

1999

Ken Ray Harward v.UTAH COUNTY, UTAH
COUNTY SHERIFF'S OFFICE, UTAH
COUNTY ATTORNEY'S OFFICE, PLEASANT
GROVE CITY, PLEASANT GROVE POLICE
DEPARTMENT, LEHI CITY, LEHI POLICE
DEPARTMENT, PROVO CITY, PROVO
POLICE DEPARTMENT, and JOHN DOES 1
THRU 10, : Brief of Appellant

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Recommended Citation

Brief of Appellant, *Harward v. Utah County*, No. 990707 (Utah Court of Appeals, 1999).
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IN THE UTAH COURT OF APPEALS

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KEN RAY HARWARD,

Plaintiff,

vs.

UTAH COUNTY, UTAH COUNTY
SHERIFF'S OFFICE, UTAH COUNTY
ATTORNEY'S OFFICE, PLEASANT
GROVE CITY, PLEASANT GROVE
POLICE DEPARTMENT, LEHI CITY,
LEHI POLICE DEPARTMENT,
PROVO CITY, PROVO POLICE
DEPARTMENT, and JOHN
DOES 1 THRU 10,

Defendants.

Case No. 990707-CA

Priority No. 15

BRIEF OF APPELLANT

Appeal from the Summary Judgment
of the Fourth Judicial District Court, Utah County
State of Utah, by the Honorable Guy R. Burningham

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* Published Opinion Requested *

** Oral Arguments Requested **

COURT OF APPEALS

TABLE OF CONTENTS

	<u>Pages</u>
<u>Table of Authorities</u>	iii
<u>Statement of Jurisdiction</u>	2
<u>Statement of Issues</u>	3
<u>Standards of Review</u>	3
<u>Statutes, Rules and Constitutional Provisions</u>	4
<u>Statement of Case</u>	4
I. <u>Nature of the Case</u>	4
II. <u>Course of the Proceedings</u>	5
III. <u>Disposition in Trial Court</u>	7
IV. <u>Statement of Facts</u>	8
<u>Summary of the Argument</u>	8
<u>Argument</u>	9
Point I. <u>The Defendants Were Not Entitled to a Dismissal as a Matter of Law—the Plaintiff’s Delivery by U.S. Express Mail on June 7th, 1996 was the Appropriate Date to Start the Computation for a September 5, 1997 Deadline for Filing his Complaint.</u> . . .	9
<u>Conclusion</u>	17

Certificate of Mailing 19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<u>Litster v. Utah Valley Community College</u> , 881 P.2d 933 (Utah Ct. App. 1994)	12
<u>Promark Group, Inc. v. Harris Corp.</u> , 860 P.2d 964 (Utah Ct. App. 1993).	15
<u>Projects Unlimited, Inc. v. Copper State Thrift & Loan Co.</u> , 798 P.2d 738 (Utah 1990).	15
<u>State v. Bagshaw</u> , 836 P.2d 1384 (Utah Ct. App. 1992)	4
<u>State v. Lowder</u> , 889 P.2d 412 (Utah 1994)	12
<u>Sweet v. Salt Lake City</u> , 43 Utah 306, 134 P. 1167 (1913).	10
 <u>STATUTES</u>	
Utah Code Ann. § 63-30-11 (1953, as amended).	2, 11
Utah Code Ann. § 63-37-1 (1953, as amended).	2, 12, 13
Utah Code Ann. § 63-37-2 (1953, as amended).	13
Utah Code Ann. § 63-37-3 (1953, as amended).	2, 12, 13

STATUTES (cont.)

Utah Code Ann. § 78-2a-3 (1953, as amended)	2
---	---

RULES

Utah R. Civ. P. 6	9
-----------------------------	---

CONSTITUTIONAL PROVISIONS

Utah State Const. Art. I, § 22	10
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IN THE UTAH COURT OF APPEALS

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KEN RAY HARWARD,)	
	(
)	
Plaintiff,	(
)	
vs.	(
)	
UTAH COUNTY, UTAH COUNTY	(
SHERIFF'S OFFICE, UTAH COUNTY)	
ATTORNEY'S OFFICE, PLEASANT	(
GROVE CITY, PLEASANT GROVE)	
POLICE DEPARTMENT, LEHI CITY,	(Case No. 990707-CA
LEHI POLICE DEPARTMENT,)	
PROVO CITY, PROVO POLICE	(Priority No. 15
DEPARTMENT, and JOHN)	
DOES 1 THRU 10,	(
)	
Defendants.	(
)	

This is an appeal from the trial court's erroneous grant of Summary Judgment in favor of the defendants. The court granted summary judgment allegedly due to two reasons: (1) The plaintiff failed to properly serve the city and county clerks pursuant to Utah Code Ann. § 63-30-11 (1998) rather than the 1997 version which was relied on by Plaintiff at the time delivering his Notices of Claim.

