IN THE UTAH SUPREME COURT

UNIVERSITY OF UTAH, *Defendant/Appellant*, v. JOHN TULLIS and AMELIA TULLIS, individually and as parents and natural guardians of P.T., a minor child, *Plaintiffs/Appellees*.	CASE NO.: 20230672-SC **Appeal from the Third District Court** **Case No. 190907183** **Honorable Adam T. Mow** **APPELLEES' BRIEF**

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CURRENT AND FORMER PARTIES

Parties to this appellate court proceeding:

- Appellant University of Utah; represented by Amy F. Sorenson, Cameron J. Cutler, and Annika L. Jones of SNELL & WILMER L.L.P., and Carolyn S. Stevens, LaMar F. Jost, and Clarissa M. Collier of WHEELER TRIGG O'DONNELL LLP.

- Appellees John Tullis and Amelia Tullis, individually and as parents and natural guardians of P.T., a minor child; represented by Christine Durham, Deno Himonas, Mark Yohalem, Sarah Smith, Caitlin McKelvie, and Cate Vaden from WILSON SONSINI GOODRICH & ROSATI, P.C., Charles H. Thronson of PARSONS BEHLE & LATIMER, and Michael A. Worel of DEWSNUP KING OLSEN & WOREL.

Parties to the proceeding in the District Court below who are not parties in this appellate court proceeding:

- State of Utah

- Primary Children's Hospital

- Pediatric Anesthesiologists, Inc.

- Benjamin D. Greenberg, M.D.

- Ed Harmen, MS, CCP, FPP

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INTRODUCTION

Because of medical malpractice committed by the University of Utah Hospital, four-year old P.T. suffered catastrophic, global brain damage. And P.T.'s parents, the Tullises, suffered, in turn, a tragedy that cannot be quantified or recompensed. While there is no putting a number on what the Hospital *took* from P.T. and the Tullises, the costs the Hospital *imposed* on them are undisputed: P.T.'s "medical and care expenses alone can reasonably be estimated at over $22 million" in present value. (R.3498.) Having devastated the Tullis family physically, emotionally, and financially, the Hospital now insists that the family can recover at most 3% of their hard costs—$745,200—with P.T. either not receiving the additional care he needs, or the Tullises forced to exhaust their own limited resources, public sources like Medicare/Medicaid, and any private insurance they may have.

The Hospital takes that unjust position even though this Court held in *Condemarin v. University Hospital*, 775 P.2d 348, 366 (Utah 1989), that "the recovery limits statutes" of the Utah Governmental Immunity Act ("GIA") "are unconstitutional as applied to" the Hospital, and even though the Hospital concedes that "*Condemarin* has not been expressly overruled" in the 35 years since it was decided. (R.4243.) Not only does Utah law not *compel* the injustice the Hospital seeks, it does not even *permit it*. As the District Court and this Court in *Condemarin* rightly ruled, the Utah Constitution guarantees the Tullises the right to seek full recovery of the medical and care costs inflicted on their family by the Hospital's negligent destruction of their son's brain. This Court should affirm.

STATEMENT OF THE ISSUE

Issue: Whether the Hospital could bear its summary-judgment burden on an immunity defense under the damages cap in the Governmental Immunity Act of Utah ("GIA"), Utah Code §§ 63G-7-101 *et seq*, in light of (1) *Condemarin*'s holding that it would be unconstitutional to do so; (2) the guarantees of the Open Courts Clause[1] that the Tullis family will have a right to a remedy for an injury; and the Uniform Operation of Laws Clause[2] that the Tullis family will not be unreasonably singled out for the great burden of being left to pay themselves for necessary medical care resulting from the Hospital's malpractice.

Standard of Review: This Court reviews the denial of summary judgment for correctness. *Eldridge v. Johndrow*, 2015 UT 21, ¶ 12, 345 P.3d 553. Further, "[t]he interpretation and constitutionality of a statute are questions of law that [the Court] review[s] for correctness." *Waite v. Utah Lab. Comm'n*, 2017 UT 86, ¶ 5, 416 P.3d 635.

Preservation: The Hospital preserved for appeal its arguments that (1) *Condemarin* is not binding law, and (2) the *Condemarin* holding does not apply to the facts of this case. (*See* R.2681–95; R.4240–54.)

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[1] "All courts shall be open, and every person, for an injury done to [him] in his … person, property or reputation, shall have remedy by due course of law…." Utah Const., art. I, § 11.

[2] "All laws of a general nature shall have uniform operation." Utah Const., art. I, § 24.

STATEMENT OF THE CASE

I. Legal Background: Governmental Immunity and *Condemarin*

At common law, a public entity had immunity for torts "committed in the exercise of a governmental function," but not those "committed in the exercise of a proprietary function." *Standiford v. Salt Lake City Corp.*, 605 P.2d 1230, 1233 (Utah 1980). In 1965, the Legislature codified that immunity in the GIA, Utah Code § 63-30-3 (1965), and it has altered and expanded it in the years since.

Pertinent here, when first adopted, the GIA waived immunity for certain actions that constituted governmental functions, including for injuries arising from the negligent acts of employees of government entities, *see* Utah Code § 63-30-10 (1965), but provided for a damages cap of $100,000 or the entity's insurance coverage, *id.* §§ 63-30-29(a) (1965), 63-30-34 (1965). In 1983, the Legislature increased the cap from $100,000 to the greater of $250,000 or the entity's insurance coverage. Utah Code §§ 63-30-34(1), (3) (1983). And in 1987, it (a) broadened the definition of "governmental function" to cover "any act, failure to act, operation, function, or undertaking of a governmental entity," (b) expanded the cap to all damages for personal injury "regardless of whether or not the function giving rise to the injury is characterized as governmental," and (c) removed the ability to obtain greater damages from insurance in excess of the cap and expanded the applicability of the cap to all damages for personal injury "regardless of whether or not the function giving rise to the injury is characterized as governmental." *Id.* §§ 63-30-2(4)(a), 63-30-34 (1987).

This was the context in which, in 1989, the Court was asked in *Condemarin* to determine whether the GIA's damages cap was constitutional as applied to the Hospital.

775 P.2d at 348–49. The challenge was brought by Ms. Condemarin, after the Hospital inflicted severe neurological damage on her son in 1982. *Id.* The Court explained that "[a]t the time this lawsuit arose, [the GIA] imposed a $100,000 limit on the amount a person could claim against an uninsured government entity because of injury or death," but the 1983 amendments "increased the permissible amount to $250,000." *Id.* at 348 n.1.

Although the $100,000 amount applied to the suit, the Court held not merely that the *old* $100,000 cap was unconstitutional; rather, it held that at either $100,000 or $250,000, "the recovery limits statutes are unconstitutional as applied to University Hospital." *Condemarin*, 775 P.2d at 366; *id.* at 369 (Zimmerman, J.) (explaining that there is a fundamental defect in any flat cap that applies to actual damages, and rejecting "any implication" that the Utah Constitution permits damages caps that do not "differentiat[e] between actual and general or punitive damages"); *id.* at 370 n.1 (Stewart, J.) ("My analysis … is the same under either the current statute or its predecessor."). This Court has thus recognized that "[i]n *Condemarin*, we declared that the $250,000 damage recovery limit (the 'cap') in the [GIA] was unconstitutional as applied to the Hospital." *Hipwell ex rel. Jensen v. Sharp*, 858 P.2d 987, 988 (Utah 1993); *accord Lee v. Gaufin*, 867 P.2d 572, 581 (Utah 1993).

Each of the justices in the Court's majority—Justices Durham, Zimmerman, and Stewart—wrote separately to explain the unconstitutionality of a damages cap for claims against the Hospital. While each justice wrote separately, their shared determination that "the recovery limits statutes are unconstitutional as applied to University Hospital" was

not the view of a mere "plurality of the Court" (Appellant's Opening Brief ("AOB") 9),[3] but "the holding of the Court"—as both the lead opinion, *Condemarin*, 775 P.2d at 366, and the dissent make clear, *id.* at 375 (Hall, C.J., dissenting) (beginning with "I do not join *the Court*….") (emphasis added).

Justice Durham explained that the recovery limit was unconstitutional under both the Open Courts Clause (also called "due process" in *Condemarin*) and the Uniform Operation of Laws Clause (also called "equal protection" in *Condemarin*).[4] *See* 775 P.2d at 356 n.6 & 363. Justice Zimmerman explicitly joined Justice Durham's holdings on the Open Courts Clause, while providing additional elaboration. *Id.* at 368–69. Justice Stewart "agree[d] with Justice Durham that the damages limitation is unconstitutional … as applied to the University Hospital," but reached that result based on the Uniform Operation of Laws Clause. *Id.* at 369–70.

Along the path to its bottom-line agreement as to the unconstitutionality of a damages cap applied to the Hospital, the majority agreed on several subsidiary points:

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[3] Among the more extraordinary elements of the Hospital's attempt to pass "the holding of the Court" off as a "plurality opinion" is its modification of a quotation from *State v. Anderson*, 910 P.2d 1229, 1234 (Utah 1996). In *Anderson*, the Court wrote: "Anderson's reliance on the case should be tempered by its plurality status. The plurality opinion in *Larocco* represents the views of only **two** justices of this court and is therefore not the law of this state." (Emphasis added.) The Hospital rendered that quote thusly: "[Plaintiffs]' reliance on the case should be tempered by its plurality status … [which] represents the views of only [**three**] justices of this court and is therefore not the law of this state." (AOB Addendum D at 10 (Hospital's alterations, emphasis added).) *Two* justices make a plurality; *three* make a majority.

[4] Consistent with the Court's current practice, Appellees refer to Justices Durham and Zimmerman's application of the *Berry* test in *Condemarin* as an open courts analysis rather than a due process analysis.

First, the damages cap as applied to the Hospital's performance of nongovernmental functions infringes upon a remedy protected by the Open Courts Clause because, historically, claims could be brought against government entities performing nongovernmental functions. *See Condemarin*, 775 P.2d at 352 & 358 (Durham, J.); *id.* at 368 (Zimmerman, J.); *id.* at 372 (Stewart, J.).

Second, "because the open courts clause was implicated, the cap must be analyzed under a heightened level of scrutiny." *Hipwell*, 858 P.2d at 989 n.4 (explaining the holding of the "majority of the court" in *Condemarin*); *see Condemarin*, 775 P.2d at 353, 357, 366, 368, 373. Indeed, the majority made clear it would also apply heightened scrutiny under the Uniform Operation of Laws Clause, which would "produce the same results on essentially the same grounds." *See id.* at 367 n.1 (Zimmerman, J.); *see id.* at 356 n.6 (Durham, J.) (noting the "identical" "operation and effect" of either clause).

Third, the damages limit as applied to the Hospital could not survive this heightened level of scrutiny because the severe restriction on patients' rights was, at best, marginally related to the Legislature's goal of protecting the public treasury. *See Condemarin*, 775 P.2d at 363 (Durham, J.) ("unreasonable burden" not "reasonably necessary for [the] preservation of the public treasury"); *id.* at 368–69 (Zimmerman, J.) ("substantial[] infringe[ment]" whose justifications are "extraordinarily weak"); *id.* at 374 (Stewart, J.) (determining that "the damage limitation, which operates only on those most seriously and severely injured, is an intrusion on a constitutional right that is not justified by whatever marginal enhancement of the legislative purpose flows from the statute"). Even the dissent

agreed that "the [legislative] rationale which the Court locates might be disputable," though it declined to question the Legislature's judgment. *id.* at 385 (Hall, C.J.).

After *Condemarin*, the Legislature continued to adjust the damages cap, including providing a mechanism to increase the cap based on changes to the consumer price index, Utah Code § 63-30d-604(1)(a), (4)(a) (2004); *id.* §§ 63G-7-604(3) & 63G-7-605(2)(a) (2017). As it stands today, the GIA provides governmental entities—including "the state of Utah" and each "hospital, college, [or] university … of the state"—with immunity "from suit for any injury that results from the exercise of a governmental function." Utah Code §§ 63G-7-102(4), (10) & 63G-7-201(1). Governmental functions have been expanded to cover "each activity, undertaking, or operation of a governmental entity," including "a governmental entity's failure to act." *Id.* § 63G-7-102(5)(a), (c). The GIA waives immunity for limited claims, including for "any injury proximately caused by the negligent act or omission of an employee committed within the scope of employment." *Id.* § 63G-7-301(2)(i). However, even for those claims, the GIA provides a total cap of $745,200 for damages for personal injury. *Id.* § 63G-7-604(1)(a), (1)(b), (3); Utah Admin. Code R. 37-4-3(12) (setting judgment limitation for incidents occurring on or after July 1, 2018, at $745,200).

Neither this Court, nor any inferior court, has held that the Legislature's adjustments to the damages cap abrogate or otherwise render inapposite the long-recognized majority holding of *Condemarin*.

II. Statement of Facts

The Tullises' son, P.T., was born with a treatable, congenital heart defect that requires three surgeries to address. The first two surgeries went fine. (R.3496.) In July 2018, four-year-old P.T. underwent the third surgery at Primary Children's Hospital ("PCH"). (*Id.*) The third surgery destroyed his and his parents' lives.

Near the end of P.T.'s surgery, a large amount of air entered his circulation, blocking the flow of oxygenated blood to the brain, a complication known as a massive air embolism ("MAE"). (*Id.*) This did not go unnoticed, but it tragically went unaddressed. The surgical team, aware of the MAE, read a placard containing PCH's emergency policies to address an MAE, including a procedure that would prevent brain damage. (R.3496–97.) But the cardiac surgeon—an employee of the Hospital—ordered the team not to follow the placard and not to perform the procedure. (R.3497.) The predictable consequences followed: P.T. suffered catastrophic, global brain damage and will require lifelong, total care. (*Id.*) The present value of P.T.'s future medical and care expenses alone can reasonably be estimated at over $22 million. (R.3498.)

III. Course of the Proceedings and Disposition Below

The Tullises filed a medical malpractice action against the Hospital, among others. (*See* R.1–7.) The Hospital, along with the State of Utah, moved for partial summary judgment based on the GIA damages cap. (*See* R.2681–95; R.2692.) The Tullises opposed the motion based on *Condemarin*.[5] (*See* R.3493–3510.)

[5] As an alternative, the Tullises requested they be allowed to conduct additional discovery if the District Court rejected the argument that *Condemarin* foreclosed the (continued...)

The District Court denied the Hospital and State's motion, rightly concluding that in *Condemarin* the Utah Supreme Court "determined that the damage[s] cap in the Governmental Immunity Act is unconstitutional as applied to the University Hospital" and that *Condemarin* is "binding authority." (R.4450–51; R.4441.) The District Court also rightly concluded that the Legislature's subsequent amendments to the damages cap and this Court's modifications of the *Berry* test did not render *Condemarin* inapplicable. (*See* R.4450–52.)

In response, the Hospital petitioned this Court for interlocutory review. The Tullises agreed that interlocutory review would be helpful. This Court granted the petition.

SUMMARY OF THE ARGUMENT

In arguing that the damages cap applies here, the Hospital asks this Court to overturn not only *Condemarin* but also ordinary, orderly legal process. The Court should decline the invitation. *Condemarin* is good law in both senses: it is precedent and it is wise. In following *Condemarin* and deeming the damages cap unconstitutional as applied in this case, the District Court ruled correctly. And the Hospital's limited brief does not carry the heavy burden necessary for abrogating *Condemarin* and reversing the District Court.

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motion. (R.3505–07.) Specifically, the Tullises sought discovery regarding two factors emphasized throughout *Condemarin*: (1) the Hospital is self-sustaining and competitive with private hospitals, and (2) the cap is not necessary to protect the public fisc. (R.3505–06.) The Tullises attempted to obtain discovery from the Hospital regarding these issues, including (1) the percentage of the Hospital's operating budget that comes from legislative appropriations and (2) the medical malpractice settlements and judgments paid by the Hospital since the damages cap was held unconstitutional by *Condemarin*. (R.3659–60.) The Hospital refused to provide this information, objecting to the discovery on relevance grounds. *Id.* Because the District Court denied the Hospital's motion for summary judgment, it did not reach this issue.

As the movant, the Hospital had the burden of "establish[ing] a right to judgment based on the applicable law as applied to an undisputed material issue of fact." *Lamb v. B & B Amusements Corp.*, 869 P.2d 926, 928 (Utah 1993). The applicable law is *Condemarin.* Because the Hospital asserted that *Condemarin* need no longer be followed, its burden was a particularly demanding one. *See Burton v. Chen*, 2023 UT 14, ¶ 51, 532 P.3d 1005. And now, as appellant, the Hospital bears another burden—it "must do the heavy lifting" to establish reversible error. *State v. Robison*, 2006 UT 65, ¶ 21, 147 P.3d 448.

The Hospital cannot carry these burdens, so instead it tries to shift them to the Tullises. As to the proceedings below, the Hospital claims "the district court's ruling is error because the Tullises"—*opponents* to a summary judgment motion—"failed to carry their burden." (AOB 3.) Per the Hospital, the Tullises could not "rely on *Condemarin*" (AOB 24) but should have argued from first principles as though the precedent did not exist. As to the appeal, the Hospital claims the Tullises—*prevailing parties and appellees*—have "waived" their ability to defend the ruling below. (*E.g.,* AOB 9.) Thus, per the Hospital, this Court cannot even *consider* whether the District Court rightly concluded that the damages cap was unconstitutional and must reverse unless the Tullises demonstrate that *Condemarin* is binding precedent. (AOB 25.) That is not how the law works.

The Hospital's approach to the parties' respective burdens—and the resulting absence in its briefing of any meaningful defense of the damages cap's constitutionality—have made this appeal an inappropriate vehicle to revisit *Condemarin*'s holding, or to

reassess the reasoning of the three justices whose opinions supported that holding. Compounding the briefing problem, even though "[t]he summary judgment motion at issue in this appeal was filed by Defendant[] State of Utah" (AOB ii n.1), the State declined to appeal and instead appears only as an amicus through the Attorney General, which cannot cure defects in the appellant's briefing. The approach the Hospital and the State have elected to take to try and "tee up" the issue disqualifies this case as suitable for reassessing a legal holding that the Hospital, its patients, its competitors, and the public have relied upon for 35 years.

But if the Court were inclined to reach the merits, then it should come to the same conclusion as did the majority in *Condemarin*: the damages cap is unconstitutional. Under Utah's Uniform Operation of Laws Clause, the cap draws unreasonable classifications between injured patients who can fully recover and those who cannot (and between the hospitals that face full liability for the medical injuries they inflict and those that do not).[6] And under the Open Courts Clause, the cap denies the Tullis family any reasonable alternative remedy, does not eliminate any clear social or economic evil, and is not a reasonable or justifiable means of protecting the public treasury. Either way, as the

[6] Even here, the medical professionals dealing with P.T. included both affiliates of the Hospital (such as the cardiac surgeon who overrode the MAE protocol) and others not affiliated with the Hospital. (R.4447.) Such scenarios are common, meaning that if the Hospital's affiliates can hide behind a damages cap unavailable to other healthcare professionals, there will be instances of medical malpractice where, in the same operating room during the same procedure, the most-culpable tortfeasors will face the least liability, while the least-culpable tortfeasors face the greatest liability. Such a classification is not merely unreasonable, but perverse, the mirror image of what prompted the majority's outrage in *Condemarin*—the fact that the most-injured victims would recover at most a tiny fraction of their costs, while the least-injured victims would be made whole.

Condemarin majority holding recognized, "the recovery limits statutes are unconstitutional as applied to" the Hospital. 775 P.2d at 366.

