

# H.B. 311 GOVERNMENTAL IMMUNITY REVISIONS

*Heather S. White*  
*Attorney at Law*

SNOW  
CHRISTENSEN  
& MARTINEAU

# New Waiver of Immunity - § 63G-7-301

- Immunity is waived for claims for injury resulting from sexual battery committed against a student of a public school (including students of charter schools), by an employee of that school who:
  1. Held a position of special trust;
  2. Is criminally charged; **AND**
  3. The school knew or should have known when it hired the employee that the employee was required by law to register as sex offender, which would have been revealed in a background check.

# Changes to Delivery Requirements for Notice of Claim and Required Notification by Governmental Entity - § 63G-7-401

- A governmental entity may not challenge the timeliness of a notice of claim if the claimant hand-delivers or mails the notice of claim to an elected official or executive officer of the entity instead of the city or town clerk (incorporated city or town), the county clerk (county), or the superintendent or business administrator of the board (for a school district or board of education) **AND**
  1. The claimant contemporaneously sends a copy (paper or electronic) to the city attorney (for a city), district or county attorney (for a county), attorney general (for the State of Utah), or other attorney representing the governmental entity; **OR**
  2. The governmental entity fails to provide written notification to the claimant of the delivery defect and the identity of the correct office within 60 days of delivery of the notice of claim.

# New Notification Requirement and Statute of Limitation – § 63G-7-403

---

- Within 60 days after the filing of a notice of claim, a governmental entity or its insurance carrier must inform the claimant in writing:
  1. That the notice of claim has been received; **AND**
  2. If applicable, it is not the correct governmental entity with which the notice of claim should have been filed.
  
- A claimant must file suit no sooner than 60 days after filing a notice of claim and no later than two years after the claim arises.

# New Undertaking Provisions - 63G-7-601

---

- A plaintiff must file a \$300 undertaking with the court within 20 days after filing suit or the court may order, *sua sponte* or on motion, to file an undertaking for an amount by a deadline set by the court.
- A defendant must raise the failure to file an undertaking as an affirmative defense in the initial responsive pleading to avoid waiver of the defense.

# Increases Aggregate Limit on Personal Injury Claims - § 63G-7-604

---

- The aggregate for individual awards for a single occurrence is increased to \$3 million, adjusted every other year as currently provided by statute.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- A claimant seeking payment in excess of the damages cap must submit a written statement of claim to the board of examiners within 180 days after:
  1. The date of a final, nonappealable judgment for personal injury claim in excess of the damages cap or damages cap settlement; OR
  2. The date that all third party claims are resolved by a final, nonappealable judgment or settlement, if that date is later than 180 days.
- The statement of claim shall include:
  1. The facts and explanation of the evidence supporting the excess damages claim;
  2. The excess damages amount;

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

3. If applicable:
  - a. A list and description of each third party claim the individual has asserted and an explanation of the disposition of the third party claim, including the amount of any judgment or settlement and the amount actually recovered;
  - b. A summary of a damages cap settlement; and
  - c. The amount of a final judgment awarded to the claimant against the governmental entity with:
    - i. The amount of the judgment before application of the cap; and
    - ii. A description of each element of damages awarded and the amount awarded for each element.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- A claimant must also submit with the statement of claim a copy of:
  1. A final judgment in favor of the claimant with any findings of fact and conclusions of law entered by the court, where the claimant has recovered an excess-cap judgment; or
  2. The agreement memorializing the damages cap settlement, if the claimant is asserting an excess-cap damages claim.
- A claimant must wait to submit a statement of claim until after the amount of the personal injury claim has been determined after application of the caps provisions.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- At least five retired Utah judges will be appointed as qualified to serve as a special master to hear excess-cap damages claims referred by the board of examiners, to make recommendations about:
  1. The governmental entity's liability; and
  2. The amount of the excess damages claim.
- The board of examiners may not require a claimant's excess damages claim to be submitted to a special master where the excess damages claim is based on a court judgment following a verdict by a trier of fact determining the governmental entity's liability or the amount of damages or both.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- A governmental entity may choose whether to have an attorney representing the political subdivision participate in proceedings to represent the interests opposing approval of the excess damages claim. The attorney general may choose to participate in proceedings under this section to represent the interests opposing approval of the excess damages claim, whether or not the state is the responsible governmental entity.
- The claimant and the government attorney shall together select an individual from the special master list to act as special master. If they are unable to agree the board of examiners shall randomly select a special master from the special master list.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- The special master has 20 days from appointment to:
  1. Prepare a written budget of estimated fees and costs for services; and
  2. Provide the budget to the claimant.
- The claimant has 20 days after receiving the special master's budget to:
  1. Approve or reject the special master's budget; and
  2. Notify the board of examiners in writing of approval or rejection.
- If the claimant rejects the special master's budget, the claimant's excess damages claim is considered withdrawn. If the claimant approves the special master's budget, the claimant shall pay all fees and costs of the special master.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- Within 30 days after approval of a special master's budget, the claimant must provide the special master a written statement that includes:
  1. A list of the name and last known address of each health care provider that provided health care services to the claimant within five years of the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;
  2. A description of the health care services provided by each health care provider;
  3. A statement describing and explaining any health care services that the claimant claims are immaterial to the claimant's personal injury claim;
  4. A list of the name and last known address of each health care insurer or other entity to which a health care or other similar benefit claim has been submitted on the claimant's behalf within five years of the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

5. A description of the health care or other similar benefits claimed under claims submitted to health care insurers or other entities listed under Subsection (12)(b)(i);
6. A statement describing and explaining any health care or other similar benefit that the claimant claims is immaterial to the claimant's personal injury claim;
7. The name and address of each employer that employed the claimant within five years of the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement, if the claimant's person injury claim includes a claim for lost wages or diminished earning capacity;
8. The name and address of each state or federal entity holding a statutory lien on any recovery;

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

9. A statement whether the claimant has received any Medicare or Medicaid benefits and, if so, a description of those benefits, including the amount;
10. A copy of all documentary evidence supporting the claimant's excess damages claim;
11. A signed authorization from the claimant allowing the special master to obtain all documents, including any billing statements, relevant to the claimant's excess damages claim from each person listed under Subsections (12)(a)(i), (b)(i), and (c).

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

## ➤ The special master:

1. Must consider evidence related to the claimant's excess damages claim;
2. May hold a hearing;
3. May request or allow a responsible governmental entity or government attorney to provide information or argument to help the special master understand the factors weighing against an excess damages claim;
4. Must make a recommendation concerning;
  - a. The governmental entity's liability; and/or
  - b. The amount of the excess damages claim.

# Creation of Special Master Proceeding for Damages Cap Claims – § 63G-9-302.5

- Within 30 days after a hearing, or if no hearing is held, after the special master's determination not to hold a hearing, the special master shall:
  1. Prepare a written recommendation, including a brief, informal discussion of the factual and legal basis for the recommendation; and
  2. Deliver a copy of the written recommendation to the claimant, the attorney general, and the board of examiners.
  
- A written recommendation may, but need not, contain findings of fact and conclusions of law.