

**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 ongoing supervision of employees for compliance with a code of conduct; and

▶ requires a local education agency to pay any attorney fees and court costs incurred by an injured student if immunity is waived.

**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

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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 or 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 ongoing supervision of paid  
 117 employees to ensure compliance with a code of conduct's prohibition of sexual conduct or  
 118 sexual relations.

119 (c) A court shall order that a local education agency pay any attorney fees and court  
 120 costs incurred by an injured student if the court determines that immunity has been waived

121 under the provisions of this Subsection (3).

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

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

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

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

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

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

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

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

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

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

139 (A) of a higher education institution; and

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

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

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

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

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

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

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