

1 **MODIFICATIONS TO GOVERNMENTAL IMMUNITY**

2 **PROVISIONS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ken Ivory**

6 Senate Sponsor: Deidre M. Henderson

7 Cosponsors: Karianne Lisonbee

8 Patrice M. Arent V. Lowry Snow

 Brian S. King

9

10 **LONG TITLE**

11 **General Description:**

12 This bill modifies provisions relating to governmental immunity.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ waives governmental immunity for an injury claim resulting from a sexual battery
16 or sexual abuse of a child against a student by a school employee unless the school
17 was subject to a specified policy and had taken reasonable steps to implement and
18 enforce the policy; and

19 ▶ waives governmental immunity for an injury claim resulting from a sexual battery
20 of a student by an employee of an institution of higher education, under certain
21 circumstances.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63G-7-201**, as last amended by Laws of Utah 2016, Chapter 181

29 **63G-7-301**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018

30

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

32 Section 1. Section **63G-7-201** is amended to read:

33 **63G-7-201. Immunity of governmental entities and employees from suit.**

34 (1) Except as otherwise provided in this chapter, each governmental entity and each
35 employee of a governmental entity are immune from suit for any injury that results from the
36 exercise of a governmental function.

37 (2) Notwithstanding the waiver of immunity provisions of Section **63G-7-301**, a
38 governmental entity, its officers, and its employees are immune from suit for any injury or
39 damage resulting from the implementation of or the failure to implement measures to:

40 (a) control the causes of epidemic and communicable diseases and other conditions
41 significantly affecting the public health or necessary to protect the public health as set out in
42 Title 26A, Chapter 1, Local Health Departments;

43 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,
44 Chapter 23b, Detection of Public Health Emergencies Act;

45 (c) respond to a national, state, or local emergency, a public health emergency as
46 defined in Section **26-23b-102**, or a declaration by the President of the United States or other
47 federal official requesting public health related activities, including the use, provision,
48 operation, and management of:

49 (i) an emergency shelter;

50 (ii) housing;

51 (iii) a staging place; or

52 (iv) a medical facility; and

53 (d) adopt methods or measures, in accordance with Section **26-1-30**, for health care
54 providers, public health entities, and health care insurers to coordinate among themselves to
55 verify the identity of the individuals they serve.

56 (3) A governmental entity, its officers, and its employees are immune from suit, and
57 immunity is not waived, for any injury if the injury arises out of or in connection with, or
58 results from:

59 (a) a latent dangerous or latent defective condition of:

60 (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or
61 viaduct; or

62 (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

63 (b) a latent dangerous or latent defective condition of any public building, structure,
64 dam, reservoir, or other public improvement.

65 (4) A governmental entity, its officers, and its employees are immune from suit, and
66 immunity is not waived, for any injury proximately caused by a negligent act or omission of an
67 employee committed within the scope of employment, if the injury arises out of or in
68 connection with, or results from:

69 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
70 function, whether or not the discretion is abused;

71 (b) except as provided in Subsections 63G-7-301(3) and (4), assault, battery, false
72 imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel,
73 slander, deceit, interference with contract rights, infliction of mental anguish, or violation of
74 civil rights;

75 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,
76 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar
77 authorization;

78 (d) a failure to make an inspection or making an inadequate or negligent inspection;

79 (e) the institution or prosecution of any judicial or administrative proceeding, even if
80 malicious or without probable cause;

81 (f) a misrepresentation by an employee whether or not the misrepresentation is
82 negligent or intentional;

83 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

- 84 (h) the collection or assessment of taxes;
- 85 (i) an activity of the Utah National Guard;
- 86 (j) the incarceration of a person in a state prison, county or city jail, or other place of
87 legal confinement;
- 88 (k) a natural condition on publicly owned or controlled land;
- 89 (l) a condition existing in connection with an abandoned mine or mining operation;
- 90 (m) an activity authorized by the School and Institutional Trust Lands Administration
91 or the Division of Forestry, Fire, and State Lands;
- 92 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
93 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
94 if:
 - 95 (i) the trail is designated under a general plan adopted by a municipality under Section
96 [10-9a-401](#) or by a county under Section [17-27a-401](#);
 - 97 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
98 use as evidenced by a written agreement between:
 - 99 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
100 is located; and
 - 101 (B) the municipality or county where the trail is located; and
 - 102 (iii) the written agreement:
 - 103 (A) contains a plan for operation and maintenance of the trail; and
 - 104 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
105 where the trail is located has, at a minimum, the same level of immunity from suit as the
106 governmental entity in connection with or resulting from the use of the trail;
 - 107 (o) research or implementation of cloud management or seeding for the clearing of fog;
 - 108 (p) the management of flood waters, earthquakes, or natural disasters;
 - 109 (q) the construction, repair, or operation of flood or storm systems;
 - 110 (r) the operation of an emergency vehicle, while being driven in accordance with the
111 requirements of Section [41-6a-212](#);

- 112 (s) the activity of:
- 113 (i) providing emergency medical assistance;
- 114 (ii) fighting fire;
- 115 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 116 (iv) an emergency evacuation;
- 117 (v) transporting or removing an injured person to a place where emergency medical
- 118 assistance can be rendered or where the person can be transported by a licensed ambulance
- 119 service; or
- 120 (vi) intervening during a dam emergency;
- 121 (t) the exercise or performance, or the failure to exercise or perform, any function
- 122 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 123 (u) an unauthorized access to government records, data, or electronic information
- 124 systems by any person or entity; or
- 125 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
- 126 public or private road.

127 Section 2. Section **63G-7-301** is amended to read:

128 **63G-7-301. Waivers of immunity.**

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

130 obligation.

131 (b) Actions arising out of contractual rights or obligations are not subject to the

132 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

133 (c) The Division of Water Resources is not liable for failure to deliver water from a

134 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development

135 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

136 condition, or safety condition that causes a deficiency in the amount of available water.

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

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

139 personal property;

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

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

148 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of
149 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
150 governmental entity when the governmental entity has taken or damaged private property for
151 public uses without just compensation;

152 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
153 fees under Sections 63G-2-405 and 63G-2-802;

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

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

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

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

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

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

167 (j) as to any action or suit brought under Section 20A-19-301 and as to any

168 compensation or expenses awarded under Section [20A-19-301\(5\)](#).

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

170 (i) "Appropriate behavior policy" means a policy that:

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

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

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

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

179 (ii) "Local education agency" means:

180 (A) a school district;

181 (B) a charter school; or

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

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

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

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

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

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

188 (v) "Sexual abuse" means the offense described in Subsection [76-5-404.1\(2\)](#).

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

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

195 (i) at the time of the sexual battery or sexual abuse, the public school was subject to an

196 appropriate behavior policy; and

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

198 (A) provided training on the policy to the employee; and

199 (B) required the employee to sign a statement acknowledging that the employee has

200 read and understands the policy.

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

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

204 (ii) "Policy governing behavior" means a policy adopted by a higher education
205 institution or the State Board of Regents that:

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

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

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

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

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

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

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

218 (A) of a higher education institution; and

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

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

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

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

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

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

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