In sum, the law does not permit—let alone compel—denying the Tullises the chance to recover the crippling medical and care costs that the Hospital inflicted on their family by destroying young P.T.'s brain. The District Court was right. The *Condemarin* Court was right. And this Court would be right to affirm.

ARGUMENT

I. The Hospital Bears the Burden in Appealing from Its Unsuccessful Summary Judgment Motion and Asking This Court to Deem *Condemarin* a Dead Letter.

Ultimately, this Court should affirm irrespective of where the burden lies in this appeal, but it is important at the outset to correct the Hospital's mistaken framing of the *appellees* "bear[ing] the [] burden" and somehow "waiv[ing]" grounds on which this Court can affirm by not advancing them below. (AOB 23–25.)

As appellant, the Hospital "bear[s] the burden of proof with respect to [its] appeal[], including the burdens attending the preservation and presentation of the record." *State v. Litherland*, 2000 UT 76, ¶ 17, 12 P.3d 92. The same was true below: in moving for summary judgment, the Hospital had the "affirmative burden" to "establish a right to judgment based on the applicable law as applied to an undisputed material issue of fact." *Lamb*, 869 P.2d at 928–29. The same is true of the ultimate burden of proof: "Immunity is an affirmative defense which must be proved by the defendant." *Nelson ex rel. Struckman v. Salt Lake City*, 919 P.2d 568, 574 (Utah 1996). And, of course, in asking that *Condemarin* be treated as a dead letter, the Hospital "ha[d] a substantial burden of

persuasion" below, and bears that same burden now. *Rutherford v. Talisker Canyons Fin., Co., LLC*, 2019 UT 27, ¶ 27, 445 P.3d 474 (quoting *Met v. State*, 2016 UT 51, ¶ 43, 388 P.3d 447).

The Hospital does not even acknowledge these burdens, let alone attempt to carry them. Instead, it argues that the Tullises bore the burden, and—despite prevailing below—somehow *waived* their ability to carry that burden on appeal by resting their argument below on *Condemarin* rather than first principles. The Hospital misunderstands procedural rules. As the prevailing party below, the Tullises can certainly seek affirmance "even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and … even though such ground or theory … was not raised in the lower court, and was not considered or passed on by the lower court." *Limb v. Federated Milk Producers Ass'n*, 461 P.2d 290, 293 n.2 (Utah 1969).

If there are waivers here, they are the Hospital's. In moving for summary judgment, the Hospital limited its analysis of *Condemarin* to a single paragraph with two unelaborated assertions. First, the Hospital incorrectly claimed that *Condemarin* "is a plurality opinion"—not an opinion of the Court—"and therefore not the law." (R.2690.) Second, the Hospital vaguely asserted that "the Utah Legislature amended several portions of the [GIA]," without identifying those amendments or explaining how those amendments rendered *Condemarin* a dead letter. (R.2690.) The Hospital failed to adequately develop these contentions below and now, on appeal, it fails to elaborate why it should prevail under first constitutional principles if its attack on *Condemarin* succeeds. Further, its appellate

attack on *Condemarin*, while more developed than its briefing below, fails to address the relevant burdens and standards.

In sum, the Tullises were entitled to rely on *Condemarin* below, and they are entitled now to defend the District Court's correct decision on any available ground. Indeed, given the Hospital's refusal *on relevance grounds* to produce the evidence that would confirm *Condemarin*'s holding that the damages cap is unnecessary for protecting the public fisc (R.3659–60), the Hospital can hardly be heard to argue that the absence of such evidence precludes a defense of the order below or precluded an opposition to the summary judgment motion.

II. "The Holding of the Court" in *Condemarin* Compels Affirmance.

The Hospital sought summary judgment based on the damages cap applying to claims against the Hospital; *Condemarin* held that this would be unconstitutional as applied to this very defendant and this very kind of medical injury. As the District Court rightly ruled, faithful application of *Condemarin* required denying the Hospital's motion.

Rather than ask this Court to overturn *Condemarin*, the Hospital asks this Court to render it a dead letter based on three alternative theories: (1) there was only a "plurality opinion" because each justice in the majority authored a separate opinion; (2) the damages limit has increased over the last 35 years; and (3) the Court has subsequently altered step two of the *Berry* test that two of the justices applied in *Condemarin*. These arguments are unavailing.

A. *Condemarin* Produced Both a "Holding of the Court" and a Majority Rationale.

The Hospital incorrectly argues that—because the three justices in the majority offered separate analyses in support of the majority holding—there was no opinion of the Court in *Condemarin*, merely a plurality opinion, which is not binding law. (AOB 10–14.) The District Court rightly rejected this argument, explaining that the holding of *Condemarin* "having been joined by a majority of the justices, is binding authority." (R.4451.)

As noted, both the lead opinion and the dissent explicitly state that there *was* a "holding of the Court" in *Condemarin*, namely that "the recovery limits statutes are unconstitutional as applied to University Hospital." 775 P.2d at 366; *id.* at 375 (Hall, C.J., dissenting). And even absent this explicit holding, "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of [a majority of the] Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *State v. Anderson*, 2020 UT App 135, ¶ 40, 475 P.3d 967 (quoting *Marks v. United States*, 430 U.S. 188, 193 (1977)); *see, e.g., Erickson v. Schenkers Int'l Forwarders, Inc.*, 882 P.2d 1147, 1148–49 (Utah 1994); *State v. Gardner*, 947 P.2d 630, 645 (Utah 1997); *Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997, 1000 (Utah 1991).

Conversely, holdings agreed to by three or more justices constitute binding authority even if the justices did not agree on the underlying analysis. For example, in *State v. Maestas*, 2012 UT 46, 299 P.3d 892, the Court considered the petitioner's argument "that

death-qualified juries are more prone to convict and impose death sentences … violat[ing] defendants' right to trial by an impartial jury." *Id.* ¶ 344. The Court noted that it had already rejected this argument in two opinions, where "four justices rejected the defendant's arguments, but based on two different reasons." *Id.* ¶ 346. In these two decisions, a majority of the Court agreed that death-qualified juries were not unconstitutional, but in each case, two pairs of justices relied on separate analyses to reach this conclusion. *Id.* Despite these split analyses, the Court concluded the petitioner's arguments were unavailing because they had already been rejected by "a majority of the court." *Id.* ¶ 347.

At a minimum, as in *Maestas*, there is an *explicit* "holding of the Court" rejecting the Hospital's effort to enforce the damages cap. That alone would be enough. But there is also, as in *Anderson*, a rationale for this outcome shared on narrow grounds in all three opinions from the majority: (1) the damages cap infringes upon a remedy protected by the Open Courts Clause; (2) this infringement triggers heightened scrutiny; and (3) the damages cap cannot withstand this heightened scrutiny. The bottom-line holding and this shared rationale is binding.

Unsurprisingly, then, this Court has repeatedly recognized that—despite the differences in Justices Durham, Stewart, and Zimmerman's opinions—the areas of agreement between the three justices constitute majority holdings of the Court. *See, e.g.*, *Hipwell*, 858 P.2d at 988 & n.4 (recognizing that "*Condemarin* held that the cap, which limited the amount injured plaintiffs could recover from the Hospital for the negligent acts of hospital employees, violated article I, section 11 of the Utah Constitution and was unconstitutional" and that "[a] majority of the court agreed that because the open courts

clause was implicated, the cap must be analyzed under a heightened level of scrutiny for constitutional purposes"); *Lee*, 867 P.2d at 581 n.14 (stating that in *Condemarin*, "[t]he Court held that the operation of a state-owned hospital was not a governmental function protected by governmental immunity and that the plaintiff therefore had a right to a remedy as protected by Article I, section 11"); *Craftsman Builder's Supply, Inc. v. Butler Mfg. Co.*, 1999 UT 18, ¶ 98, 974 P.2d 1194 (plurality opinion) (noting that "[a]ll three justices [constituting the *Condemarin* majority] agreed that sovereign immunity for tort liability was limited, to some extent, by the rights protected by Article I, section 11"); *Scott v. Utah Cnty*, 2015 UT 64, ¶ 61, 356 P.3d 1172 (unanimous decision) (noting that the Court had previously determined that "operating a hospital where only '3.5 percent of the hospital's operating budget came from legislative appropriations'" is not a governmental function (quoting *Condemarin*, 775 P.2d at 373)).

Unable to answer either the explicit language of *Condemarin*, the framework for analyzing separate opinions, or the routine description of *Condemarin* as producing a majority holding, the Hospital misreads four cases that it claims "recogniz[e] *Condemarin*'s lack of a majority analysis and, thus, its limited precedential value": *Parks v. Utah Transit Auth.*, 2002 UT 55, 53 P.3d 473; *DeBry v. Noble*, 889 P.2d 428 (Utah 1995); *McCorvey v. Utah State Dep't of Transp.*, 868 P.2d 41 (Utah 1993); and *Amundsen v. Univ. of Utah*, 2019 UT 49, 448 P.3d 1224. (AOB 13.) None of the cases supports treating *Condemarin* as a dead letter here.

First, in *Parks*, the question was not the application of *Condemarin* to the Hospital, but its extension *beyond* the Hospital to the Utah Transit Authority. *See* 2002 UT 55, ¶ 11.

The Court explained that "*Condemarin* addressed the proprietary and governmental distinction *in relation to the University Hospital*, but it did not do so in a manner that could be practically applied *to any other governmental entity*. As a result, there is limited precedential value to that opinion." *Id.* (emphasis added). Here, of course, *Condemarin* applies to the Hospital.

Next, in *DeBry*, the Court rejected the Court of Appeals' treatment of a statement in the historical background section of Justice Durham's opinion as a binding holding of the Court, noting that Justice Durham's opinion "was the lead opinion in *Condemarin*" but "not a majority opinion" and that the statement in question "was made in the course of her analysis of the history and general structure of the [GIA]" and accordingly "d[id] not constitute a holding." 889 P.2d at 435. So stipulated. But that says nothing about (1) the portion of the opinion that is explicitly "the holding of the Court" or (2) the rationale that overlaps among the three majority opinions. Indeed, the *DeBry* Court cited *Condemarin* favorably, and did not treat it as a dead letter. *See id.* at 439.

As for *McCorvey*, far from saying *Condemarin* has limited precedential value, it acknowledged the same majority holdings that the Hospital now denies are binding precedent. The Court explained that the *Condemarin* majority: (1) held that the damages cap "violated the open courts clause"; (2) "in turn … appl[ied] heightened scrutiny to the cap"; and (3) applying heightened scrutiny, held that the damages cap "was unconstitutional as applied to" the Hospital. 868 P.2d at 47. In a footnote, the *McCorvey* Court noted that although the *Condemarin* majority agreed that heightened scrutiny applied, they "disagreed as to" the "correct state constitutional analysis to apply." *See id.*

at 47 n.25. Again, so stipulated. But the *McCorvey* Court still recognized the binding majority holdings from *Condemarin* despite this disagreement. *See id.* at 47.

Finally, *Amundsen* says nothing about the binding nature of *Condemarin*. The *Amundsen* Court was addressing a different question, *i.e.*, whether the procedural notice requirements under the GIA violated the Open Courts Clause. 2019 UT 49, ¶ 2. The plaintiff argued that by prohibiting her from bringing her claim against the Hospital where she failed to satisfy notice requirements, the GIA violated the Open Courts Clause. *See id.* ¶ 44. The Court concluded that the plaintiff's argument failed as it had previously held in *Payne ex rel. Payne v. Myers*, 743 P.2d 186, 190 (Utah 1987), that notice of claim provisions under the GIA did not abrogate remedies protected by the Open Courts Clause because the individual still had a remedy and just had to comply with the notice requirements. *See Amundsen*, 2019 UT 49, ¶ 44. The Court noted that "a party who neglects to recite and address controlling precedent will, almost necessarily, fail to carry her burden of persuasion." *Id.* Because the plaintiff failed to show that the operation of the GIA's notice requirement provision abrogated a remedy, the Court declined to address her argument that the damages cap violated the Open Courts Clause. *See id.* ¶ 46. In other words, once the Court concluded the plaintiff's claim was correctly dismissed pursuant to the GIA's notice requirements, there was no reason to address the damages cap because it had no impact on her claim.

In sum, *Condemarin* produced a "holding of the Court" supported by common grounds and is binding.

B. Faithful Application of "the Holding of the Court" Means that Legislative Adjustments to the Damages Cap Do Not Render *Condemarin* a Dead Letter.

According to the Hospital, even if *Condemarin* is binding precedent, it can nevertheless be entirely ignored because the Legislature has since changed the GIA, including repealing and reenacting the GIA in 2004. (AOB 1, 18–22.) The Hospital highlights that the reenacted statute: (1) raises the damages cap to $745,200 for individuals injured by the Hospital's negligence after July 2018; (2) provides a mechanism to account for inflation; and (3) does not include the ability to recover up to the amount of any insurance coverage. (*Id.*) Respect for *stare decisis*—and for the Utah Constitution—does not permit a constitutional holding of this Court to be nullified by the Legislature's modest modifications of the GIA.

Once it is recognized that the majority produced a binding "opinion of the Court," the Hospital cannot "confine [*Condemarin*] to its facts on the grounds that [*Condemarin*] was wrongly decided"; that "doesn't respect stare decisis," and "[r]espect for past opinions demands more." *Neese v. Utah Bd. of Pardons & Parole*, 2017 UT 89, ¶ 57, 416 P.3d 663. *Condemarin* cannot be given a "bare, technical" application that leaves it "technically alive" but in actuality a dead letter. *Id.* at ¶ 58 (citation omitted). Instead, "[a]bsent a persuasive invitation to overrule [it]"—and the Hospital has offered none and indeed does not even ask that *Condemarin* be overruled—this Court must give it "a full and fair application to the facts before us." *Id.* at ¶ 59.

The Hospital identifies nothing in *any* justice's decision in *Condemarin*—not even the dissent—that suggests the Court would have reached a different result in light of the

subsequent legislative modifications to the GIA. (*See* AOB 18–22.) Tellingly, as noted, the Court took no pause at the fact the cap had been raised from $100,000 to $250,000. (*See supra* p. 4.) If that 150% increase did not bear on the analysis—for instance, Justice Durham's conclusion that the cap would *not* be "large enough to compensate a majority of injuries (minor or serious)," 775 P.2d at 363—then neither do the subsequent changes. Whether measured from a starting point of $100,000 or $250,000, the increase to $754,200 since *Condemarin* has not even kept pace with inflation in medical and care expenses,[7] let alone increased the cap so materially as to change the constitutional analysis. Indeed, the amendments not only lowered the real-dollar cap, they also eliminated the ability to go above the cap where there is insurance coverage. *See* Utah Code § 63-30d-604 (2004).

Instead of articulating how the amendments would materially change how the Court resolved *Condemarin*, the Hospital directs the Court to the statements from individual senators characterizing the GIA as having been significantly changed in 2004. (AOB 19–21.) But the provisions at issue here were changed only incrementally, and ultimately "[t]he best evidence of the legislature's intent is the plain language of the statute itself." *McKitrick v. Gibson*, 2021 UT 48, ¶ 19, 496 P.3d 147. Further, the only discussion of the increase in the damages cap was an explanation from the bill's Senate sponsor, Senator Blackham,

[7] *See Hospital and Related Services Inflation Calculator*, Official Data Foundation, https://www.in2013dollars.com/Hospital-and-related-services/price-inflation/1982-to-2018?amount=100000 (last visited April 17, 2024) (calculating that based on hospital and related services inflation rates under the Consumer Price Index, $100,000 in 1982 is the equivalent to $960,396.25 in 2018). Put more starkly, the cap in 2018 is *lower* than the "absurdly low" cap at issue in *Condemarin.* 775 P.2d at 366.

that "the caps … have been increased to the current level that inflation would go from the 1965 act." *See* Hearing on S.B. 55 sub. 1, Utah Senate, 2004 General Session, Day 37 (statement of Sen. Blackham) at 11:13-28, https://le.utah.gov/av/floorArchive.jsp?markerID=33434. In other words, far from materially *increasing* the cap, it was (at most) being held flat. As for the quote indicating an intention to address "unpredictable changes in Supreme Court interpretations" (AOB 21), even the Hospital is not arguing that *Condemarin* misinterpreted *the GIA*, and the Legislature cannot override the Court's interpretation of the Constitution. *See Hipwell*, 858 P.2d at 989 n.10, 990 (holding that the legislative change to the definition of "governmental function" could not override application of the Open Courts Clause).

Just as when *Condemarin* was decided, it remains true today that "it is unlikely that the recovery limit amount would pay more than a fraction of plaintiffs' actual medical expenses," so "the burden of this legislative attempt to protect the state treasury falls exclusively on those most in need of financial protection." *Condemarin*, 775 P.2d at 361 (Durham, J.). The GIA amendments are not material to *Condemarin*.

C. The Court Has Not Explicitly or Implicitly Overruled *Condemarin*.

The Hospital fares no better with its attempt to nullify *Condemarin* by describing the development in this Court's open courts analysis of constitutionality in the years since. (AOB 14–17.) To be sure, that analysis *has* developed, though the Court continues to apply *Berry*, as the Court did in *Condemarin*. *See Condemarin*, 775 P.2d at 357 (Durham, J.); *id.* at 366 (Zimmerman, J.); *Judd v. Drezga*, 2004 UT 91, ¶ 11, 103 P.3d 135; *Waite*, 2017 UT 86, ¶¶ 21–22. While this Court subsequently changed the level of deference afforded to the

Legislature in the *Berry* test, these decisions did not overrule *Berry* or *Condemarin. See Judd*, 2004 UT 91, ¶ 17; *Waite,* 2017 UT 86, ¶ 22.

In *Judd*, 2004 UT 91, ¶ 11, and *Waite*, 2017 UT 86, ¶ 22, the Court explained that it was no longer good law to presume legislation unconstitutional when it abrogates a remedy protected by the Open Courts Clause. As in *Condemarin*, however, the Court continued to apply a heightened level of scrutiny in the three-part *Berry* test.[8] *Judd*, 2004 UT 91, ¶¶ 12-18 (analyzing whether the Legislature's elimination of a remedy protected by the Open Courts Clause was "narrowly tailored" to address the identified social or economic evil); *Waite,* 2017 UT 86, ¶¶ 18-30 (same). And in neither case did the Court overturn the holding of *Condemarin* that the damages cap is unconstitutional as applied to the Hospital. Indeed, *Judd* specifically noted the differences between the damages cap at

[8] The Hospital cites the opinion of two justices in *Wood v. Univ. of Utah Med. Ctr.*, 2002 UT 134, ¶ 8, 67 P.3d 436, to support its argument that *Condemarin* had been overruled. (AOB 14.) *Wood* was a split opinion of the Court, in which Justice Durham wrote for the majority on the proper application of the *Berry* test, and Justice Wilkins' lead opinion garnered the votes of the majority as to the application of the due process and equal protection analyses. *See Wood*, 2002 UT 134, ¶ 41 (Durham, J., dissenting) ("I note that Part I of this opinion on the standard of review, having been joined by Justices Howe and Russon, reflects the majority view on that issue."). Justice Wilkins' criticism of the application of heightened scrutiny to legislation that abrogates a remedy protected by the Open Courts Clause only received the support of one other justice, while the majority signed on to Justice Durham's countering opinion. *See id.* ¶¶ 7–8 (Part I of Justice Wilkins' opinion, critiquing the application of heightened scrutiny to open courts challenges); *id.* ¶ 39 (Durrant, C.J., concurring in Justice Wilkins' opinion); *id.* ¶ 40 (Howe, J., concurring in the result of parts II and III of Justice Wilkins' opinion); *id.* ¶¶ 43–50 (Durham, J., dissenting) (reaffirming the application of heightened scrutiny to open courts challenges in part I of her dissent); *id.* ¶ 86 (Howe, J., concurring in Part I of Justice Durham's dissent); *id.* ¶ 40 (Russon, J., concurring in Justice Durham's dissent). Accordingly, the excerpt from *Wood* that the Hospital relies upon represented the opinion of only two justices and could not overrule *Condemarin*.

issue in that case (which applied only to noneconomic damages) and the damages cap considered in *Condemarin* (which applied to all damages) to explain the differing results in the two cases. *See Judd,* 2004 UT 91, ¶ 17. There would be no reason for such analysis if the change shift in the *Berry* test had abrogated *Condemarin*.