The court accepted the defendants' arguments that they did not receive any notice of the claims; and (2) the court accepted the defendants' erroneous computation of time. The court bought the argument that the Court should find that the Plaintiff was one day late filing his Complaint with the district court by applying Utah Code Ann. § 63-37-1 (1953, as amended) and then computed the date of delivery to be the date of so-called mailing. The date that Plaintiff shipped the notices via U.S. Express Mail¹ was June 6th, 1996. The Plaintiff intended the notices to be delivered on the 7th of June—to meet the one-year filing deadline for notices of claim pursuant to Utah Code Ann. § 63-30-13 (1953, as amended).

The Plaintiff was severely prejudiced by the court when it accepted the defendants arguments. Firstly, the Plaintiff did comply with Section 63-30-11 by delivering said notices of claim to the governing bodies' respective councils. Secondly, the court violated the Rule 6(a), Utah Rules of Civil Procedure regarding the computation of time. The rule specifically disallows the inclusion of the “day of the act, event, or default” in the computation of time. The court allowed such an inclusion and found that the Plaintiff failed to file his Complaint timely by a day.

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by *Utah Code Ann.* § 78-2a-3

¹ Which the court should take judicial notice that the postmaster guarantees over-night delivery.

(1953, as amended) (2) (j) (cases transferred to the Court of Appeals from the Supreme Court). The appellant appeals the final order and judgment of the Fourth Judicial District Court, in and for Utah County involving wrongful refusal to return personal property in spite of a court order to do so.

STATEMENT OF ISSUES

1. Whether the Plaintiff complied with Section 63-30-11 (1997) by effecting delivery to the defendant's "responsible governmental entities."
2. Whether the Plaintiff effected delivery on June 7th, 1996 as guaranteed by the courier U.S. Express Mail, or on June 6th, 1996 by mail pursuant to Section 63-37-1 1953, as amended).
3. Whether the trial court erroneously computed the time for filing the Plaintiff's Complaint.

STANDARDS OF REVIEW

The trial court misinterpreted and or otherwise misapplied Sections 63-30-11 and 63-37-1 against the Plaintiff and incorrectly computed the filing deadline of the Plaintiff's Complaint.

Statutory interpretation presents a question of law. Ward v. Richfield City, 798 P.2d 757, 759 (Utah 1990). Utah appellate courts review questions of law under a correction of error standard, without deference to the trial court. Bellon v. Malnar, 808 P.2d 1089, 1092 (Utah 1991); Ward, 798 P.2d at 759.

State v. Bagshaw, 836 P.2d 1384 (Utah Ct. App. 1992).

Because the application of a statute is a question of law, the appellate court must review for correctness the actions of the trial court. *See State v. Grate*, 947 P.2d 1161, 1164 (Utah Ct. App. 1997).

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

[Included herewith in Addendum A.]

STATEMENT OF THE CASE

I. Nature of the Case:

This case arises from an appeal of the final judgment of the Fourth District Court. The trial court granted summary judgment against the Plaintiff and in favor of the defendants. The key issues are that the trial court incorrectly computed the filing deadline for the Plaintiff's Complaint and prejudicially applied a modified statutory provision that was not in effect at the time the Plaintiff had his notices of claim delivered to the responsible governmental entities. At the February 2, 1999 hearing, the trial court demanded the Plaintiff's counsel to show the court how the

