clinical training program;

76 (ix) volunteers as defined by Subsection [67-20-2\(3\)](#); and

77 (x) tutors.

78 (b) "Employee" includes all of the positions identified in Subsection [~~(2)~~] (3)(a),  
79 whether or not the individual holding that position receives compensation.

80 (c) "Employee" does not include an independent contractor.

81 [~~(3)~~] (4) "Governmental entity" means the state and its political subdivisions as both  
82 are defined in this section.

83 [~~(4)~~] (5) (a) "Governmental function" means each activity, undertaking, or operation of  
84 a governmental entity.

85 (b) "Governmental function" includes each activity, undertaking, or operation

86 performed by a department, agency, employee, agent, or officer of a governmental entity.

87 (c) "Governmental function" includes a governmental entity's failure to act.

88 [~~(5)~~] (6) "Injury" means death, injury to a person, damage to or loss of property, or any  
89 other injury that a person may suffer to the person or estate, that would be actionable if  
90 inflicted by a private person or the private person's agent.

91 [~~(6)~~] (7) "Personal injury" means an injury of any kind other than property damage.

92 [~~(7)~~] (8) "Political subdivision" means any county, city, town, school district,  
93 community reinvestment agency, special improvement or taxing district, local district, special  
94 service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13,  
95 Interlocal Cooperation Act, or other governmental subdivision or public corporation.

96 [~~(8)~~] (9) "Property damage" means injury to, or loss of, any right, title, estate, or  
97 interest in real or personal property.

98 [~~(9)~~] (10) "State" means the state of Utah, and includes each office, department,  
99 division, agency, authority, commission, board, institution, hospital, college, university,  
100 Children's Justice Center, or other instrumentality of the state.

101 [~~(10)~~] (11) "Willful misconduct" means the intentional doing of a wrongful act, or the  
102 wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's  
103 conduct will probably result in injury.

104 Section 3. Section **63G-7-301** is amended to read:

105 **63G-7-301. Waivers of immunity.**

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

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

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

- 114 (2) Immunity from suit of each governmental entity is waived:
- 115 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
116 personal property;
- 117 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
118 property, to determine any adverse claim on real or personal property, or to obtain an  
119 adjudication about any mortgage or other lien that the governmental entity may have or claim  
120 on real or personal property;
- 121 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
122 merchandise, or other property while it is in the possession of any governmental entity or  
123 employee, if the property was seized for the purpose of forfeiture under any provision of state  
124 law;
- 125 (d) subject to Subsection [63G-7-302\(1\)](#), as to any action brought under the authority of  
126 Utah Constitution, Article I, Section 22, for the recovery of compensation from the  
127 governmental entity when the governmental entity has taken or damaged private property for  
128 public uses without just compensation;
- 129 (e) subject to Subsection [63G-7-302\(2\)](#), as to any action brought to recover attorney  
130 fees under Sections [63G-2-405](#) and [63G-2-802](#);
- 131 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
132 Act;
- 133 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
134 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
135 Land Use Act;
- 136 (h) except as provided in Subsection [63G-7-201\(3\)](#), as to any injury caused by:
- 137 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
138 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or  
139 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
140 or other public improvement; and
- 141 (i) subject to ~~[Subsection]~~ Subsections [63G-7-101\(4\)](#) and [63G-7-201\(4\)](#), as to any

142 injury proximately caused by a negligent act or omission of an employee committed within the  
143 scope of employment.

144 Section 4. Section 63G-7-403 is amended to read:

145 **63G-7-403. Notice of claim -- Approval or denial of claim -- Action in district**  
146 **court -- Time for commencing action -- Commencing action after time limit.**

147 (1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its  
148 insurance carrier shall inform the claimant in writing that the claim has either been approved or  
149 denied.

150 (b) A claim is considered to be denied if, at the end of the 60-day period, the  
151 governmental entity or its insurance carrier has failed to approve or deny the claim.

152 (2) (a) If the claim is denied, a claimant may [~~institute~~] pursue an action in the district  
153 court against the governmental entity or an employee of the entity.

154 (b) [~~The~~] Subject to Subsection (3), a claimant shall [begin] commence the action  
155 within one year after denial of the claim or within one year after the denial period specified in  
156 this chapter has expired, regardless of whether or not the function giving rise to the claim is  
157 characterized as governmental.

158 (3) (a) As used in this Subsection (3), "claimant" includes a representative of an  
159 individual:

160 (i) who dies before an action is begun under this section; and

161 (ii) whose cause of action survives the individual's death.

162 (b) A claimant may commence an action after the time limit described in Subsection

163 (2)(b) if:

164 (i) the claimant had commenced a previous action within the time limit of Subsection

165 (2)(b);

166 (ii) the previous action failed or was dismissed for a reason other than on the merits;

167 and

168 (iii) the claimant commences the new action within one year after the previous action  
169 failed or was dismissed.

170 (c) A claimant may commence a new action under Subsection (3)(b) only once.

171 Section 5. Section **63G-7-601** is amended to read:

172 **63G-7-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking**  
173 **required.**

174 (1) An action brought under this chapter shall be governed by the Utah Rules of Civil  
175 Procedure to the extent that they are consistent with this chapter.

176 (2) At the time the action is filed, the plaintiff shall file an undertaking [~~in a sum fixed~~  
177 ~~by the court that is~~]:

178 (a) [~~not less than \$300~~] in the amount of \$300, unless otherwise ordered by the court;  
179 and

180 (b) conditioned upon payment by the plaintiff of taxable costs incurred by the  
181 governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover  
182 judgment.