Indeed, the shared rationale of the majority justices in *Condemarin* is one that did not depend on a presumption of unconstitutionality—the result was rather dictated by the disconnect between the legislative interest and the effect of the damages cap. (*See supra* pp. 14–16.) The majority shared repugnance for "the absurdly low amount contained in the recovery limits statutes," which "infringes egregiously" on the rights of victims of medical malpractice, *Condemarin*, 775 P.2d at 366 (Durham, J.), "severely restricts the right of every citizen" on grounds that "are extraordinarily weak," *id.* at 368–69 (Zimmerman, J.), and "operates *only* on those most seriously and severely injured" "an intrusion on a constitutional right that is not justified by whatever marginal enhancement of the legislative purpose flows from the statute," *id.* at 374 (Stewart, J.). A presumption neither caused, nor could cure, such repugnance.

For that reason, any change in the *Berry* approach is insufficient to treat *Condemarin* as a dead letter.

III. The Court Should Apply the "Holding of the Court" in *Condemarin* Both as a Matter of *Stare Decisis* and Because It Is a Sound Rule.

For the reasons just set forth, *Condemarin* is good, binding law, and the question before the Court is whether the Hospital has carried the heavy burden of overcoming *stare*

decisis to justify changing a long-standing precedent. As explained below, the Hospital does not even attempt to carry that burden, nor could it had it tried.

One reason for not overturning *Condemarin* is, equally, a reason to affirm here even if the Hospital is hypothetically correct and *Condemarin* is somehow a dead letter: the rule of *Condemarin* is sound. What the Hospital seeks is an injustice that has become no less repugnant to the Utah Constitution and basic decency in the 35 years since *Condemarin*: an absurd outcome by which patients who are only slightly hurt by the Hospital's malpractice can fully recover, but those whose lives are ruined by such negligence—like P.T.—are left not only bereft of their health but also of the costs of caring for their broken bodies and minds.

Let us be perfectly clear: the Hospital's position is that, as between the family shattered by the Hospital's negligence and the Hospital, it is *the family* who should bear the costs of caring for a child whose brain was catastrophically damaged through malpractice. For "damages cap" is a misnomer. Nothing in the GIA caps the amount of damage that the Hospital can do to a child through medical malpractice. What the Hospital wants to cap is *its accountability* and *the Tullises' ability to care for their child*.

In the 35 years since *Condemarin*, such callousness has not been the law of the land in Utah. Principles of *stare decisis* caution, and fundamental constitutional precepts mean that the tortfeasor—not the victim—should continue to bear the medical and care costs of the Hospital's malpractice.

A. Principles of *Stare Decisis* Require Retaining *Condemarin.*

"The stability and legitimacy of our legal system requires [the Court] to undertake the review of precedents in a spirit of deference and humility," and "not overrule [those] precedents lightly." *Rutherford*, 2019 UT 27, ¶ 27. This precept of "*[s]tare decisis* 'is a cornerstone of Anglo–American jurisprudence' because it 'is crucial to the predictability of the law and the fairness of adjudication.'" *Eldridge*, 2015 UT 21, ¶ 21 (quoting *State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993)). It "reinforces confidence in judicial integrity and lays a foundation of order upon which individuals and organizations in our society can conduct themselves." *State v. Rowan*, 2017 UT 88, ¶ 24, 416 P.3d 566 (Himonas, J., concurring) (joined by majority).

Because of these bedrock principles, this Court will not overrule precedents unless "they've proven to be unpersuasive and unworkable, create more harm than good, and haven't created reliance interests." *Neese*, 2017 UT 89, ¶ 57. The Court will not merely pay lip service through a "bare, technical refusal to overrule" a decision, while actually "beating [it] to a pulp and then sending it out to the lower courts weakened, denigrated, more incomprehensible than ever, and yet somehow technically alive." *Id.* ¶ 58 (citation omitted). Instead, the Court gives precedent "full and fair application to the facts before [it]." *Id.* ¶ 59.

These important principles are reflected in *Eldridge*'s two-factor test. *Rutherford*, 2019 UT 27, ¶ 28. First, the Court looks to "the persuasiveness of the authority and reasoning on which the precedent was originally based." *Eldridge*, 2015 UT 21, ¶ 22. Second, the Court must address "how firmly the precedent has become established in the

law since it was handed down." *Id.* These two factors reflect the "two main goals of the doctrine of *stare decisis*"—"predictability and fairness." *See Christiansen v. Harrison W. Constr. Corp.*, 2021 UT 65, ¶ 92, 500 P.3d 825 (Himonas, J., concurring) (joined by majority).

Not only does the Hospital not put forth a persuasive argument as to why *Condemarin* fails the *Eldridge* test, but the Hospital *does not even mention the test*. It is not enough to ask this Court "to confine [*Condemarin*] to its facts"; this Court will not "upend our precedents absent argument from the parties that they be overruled." *Neese*, 2017 UT 89, ¶ 59. Given the Hospital's failure to make such argument, or even cite the applicable test, its appeal must fail. Indeed, the Hospital's decision not to even brief the applicable test is consistent with an overall strategy of burden-shifting—requiring the Tullises to brief in the first instance why a precedent should be upheld without seeing the appellant's arguments for why it should be disregarded.

Regardless, as explained below, this Court should not overturn its holding because it (1) is soundly reasoned and based on substantial authority; and (2) has become firmly established, creating substantial reliance interests. These two factors alone are sufficient to demonstrate that *Condemarin* is entitled to *stare decisis* respect. But even analyzing the constitutionality of the damages cap today—accounting for the subsequent changes that the Hospital argues demonstrate *Condemarin* is no longer binding law—shows that *Condemarin* got it right. The Court should not overrule *Condemarin* based on subsequent shifts related to the underlying analysis where it is clear that the Court would still reach the same conclusion today.

1. The Hospital has not briefed a stare decisis *challenge to* Condemarin *and has, therefore, waived the argument.*

A party asking the Court "to overturn prior precedent ha[s] a substantial burden of persuasion." *Rutherford*, 2019 UT 27, ¶ 27 (quoting *Met*, 2016 UT 51, ¶ 43). And the Court will not overturn its precedent "unless and until a party meets its burden of establishing that [the Court's] prior case law is unworthy of *stare decisis* respect." *JBS Carriers v. Utah Lab. Comm'n*, 2022 UT 31, ¶ 45, 513 P.3d 715 (quoting *Waite*, 2017 UT 86, ¶ 88 (Pearce, J., concurring)). To meet this burden, "a party must address" and "meaningfully engage with" the two *Eldridge* factors. *Burton*, 2023 UT 14, ¶¶ 51–53.

The Hospital has elected not to take on this burden, declining to ask the Court to overturn *Condemarin* and failing to address the *Eldridge* factors. By failing to raise this issue on appeal, the Hospital has in fact waived this argument, and the Hospital cannot cure that waiver in their reply brief. *State v. Johnson*, 2017 UT 76, ¶ 16, 416 P.3d 443. And, because the Hospital has waived this argument, the Court should not consider whether to overturn the holding in *Condemarin*. *Id.*; *see also JBS Carriers*, 2022 UT 31, ¶ 45 (declining to revisit precedent where neither party had asked the Court to overturn precedent or briefed the *Eldridge* factors).

This waiver alone should end the matter.

2. Condemarin *is soundly reasoned and based on substantial authority.*

"The first factor in determining how much deference a precedent should be afforded is the persuasiveness of the authority and reasoning on which the precedent is based." *Eldridge*, 2015 UT 21, ¶ 24. The Hospital has the burden of demonstrating that *Condemarin*

was not merely wrong, but based on "[w]eak [a]uthority and [r]easoning," *see id.*, ¶ 23, or an absence of analysis entirely, *see State v. Sanders*, 2019 UT 25, ¶ 37, 445 P.3d 453. That is particularly difficult. "[B]ecause of the paramount importance of constitutional adjudication, [the Court] assume[s] that when [the] court has previously adjudicated a constitutional issue, it has not rushed headlong to reach the constitutional question, but has, instead, acted with the utmost care." *Rowan*, 2017 UT 88, ¶ 25 (Himonas, J., concurring) (joined by majority). No such assumption is necessary here, because *Condemarin* shows such care throughout. The justices engaged deeply with Utah law (and with each other), and unlike precedents this Court has overruled that "did not even nod at the cases from other jurisdictions that have wrestled with the topic," *Sanders*, 2019 UT 25, ¶ 37, they carefully surveyed other states' and federal courts' reasoning as well. *See, e.g., Condemarin,* 775 P.2d at 361-62 (Durham, J.); 368 (Zimmerman, J.); 372-74 (Stewart, J.) (citations omitted).

In sum, while the Hospital may disagree with the outcome of the case, the level of care and breadth of law surveyed in *Condemarin* is extraordinary.

3. Condemarin *has become firmly established.*

For 35 years, the express holding of this Court has been that the damages caps are unconstitutional as applied to the Hospital. Patients seeking care there did so against that backdrop; the Hospital bought insurance against that backdrop; and plaintiffs filed cases against that backdrop. "Societal reliance lies at the heart of *stare decisis* and originated with Justice Brandeis's statement that 'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'" *Christiansen*, 2021 UT 65,

¶ 90 (Himonas, J., concurring) (joined by majority) (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). The Court considers "the age of the precedent, how well it has worked in practice, its consistency with other legal principles, and the extent to which people's reliance on the precedent would create injustice or hardship if it were overturned." *Eldridge*, 2015 UT 21, ¶ 22. All of these factors favor retaining *Condemarin*.

First, *Condemarin* has been on the books for 35 years—a significant amount of time that this Court has previously determined weighs against overruling precedent. *See*, *e.g.*, *Taylorsville City v. Mitchell*, 2020 UT 26, ¶ 35, 466 P.3d 148 (noting that fact decision had been "on the books for thirty years" weighed against overturning precedent).

Second, *Condemarin* has worked well in practice. From an impact standpoint, there is no evidence whatsoever that the inapplicability of damages caps to the Hospital has adversely affected the Hospital or the public treasury. And the limited nature of the *Condemarin* holding has made it straightforward for courts to apply. Moreover, despite that limited holding, its reasoning has proven influential in both Utah and beyond. The dozens of cases relying on *Condemarin* in various ways would all needlessly be undermined by abrogating the decision.

Third, *Condemarin*'s holding is consistent with other Utah legal principles. Not for nothing did this Court cite *Condemarin* for the "principle of American law that victims of wrongful or negligent acts should be compensated to the extent that they have been harmed," *Savage v. Utah Youth Vill.*, 2004 UT 102, ¶ 13, 104 P.3d 1242, and reaffirm the principle that the Open Courts Clause "acts as a substantive check on legislative power,"

Waite, 2017 UT 86, ¶ 18. The holding and core principles of *Condemarin* are well woven into the fabric of Utah law; that aspects of its analysis may be outmoded in some respects—as the Hospital contends—does not make *Condemarin* a khaki thread in gray slacks.

Finally, and most significantly, the Court's decision in *Condemarin* has created substantial reliance interests, which "would create injustice or hardship if it were overturned." *Eldridge*, 2015 UT 21, ¶ 22. Since *Condemarin* was decided, Utah patients and hospitals have been on notice that the damages cap is unconstitutional. Accordingly, patients and their families, including the Tullises, have sought treatment from the Hospital, knowing that their ability to seek a remedy if something went wrong was the same whether at the hands of the Hospital or its competitors. This also generates secondary effects, such as individuals deciding to move their family to seek treatment at the Hospital or to sign up for a health insurance plan where the Hospital would be their only in-network coverage. Other hospitals and care facilities may have made investments in reliance on the notion that they would be competing against the Hospital on an even playing field, rather than one tilted in the Hospital's favor by liability limits and cheaper insurance.

The Hospital's actions also demonstrate its reliance on *Condemarin*. From the time *Condemarin* was published in 1989 through January 2023, the Hospital regularly settled with injured patients above the damages cap, instilling the community's reasonable reliance on the holding. It was only on January 1, 2023, that the Hospital stopped settling those cases. (*See* R.3495; *see also* R.2336, n.1; R.2564–65.) The Hospital is also self-insured for up to $5 million per claim, with additional excess coverage—showing the Hospital's reliance upon *Condemarin* in selecting insurance. (*See* R.4244.) Such excess

coverage would make no sense if the Hospital actually believed there was a cap of less than $1 million.

In sum, while the Hospital's failure to even brief the relevant test or factors should alone compel affirmance, the *Eldridge* analysis strongly supports retaining *Condemarin*'s holding.

B. The "Sound Rule" of *Condemarin* Belongs in the Law.

Even where a prior decision reads the precedent wrong, this Court will retain the holding when "it nevertheless articulated a sound rule." *See, e.g.*, *C.R. England v. Swift Transp. Co.*, 2019 UT 8, ¶ 31, 437 P.3d 343. Of course, "a sound rule" is worth adopting anew even when precedent does not compel it. The soundness of the *Condemarin* holding means that it should be part of this Court's precedent—either because the Court retains *Condemarin* as a matter of *stare decisis* or because the Court adopts that holding as a matter of underlying constitutional principles considered afresh.

1. The damages cap as applied to the Hospital violates the Open Courts Clause.

As applied to the Hospital, the damages cap abrogates a cause of action or remedy that was available at the time of its enactment, *see Laney v. Fairview City*, 2002 UT 79, ¶ 4950, 57 P.3d 1007, and it neither (1) "provides an injured person an effective and reasonable alternative remedy 'by due course of law' for vindication of his constitutional interest," nor (2) addresses "a clear social or economic evil to be eliminated" where "the elimination of an existing legal remedy is not an arbitrary or unreasonable means for achieving the objective," *Judd*, 2004 UT 91, ¶ 11 (quoting *Berry v. Beech Aircraft Corp.*,

717 P.2d 670, 680 (Utah 1985)); *see also Waite*, 2017 UT 86, ¶ 19. For that reason, it is unconstitutional.

a. The damages cap abrogates a remedy.

Where legislation expands immunity beyond the performance of what was historically considered a governmental function, it abrogates a remedy that would have been available under the common law and the GIA as originally enacted. *See Tindley v. Salt Lake City School Dist.*, 2005 UT 30, ¶ 21, 116 P.3d 295.

Under the *Standiford* test, the historical scope of a governmental function is one "[1] of such a unique nature that it can only be performed by a governmental agency or … [2] essential to the core of governmental activity." *Standiford v. Salt Lake City Corp.,* 605 P.2d 1230, 1236–37 (Utah 1980). The Hospital's services fail that test. First, private hospitals in the area provide the same services, competing with the Hospital in the marketplace. Second, the Hospital's services are not "essential to the core of governmental acitivty," *id.*, where the Hospital receives only 2.9% of its funding through legislative appropriations and provides a service that is also provided by private hospitals competing in the same market. (*See* R.3498; R.4243–44.)

Whether considering 1978 (when the Legislature expanded immunity to all activities engaged in by governmentally-owned hospitals) or 2004 (when the Legislature enacted the current version of the GIA), the cap cuts off a remedy that was previously available. The 1978 amendments abrogated the ability of an individual to seek a remedy for negligence caused by the Hospital by expanding immunity beyond the exercise of governmental functions. And if the Court agrees with the Hospital's argument that the 2004

reenactment of the GIA in its current form had the effect of displacing the *Condemarin* holding, the 2004 act abrogated a remedy that had been available based on *Condemarin*'s holding that the damages cap in the GIA was unconstitutional as applied to the Hospital. Indeed, the Court has recognized in *Judd* that legislation setting a cap on damages for a claim where no such cap previously existed abrogates a remedy protected by the Open Courts Clause. *See* 2004 UT 91, ¶ 12.

b. The Legislature has not provided a reasonable alternative.

An alternative remedy is reasonable only if it is "substantially equal in value or other benefit to the remedy abrogated in providing essentially comparable substantive protection to one's person, property, or reputation." *Berry,* 717 P.2d at 680. Here, the GIA reduces injured patients' potential recovery from the Hospital to $745,200 but offers no alternative benefit. *See* Utah Code §§ 63G-7-102(4) & (10); *id.* § 63G-7-604(1)(a); *id.* § 63G-7-605; Utah Admin. Code R. 37-4-3(12). As the cap on recovery here, which could reduce plaintiffs' recovery by 97%, makes clear (R.3498), and as *Judd* recognizes, it is "self-evident" that this is not an adequate alternative remedy, 2004 UT 91, ¶ 12.

c. There is no clear social or economic evil to be eliminated.

In deciding "whether the legislature was acting in response to a 'clear social or economic evil,'" *Waite*, 2017 UT 86, ¶ 21 (quoting *Berry*, 717 P.2d at 680), the question is whether the Legislature "determined that there was a crisis needing a remedy," *Judd*, 2004 UT 91, ¶ 15. If so, it is entitled to deference "[w]hen an issue is fairly debatable." *Id.* Here, the Legislature did not articulate any crisis of tort claims against the Hospital, and

even if it had, it is not fairly debatable that a cap is necessary to "protect the public treasury from the costs of medical malpractice," *Condemarin*, 775 P.2d at 354—the only interest ever articulated for capping claims against the Hospital.

To begin with, the Hospital has faced no solvency issues from medical malpractice claims in the 35 years since *Condemarin*. And the fact that hospitals unaffiliated with the State have continued operations confirms that the GIA damages cap is not necessary for their solvency. That may be because hospitals have partaken equally of the Utah Health Care Malpractice Act, which caps noneconomic damages in medical malpractice cases. *See* Utah Code § 78B-3-410(1)(d). That there is no crisis in the public fisc to be addressed by a damages cap for the Hospital is further underscored by the very small role that public funding plays at the Hospital—less than 3%. (*See* R.3498; R.4243–44.)

d. The damages cap is an arbitrary and unreasonable means of pursuing the legislative goal.

Even if the Court determines the damages cap as applied to the Hospital was a response to a clear social or economic evil, the cap would still be unconstitutional because it is "an arbitrary or unreasonable means for achieving the objective." *Berry,* 717 P.2d at 680. The cap is not "'narrowly tailored'" and it "cut[s] an unnecessarily wide swath through [the impacted] causes of action." *Waite*, 2017 UT 86, ¶ 28; *see also Judd*, 2004 UT 91, ¶ 17; *Hirpa v. IHC Hosps., Inc.*, 948 P.2d 785, 794 (Utah 1997)). The damages cap here compares unfavorably to those deemed narrowly tailored in *Judd*, *Waite*, and *Craftsman*.

In *Judd*, the Court concluded a damages cap that only applied to noneconomic damages was "narrowly tailored" because the Malpractice Act was "limit[ed to] quality of

life damages alone," *unlike* "the cap struck down in *Condemarin*," which "cap[ped] all damages." 2004 UT 91, ¶ 17. This was critical because although "Utah has not seen large damage awards in significant numbers," noneconomic damages such as quality-of-life damages "are [] less susceptible to quantification than purely economic damages." *Id.* Here, of course, the cap suffers from exactly the defect whose absence saved the Malpractice Act.