Plaintiff complied with Section 63-30-11 (1998).² (H. at 30-39).³

II. Course of the Proceedings:

On or about June 9, 1995, the defendants, by and through agents, auctioned the Plaintiff's personal property without just compensation in violation of a court order and Article I, Section 22 of the *Utah State Constitution*. (R. at 3-4, 196-198, 254; H. at 28). As a result, pursuant to Utah Code Ann. § 63-30-11 (1997), Mr. Harward had prepared and delivered notices of claim to believed responsible governmental entities, Utah County, Lehi City, Pleasant Grove City, and Provo City. This was accomplished by not only serving them onto the city council. (R. at 118-130). Facing a one-year deadline, on June 6th, 1996, the Plaintiff chose a courier who guaranteed over-night delivery by 10:30 a.m. (H. at 28). All of the notices of claim were to have their respective notices of claim delivered to them on June 7th, 1996. (R. at 155, 157; H. at 10). With the guarantee, it is presumed that the notices were all delivered no later than that and certainly within 3 days to the deadline as the statute required. If not delivered by June 9th, 1996, further proceeding by Plaintiff would be time barred.

² It was not then-known that a modification occurred during the course of the year. Hence, counsel was not prepared to argue that point because it was not raised in the defendant's dispositive motions.

³ The record does not have a continuous pagination for the Hearing transcript, it simply has a paginated cover of 409. Therefore, for simplicity in briefing, any references to the file will be cited as an "R" and citations to the transcript will be shown as an "H".

All of the defendants claimed that Plaintiff's delivery through a courier other than certified or registered U.S. Mail constituted mailing anyway on that date which would arguably mean that the date of delivery to the responsible governmental entities was on June 6th, 1996 pursuant to Section 63-37-1 *et seq.* (R. at 110, 168, 205,

Pursuant to Utah Law, under Section 63-30-14, the plaintiff must then allow the governmental entities 90 days to accept liability. Once the 90 days expires or when the entities otherwise deny liability, the plaintiff must file his suit within one year from that date or face being time-barred. The date of the expiration is the question before this Court. The defendants all claim that none of them admitted liability and they all deny submitting to Plaintiff rejection letters. Thus, the only issue is when the actual 90 days expired. (R. at 262). The defendants all claim that the 90-days expired ninety-days from June 6th, 1996 or September 4th, 1996.⁴ *Id.*

The Plaintiff relying on the plain language of Section 63-30-11, requiring their "delivery" to the governmental bodies did not consider the claims delivered until June 7th, 1996. The delivery of said notices is specifically required by Section 63-30-11 to comply with the Governmental Immunity Act, 63-30-1 *et seq.* and the Plaintiff did not generally rely on other provisions outside of the Act. The defendants on the other hand all argued that the Plaintiff's delivery of said notice was accomplished on June 6th,

⁴ Except for Pleasant Grove who interestingly attempts to purport even a need to earlier file as soon as September 3rd, 1996. This argument was not adopted by the Court. Such an argument disregarded the well-established computation rule not to include the date of the "act, event, or default." *See* Rule 6(a) of the Utah Rules of Civil Procedure.

1996 because of the general provision Section 63-37-1 *et seq.* The court ultimately bought the argument and concluded that the Plaintiff delivered his notices of claim on June 6th. (H. at 48-50). However, this notion is misplaced. In order for a party to claim protection under Section 63-37-1, he needs to full compliance with the provisions outlined in Section 63-37-2. The minimum requirements provide that the documents need to be certified or registered mail delivered to the U.S. Mail with a follow up within 30 days thereafter. (H. at 34). No such action was taken by the Plaintiff for the defendants claim Section 63-37-1's application against the Plaintiff. As a matter of fact, no defendant raised an affirmative defense a violation of Section 63-37-1. (H. at 25).

Thereafter, the Plaintiff had until September 5, 1997 in which to file his Complaint. (R. at 157). However, according to the defendants' claim and the Court's adopted position, the complaint allegedly should have been filed with the court on September 4th, 1997. But as the Court put it, "it appears to me that 63-37-1 does control in this case." (H. at 48). The court, however, has erred. The U.S. Express Mail service is in direct competition with UPS, Federal Express, Airborne Express, DHL, and other such courier services—just to name a few.

III. Disposition in Trial Court:

No trial occurred. On February 2, 1999, the trial court held a disposition

motions hearing. (R. at 323, 409). Consequently, the court held that Section 63-37-1 was controlling and he granted summary judgment for the defendants. (H. at 48).

