COVID-19 IMMUNITY PROVISIONS

2020 FIFTH SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Marc K. Roberts

LONG TITLE

General Description:

This bill addresses immunity related to COVID-19.

Highlighted Provisions:

This bill:

- addresses the relationship between the governmental immunity act and immunity related to exposure to COVID-19; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-201, as last amended by Laws of Utah 2020, Chapter 288

63G-8-201, as last amended by Laws of Utah 2016, Chapter 181

78B-4-517, as enacted by Laws of Utah 2020, Third Special Session, Chapter 12

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

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

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:

[~~(a)~~] (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;

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

[~~(c)~~] (iii) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, 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:

[~~(i)~~] (A) an emergency shelter;

[~~(ii)~~] (B) housing;

[~~(iii)~~] (C) a staging place; or

[~~(iv)~~] (D) a medical facility; and

[~~(d)~~] (iv) adopt methods or measures, in accordance with Section 26-1-30, 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 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:

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

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

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

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

(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 pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, 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; or

(v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Section 2. Section **63G-8-201** is amended to read:

63G-8-201. Voluntary services -- Immunity from liability -- Exceptions.

(1) A person performing services on a voluntary basis, without compensation, under the general supervision of, and on behalf of any public entity, is immune from liability with respect to any decisions or actions, other than in connection with the operation of a motor vehicle, taken during the course of those services, unless it is established that such decisions or actions were grossly negligent, not made in good faith, or were made maliciously.

(2) A volunteer facilitator is immune from liability to the extent provided in Subsection 67-20-3(4).

(3) A person or entity owning a building or other facility and an operator of or an employee in a building or facility is immune from liability with respect to any decisions or actions related to emergency or public health conditions, as described in Subsection 63G-7-201(2)[~~(c)~~](b)(iii), while acting under the general supervision of or on behalf of any public entity.

Section 3. Section **78B-4-517** is amended to read:

78B-4-517. Immunity related to COVID-19.

(1) As used in this section:

(a) "COVID-19" means:

(i) severe acute respiratory syndrome coronavirus 2; or

(ii) the disease caused by severe acute respiratory syndrome coronavirus 2.

(b) "Person" means the same as that term is defined in Section 68-3-12.5.

(c) "Premises" means real property and any appurtenant building or structure.

(2) Subject to the other provisions of this section, a person is immune from civil liability for damages or an injury resulting from exposure of an individual to COVID-19 on the premises owned or operated by the person, or during an activity managed by the person. Immunity as described in this Subsection (2) does not apply to:

(a) willful misconduct;

(b) reckless infliction of harm; or

(c) intentional infliction of harm.

(3) This section does not modify the application of:

(a) Title 34A, Chapter 2, Workers' Compensation Act;

(b) Title 34A, Chapter 3, Utah Occupational Disease Act; or

(c) Title 34A, Chapter 6, Utah Occupational Safety and Health Act[~~; or~~].

[~~(d) Title 63G, Chapter 7, Governmental Immunity Act of Utah.~~]

(4) The immunity in Subsection (2) is in addition to any other immunity protections that may apply in state or federal law.