In *Waite*, the Court upheld a statute that "cut[] off a worker's right to file for benefits only if the changed circumstances warranting benefits—the development of the injury into a disability or the discovery of a previously unknown injury—accrue[d] twelve years after the original accident." 2017 UT 86, ¶ 29. This statute was narrowly tailored "to end prolonged and uncertain liability for both insurance companies and employers—and to reduce the associated insurance premiums." *Id.* ¶ 30. It applied after only twelve years, substantially longer than most statutes of repose or statutes of limitation, using the minimal intrusion possible to address the uncertainty raised by potential future claims. *Id.*

In *Craftsman*, the Court concluded that a statute of repose on claims arising from improvements to real property was narrowly tailored because the limitations set by the statute (six years for breach of contract and breach of warranty claims, and twelve years for all other claims) were a reasonable and nonarbitrary means to address the Legislature's stated purpose of reducing liability insurance and record storage costs in the construction industry. *See* 1999 UT 18, ¶¶ 13, 21–22. In reaching this conclusion, the Court noted that although the evidence showed claims were unlikely to arise six years after construction

was complete, the Legislature still narrowly tailored the legislation to only apply after twelve years for most claims. *See id.* ¶¶ 21–22.

Unlike those laser-focused excisions, the cap the Hospital seeks is an amputation that "cut[s] an unnecessarily wide swath through causes of action." *Hirpa*, 948 P.2d at 794. In *Judd*, *Waite*, and *Craftman*, the Legislature had targeted the most marginal and uncertain of claims—damages that were "less susceptible to quantification," or claims so old that evidence would be stale and memories faded. Here, the Hospital goes after hard numbers—actual cost of care—where there are no problems of proof. The cap is not set so high that only black-swan injuries would trigger it, but rather at a level that impinges on most serious claims of malpractice.

Indeed, the cap reflects no logic at all, simply an effort to adjust for inflation an arbitrary round number settled upon decades ago, under entirely different healthcare and economic circumstances. *See* Hearing on S.B. 55 sub. 1, Utah Senate, 2004 General Session, Day 37 (statement of Sen. Blackham) at 11:13-28, https://le.utah.gov/av/floorArchive.jsp?markerID=33434 (explaining that "the caps … have been increased to the current level that inflation would go from the 1965 act"). The Hospital has needed no such limit for the past 35 years, and indeed the limit is a fraction of the Hospital's self-insurance, even before it reaches excess coverage.

In sum, the damages cap is not narrowly tailored, and for this reason, too, would fail the Open Courts Clause analysis.

2. *The damages cap as applied to the Hospital violates the Uniform Operation of Laws Clause.*

The damages cap likewise violates the Uniform Operation of Laws Clause. In fact, the Hospital does not even attempt to dispute the analysis of the Uniform Operation of Laws in *Condemarin*. (*See* AOB 14–16.) And applying the law that has developed since *Condemarin* confirms that the same result should be reached today.

Because the damages cap infringes upon a remedy protected by the Open Courts Clause, its review under the Uniform Operation of Laws Clause is subject to heightened scrutiny. *See Tindley*, 2005 UT 30, ¶ 28. That is, the discriminatory classifications created by the damages cap will be upheld only if they "(1) [are] reasonable, (2) ha[ve] more than a speculative tendency to further the legislative objective and, in fact, actually and substantially further[] a valid legislative purpose, and (3) [are] reasonably necessary to further a legitimate legislative goal." *Lee*, 867 P.2d at 582–83; *see also Judd*, 2004 UT 91, ¶ 21; *Gallivan v. Walker*, 2002 UT 89, ¶ 42, 549 P.3d 1069.

The damages cap as applied to the Hospital creates two discriminatory classifications. *First*, patients injured by the Hospital are treated differently than patients injured by private hospitals. This arbitrary classification impacts both patients—whose ability to recover varies with which hospital they choose—and hospitals—as the Hospital's competitors are not benefited by the damages cap. *Second,* patients severely injured by the Hospital are treated differently than patients less severely injured by the Hospital.

a. The classifications created by the damages cap are not reasonable.

Turning to the first step of the analysis, these classifications are not "reasonable." *See Lee*, 867 P.2d at 582–83. To determine whether a classification is reasonable, the Court has "considered: (1) if there is a greater burden on one class as opposed to another without a reason; (2) if the statute results in unfair discrimination; (3) if the statute creates a classification that is arbitrary or unreasonable; or (4) if the statute singles out similarly situated people or groups without justification." *Merrill v. Utah Lab. Comm'n*, 2009 UT 26, ¶ 10, 223 P.3d 1089, *reh'g granted on other grounds* 2009 UT 74, 223 P.3d 1099.

Classifications are more likely to be upheld when they are closely related to the goal of the legislation. For example, the Court determined that treating pit bulls differently than other breeds of dogs was reasonable in pursuit of public safety where the undisputed evidence showed that "as a group, pit bulls are dangerous animals." *Greenwood v. City of N. Salt Lake*, 817 P.2d 816, 821 (Utah 1991). In contrast, where legislation arbitrarily shifts a burden to one group in a way that is not clearly connected to the legislative purpose, the Court has determined that the classifications created by the legislation are unreasonable. For example, the Court concluded it was unreasonable to lower worker's compensation benefits for individuals on the basis that they were receiving Social Security benefits "because this classification singles out certain people without a rational basis." *Merrill*, 2009 UT 26, ¶ 15.

The classification between patients injured by the Hospital and patients injured by a private hospital is unreasonable. These individuals are similarly situated. Indeed, in

emergency circumstances it may be pure happenstance whether an individual is treated by the Hospital or another facility. Either way, the victim of malpractice faces medical and care costs. Either way, the victim is subject to the Utah Health Care Malpractice Act, which caps noneconomic damages. *See* Utah Code § 78B-3-410. Despite being materially identical, the Hospital's victims cannot even recover their full medical and care costs, and the Hospital's competitors face an uneven playing field in operational expenses. The only identified difference to justify this classification is that the Hospital receives around 3% of its funding from the State. This minor difference is not a rational justification to treat these similarly situated individuals differently.

The second classification, between those with the most severe injuries and those with milder injuries, is also unreasonable. As explained in *Condemarin*, 775 P.2d at 353 (Durham, J.), while those with mild injuries can recover all their damages, patients who suffer the greatest harm because of the Hospital's negligence are "single[d] out" with the "greater burden" of not even receiving compensation to cover their actual medical costs. *Merrill*, 2009 UT 26, ¶ 10. This classification impermissibly shifts a significant burden to those most harmed by the Hospital's negligence and is arbitrary.

These classifications are not reasonable, and accordingly, before even reaching steps two and three, it is clear that the damages cap violates the Uniform Operation of Laws Clause.

b. The classifications created by the damages cap are not reasonably necessary to achieve the legislative goal and do not substantially further a valid legislative purpose.

The classifications fail at step 1, but even if that were not so, they would still be unconstitutional unless they "ha[ve] more than a speculative tendency to further the legislative objective and, in fact, actually and substantially further[] a valid legislative purpose" and are "reasonably necessary to further a legitimate legislative goal." *Judd*, 2004 UT 91, ¶ 19 (quoting *Lee*, 867 P.2d at 582–83). Considering the only objective ever articulated for the damages cap—"protect[ing] the public treasury from the costs of medical malpractice insurance and/or large recoveries," *Condemarin*, 775 P.2d at 354—the classifications are at best speculative and not reasonably necessary, and thus fail the second and third steps as well.

As noted above, the Hospital receives only about 3% of its funding from the State and is presently insured up to $5 million per claim with excess coverage. (*See* R.3498; R.4243–44.) Accordingly, lowering the Hospital's insurance premiums would only have a minor, indirect effect on the public treasury. And, far from demonstrating that the damages cap "actually and substantially furthers a valid legislative purpose," the past 30+ years demonstrate that the damages cap is unnecessary as the Hospital has been able to retain insurance and pay for its negligence without jeopardizing the public treasury.

The Court has previously recognized that arbitrary classifications cannot withstand scrutiny under the Uniform Operation of Laws Clause solely because the legislation supports some broad, indirectly related goal. For example, in *Lee,* three members of this

Court struck down a statute of repose and statute of limitations for minors in medical malpractice cases. *See* 867 P.2d at 589. The Court discussed the legislative rationale underlying the Malpractice Act (combatting increasing malpractice insurance costs and healthcare costs caused by increased litigation) and expressed significant skepticism. 867 P.2d at 583–84. The Court concluded that there was no evidence supporting the legislature's determination that a substantial rise in the number of medical malpractice lawsuits and the size of verdicts was accounting for a dramatic increase in medical malpractice insurance premiums and the increased cost of health care. *Id.* at 588. The Court also determined that even if the legislative rationale were a legitimate concern, "that would not justify shifting the costs of malpractice injuries from health-care providers to injured children and their caretakers." *Id.* The Court held that the medical malpractice statutes of limitation and repose unconstitutionally discriminated against minors whose malpractice claims were extinguished by the statute before the minors reached the age of majority. *Id.* at 589.

Applying the same principles in a different context, the Court struck down a multicounty signature requirement for ballot initiatives in *Gallivan*. 2002 UT 89, ¶¶ 12, 43-64. The Court found that in the application of Utah statutes governing voter initiatives, registered voters were treated differently depending on whether they lived in urban or rural counties. *Id.* ¶ 45. Because the voter initiative legislation required a petition to garner support from at least 20 of Utah's 29 counties, the votes of registered voters in rural counties were effectively being given more weight than those in urban counties. *Id.* The Court concluded that the legislative purposes put forward, such as maintaining the integrity

of the voting process and ensuring that initiatives are not too easy to get on the ballot, did not justify the discriminatory classification. *Id.* ¶ 47. The Court determined the classification between urban and rural voters was not a "reasonably necessary means" of meeting the Legislature's goals. *Id.* ¶ 49. Accordingly, the Court held that the multicounty signature requirement was an unconstitutional violation of the Uniform Operation of Laws Clause. *Id.*

These cases demonstrate a pattern: the Court has struck down legislation that creates classifications with only a minimal relationship to a broad legislative goal. The damages cap at issue here, and the relationship between the classifications it creates and its legislative purpose, is like legislation this Court has previously determined violated the Uniform Operation of Laws Clause. Discriminating against those who were injured by the negligence of the Hospital as opposed to its private competitors, and those who face severe injuries as a result of said negligence as opposed to those with milder injuries, is not reasonably necessary to support the broad goal of protecting the public treasury.

Other decisions where the Court has determined the damages cap under the GIA is constitutional under the Uniform Operations of Laws Clause are not helpful here because in those cases the Court determined the damages cap as applied did not impinge upon a remedy protected by the Open Courts Clause, and accordingly did not apply heightened scrutiny. These cases all related to applications of the damages cap where the government traditionally allowed immunity over the activity in question under common law. *See Tindley*, 2005 UT 30, ¶ 26 ("We conclude that school districts have always enjoyed governmental immunity for the operation of such programs as the one at issue."); *Parks*,

2002 UT 55, ¶ 18 (operation of the Utah Transit Authority is a "governmental function" for which the government would have historically been entitled to immunity); *McCorvey,* 868 P.2d at 48 ("Because no right existed at common law to recover from the state for injuries arising out of the state's maintenance of public roadways, the legislature is free to limit the state's liability in that area without implicating the open courts clause and its concomitant heightened scrutiny."). The same is not true here.

The damages cap is an unconstitutional violation of the Uniform Operations of Laws Clause. It creates arbitrary classifications that are not reasonably necessary to further the Legislature's goal of protecting the public treasury and does not actually and substantially further that goal. The damages cap also draws unreasonable and unfair classifications between the injured patients who can recover and those who cannot (and between hospitals who are and are not protected by the damages cap). These classifications are insufficiently related to the legislation's purpose of protecting the public treasury.

CONCLUSION

The Court should affirm.

Dated: April 22, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the brief complies with Rules 21(h) and 24(g) of the Utah Rules of Appellate Procedure because it is no more than 14,000 words and contains no information other than public information.

Dated: April 22, 2024

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ADDENDA

Addendum A	Constitution of Utah, Article I, Section 11
Addendum B	Constitution of Utah, Article I, Section 24
Addendum C	GIA, Utah Code § 63-30-3 (1965) GIA, Utah Code § 63-30-10 (1965) GIA, Utah Code § 63-30-34 (1965)
Addendum D	GIA, Utah Code § 63-30-34 (1983)
Addendum E	GIA, Utah Code § 63-30-2 (1987)
Addendum F	GIA, Utah Code § 63-30-34 (1987)
Addendum G	GIA, Utah Code § 63-30d-604 (2004)
Addendum H	GIA, Utah Code § 63G-7-604 (2017)
Addendum I	GIA, Utah Code § 63G-7-605 (2017)
Addendum J	GIA, Utah Code §§ 63G-7-101 *et seq*
Addendum K	Utah Health Care Malpractice Act, Utah Code § 78B-3-410
Addendum L	Utah Admin. Code R. 37-4-3

ADDENDUM A

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.

Article I, Section 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Article I, Section 8 [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

(a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law.

Article I, Section 9 [Excessive bail and fines -- Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

Article I, Section 10 [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Article I, Section 11 [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party.

Article I, Section 12 [Rights of accused persons.]

ADDENDUM B

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law.

Article I, Section 18 [Attainder -- Ex post facto laws -- Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

Article I, Section 19 [Treason defined -- Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act.

Article I, Section 20 [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law.

Article I, Section 21 [Slavery and involuntary servitude forbidden -- Limitation.]

(1) Neither slavery nor involuntary servitude shall exist within this State.
(2) Subsection (1) does not apply to the otherwise lawful administration of the criminal justice system.

Article I, Section 22 [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation.

Article I, Section 23 [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity.

Article I, Section 24 [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Article I, Section 25 [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Article I, Section 26 [Provisions mandatory and prohibitory.]

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

ADDENDUM C

UTAH CODE ANNOTATED

1953

CONTAINING THE GENERAL AND PERMANENT LAWS OF THE STATE IN FORCE AT THE CLOSE OF THE THIRTY-SEVENTH LEGISLATURE, REGULAR SESSION, 1967

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CHAPTER 30

GOVERNMENTAL IMMUNITY ACT

63-30-1. Short title.—This act shall be known and may be cited as the "Utah Governmental Immunity Act."

History: L. 1965, ch. 139, § 1.

Title of Act.

An act relating to the immunity of the state, its agencies and political subdivision from actions at law; providing for exemption thereto, for the purchase of liability insurance, and for the payment of claims and judgments.

1. Governmental function of sanitary district.

Operation of sewage facilities by sanitary district is governmental function and, prior to Governmental Immunity Act, district enjoyed immunity from suit for damages. Johnson v. Salt Lake County Cottonwood Sanitary Dist., — U. (2d) —, 438 P. 2d 706.

Collateral References.

States⇐191.
81 C.J.S. States §§ 131, 132.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 A. L. R. 3d 382.

Law Review.

The Utah Governmental Immunity Act: An Analysis, 1967 Utah L. Rev. 120.

63-30-2. Definitions.—As used in this act:

(1) The word "state" shall mean the state of Utah or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof;

(2) The words "political subdivision" shall mean any county, city, town, school district, special improvement or taxing district, or any other political subdivision or public corporation;

(3) The words "governmental entity" shall mean and include the state and its political subdivisions as defined herein;

(4) The word "employee" shall mean and include any officer, employee or servant of a governmental entity;

(5) The word "claim" shall mean any claim brought against a governmental entity or its employee as permitted by this act;

(6) The word "injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

History: L. 1965, ch. 139, § 2.

63-30-3. Immunity of governmental entities from suit.—Except as may be otherwise provided in this act, all governmental entities shall be immune from suit for any injury which may result from the activities of said entities wherein said entity is engaged in the exercise and discharge of a governmental function.

History: L. 1965, ch. 139, § 3.

63-30-4. Act provisions not construed as admission or denial of liability —Effect of waiver of immunity.—Nothing contained in this act, unless specifically provided, is to be construed as an admission or denial of liability or responsiblity in so far as governmental entities are concerned. Wherein immunity from suit is waived by this act, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person.

History: L. 1965, ch. 139, § 4.

63-30-5. Waiver of
from suit of all govern
ligation.
History: L. 1965, ch. 139,

63-30-6. Waiver of
munity from suit of all
any property real or p
thereto, or to foreclos
any adverse claim the
gage or other lien said
History: L. 1965, ch. 139

63-30-7. Waiver o
motor vehicles—Excep
ties is waived for in
employee of a motor
employment; provided
operation of emergenc
in accordance with t
notated 1953, as amend
History: L. 1965, ch. 13

Compiler's Notes.
Section 41-6-14 referre
tion was further amende
ch. 83, § 1.

Cross-Reference.
Safety Responsibility
motor vehicle liability

63-30-8. Waiver
or dangerous condit
munity from suit of
caused by a defective
street, alley, crosswa
structure located the
History: L. 1965, ch. 1

63-30-9. Waiver
public building, stru
munity from suit o
caused from a dang
structure, dam, rese
waived for latent def
History: L. 1965, ch.

63-30-10. Waive
omission of employ
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except if the injury

63-30-5. Waiver of immunity as to contractual obligation.—Immunity from suit of all governmental entities is waived as to any contractual obligation.

History: L. 1965, ch. 139, § 5.

63-30-6. Waiver of immunity as to actions involving property.—Immunity from suit of all governmental entities is waived for the recovery of any property real or personal or for the possession thereof or to quiet title thereto, or to foreclose mortgages or other liens thereon or to determine any adverse claim thereon, or secure any adjudication touching any mortgage or other lien said entity may have or claim on the property involved.

History: L. 1965, ch. 139, § 6.

63-30-7. Waiver of immunity for injury from negligent operation of motor vehicles—Exception.—Immunity from suit of all governmental entities is waived for injury resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of his employment; provided, however, that this section shall not apply to the operation of emergency vehicles as defined by law and while being driven in accordance with the requirements of section 41-6-14, Utah Code Annotated 1953, as amended by chapter 86, Laws of Utah, 1961.

History: L. 1965, ch. 139, § 7.

Compiler's Notes.

Section 41-6-14 referred to in this section was further amended by Laws 1965, ch. 83, § 1.

Cross-Reference.

Safety Responsibility Act, provisions of motor vehicle liability policy, 41-12-21.

Collateral References.

What is "motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicle, 77 A. L. R. 2d 945.

63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.—Immunity from suit of all governmental entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct or other structure located thereon.

History: L. 1965, ch. 139, § 8.

63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement—Exception.—Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions.

History: L. 1965, ch. 139, § 9.

63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee—Exceptions.—Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of his employment except if the injury:

(1) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused, or

(2) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of rights of privacy, or civil rights, or

(3) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization, or

(4) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property, or

(5) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause, or

(6) arises out of a misrepresentation by said employee whether or not such is negligent or intentional, or

(7) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances, or

(8) arises out of or in connection with the collection of and assessment of taxes, or

(9) arises out of the activities of the Utah National Guard, or

(10) arises out of the incarceration of any person in any state prison, county or city jail or other place of legal confinement, or

(11) arises from any natural condition on state lands or the result of any activity authorized by the state land board.

History: L. 1965, ch. 139, § 10.

63-30-11. Claim for injury—Claimant's petition for relief.—Any person having a claim for injury to person or property against a governmental entity or its employee may petition said entity for any appropriate relief including the award of money damages.

History: L. 1965, ch. 139, § 11.

63-30-12. Claim against state or agency—Notice to attorney general and agency—Time for filing.—A claim against the state or any agency thereof as defined herein shall be forever barred unless notice thereof is filed with the attorney general of the state of Utah and the agency concerned within one year after the cause of action arises.