IV. Statement of Facts:

See part II above.⁵

SUMMARY OF THE ARGUMENT

Summary judgment in favor of the defendants. The court granted summary judgment allegedly due to two reasons: (1) The plaintiff failed to properly serve the city and county clerks pursuant to Utah Code Ann. § 63-30-11 (1998). The Plaintiff served the defendants' respective governing bodies pursuant to the 1997 version of said provision. The court accepted the defendants' arguments that they did not receive any notice of the claims in spite of them being delivered to the city council and their respective police chiefs.

Also, the court erroneously agreed with the defendants that Section 63-37-1 was controlling, which consequently affected the computation of time. The court bought the argument that the Court should find that the Plaintiff was one day late filing his Complaint with the district court by applying Utah Code Ann. § 63-37-1 (1953, as amended) and then computed the date of delivery to be the date of so-called

⁵ The course of the proceedings is the nature of this appeal as this matter was dismissed with the granting summary judgment for the defendants.

mailing. The date that Plaintiff shipped the notices via U.S. Express Mail⁶ was June 6th, 1996. The Plaintiff intended the notices to be delivered on the 7th of June—to meet the one-year filing deadline for notices of claim pursuant to Utah Code Ann. § 63-30-13 (1953, as amended) (the deadline was June 9th, 1999).

The Plaintiff was severely prejudiced by the court when it accepted the defendants arguments. Firstly, the Plaintiff did comply with Section 63-30-11 by delivering said notices of claim to the governing bodies' respective councils. Secondly, the court violated Rule 6(a), Utah Rules of Civil Procedure regarding the computation of time. The rule specifically disallows the inclusion of the “day of the act, event, or default” in the computation of time. The court allowed such an inclusion and found that the Plaintiff failed to file his Complaint timely by a day.

ARGUMENT

POINT I.

THE DEFENDANTS WERE NOT ENTITLED TO A DISMISSAL AS A MATTER OF LAW—THE PLAINTIFF’S DELIVERY BY U.S. EXPRESS MAIL ON JUNE 7th, 1996 WAS THE APPROPRIATE DATE TO START THE COMPUTATION FOR A SEPTEMBER 5, 1997 DEADLINE FOR FILING HIS COMPLAINT.

On or about June 9, 1995, the defendants, by and through agents, auctioned Mr. Harward’s personal property without just compensation in violation of a

⁶ Which the court should take judicial notice that the postmaster guarantees over-night delivery.

court order and Article I, Section 22 of the *Utah State Constitution*. (R. at 3-4, 196-198, 254; H. at 28). As a result, pursuant to Utah Code Ann. § 63-30-11 (1997), Mr. Harward had prepared and delivered notices of claim to believed responsible governmental entities, Utah County, Lehi City, Pleasant Grove City, and Provo City. This was accomplished by not only serving them onto the city council, (R. at 118-130), but onto their respective police chiefs. The Utah Supreme Court, in Sweet v. Salt Lake City, 43 Utah 306, 134 P. 1167 (1913) stated that the purpose of notice-of-claim requirement is to require every claimant to state clearly all of the elements of his claims to the board of commissioners or city council for allowance as a condition precedent to his right to sue the city and recover his damages in an ordinary action.

Facing a one-year deadline, on June 6th, 1996, the Plaintiff chose a courier who guaranteed over-night delivery by 10:30 a.m. (H. at 28).⁷ All of the notices of claim were to have their respective notices of claim delivered to them on June 7th, 1996. (R. at 155, 157; H. at 10). With the guarantee, it's presumed that the notices were all delivered no later than that date and certainly within 3 days to the deadline just as the 1997 version of Section 63-30-11 required. If not delivered by June 9th, 1996, further proceeding by Plaintiff would be time barred. Any claimant only has one year to demand a claim. It's for this reason, the Plaintiff believed that he

⁷ Bruce Oliver, Plaintiff's attorney, debated between using U.S. Express Mail service, UPS, Federal Express, Airborne Express, and DHL. He selected U.S. Express Mail because the nearest post office was only a-half-a-block away located at 230 West 200 South.

substantially complied with Section 63-30-11. This Section read:

- (1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.
- (2) Any person having a claim for injury against a governmental entity, or against its 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; and
 - (iii) the damages incurred by the claimant so far as they are known.(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; and
 - (ii) directed and delivered to the responsible governmental entity according to the requirements of Section 63-30-12 or 63-30-13.
- (4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.
 - (b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.
 - (ii) The court may not grant an extension that exceeds the applicable statute of limitations.
 - (c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

Utah Code Ann. § 63-30-11 (1997).