History: L. 1965, ch. 139, § 12.

Cross-Reference.

Mailing claims to state or political subdivisions, 63-37-1 et seq.

63-30-13. Claim against political subdivision—Time for filing notice—Claim against city or town for injury on highways, bridges, or other structures.—A claim against a political subdivision shall be forever barred unless notice thereof is filed within ninety days after the cause of action arises; provided, however, that any claim filed against a city or incorporated town under section 63-30-8 shall be governed by the provisions of section 10-7-77, Utah Code Annotated, 1953.

History: L. 1965, ch. 13

63-30-14. Claim f
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History: L. 1965, ch. 1

63-30-15. Denial
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63-30-16. Jurisdi
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History: L. 1965, ch. 1

63-30-17. Venue
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History: L. 1965, ch. 1

63-30-18. Compr
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History: L. 1965, ch. 1

63-30-19. Under
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History: L. 1965, ch. 139, § 13.

Cross-Reference.

Mailing claims to state or political subdivisions, 63-37-1 et seq.

63-30-14. Claim for injury—Approval or denial by governmental entity or insurance carrier within ninety days.—Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim.

History: L. 1965, ch. 139, § 14.

63-30-15. Denial of claim for injury—Authority and time for filing action against governmental entity.—If the claim is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where immunity from suit has been waived as in this act provided. Said action must be commenced within one year after denial or the denial period as specified herein.

History: L. 1965, ch. 139, § 15.

63-30-16. Jurisdiction of district courts over actions—Application of Rules of Civil Procedure.—The district courts shall have exclusive original jurisdiction over any action brought under this act and such actions shall be governed by the Utah Rules of Civil Procedure in so far as they are consistent with this act.

History: L. 1965, ch. 139, § 16.

Collateral References.

Costs: liability of state, or its agency or board, for costs in civil action to which it is a party, 72 A. L. R. 2d 1379.

63-30-17. Venue of actions.—Actions against the state may be brought in the county in which the cause of action arose or in Salt Lake County. Actions against a county may be brought in the county in which the cause of action arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Said leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which said political subdivision is located or in the county in which the cause of action arose.

History: L. 1965, ch. 139, § 17.

63-30-18. Compromise and settlement of actions.—The governmental entity, after conferring with its legal officer or other legal counsel if it has no such officer, may compromise and settle any action as to the damages or other relief sought.

History: L. 1965, ch. 139, § 18.

63-30-19. Undertaking required of plaintiff in action.—At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the court, but in no case less than the sum of $300, conditioned upon payment by the plaintiff of taxable costs incurred by the governmental en-

tity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

History: L. 1965, ch. 139, § 19.

63-30-20. Judgment against governmental entity bars action against employee.—Judgment against a governmental entity in an action brought under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

History: L. 1965, ch. 139, § 20.

63-30-21. Claims by other governmental entities prohibited.—Notwithstanding any other provision of this act, no claim hereunder shall be brought by the United States or by any other state, territory, nation or governmental entity.

History: L. 1965, ch. 139, § 21.

63-30-22. Exemplary or punitive damages prohibited—Governmental entity exempt from execution, attachment or garnishment.—No judgment shall be rendered against the governmental entity for exemplary or punitive damages; nor shall execution, attachment or garnishment issue against the governmental entity.

History: L. 1965, ch. 139, § 22.

63-30-23. Payment of claim or judgment against state—Presentment for payment.—Any claim approved by the state as defined herein or any final judgment obtained against the state shall be presented to the office, agency, institution or other instrumentality involved for payment if payment by said instrumentality is otherwise permitted by law. If such payment is not authorized by law then said judgment or claim shall be presented to the board of examiners and the board shall proceed as provided in section 63-6-10, Utah Code Annotated, 1953.

History: L. 1965, ch. 139, § 23.

63-30-24. Payment of claim or judgment against political subdivision—Procedure by governing body.—Any claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body thereof to be paid forthwith from the general funds of said political subdivision unless said funds are appropriated to some other use or restricted by law or contract for other purposes.

History: L. 1965, ch. 139, § 24.

63-30-25. Payment of claim or judgment against political subdivision—Installment payments.—If the subdivision is unable to pay the claim or award during the current fiscal year it may pay the claim or award in not more than ten ensuing annual installments of equal size or in such other installments as are agreeable to the claimant.

History: L. 1965, ch. 139, § 25.

63-30-26. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.—Any political subdivision may create and

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History: L. 1965, ch. 13

**63-30-27. Tax lev
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lated herein.

History: L. 1965, ch. 13

**63-30-28. Liabilit
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of this act.

History: L. 1965, ch. 13

Cross-References.
Settlement of claim u

63-30-29. Liabilit
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maintain a reserve fund or may jointly with one or more other political subdivisions make contributions to a joint reserve fund, for the purpose of making payment of claims against the co-operating subdivisions when they become payable pursuant to this act, or for the purpose of purchasing liability insurance to protect the co-operating subdivisions from any or all risks created by this act.

History: L. 1965, ch. 139, § 26.

63-30-27. Tax levy by political subdivisions for payment of claims or judgments or insurance premiums.—Notwithstanding any provision of law to the contrary all political subdivisions shall have authority to levy an annual property tax in the amount necessary to pay any claims, settlements or judgments secured pursuant to the provisions hereof, or to pay the costs to defend against same, or for the purpose of establishing and maintaining a reserve fund for the payment of such claims, settlements or judgments as may be reasonably anticipated, or to pay the premium for such insurance as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; provided, that in no event shall such levy exceed one-half mill nor shall the revenues derived therefrom be used for any other purpose than those stipulated herein.

History: L. 1965, ch. 139, § 27.

63-30-28. Liability insurance—Purchase by governmental entity authorized.—Any governmental entity within the state of Utah may purchase insurance against any risk which may arise as a result of the application of this act.

History: L. 1965, ch. 139, § 28.

Cross-References.

Settlement of claim under liability insurance policy not admission of liability, 31-1-15.

Waiver of policy provisions or defenses, what does not constitute, 31-19-34.

63-30-29. Liability insurance—Required policy provisions.—Every policy or contract of insurance purchased by a governmental entity as permitted under the provisions of this chapter shall provide:

(a) In respect to bodily injury liability that the insurance carrier shall pay on behalf of the insured governmental entity all sums which the insured would in the absence of the defense of governmental immunity be legally obligated to pay as damages because of bodily injury, sickness or disease, including death resulting therefrom, sustained by any person, caused by accident, and arising out of the ownership, maintenance and use of automobiles, or arising out of the ownership, maintenance or use of premises, and all operations necessary or incidental thereto, or in respect to other operations and caused by accident subject to a limit, exclusive of interest and costs, of not less than $100,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than $300,000 because of bodily injury or death of two or more persons in any one accident.

(b) In respect to property damage liability that the insurance carrier shall pay on behalf of the insured governmental entity all sums which the insured would in the absence of the defense of governmental immunity

be legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident, and arising out of the ownership, maintenance and use of automobiles, or arising out of the ownership, maintenance or use of premises, and all operations necessary or incidental thereto, or in respect to other operations and caused by accident to a limit of not less than $50,000 because of injury to or destruction of property of others in any one accident.

History: L. 1965, ch. 139, § 29.

63-30-30. Liability insurance—Provision for waiver of sovereign immunity defense and for payment by insurer required in policy.—Every contract or policy of insurance purchased under the terms of this act for any or all risks created by this act shall include a provision or endorsement by which the insurer agrees not to assert the defense of sovereign immunity, and to pay all sums for which it would otherwise be liable under its contract or policy of insurance.

History: L. 1965, ch. 139, § 30.

63-30-31. Liability insurance—Construction of policy not in compliance with act.—Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of the act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid.

History: L. 1965, ch. 139, § 31.

63-30-32. Liability insurance—Purchase of policy from lowest and best bidder required.—No contract or policy of insurance may be purchased under this chapter or renewed under this act except upon public bid to be let to the lowest and best bidder.

History: L. 1965, ch. 139, § 32.

63-30-33. Liability insurance—Insurance for employees authorized.—A governmental entity may insure any or all of its employees against all or any part of his liability for injury or damage resulting from a negligent act or omission in the scope of his employment regardless of whether or not said entity is immune from suit for said act or omission, and any expenditure for such insurance is herewith declared to be for a public purpose.

History: L. 1965, ch. 139, § 33.

63-30-34. Liability insurance—Judgment or award over limits of insurance policy reduced.—If any judgment or award against a governmental entity under sections 63-30-7, 63-30-8, 63-30-9, and 63-30-10 exceeds the minimum amounts for bodily injury and property damage liability specified in section 63-30-29, the court shall reduce the amount of said judgment or award to a sum equal to said minimum requirements unless the governmental entity has secured insurance coverage in excess of said minimum

requirements in which
judgment or award to
the insurance policy.

History: L. 1965, ch. 139, §

Separability Clause.

Section 35 of Laws 1965
vided: "If any section, pa
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Section 63-31-1. Short titl
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63-31-8. Division
63-31-9. Director

63-31-1. Short titl
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History: L. 1965, ch. 136,

Compiler's Notes.

Laws 1967, ch. 175 cre
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et seq.

Title of Act.

An act creating the U
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63-31-1.1. Board
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requirements in which event the court shall reduce the amount of said judgment or award to a sum equal to the applicable limits provided in the insurance policy.

History: L. 1965, ch. 139, § 34.

Separability Clause.

Section 35 of Laws 1965, ch. 139 provided: "If any section, part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remainder of this act."

Repealing Clause.

Section 36 of Laws 1965, ch. 139 provided: "All other acts or statutes in conflict with provisions of this act are repealed as of the effective date of this act."

Effective Date.

Section 37 of Laws 1965, ch. 139 provided: "This act shall take effect on July 1, 1966, and shall apply only to claims and actions arising after said date."

CHAPTER 31

INDUSTRIAL PROMOTION

63-31-1. Short title.—This act shall be known and cited as the "Industrial Promotion Commission Act."

History: L. 1965, ch. 136, § 1.

Compiler's Notes.

Laws 1967, ch. 175 created the board of industrial promotion and the division of industrial promotion with the department of development services. See 63-33-1 et seq.

Title of Act.

An act creating the Utah state industrial promotion commission providing power to make rules, prescribing powers, duties, purpose and terms of office, fixing compensation of commissioners, providing for annual reports, providing commission use of existing agencies and services and appropriating $500,000 therefor.

Cross-Reference.

Industrial facilities development, 11-17-1 et seq.

Collateral References.

Municipal Corporations⇐265-267, 278, 285-286, 457-463, 858-861, 866-867, 869, 872-877; States⇐41, 44-47, 114, 132, 157, 166.

64 C.J.S. Municipal Corporations §§ 1835, 1842, 1902, 1905, 1909, 1911-1912; 81 C.J.S. States §§ 54-59, 66, 101-103.

38 Am. Jur. 116, Municipal Corporations § 429; 42 Am. Jur. 771, Public Funds § 72; 43 Am. Jur. 795, Public Works § 52.

63-31-1.1. Board of industrial promotion—Creation—Transfer of powers and duties—Members of commission continue to serve.—There is created within the department of development services a board of industrial promotion which shall assume all of the functions, powers, duties, rights and responsibilities of the Utah state industrial promotion commission, as amended by this act, together with all functions, powers, duties, rights and

ADDENDUM D

UTAH CODE ANNOTATED

1953

VOLUME 7A, PART I

1986 REPLACEMENT

Title 60 to Title 63

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Volume 7

Replacement Volume 7A

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employment, or under color of authority, regardless of whether or not said entity is immune from suit for said act or omission, and any expenditure for such insurance is for a public purpose. The insurer under any contract or policy of insurance pursuant to this section shall have no right to indemnification or contribution from the governmental entity or its employee with respect to any loss or liability covered by the contract or policy.

History: L. 1965, ch. 139, § 33; 1979, ch. 94, § 2; 1983, ch. 130, § 2.

Amendment Notes. — The 1983 amendment substituted "an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority" for "a negligent act or omission in the scope of his employment" in the first sentence; substituted "employee" for "insurer" in the second sentence; and made minor changes in phraseology.

Cross-References. — Indemnification of public officers and employees, §§ 63-30-36 to 63-30-38.

COLLATERAL REFERENCES

A.L.R. — Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 A.L.R.3d 6.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties, 71 A.L.R.3d 90.

63-30-34. Limitation of judgments against governmental entity or employee — Insurance coverage exception.

(1) Subject to the provisions of Subsection (3), if a judgment for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $250,000 for one person in any one occurrence, or $500,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

(2) Subject to the provisions of Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $100,000 in any one occurrence, the court shall reduce the judgment to that amount.

(3) If a governmental entity has secured insurance coverage in excess of the amounts set forth in Subsections (1) and (2), the court shall reduce the amount of the judgment or award to a sum equal to the applicable limits of the insurance coverage.

History: C. 1953, 63-30-34, enacted by L. 1983, ch. 130, § 3.

Repeals and Enactments. — Laws 1983, ch. 130, § 3 repealed old § 63-30-34, as amended by Laws 1979, ch. 94, § 3, relating to excess judgments, and enacted new § 63-30-34.

63-30-35. Comp age — ing st

(1) After consultat the Department of . liability plan, with l will protect the state Deductibles and ma manager in consult

(2) The risk mana established in § 63-1 and their indemnifie and shall apportion Unless specifically 63-1-47(9) [63-1-47(8 provide liability ins

(3) Notwithstandi this code, the state tive Services for all including attorneys' indemnified employ Fund may be liable such claims. The ris Fund for this purp

History: C. 1953, 63- 1981, ch. 250, § 8; L.

Amendment Notes. ment, effective July 1, partment of Administra partment of finance" th substituted the referenc reference to § 63-30-29 stituted references to § to § 63-2-92 in Subsectic which the Risk Manager

63-30-36. Defe Coop

(1) Before a gove the employee must defend him and m him or within such entity in maintaini ments imposed on entity relating to t fails to reasonably required to defend compromise, or set

ADDENDUM E

UTAH CODE ANNOTATED

1988 Cumulative Supplement

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1986 EDITION

Place With Corresponding Bound Volume.

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See Preface in Volume 1A.

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SUMM

UTAH

63-30-2. Definitions.

As used in this chapter:

(1) "Claim" means any claim or cause of action for money or damages against a governmental entity or against an employee.

(2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees, commissioners, members of a governing body, members of a board, members of a commission, or members of an advisory body, student teachers certificated in accordance with Section 53A-6-101, educational aides, students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program, volunteers, and tutors, but does not include an independent contractor.

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

(3) "Governmental entity" means the state and its political subdivisions as defined in this chapter.

(4) (a) "Governmental function" means any act, failure to act, operation, function, or undertaking of a governmental entity whether or not the act, failure to act, operation, function, or undertaking is characterized as governmental, proprietary, a core governmental function, unique to government, undertaken in a dual capacity, essential to or not essential to a government or governmental function, or could be performed by private enterprise or private persons.

(b) A "governmental function" may be performed by any department, agency, employee, agent, or officer of a governmental entity.

(5) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

(6) "Personal injury" means an injury of any kind other than property damage.

(7) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.

(9) "State" means the state of Utah, and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

History: L. 1965, ch. 139, § 2; 1973, ch. 103, § 2; 1978, ch. 27, § 1; 1981, ch. 116, § 1; 1983, ch. 129, § 2; 1987, ch. 75, § 2; 1987 (1st S.S.), ch. 4, § 1; 1988, ch. 2, § 338.

Amendment Notes. — The 1987 amendment, by Laws 1987, Chapter 75, alphabetized the definitions of this section as set out in the bound volume and renumbered the subsections accordingly, added present Subsection (4), and made minor changes in phraseology and punctuation.

The 1987 (1st S.S.) amendment, effective June 3, 1987, designated the former provisions of Subsection (2) as Paragraph (a) and added Paragraph (b) in that subsection; and substituted "includes a governmental entity's officers, employees, servants, trustees, commissioners, members of a governing body, members of a board, members of a commission, or members of an advisory body" for "means any officer, employee, or servant of a governmental

entity, whether or not compensated, incl
and inserted "but does not include an in
dent contractor" in Subsection (2)(a).

63-30-3. Immunity of g

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ANALYSIS

Escrowed fund disbursement.
Governmental function.

Escrowed fund disbursement.

The supervision of disbursement of es
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crowed funds does not constitute a gove
tal function for purposes of this section
not subject to the notice requirem
§ 63-30-11. Cox v. Utah Mtg. & Loan
716 P.2d 783 (Utah 1986).

Governmental function.

A lender's complaint against the St
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Journal of Energy Law and Po
Comment, The Only Way to Manage a
Utah's Liability Immunity for Flood C
J. Energy L. & Pol'y 95 (1987).

A.L.R. — Governmental tort liab
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63-30-4. Act provisions
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NO

ANALYSIS

Governmental immunity.
—Governmental function.
Personal liability.
—Applicability of section.
—Remedy for wrongful act.
Cited.

entity, whether or not compensated, including" and inserted "but does not include an independent contractor" in Subsection (2)(a).

The 1988 amendment, effective February 2, 1988, in Subsection (2)(a) substituted "53A-6-101" for "53-2-15".

63-30-3. Immunity of governmental entities from suit.

NOTES TO DECISIONS

ANALYSIS

Escrowed fund disbursement.
Governmental function.

Escrowed fund disbursement.

The supervision of disbursement of escrowed funds is not of such a unique nature that it could only be performed by a governmental entity and is not essential to the core of governmental activity; therefore, disbursement of escrowed funds does not constitute a governmental function for purposes of this section and is not subject to the notice requirement of § 63-30-11. Cox v. Utah Mtg. & Loan Corp., 716 P.2d 783 (Utah 1986).

Governmental function.

A lender's complaint against the State Tax Commission, claiming that the commission and its employees negligently failed to advise the lender that a duplicate vehicle title had been issued and improperly issued to the borrower the title certificate upon which the lender relied in making its loan, was barred by governmental immunity. The issuance of motor vehicle titles and recordkeeping responsibilities are governmental functions and have immunity under this section. Further, the statutory waiver of immunity for negligence does not apply, under § 63-30-10(1)(c), when the alleged injury arises out of the issuance of a title certificate. Metropolitan Fin. Co. v. State, 714 P.2d 293 (Utah 1986).

The regulation of public safety needs and the evaluation, installation, maintenance and improvement of safety signals or devices at railroad crossings is a governmental function. Gleave v. Denver & R.G.W.R.R., 74 Utah Adv. Rep. 35 (Ct. App. 1988).

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — Comment, The Only Way to Manage a Desert: Utah's Liability Immunity for Flood Control, 8 J. Energy L. & Pol'y 95 (1987).

A.L.R. — Governmental tort liability for failure to provide police protection to specifically threatened crime victim, 46 A.L.R.4th 948.

Failure to restrain drunk driver as ground of liability of state or local governmental unit or officer, 48 A.L.R.4th 287.

63-30-4. Act provisions not construed as admission or denial of liability — Effect of waiver of immunity — Exclusive remedy — Joinder of employee — Limitations on personal liability.

NOTES TO DECISIONS

ANALYSIS

Governmental immunity.
—Governmental function.
Personal liability.
—Applicability of section.
—Remedy for wrongful act.
Cited.

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SUMM

UTAH

(d) the costs to defend against any claim, settlement, or judgment; or

(e) the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments as may be reasonably anticipated.

(2) It is legislative intent that the payments authorized for punitive damage judgments or to pay the premium for such insurance as authorized is money spent for a public purpose within the meaning of this section and Article XIII, Sec. 5, Utah Constitution, even though as a result of the levy the maximum levy as otherwise restricted by law is exceeded. No levy under this section may exceed .0001 per dollar of taxable value of taxable property. The revenues derived from this levy may not be used for any other purpose than those stipulated in this section.

History: L. 1965, ch. 139, § 27; 1973, ch. 165, § 1; 1978, ch. 27, § 8; 1985, ch. 165, § 81; 1988, ch. 3, § 234.

Amendment Notes. — The 1988 amendment, effective February 9, 1988, rewrote the section, as amended by Laws 1985, ch. 165, § 81, to the extent that a detailed comparison is impracticable.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

63-30-34. Limit of judgment against governmental entity or employee.

(1) Except as provided in Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $250,000 for one person in any one occurrence, or $500,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the injury is characterized as governmental.

(2) Except as provided in Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $100,000 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(3) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property without just compensation.

History: C. 1953, 63-30-34, enacted by L. 1983, ch. 130, § 3; 1987, ch. 75, § 9.

Amendment Notes. — The 1987 amendment added to the end of Subsections (1) and (2) "regardless of whether or not the function giving rise to the injury is characterized as governmental," substituted present Subsection (3) for the subsection as set out in the bound volume, and made minor changes in phraseology.

Cited in Payne ex rel. Payne v. Myers, 743 P.2d 186 (Utah 1987).

63-30-35. Comprehensive liab age — Expenses o counsel for state ju for the Legislature branches, members,

(1) After consultation with appropria the Department of Administrative Se liability plan, with limits not lower tha which will protect the state and its in liability. Deductibles and maximum lim the risk manager in consultation with ment of Administrative Services.

(2) The risk manager may expend fu established in Section 63-1-47, to proc agencies and their indemnified employe by law, and shall apportion the cost Section 63-1-47. Unless specifically aut Subsection 63-1-47(8), no agency other provide liability insurance for the sta

(3) (a) The Office of the Attorney C provide legal representation to th branches of state government in coverage applies.

(b) When the attorney general legal representation to the judicia general shall consult with the gen with the general counsel for the L defending their respective branch, ing decisions concerning the dispo settlement of monetary claims in torney general and the state risk

(4) (a) If the Judicial Council, after for the state judiciary, determines cannot adequately defend the stat because of a conflict of interest, s political or legal differences, the J counsel to separately represent a

(b) If the general counsel for th dent legal representation of the ployees, the general counsel shall attorney general in writing, prio

(c) If the state judiciary elects under this section, the decision for judiciary, its members, or employe

ADDENDUM G

Utah Statutes Annotated - 2004

U.C.A. 1953 § 63-30d-604

West's Utah Code Annotated Currentness
Title 63. State Affairs in General
Chapter 30D. Governmental Immunity Act of Utah (Refs & Annos)
Part 6. Legal Actions Under This Chapter—Procedures, Requirements, Damages, and Limitations on Judgments

§ 63-30d-604. Limitation of judgments against governmental entity or employee—Process for adjustment of limits

(1)(a) Except as provided in Subsections (2) and (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $553,500 for one person in any one occurrence, or $1,107,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than $553,500 for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $221,400 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Subsection (4).

(4)(a) Each year, the risk manager shall:

(i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code [FN1];
(ii) calculate the increase or decrease in the limitation of judgment amounts established in this section as a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2003; and
(iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the limitation of judgment amounts established in Subsection (1) to the nearest $100.

(b) Each even-numbered year after 2004, the risk manager shall make rules, which become effective no later than July 1, that establish the new limitation of judgment amounts.

(c) Adjustments made by the risk manager to the limitation of judgment amounts established by this section have prospective effect only from the date the rules establishing the new limitation of judgment take effect and those adjusted limitations of judgment apply only to claims for injuries or losses that occur after the effective date of the rules that establish those new limitations of judgment.

Laws 2004, c. 267, § 23, eff. July 1, 2004.

[FN1] 26 U.S.C.A. § 1.

HISTORICAL AND STATUTORY NOTES

Laws 1991, c. 76.

Laws 2000, c. 157, § 2.

Laws 2003, c. 180, § 4.

C. 1953, §§ 63-30-34, 78-60-103.

CROSS REFERENCES

Rulemaking, Administrative Rulemaking Act, see § 63-46a-1 et seq.

ADMINISTRATIVE CODE REFERENCES

Administrative services, risk management, adjusted Utah Governmental Immunity Act limitations on judgments, see Utah Admin. Code 37-4.

LIBRARY REFERENCES

Municipal Corporations 743.
Westlaw Key Number Search: 268k743.
C.J.S. Municipal Corporations § 871.

RESEARCH REFERENCES

ALR Library

43 A.L.R.4th 19, Validity and Construction of Statute or Ordinance Limiting the Kinds or Amount of Actual Damages Recoverable in Tort Action Against Governmental Unit.

Encyclopedias

31 Am. Jur. Proof of Facts 3d 351, Establishing Liability of a State or Local Highway Administration, Where Injury Results from the Failure to Place or Maintain Adequate Highway Signs.

Treatises and Practice Aids

1 Causes of Action 2d 603, Cause of Action Against Governmental Entity for Injury Caused by Condition of Public Building.

Civil Actions Against State and Local Government § 6:12, Generally.

Civil Actions Against State and Local Government § 6:13, Validity and Effect of Statutory Caps.

Restatement (Second) of Torts § 895B, States.

NOTES OF DECISIONS

1. Validity

Statute that imposed damage caps for actions against government entities did not violate provision of State Constitution generally prohibiting abrogation of the right of action to recover damages for injuries resulting in death or limitation of amount recoverable for such injuries, where there was no express constitutional or statutory authority at time of Constitution's adoption allowing suits for wrongful death against state. Const. Art. 16, § 5; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Municipal Corporations 723.5

Provision of Utah Governmental Immunity Act imposing damages caps for actions against governmental entities does not violate provisions of State Constitution relating to due process, uniform operation of laws, and the right to jury trial. Const. Art. 1, §§ 7, 10, 24; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Constitutional Law 299.2; Jury 31.1; Municipal Corporations 723.5; Statutes 74(1)

Statute setting cap on damages awards against government agencies did not violate open courts provision of Utah Constitution by limiting recovery in action in which governmental entity was substituted for government employee. (Per concurring opinion of Howe, C.J., with one justice concurring and one justice concurring in the result.) Const. Art. 1, § 11; U.C.A.1953, 63-30-4, 63-30-34. Lyon v. Burton, 2000, 5 P.3d 616, 387 Utah Adv. Rep. 27, 2000 UT 19, 2000 UT 55, modified on denial of rehearing. Constitutional Law 328; Municipal Corporations 743

2. Constitutional rights

Provision of Utah Governmental Immunity Act imposing damages caps for actions against governmental entities did not violate provision of State Constitution prohibiting statutory limitations on amount recoverable in an action to recover for injuries resulting in death except in cases where compensation for injuries resulting in death is provided for by law; it was only through immunity statute that compensation from government for wrongful death was available, and governmental immunity would otherwise prevail. Const. Art. 16, § 5; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Municipal Corporations 723.5

Application of statutory damage cap to reduce plaintiff motorist's judgment against county in personal injury action arising out of automobile collision did not violate state constitutional rights to due process of law, trial by jury, open courts, and uniform operation of laws. Const. Art. 1, §§ 7, 10, 11, 24; U.C.A.1953, 63-30-34(1). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Automobiles 313; Constitutional Law 301(2); Constitutional Law 328; Jury 37; Statutes 74(1)

Application of statutory damage cap to plaintiff motorist's judgment against county for negligent design, maintenance, and signing of road did not violate motorist's state constitutional right to ability to enjoy his life and liberty; motorist had no fundamental right to recover unlimited damages from government entity performing governmental function. Const. Art. 1, § 1; U.C.A.1953, 63-30-34(1). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Automobiles 313; Constitutional Law 83(1)

Damages cap contained in Governmental Immunity Act, as applied to inmate's action against prison officials for violation of his rights under "unnecessary rigor" clause of State Constitution, was unreasonable regulation of inmate's rights under such clause and, therefore, was inapplicable to such action. Const. Art. 1, § 9; U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Prisons 10

Damages cap contained in Governmental Immunity Act is constitutionally invalid as applied to prisoners' claims against prison officials under constitutional section prohibiting cruel and unusual punishment and treatment of prisoners with unnecessary rigor. Const. Art. 1, § 9; U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Prisons 10

Damage cap on Department of Transportation's (DOT) liability for negligent maintenance of public road was constitutional as applied to injured motorist; cap did not infringe on fundamental right, given that no right existed at common law to recover from

state for injuries arising out of state's maintenance of public roadways. Const. Art. 1, §§ 7, 10, 11, 24; U.C.A.1953, 63-30-8, 63-30-34(1). McCorvey v. Utah State Dept. of Transp., 1993, 868 P.2d 41. Constitutional Law 301(1); Highways 212; States 212

Reasonableness of legal advice in settling medical malpractice claim for Governmental Immunity Act's $250,000 damages cap had to be judged on law existing at time services were rendered, including Supreme Court decision in Condemarin v. University Hospital holding that Act's damage recovery limit was unconstitutional as applied to hospital. U.C.A. 1953, 63-30-34(1). Hipwell By and Through Jensen v. Sharp, 1993, 858 P.2d 987. Attorney And Client 112

Statutes which imposed limit on amount person could claim against uninsured government entity because of injury or death were unconstitutional under State Constitution as applied to university hospital. U.C.A.1953, 63-30-1 to 63-30-38; U.C.A.1953, 63-30-29 (Repealed). Condemarin v. University Hosp., 1989, 775 P.2d 348. Colleges And Universities 2

3. Governmental functions

Activities of Utah Transit Authority (UTA) would have been considered a governmental function under former statutory provision that placed caps on damages against public entities in connection with governmental functions but not in connection with proprietary functions, and thus amendment providing that all activities of governmental entities were governmental functions subject to damages caps did not diminish UTA's potential tort liability for purposes of provision of State Constitution providing that courts shall be open and guaranteeing a remedy for injury. Const. Art. 1, § 11; U.C.A.1953, 17A-2-1001 et seq.; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Constitutional Law 321; Municipal Corporations 723.5

4. Occurrence

Term “occurrence”, as used in damages cap provisions of Governmental Immunity Act, refers to number of causes that inflicted completely separate injuries, rather than to number of injuries sustained by claimant or number of causes that contributed to injuries. U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Municipal Corporations 743

Under damages cap provisions of Governmental Immunity Act, claimant is barred from collecting more than cap amount unless claimant received separate injuries from clearly separate causes, and cap amount may not be increased by number of causes contributing to single injury, duration of cause of injury, or number of injuries resulting from one particular cause. U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Municipal Corporations 743

5. Total recovery

Provision of governmental immunity statute, under which if judgment against governmental entity exceeds $250,000 “for” one person in any one occurrence, or $500,000 “for” two or more persons in any one occurrence, trial court is required to reduce judgment to that amount did not entitle parents of motorist killed in collision with Utah Transit Authority (WTA) bus to $250,000 each in wrongful death action against WTA in which jury awards to each parent exceeded that figure; $250,000 cap applied to total damages recoverable because action arose from injury or death to one person. U.C.A. 1953, 63-30-34(1) (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Automobiles 249

Damages cap contained in Governmental Immunity Act applies to claimant's total recovery, rather than to judgment against each individual defendant found to be liable. U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Municipal Corporations 743

6. Interest and costs

Statute providing for award of prejudgment interest in personal injury actions requires interest to be included in the judgment, and therefore interest award is subject to statute setting cap on judgments for personal injury damages against government

agencies. U.C.A.1953, 63-30-34, 78-27-44(2). Lyon v. Burton, 2000, 5 P.3d 616, 387 Utah Adv. Rep. 27, 2000 UT 19, 2000 UT 55, modified on denial of rehearing. Municipal Corporations 743

Prejudgment interest and prejudgment costs were part of judgment against county, and thus trial court did not err by including prejudgment interest and prejudgment costs in judgment reduced by statutory damage cap. U.C.A.1953, 63-30-34(1)(a), 78-27-44(2). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Counties 141

Postjudgment interest and postjudgment costs were not part of judgment entered against county in personal injury action, and thus postjudgment interest and postjudgment costs should not have been included in damage award reduced to statutory damage cap. U.C.A.1953, 15-1-4(2), 63-30-34(1)(a). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Counties 141

7. Contractual obligations

Liability limits in § 63-30-34 do not apply to contractual obligations of a governmental entity. Op.Atty.Gen. No. 89-36, (Sept. 1, 1989) 1989 WL 434088.

Current through the end of the 2004 4th Spec. Sess.

End of Document

ADDENDUM H

Utah Statutes Annotated - 2017

West's Utah Code Annotated
Title 63g. General Government
Chapter 7. Governmental Immunity Act of Utah (Refs & Annos)
Part 6. Legal Actions Under this Chapter--Procedures, Requirements, Damages, and Limitations on Judgments

U.C.A. 1953 § 63G-7-604
Formerly cited as UT ST § 63-30d-604

§ 63G-7-604. Limitation of judgments against governmental entity or employee--Process for adjustment of limits

Currentness

(1)(a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $233,600 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(d) Subject to Subsection (3), there is a $2,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Section 63G-7-605.

Credits
Laws 2008, c. 382, § 1506, eff. May 5, 2008; Laws 2017, c. 151, § 1, eff. May 9, 2017.

HISTORICAL AND STATUTORY NOTES

Prior Laws:
Laws 1991, c. 76.

Laws 2000, c. 157, § 2.

Laws 2003, c. 180, § 4.

Laws 2004, c. 267, § 23.

Laws 2006, c. 357, § 5.

Laws 2007, c. 71, § 1.

C. 1953, §§ 63-30-34, 63-30d-604, 78-60-103.

CROSS REFERENCES

Administrative rulemaking act, see § 63G-3-101 et seq.

LIBRARY REFERENCES

Municipal Corporations 743.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 1139 to 1140.

NOTES OF DECISIONS

1 Validity

Statute that imposed damage caps for actions against government entities did not violate provision of State Constitution generally prohibiting abrogation of the right of action to recover damages for injuries resulting in death or limitation of amount recoverable for such injuries, where there was no express constitutional or statutory authority at time of Constitution's adoption allowing suits for wrongful death against state. Const. Art. 16, § 5; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Municipal Corporations 723.5

Provision of Utah Governmental Immunity Act imposing damages caps for actions against governmental entities does not violate provisions of State Constitution relating to due process, uniform operation of laws, and the right to jury trial. Const. Art. 1, §§ 7, 10, 24; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Constitutional Law 4420; Jury 31.1; Municipal Corporations 723.5; Statutes 1723

Statute setting cap on damages awards against government agencies did not violate open courts provision of Utah Constitution by limiting recovery in action in which governmental entity was substituted for government employee. (Per concurring opinion

of Howe, C.J., with one justice concurring and one justice concurring in the result.) Const. Art. 1, § 11; U.C.A.1953, 63-30-4, 63-30-34. Lyon v. Burton, 2000, 5 P.3d 616, 387 Utah Adv. Rep. 27, 2000 UT 19, 2000 UT 55, modified on denial of rehearing. Constitutional Law 2314; Municipal Corporations 743

2 Constitutional rights

Provision of Utah Governmental Immunity Act imposing damages caps for actions against governmental entities did not violate provision of State Constitution prohibiting statutory limitations on amount recoverable in an action to recover for injuries resulting in death except in cases where compensation for injuries resulting in death is provided for by law; it was only through immunity statute that compensation from government for wrongful death was available, and governmental immunity would otherwise prevail. Const. Art. 16, § 5; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Municipal Corporations 723.5

Application of statutory damage cap to reduce plaintiff motorist's judgment against county in personal injury action arising out of automobile collision did not violate state constitutional rights to due process of law, trial by jury, open courts, and uniform operation of laws. Const. Art. 1, §§ 7, 10, 11, 24; U.C.A.1953, 63-30-34(1). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Automobiles 313; Constitutional Law 2314; Constitutional Law 4424; Jury 37; Statutes 1723

Application of statutory damage cap to plaintiff motorist's judgment against county for negligent design, maintenance, and signing of road did not violate motorist's state constitutional right to ability to enjoy his life and liberty; motorist had no fundamental right to recover unlimited damages from government entity performing governmental function. Const. Art. 1, § 1; U.C.A.1953, 63-30-34(1). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Automobiles 313; Constitutional Law 1079; Constitutional Law 1085

Damages cap contained in Governmental Immunity Act, as applied to inmate's action against prison officials for violation of his rights under "unnecessary rigor" clause of State Constitution, was unreasonable regulation of inmate's rights under such clause and, therefore, was inapplicable to such action. Const. Art. 1, § 9; U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Civil Rights 1766; Sentencing And Punishment 1532

Damages cap contained in Governmental Immunity Act is constitutionally invalid as applied to prisoners' claims against prison officials under constitutional section prohibiting cruel and unusual punishment and treatment of prisoners with unnecessary rigor. Const. Art. 1, § 9; U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Civil Rights 1766; Sentencing And Punishment 1532

Damage cap on Department of Transportation's (DOT) liability for negligent maintenance of public road was constitutional as applied to injured motorist; cap did not infringe on fundamental right, given that no right existed at common law to recover from state for injuries arising out of state's maintenance of public roadways. Const. Art. 1, §§ 7, 10, 11, 24; U.C.A.1953, 63-30-8, 63-30-34(1). McCorvey v. Utah State Dept. of Transp., 1993, 868 P.2d 41. Constitutional Law 4420; Highways 212; States 212

Reasonableness of legal advice in settling medical malpractice claim for Governmental Immunity Act's $250,000 damages cap had to be judged on law existing at time services were rendered, including Supreme Court decision in Condemarin v. University Hospital holding that Act's damage recovery limit was unconstitutional as applied to hospital. U.C.A. 1953, 63-30-34(1). Hipwell By and Through Jensen v. Sharp, 1993, 858 P.2d 987. Attorney And Client 112

Statutes which imposed limit on amount person could claim against uninsured government entity because of injury or death were unconstitutional under State Constitution as applied to university hospital. U.C.A.1953, 63-30-1 to 63-30-38; U.C.A.1953, 63-30-29 (Repealed). Condemarin v. University Hosp., 1989, 775 P.2d 348. Death 9; Health 606

3 Governmental functions

Activities of Utah Transit Authority (UTA) would have been considered a governmental function under former statutory provision that placed caps on damages against public entities in connection with governmental functions but not in connection with proprietary functions, and thus amendment providing that all activities of governmental entities were governmental functions subject to damages caps did not diminish UTA's potential tort liability for purposes of provision of State Constitution providing that courts shall be open and guaranteeing a remedy for injury. Const. Art. 1, § 11; U.C.A.1953, 17A-2-1001 et seq.; U.C.A.1953, 63-30-34 (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Constitutional Law 2314; Municipal Corporations 723.5

4 Occurrence

Term "occurrence", as used in damages cap provisions of Governmental Immunity Act, refers to number of causes that inflicted completely separate injuries, rather than to number of injuries sustained by claimant or number of causes that contributed to injuries. U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Municipal Corporations 743

Under damages cap provisions of Governmental Immunity Act, claimant is barred from collecting more than cap amount unless claimant received separate injuries from clearly separate causes, and cap amount may not be increased by number of causes contributing to single injury, duration of cause of injury, or number of injuries resulting from one particular cause. U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Municipal Corporations 743

5 Total recovery

Provision of governmental immunity statute, under which if judgment against governmental entity exceeds $250,000 "for" one person in any one occurrence, or $500,000 "for" two or more persons in any one occurrence, trial court is required to reduce judgment to that amount did not entitle parents of motorist killed in collision with Utah Transit Authority (WTA) bus to $250,000 each in wrongful death action against WTA in which jury awards to each parent exceeded that figure; $250,000 cap applied to total damages recoverable because action arose from injury or death to one person. U.C.A. 1953, 63-30-34(1) (1999). Parks v. Utah Transit Authority, 2002, 53 P.3d 473, 449 Utah Adv. Rep. 12, 2002 UT 55. Automobiles 249.3

Damages cap contained in Governmental Immunity Act applies to claimant's total recovery, rather than to judgment against each individual defendant found to be liable. U.C.A.1953, 63-30-34(1)(a, b). Bott v. DeLand, 1996, 922 P.2d 732. Municipal Corporations 743

6 Interest and costs

Statute providing for award of prejudgment interest in personal injury actions requires interest to be included in the judgment, and therefore interest award is subject to statute setting cap on judgments for personal injury damages against government agencies. U.C.A.1953, 63-30-34, 78-27-44(2). Lyon v. Burton, 2000, 5 P.3d 616, 387 Utah Adv. Rep. 27, 2000 UT 19, 2000 UT 55, modified on denial of rehearing. Municipal Corporations 743

Prejudgment interest and prejudgment costs were part of judgment against county, and thus trial court did not err by including prejudgment interest and prejudgment costs in judgment reduced by statutory damage cap. U.C.A.1953, 63-30-34(1)(a), 78-27-44(2). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Counties 141

Postjudgment interest and postjudgment costs were not part of judgment entered against county in personal injury action, and thus postjudgment interest and postjudgment costs should not have been included in damage award reduced to statutory damage cap. U.C.A.1953, 15-1-4(2), 63-30-34(1)(a). Hart v. Salt Lake County Com'n, 1997, 945 P.2d 125, 324 Utah Adv. Rep. 30, certiorari denied 953 P.2d 449. Counties 141

7 Contractual obligations

Liability limits in § 63-30-34 do not apply to contractual obligations of a governmental entity. Op.Atty.Gen. No. 89-36, (Sept. 1, 1989) 1989 WL 434088.

U.C.A. 1953 § 63G-7-604, UT ST § 63G-7-604

Current through 2017 First Special Session.

End of Document

ADDENDUM I

Utah Statutes Annotated - 2017

West's Utah Code Annotated
Title 63g. General Government
Chapter 7. Governmental Immunity Act of Utah (Refs & Annos)
Part 6. Legal Actions Under this Chapter--Procedures, Requirements, Damages, and Limitations on Judgments

U.C.A. 1953 § 63G-7-605

§ 63G-7-605. Adjustments to limitation of judgment amounts

Currentness

(1) As used in this section:

(a) "Adjusted consumer price factor" means what the consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code, would be without the medical care component and the medical services component.

(b) "Aggregate limit" means the limit on the aggregate amount of personal injury damages claims from a single occurrence, as provided in Subsection 63G-7-604(1)(d).

(c) "Individual limit" means the limit on the amount of a judgment for damages for personal injury, as provided in Subsection 63G-7-604(1)(a).

(d) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk manager under this section.

(e) "Latest individual limit" means the individual limit, as last adjusted by the risk manager under this section.

(f) "Latest property damage limit" means the property damage limit, as last adjusted by the risk manager under this section.

(g) "Medical care component" means the medical care sub-index of the consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(h) "Medical services component" means the medical services sub-index of the consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(i) "Property damage limit" means the limit on the amount of a judgment for property damage, as provided in Subsection 63G-7-604(1)(c).

(2)(a) Each even-numbered year, the legislative fiscal analyst shall, subject to Subsection (3):

(i) adjust the individual limit by an amount equal to the sum of:

(A) 66.5% of the latest individual limit, multiplied by the adjusted consumer price factor;

(B) 16.75% of the latest individual limit, multiplied by the medical care component; and

(C) 16.75% of the latest individual limit, multiplied by the medical services component;

(ii) adjust the aggregate limit by an amount equal to the sum of:

(A) 66.5% of the latest aggregate limit, multiplied by the adjusted consumer price factor;

(B) 16.75% of the latest aggregate limit, multiplied by the medical care component; and

(C) 16.75% of the latest aggregate limit, multiplied by the medical services component;

(iii) adjust the property damage limit as a percentage equal to the percentage increase or decrease in the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code; and

(iv) no later than June 1, communicate the adjusted limits under Subsections (2)(a)(i), (ii), and (iii) to the risk manager.

(b) The legislative fiscal analyst shall round up to the nearest $100 the individual limit, aggregate limit, and property damage limit adjusted under Subsection (2)(a).

(3) The legislative fiscal analyst may not adjust an individual limit or aggregate limit under Subsection (2) if the adjustment results in a decrease in the amount of the limit.

(4)(a) Each even-numbered year, the risk manager shall make rules, to become effective no later than July 1 of that year, that establish a new individual limit, aggregate limit, and property damage limit, as adjusted under Subsection (2).

(b) An adjustment to the individual limit, aggregate limit, or property damage limit under this section has prospective effect only from the date the rules establishing the new limit take effect.

(c) An individual limit, aggregate limit, or property damage limit, as adjusted under this section, applies only to a claim for injury or loss that occurs after the effective date of the rules that establish the adjusted limit.

Credits

Laws 2017, c. 151, § 2, eff. May 9, 2017.

U.C.A. 1953 § 63G-7-605, UT ST § 63G-7-605

Current through 2017 First Special Session.

ADDENDUM J

Chapter 7
Governmental Immunity Act of Utah

Part 1
General Provisions

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

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

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

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

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

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

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

Amended by Chapter 300, 2017 General Session

63G-7-102 Definitions.

As used in this chapter:

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

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

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

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

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

(3)

(a) "Employee" includes:

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

(ii) a member of a governing body;

(iii) a member of a government entity board;

(iv) a member of a government entity commission;

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

(vi) a student holding a license issued by the State Board of Education;

(vii) an educational aide;

(viii) a student engaged in an internship under Section 53B-16-402 or 53G-7-902;

(ix) a volunteer, as defined in Section 67-20-2; and

(x) a tutor.

(b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or not the individual holding that position receives compensation.
(c) "Employee" does not include an independent contractor.
(4) "Governmental entity" means:
(a) the state and its political subdivisions; and
(b) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.
(5)
(a) "Governmental function" means each activity, undertaking, or operation of a governmental entity.
(b) "Governmental function" includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.
(c) "Governmental function" includes a governmental entity's failure to act.
(6) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to the person or estate, that would be actionable if inflicted by a private person or the private person's agent.
(7) "Personal injury" means an injury of any kind other than property damage.
(8) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.
(9) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.
(10) "State" means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, Children's Justice Center, or other instrumentality of the state.
(11) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's conduct will probably result in injury.

Amended by Chapter 16, 2023 General Session

Part 2
Governmental Immunity - Statement, Scope, and Effect

63G-7-201 Immunity of governmental entities and employees from suit.
(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.
(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit:
(a) as provided in Section 78B-4-517; and
(b) for any injury or damage resulting from the implementation of or the failure to implement measures to:

(i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
(ii) investigate and control suspected bioterrorism and disease as set out in Sections 26B-7-316 through 26B-7-324;
(iii) respond to a national, state, or local emergency, a public health emergency as defined in Section 26B-7-301, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:
(A) an emergency shelter;
(B) housing;
(C) a staging place; or
(D) a medical facility; and
(iv) adopt methods or measures, in accordance with Section 26B-1-202, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

(3)
(a) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:
(i) a latent dangerous or latent defective condition of:
(A) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or
(B) another structure located on any of the items listed in Subsection (3)(a)(i); or
(ii) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(b)
(i) As used in this Subsection (3)(b):
(A) "Contaminated land" means the same as that term is defined in Section 11-58-102.
(B) "Contamination" means the condition of land that results from the placement, disposal, or release of hazardous matter on, in, or under the land, including any seeping or escaping of the hazardous matter from the land.
(C) "Damage" means any property damage, personal injury, or other injury or any loss of any kind, however denominated.
(D) "Environmentally compliant" means, as applicable, obtaining a certificate of completion from the Department of Environmental Quality under Section 19-8-111 following participation in a voluntary cleanup under Title 19, Chapter 8, Voluntary Cleanup Program, obtaining an administrative letter from the Department of Environmental Quality for a discrete phase of a voluntary cleanup that is conducted under a remedial action plan as defined in Section 11-58-605, or complying with the terms of an environmental covenant, as defined in Section 57-25-102, signed by an agency, as defined in Section 57-25-102, and duly recorded in the office of the recorder of the county in which the contaminated land is located.
(E) "Government owner" means a governmental entity, including an independent entity, as defined in Section 63E-1-102, that acquires an ownership interest in land that was contaminated land before the governmental entity or independent entity acquired an ownership interest in the land.
(F) "Hazardous matter" means hazardous materials, as defined in Section 19-6-302, hazardous substances, as defined in Section 19-6-302, or landfill material, as defined in Section 11-58-102.

(G) "Remediation" means the same as that term is defined in Section 11-58-102.

(ii)

(A) A government owner and the government owner's officers and employees are immune from suit, and immunity is not waived, for any claim for damage that arises out of or in connection with, or results from, contamination of contaminated land.

(B) A government owner's ownership of contaminated land may not be the basis of a claim against the government owner for damage that arises out of or in connection with, or results from, contamination of contaminated land.

(iii) Subsection (3)(b)(ii) does not limit or affect:

(A) the liability of a person that placed, disposed of, or released hazardous matter on, in, or under the land; or

(B) a worker compensation claim of an employee of an entity that conducts work on or related to contaminated land.

(iv) Immunity under Subsection (3)(b)(ii)(A) is not affected by a government owner's remediation of contaminated land if the government owner is environmentally compliant.

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

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

(b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

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

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

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

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

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

(h) the collection or assessment of taxes;

(i) an activity of the Utah National Guard;

(j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;

(k) a natural condition on publicly owned or controlled land;

(l) a condition existing in connection with an abandoned mine or mining operation;

(m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(n) the operation or existence of a trail that is along a water facility, as defined in Section 73-1-8, stream, or river, regardless of ownership or operation of the water facility, stream, or river, if:

(i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;

(ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:

(A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and
(B) the municipality or county where the trail is located; and
(iii) the written agreement:
(A) contains a plan for operation and maintenance of the trail; and
(B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
(o) research or implementation of cloud management or seeding for the clearing of fog;
(p) the management of flood waters, earthquakes, or natural disasters;
(q) the construction, repair, or operation of flood or storm systems;
(r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
(s) the activity of:
(i) providing emergency medical assistance;
(ii) fighting fire;
(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
(iv) an emergency evacuation;
(v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
(vi) intervening during a dam emergency;
(t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
(u) an unauthorized access to government records, data, or electronic information systems by any person or entity;
(v) an activity of wildlife, as defined in Section 23A-1-101, that arises during the use of a public or private road;
(w) a communication between employees of one or more law enforcement agencies related to the employment, disciplinary history, character, professional competence, or physical or mental health of a peace officer, or a former, current, or prospective employee of a law enforcement agency, including any communication made in accordance with Section 53-14-103; or
(x) providing or failing to provide information under Section 53-27-102 or Subsection 41-1a-213(6), (7), or (8), 53-3-207(4), or 53-3-805(5).

Amended by Chapter 34, 2023 General Session
Amended by Chapter 105, 2023 General Session
Amended by Chapter 259, 2023 General Session
Amended by Chapter 329, 2023 General Session
Amended by Chapter 452, 2023 General Session
Amended by Chapter 456, 2023 General Session

63G-7-202 Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability -- Public duty does not create specific duty.
(1)

(a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.
(b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.
(c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.
(2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.
(3)
(a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.
(b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.
(c) A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless:
(i) the employee acted or failed to act through fraud or willful misconduct;
(ii) the injury or damage resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:
(A) with a blood alcohol content equal to or greater by weight than the established legal limit;
(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or
(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle;
(iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform the employee's job function because of:
(A) the use of alcohol;
(B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or
(C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4;
(iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section; or
(v) the employee intentionally or knowingly:
(A) fabricated evidence; or
(B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of others, failed to disclose evidence that:
(I) was known to the employee; and
(II)
(Aa) was known by the employee to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending judicial or administrative proceeding; or

(Bb) was known by the employee to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.

(d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or pursue a civil action or proceeding against an employee, does not apply if the employee failed to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by law from disclosing the evidence.

(4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:

(a) during the performance of the employee's duties;

(b) within the scope of employment; or

(c) under color of authority.

(5) A general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public.

Amended by Chapter 415, 2014 General Session

63G-7-203 Exemptions for certain actions.

The requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, and 63G-7-601 do not apply to:

(1) an action that involves takings law, as defined in Section 63L-3-102; or

(2) an action filed under Title 67, Chapter 21, Utah Protection of Public Employees Act.

Amended by Chapter 178, 2018 General Session

Part 3
Waivers of Immunity

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 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 Section 63G-2-209, 63G-2-405, or 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 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 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:
(i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and
(ii) before the sexual battery or sexual abuse occurred, the public school had:
(A) provided training on the code of conduct to the employee; and
(B) required the employee to sign a statement acknowledging that the employee has read and understands the code of conduct.

(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:
(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.

Amended by Chapter 516, 2023 General Session

63G-7-302 Assessment of compensation and damages in an action for taking or damaging private property.

(1) Except as provided in Subsection (2), in an action brought under 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, compensation and damages shall be assessed according to Title 78B, Chapter 6, Part 5, Eminent Domain.

(2) In an action brought under Utah Constitution, Article I, Section 22, for the recovery of compensation for the interruption of water use in the case of a temporary water shortage emergency that results in the taking or damage of property for public uses without just compensation, compensation and damages shall be assessed in accordance with Title 73, Chapter 3d, Water Preferences During Emergencies.

Amended by Chapter 126, 2023 General Session

Part 4
Notice of Claim Against a Governmental Entity or a Government Employee

63G-7-401 When a claim arises -- Notice of claim requirements -- Governmental entity statement -- Limits on challenging validity or timeliness of notice of claim.

(1)

(a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:

(i) that the claimant had a claim against the governmental entity or the governmental entity's employee; and

(ii) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against the governmental entity's employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3)

(a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as the damages are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63G-7-202(3)(c), the name of the employee.

(b) The notice of claim shall be:
(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian, using any form of signature recognized by law as binding; and
(ii) delivered, transmitted, or sent, as provided in Subsection (3)(c), to the office of:
(A) the city or town clerk, when the claim is against an incorporated city or town;
(B) the county clerk, when the claim is against a county;
(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;
(D) the presiding officer or secretary or clerk of the board, when the claim is against a special district or special service district;
(E) the attorney general, when the claim is against the state;
(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or
(G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).
(c) A notice of claim shall be:
(i) delivered by hand to the physical address provided under Subsection (5)(a)(iii)(A);
(ii) transmitted by mail to the physical address provided under Subsection (5)(a)(iii)(A), according to the requirements of Section 68-3-8.5; or
(iii) sent by electronic mail to the email address provided under Subsection (5)(a)(iii)(B).
(d) A claimant who submits a notice of claim by electronic mail under Subsection (3)(c)(iii) shall contemporaneously send a copy of the notice of claim by electronic mail to the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, who represents the governmental entity.

(4)
(a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.
(b) If a guardian ad litem is appointed, the time for filing a claim under Section 63G-7-402 begins when the order appointing the guardian ad litem is issued.

(5)
(a) A governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:
(i) the name and address of the governmental entity;
(ii) the office or agent designated to receive a notice of claim; and
(iii)
(A) the physical address to which a notice of claim is to be delivered by hand or transmitted by mail, for a notice of claim that a claimant chooses to hand deliver or transmit by mail; and
(B) the email address to which a notice of claim is to be sent, for a notice of claim that a claimant chooses to send by email, and the email address of the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, who represents the governmental entity.
(b) A governmental entity shall update the governmental entity's statement as necessary to ensure that the information is accurate.
(c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).

(d)
(i) A newly incorporated municipality shall file the statement required by Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5.
(ii) A newly incorporated special district shall file the statement required by Subsection (5)(a) at the time that the written notice is filed with the lieutenant governor under Section 17B-1-215.
(e) A governmental entity may, in the governmental entity's statement, identify an agent authorized to accept notices of claim on behalf of the governmental entity.
(6) The Division of Corporations and Commercial Code shall:
(a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and
(b) make the indices available to the public both electronically and via hard copy.
(7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).
(8) A governmental entity may not challenge the timeliness, under Section 63G-7-402, of a notice of claim if:
(a)
(i) the claimant files a notice of claim with the governmental entity:
(A) in accordance with the requirements of this section; and
(B) within 30 days after the expiration of the time for filing a notice of claim under Section 63G-7-402;
(ii) the claimant demonstrates that the claimant previously filed a notice of claim:
(A) in accordance with the requirements of this section;
(B) with an incorrect governmental entity;
(C) in the good faith belief that the claimant was filing the notice of claim with the correct governmental entity;
(D) within the time for filing a notice of claim under Section 63G-7-402; and
(E) no earlier than 30 days before the expiration of the time for filing a notice of claim under Section 63G-7-402; and
(iii) the claimant submits with the notice of claim:
(A) a copy of the previous notice of claim that was filed with a governmental entity other than the correct governmental entity; and
(B) proof of the date the previous notice of claim was filed; or
(b)
(i) the claimant delivers by hand, transmits by mail, or sends by email a notice of claim:
(A) to an elected official or executive officer of the correct governmental entity but not to the correct office under Subsection (3)(b)(ii); and
(B) that otherwise meets the requirements of Subsection (3); and
(ii)
(A) the claimant contemporaneously sends a hard copy or electronic copy of the notice of claim to the office of the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, representing the correct governmental entity; or
(B) the governmental entity does not, within 60 days after the claimant delivers the notice of claim under Subsection (8)(b)(i), provide written notification to the claimant of the delivery defect and of the identity of the correct office to which the claimant is required to deliver the notice of claim.

Amended by Chapter 16, 2023 General Session

63G-7-402 Time for filing notice of claim.

A claim against a governmental entity, or against an employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the person and according to the requirements of Section 63G-7-401 within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-403 Notifying of the receipt of a notice of claim -- Action in district court -- Time for commencing action -- Commencing action after time limit.

(1) Within 60 days after the filing of a notice of claim, the governmental entity, the entity's representative, or the entity's insurance carrier shall inform the claimant in writing:
  (a) that the notice of claim has been received; and
  (b) if applicable, that the governmental entity believes it is not the correct governmental entity with which the notice of claim should have been filed.

(2)
  (a)
    (i) Subject to Subsections (2)(a)(ii) and (b), a claimant may pursue an action in the district court against the governmental entity or an employee of the entity.
    (ii) A claimant may not file an action before the date that is 60 days after the claimant's notice of claim is filed.
  (b) Subject to Subsection (3), a claimant shall commence the action within two years after the claim arises, as provided in Subsection 63G-7-401(1), regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3)
  (a) As used in this Subsection (3), "claimant" includes a representative of an individual:
    (i) who dies before an action is begun under this section; and
    (ii) whose cause of action survives the individual's death.
  (b) A claimant may commence an action after the time limit described in Subsection (2)(b) if:
    (i) the claimant had commenced a previous action within the time limit of Subsection (2)(b);
    (ii) the previous action failed or was dismissed for a reason other than on the merits; and
    (iii) the claimant commences the new action within one year after the previous action failed or was dismissed.
  (c) A claimant may commence a new action under Subsection (3)(b) only once.

Amended by Chapter 53, 2020 General Session

Part 5
Legal Actions Under this Chapter - Jurisdiction and Venue

63G-7-501 Jurisdiction of district courts over actions.

(1) The district courts have exclusive, original jurisdiction over any action brought under this chapter.

(2) An action brought under this chapter may not be tried as a small claims action.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-502 Venue of actions.

(1) Actions against the state may be brought in the county in which the claim arose or in Salt Lake County.

(2)

(a) Actions against a county may be brought in the county in which the claim arose, or in the defendant county.

(b)

(i) A district court judge of the defendant county may transfer venue to any county contiguous to the defendant county.

(ii) A motion to transfer may be filed ex parte.

(3) Actions against all other political subdivisions, including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

Amended by Chapter 33, 2016 General Session

Part 6
Legal Actions Under this Chapter - Procedures, Requirements, Damages, and Limitations on Judgments

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

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

(2) A plaintiff who files an action under this chapter shall file an undertaking within 20 days after commencement of the action:

(a) in the amount of $300, unless otherwise ordered by the court; and

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

(3) If a plaintiff does not file an undertaking as required in Subsection (2), a court may, sua sponte or pursuant to a motion, order the plaintiff to file an undertaking in an amount and by a deadline that the court establishes.

(4) A defendant waives a defense based on the plaintiff's failure to file an undertaking under this section if the defendant does not raise the plaintiff's failure to file an undertaking as an affirmative defense in the defendant's initial responsive pleading.

Amended by Chapter 229, 2019 General Session

63G-7-602 Compromise and settlement of claims by political subdivision.

A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise and settle any action as to the damages or other relief sought.

Amended by Chapter 355, 2015 General Session

63G-7-603 Exemplary or punitive damages prohibited -- Governmental entity not subject to execution, attachment, or garnishment -- Exception.

(1)
(a) A judgment may not be rendered against a governmental entity for exemplary or punitive damages.
(b) If a governmental entity would be required to pay the judgment under Section 63G-7-902 or 63G-7-903, the governmental entity shall pay any judgment or portion of any judgment entered against its employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages.

(2)
(a) Except as provided in Subsection (2)(b), execution, attachment, or garnishment may not issue against a governmental entity.
(b) A judgment creditor may garnish a state income tax refund owing to the judgment debtor.

Amended by Chapter 152, 2017 General Session

63G-7-604 Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.

(1)
(a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.
(b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.
(c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds $233,600 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.
(d) Subject to Subsection (3), there is a $3,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Section 63G-7-605.

Amended by Chapter 229, 2019 General Session

63G-7-605 Adjustments to limitation of judgment amounts.

(1) As used in this section:
(a) "Adjusted consumer price factor" means what the consumer price index would be without the medical care component and the medical services component.
(b) "Aggregate limit" means the limit on the aggregate amount of personal injury damages claims from a single occurrence, as provided in Subsection 63G-7-604(1)(d).

(c) "Applicable index" means:
(i) the consumer price index, for a calculation of the percentage change in the consumer price index;
(ii) the adjusted consumer price factor, for a calculation of the percentage change in the adjusted consumer price factor;
(iii) the medical care component, for a calculation of the percentage change in the medical care component; or
(iv) the medical services component, for a calculation of the percentage change in the medical services component.
(d) "Base applicable index" means an applicable index for the year that is three years before the year in which the legislative fiscal analyst calculates new limits under this section.
(e) "Consumer price index" means the annual index reported by the United States Bureau of Labor Statistics for consumer prices for all urban consumers, not seasonally adjusted.
(f) "Individual limit" means the limit on the amount of a judgment for damages for personal injury, as provided in Subsection 63G-7-604(1)(a).
(g) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk manager under this section.
(h) "Latest individual limit" means the individual limit, as last adjusted by the risk manager under this section.
(i) "Latest property damage limit" means the property damage limit, as last adjusted by the risk manager under this section.
(j) "Medical care component" means the medical care sub-index of the consumer price index.
(k) "Medical services component" means the medical care services sub-index of the consumer price index.
(l) "Percentage change" means the amount of change between the base applicable index and the applicable index for the year before the year in which the legislative fiscal analyst calculates new limits under this section, expressed as a percentage of the base applicable index.
(m) "Property damage limit" means the limit on the amount of a judgment for property damage, as provided in Subsection 63G-7-604(1)(c).
(n) "Risk manager" means the state risk manager appointed under Section 63A-4-101.5.
(2) Each even-numbered year, the legislative fiscal analyst shall, subject to Subsection (3):
(a) calculate a new individual limit by adding to the latest individual limit the sum of:
(i) 66.5% of the latest individual limit, multiplied by the percentage change in the adjusted consumer price factor;
(ii) 16.75% of the latest individual limit, multiplied by the percentage change in the medical care component; and
(iii) 16.75% of the latest individual limit, multiplied by the percentage change in the medical services component;
(b) calculate a new aggregate limit by adding to the latest aggregate limit the sum of:
(i) 66.5% of the latest aggregate limit, multiplied by the percentage change in the adjusted consumer price factor;
(ii) 16.75% of the latest aggregate limit, multiplied by the percentage change in the medical care component; and
(iii) 16.75% of the latest aggregate limit, multiplied by the percentage change in the medical services component;
(c) calculate a new property damage limit by adding to the latest property damage limit the amount of the latest property damage limit multiplied by the percentage change in the consumer price index;

(d) round up to the nearest $100 the individual limit, aggregate limit, and property damage limit calculated under Subsections (2)(a), (b), and (c); and
(e) no later than May 1, communicate the newly calculated limits under Subsections (2)(a), (b), and (c) to the risk manager.
(3) The newly calculated individual limit, aggregate limit, or property damage limit under Subsection (2) may not be less than the amount of the limit before the new calculation under Subsection (2).
(4)
(a) Each even-numbered year, the risk manager shall make rules, to become effective no later than July 1 of that year, that establish a new individual limit, aggregate limit, and property damage limit, as calculated under Subsection (2).
(b) A newly calculated individual limit, aggregate limit, or property damage limit under this section has prospective effect only from the date the rules establishing the new limit take effect.
(c) An individual limit, aggregate limit, or property damage limit, as newly calculated under this section, applies only to a claim for injury or loss that occurs after the effective date of the rules that establish the newly calculated limit.

Amended by Chapter 33, 2021 General Session

Part 7
Payment Process and Sources for Paying Proved Claims Against Governmental Entities

63G-7-701 Payment of claim or judgment against state -- Presentment for payment.
(1) Each claim that is approved by the state or any final judgment obtained against the state shall be presented for payment to:
(a) the state risk manager; or
(b) the office, agency, institution, or other instrumentality involved, if payment by that instrumentality is otherwise permitted by law.
(2) If payment of the claim is not authorized by law, the judgment or claim shall be presented to the board of examiners for action as provided in Section 63G-9-301.
(3) If a judgment against the state is reduced by the operation of Section 63G-7-604, the claimant may submit the excess claim to the board of examiners.

Amended by Chapter 4, 2020 Special Session 5

63G-7-702 Payment of claim or judgment against political subdivision -- Procedure by governing body -- Payment options.
(1)
(a) Each claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body of the political subdivision.
(b) The governing body shall pay the claim immediately from the general funds of the political subdivision unless:
(i) the funds are appropriated to some other use or restricted by law or contract for other purposes;

(ii) the political subdivision opts to pay the claim or award in installments under Subsection (2); or
(iii) the political subdivision elects to bond for the portion of the claim, judgment, or settlement that exceeds $3,000,000 in accordance with Subsection 11-14-103(1)(d).
(2) Except as provided in Subsection (3), if the subdivision is unable to pay the claim or award during the current fiscal year, it may pay the claim or award in not more than 10 ensuing annual installments of equal size or in whatever other installments that are agreeable to the claimant.
(3) If a political subdivision elects to bond for the portion of a claim, judgment, or settlement that exceeds $3,000,000 in accordance with Subsection 11-14-103(1)(d), the political subdivision may issue bonds with a maturity date not to exceed 21 years.

Amended by Chapter 386, 2016 General Session

63G-7-703 Reserve funds for payment of claims or purchase of insurance created by political subdivisions.

Any political subdivision may create and maintain a reserve fund or, may jointly with one or more other political subdivisions, make contributions to a joint reserve fund, for the purpose of:
(1) making payment of claims against the cooperating subdivisions when they become payable under this chapter; or
(2) for the purpose of purchasing liability insurance to protect the cooperating subdivisions from any or all risks created by this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-704 Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.

(1) Notwithstanding any provision of law to the contrary, a political subdivision may levy an annual property tax sufficient to pay:
(a) any claim, settlement, or judgment, including interest payments and issuance costs for bonds issued under Subsection 11-14-103(1)(d) to pay the portion of any claim, settlement, or judgment that exceeds $3,000,000;
(b) the costs to defend against any claim, settlement, or judgment; or
(c) for the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments that may be reasonably anticipated.
(2)
(a) The payments authorized to pay for punitive damages or to pay the premium for authorized insurance is money spent for a public purpose within the meaning of this section and Utah Constitution, Article XIII, Sec. 5, even though, as a result of the levy, the maximum levy as otherwise restricted by law is exceeded.
(b)
(i) Except as provided in Subsection (2)(b)(ii), a levy under this section may not exceed .0001 per dollar of taxable value of taxable property.
(ii) A levy under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds $3,000,000 may not exceed .001 per dollar of taxable value of taxable property.
(c) Except as provided in Subsection 17-36-29(1), the revenues derived from this levy may not be used for any purpose other than those specified in this section.
(3) Beginning January 1, 2012, a local school board may not levy a tax in accordance with this section.

(4) A political subdivision that levies an annual property tax under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds $3,000,000:
(a) shall comply with the notice and public hearing requirements under Section 59-2-919; and
(b) may levy the annual property tax until the bonds' maturity dates expire.

Amended by Chapter 453, 2017 General Session

Part 8
Self-Insurance and Purchase of Liability Insurance by Governmental Entities

63G-7-801 Insurance -- Self-insurance or purchase of liability insurance by governmental entity authorized -- Establishment of trust accounts for self-insurance.
(1) Any governmental entity within the state may self-insure, purchase commercial insurance, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against:
(a) any risk created or recognized by this chapter; or
(b) any action for which a governmental entity or its employee may be held liable.
(2)
(a) In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establishing a trust account.
(b) In creating the trust account, the governmental entity shall ensure that:
(i) the trust account is managed by an independent private trustee; and
(ii) the independent private trustee has authority, with respect to claims covered by the trust, to:
(A) expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and
(B) pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon.
(c) Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to:
(i) employ counsel to defend actions against the entity and its employees;
(ii) protect and safeguard the assets of the trust;
(iii) provide for claims investigation and adjustment services;
(iv) employ expert witnesses and consultants; and
(v) provide other services and functions that are necessary and proper to carry out the purposes of the trust.
(d) The money and interest earned on the trust fund may be invested by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are subject to audit by the state auditor.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-802 Insurance -- Liability insurance -- Government vehicles operated by employees outside scope of employment.
(1) A governmental entity that owns vehicles driven by an employee of the governmental entity with the express or implied consent of the entity, but which, at the time liability is incurred as a

result of an automobile accident, is not being driven and used within the course and scope of the driver's employment is, subject to Subsection (2), considered to provide the driver with the insurance coverage required by Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act.

(2) The liability coverages considered provided are the minimum limits under Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-803 Liability insurance -- Construction of policy not in compliance with act.

(1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of this chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

(2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before July 1, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-804 Liability insurance -- Methods for purchase or renewal.

(1) Except as provided in Subsection (2), a contract or policy of insurance may be purchased or renewed under this chapter only upon public bid to be let to the lowest and best bidder.

(2) The purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session

63G-7-805 Liability insurance -- Insurance for employees authorized -- No right to indemnification or contribution from governmental agency.

(1)

(a) A governmental entity may insure any or all of its employees against liability, in whole or in part, for injury or damage resulting from an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority, regardless of whether or not that entity is immune from suit for that act or omission.

(b) Any expenditure for that insurance is for a public purpose.

(c) Under any contract or policy of insurance providing coverage on behalf of a governmental entity or employee for any liability defined by this section, regardless of the source of funding for the coverage, the insurer has no right to indemnification or contribution from the governmental entity or its employee for any loss or liability covered by the contract or policy.

(2) Any surety covering a governmental entity or its employee under any faithful performance surety bond has no right to indemnification or contribution from the governmental entity or its employee for any loss covered by that bond based on any act or omission for which the

governmental entity would be obligated to defend or indemnify under the provisions of Section 63G-7-902.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 9
Coverage and Representation of State Entities and Employees

63G-7-901 Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, the state's branches, members, or employees.

(1)
(a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where coverage under the Risk Management Fund created by Section 63A-4-201 applies.
(b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims.
(c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims in those cases lies with the attorney general and the state risk manager.

(2)
(a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.
(b) If the general counsel for the state judiciary undertakes independent legal representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
(c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.

(3)
(a) If the Legislative Management Committee, after consultation with the general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.
(b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
(c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees,

where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.

(4)

(a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the Utah Code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Government Operations for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising state agencies and employees regarding any of those claims.

(b) The risk manager shall draw funds from the Risk Management Fund for this purpose.

Amended by Chapter 344, 2021 General Session

63G-7-902 Defending government employee -- Request -- Cooperation -- Payment of judgment.

(1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:

(a) during the performance of the employee's duties;

(b) within the scope of the employee's employment; or

(c) under color of authority.

(2)

(a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend the employee:

(i) within 10 days after service of process upon the employee; or

(ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on the employee's behalf; or

(iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.

(b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.

(3) The governmental entity may decline to defend, or, subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:

(a) that the act or omission in question did not occur:

(i) during the performance of the employee's duties;

(ii) within the scope of the employee's employment; or

(iii) under color of authority; or

(b) that the injury or damage on which the claim was based resulted from conditions set forth in Subsection 63G-7-202(3)(c).

(4)

(a) Within 10 days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.

(b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.

(5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.
(6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment if any of the conditions set forth in Subsection (3) are established.
(7)
(a) Nothing in this section or Section 63G-7-903 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63G-7-802.
(b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under any of the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-903 Recovery of judgment paid and defense costs by government employee.
(1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, that the governmental entity is required to pay under Section 63G-7-902, the employee may recover from the governmental entity the amount of the payment and the reasonable costs incurred in the employee's defense.
(2)
(a) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under a reservation of rights as provided in Subsection 63G-7-902(6), the employee may recover from the governmental entity under Subsection (1) if the employee can prove that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.
(b) The employee has the burden of proof that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-904 Indemnification of governmental entity by employee not required.
If a governmental entity pays all or part of a judgment, compromise, or settlement based on a claim against the governmental entity or an employee, the employee is not required to indemnify the governmental entity for the payment.

Renumbered and Amended by Chapter 382, 2008 General Session

ADDENDUM K

West's Utah Code Annotated
Title 78b. Judicial Code
Chapter 3. Actions and Venue
Part 4. Utah Health Care Malpractice Act (Refs & Annos)

U.C.A. 1953 § 78B-3-410
Formerly cited as UT ST § 78-14-7.1

§ 78B-3-410. Limitation of award of noneconomic damages in malpractice actions

Currentness

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. The amount of damages awarded for noneconomic loss may not exceed:

(a) for a cause of action arising before July 1, 2001, $250,000;

(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000;

(c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and

(d) for a cause of action arising on or after May 15, 2010, $450,000.

(2)(a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

(b) By July 15 of each year until July 1, 2009, the state treasurer shall:

(i) certify the inflation-adjusted limit calculated under this Subsection (2); and

(ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:

(i) be rounded to the nearest $10,000; and

(ii) apply to a cause of action arising on or after the date the annual adjustment is made.

(3) As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The limit under Subsection (1) does not apply to awards of punitive damages.

Credits

Laws 2008, c. 3, § 716, eff. Feb. 7, 2008; Laws 2010, c. 97, § 1, eff. May 11, 2010.

Editors' Notes

VALIDITY

<For validity of this section, see, Smith v. U.S., 356 P.3d 1249, 793 Utah Adv. Rep. 39, 2015 UT 68 (2015). >

Notes of Decisions (9)

U.C.A. 1953 § 78B-3-410, UT ST § 78B-3-410
Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

ADDENDUM L

Utah Administrative Code
Government Operations (Titles R13-R37, R477, R895)
Title R37. Risk Management.
Rule R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.

U.A.C. R37-4-3
Formerly cited as UT ADC R37-4

R37-4-3. Limitations of Judgments by Calendar Date.

Effective: July 1, 2022
Currentness

The limitations on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

(1) Incident(s) occurring before July 1, 2001 - $250,000 for one person in an occurrence, $500,000 aggregate for two or more persons in an occurrence; and $100,000 for property damage for any one occurrence.

(2) Incidents occurring on or after July 1, 2001 - $500,000 for one person in an occurrence, $1,000,000 aggregate for two or more persons in an occurrence; and $200,000 for property damage for any one occurrence.

(3) Incidents occurring on or after July 1, 2002 - $532,500 for one person in an occurrence, $1,065,000 aggregate for two or more persons in an occurrence; and $213,000 for property damage for any one occurrence.

(4) Incidents occurring on or after July 1, 2004 - $553,500 for one person in an occurrence, $1,107,000 aggregate for two or more persons in an occurrence, and $221,400 for property damage for any one occurrence.

(5) Incidents occurring on or after July 1, 2006 - $583,900 for one person in an occurrence, $1,167,900 aggregate for two or more persons in an occurrence, and $233,600 for property damage for any one occurrence.

(6) Incidents occurring on or after July 1, 2007 - $583,900 for one person in an occurrence, $2,000,000 aggregate for two or more persons in an occurrence, and $233,600 for property damage for any one occurrence.

(7) Incidents occurring on or after July 1, 2008 - $620,700 for one person in an occurrence, $2,126,000 aggregate for two or more persons in an occurrence, and $248,300 for property damage for any one occurrence.

(8) Incidents occurring on or after July 1, 2010 - $648,700 for one person in an occurrence, $2,221,700 aggregate for two or more persons in an occurrence, and $259,500 for property damage for any one occurrence.

(9) Incidents occurring on or after July 1, 2012 - $674,000 for one person in an occurrence, $2,308,400 aggregate for two or more persons in an occurrence, and $269,700 for property damage for any one occurrence.

(10) Incidents occurring on or after July 1, 2014 - $703,000 for one person in an occurrence, $2,407,700 aggregate for two or more persons in an occurrence, and $281,300 for property damage for any one occurrence.

(11) Incidents occurring on or after July 1, 2016 - $717,100 for one person in an occurrence, $2,455,900 aggregate for two or more persons in an occurrence, and $286,900 for property damage for any one occurrence.

(12) Incidents occurring on or after July 1, 2018 - $745,200 for one person in an occurrence, $2,552,000 aggregate for two or more persons in an occurrence, and $295,000 for property damage for any one occurrence as explained in R37-4-2(2).

(13) Incidents occurring on or after July 1, 2020 - $779,600 for one person in an occurrence, $3,138,300 aggregate for two or more persons in an occurrence, and $307,700 for property damage for any one occurrence as explained in R37-4-2(2).

(14) Incidents occurring on or after July 1, 2022 - $827,000 for one person in an occurrence, $3,329,100 aggregate for two or more persons in an occurrence, and $326,200 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, Governmental Immunity Act caps

Credits

Date of Enactment or Last Substantive Amendment: January 18, 2019; amended eff. Jul. 1, 2020; amended eff. Jul. 1, 2022

Notice of Continuation: Mar. 21, 2022

Authorizing, Implemented, or Interpreted Law: UT ST 63G-7-605(4)

Current through rules published in the Utah State Bulletin Number 2024-03, February 1, 2024. Some sections may be more current, see credits for details.

Utah Admin. R37-4-3, UT ADC R37-4-3

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