In this matter, the Plaintiff complied with this provision to the letter. This statute specifically deals with notice of claims and dealing with matters under the Governmental Immunity Act. The focal point in this matter is the “delivery” to the “responsible governmental bodies”. This was accomplished by the Plaintiff timely.

The date that the delivery was to be completed in light of the U.S. Express Mail guarantee is that the delivered would be accomplished no later than 10:30 a.m. following the date it was placed into the care of the courier—in this case it happened to be the postmaster.

Because the Plaintiff chose the postmaster, the defendants were armed with a shaky defense that this accomplished mailing and that pursuant to Section 63-37-1 *et seq.* the date of delivery was June 6th instead of June 7th. In this matter, defendants are not entitled to the defense. Firstly, Section 63-30-11 is specific in nature and Section 63-37-1 is a general one. Contrary to the defendants' arguments and the court's conclusion, Section 63-37-1 is not controlling. The long-standing policy is that "specific statutes control over more general ones," State v. Lowder, 889 P.2d 412, 414 (Utah 1994). Since the issue at hand is whether there was compliance with the immunity act any other provision dealing with mailing claims in general is not controlling. However, Plaintiff would concede that such a general provision could have been utilized by him however he would not be entitled to its protection unless there was strict compliance with the provisions of Section 63-37-1 *et seq.* See Litster v. Utah Valley Community College, 881 P.2d 933 (Utah Ct. App. 1994). In this matter, the Plaintiff did not attempt service under Section 63-37-1 *et seq.* Moreover, there was no strict compliance of said provisions. Without strict compliance with the plain language of the sections it cannot be applied to protect any party whether raised by the

defense or by the Plaintiff. In this case, the defense.

Section 63-37-1 *et seq.* provides:

Section 63-37-1. When Postmark date deemed filing date – When mailing date deemed filing date.

Any report, claim, tax return, statement or other document or any payment required or authorized to be filed or made to the state of Utah, or to any political subdivision thereof, which is:

(1) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivisions on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(2) Mailed but not received by the state or political subdivisions where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, tax return, statement, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within thirty days after written notification is given to the sender by the state or political subdivisions of its nonreceipt of such report, tax return, statement, or other document.

63-37-2. Registered or certified mail - Record as proof of delivery.

If any such report, claim, tax return, statement or other document or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, statement or other document or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

63-37-3. Filing date falling on Saturday, Sunday or legal holiday.

If the date for filing any such report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday or legal holiday, such acts shall be considered timely if performed on the next business

day.
Id.

All of the defendants claimed that Plaintiff's delivery was June 6th, 1996 pursuant to 63-37-1. However, their arguments do not withstand the *Litster* Test. In *Litster v. Utah Valley Community College*, 881 P.2d 933 (Utah Ct. App. 1994), this Court stated that there was "delineates a two-step process by which receipt can be established." The Court went on to explain:

The document shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; **and**. . . the sender files with the state or political subdivision a duplicate within thirty days after written notification is given to the sender by the state or political subdivisions of its nonreceipt of such report, tax return, statement, or other document.

Id. (Emphasis by the Court). In this matter, the Plaintiff was not relying on Section 63-37-1 as was *Litster*. *Litster* was not allowed to claim mailing protection under Section 63-37-1 as the defendants in this should not be allowed. Reliance on Section 63-37-1 is clearly misplaced. The Plaintiff did not send the notices of claim to the governmental entities via certified or registered U.S. Mail. The Plaintiff intended their delivery to be on June 7th, 1996 as required under Section 63-30-11. This is contrary to the defendants claims; the defendants argued that the effective date of delivery should have been June 6th, 1996. (R. at 110, 168, 205). This notion is wrong.

Moreover, "In determining whether the trial court properly found there were no genuine material issues of fact, we review the facts in the light most favorable

to the losing party, while giving no deference to the trial court's legal conclusions."

Promark Group, Inc. v. Harris Corp., 860 P.2d 964, 966 (Utah App. 1993); *accord* Projects Unlimited, Inc. v. Copper State Thrift & Loan Co., 798 P.2d 738, 743 (Utah 1990). In this matter, it is highly likely that this Court will find in favor of Mr.

Harward. In essence, the defendants are arguing that the trial court should grant them summary judgment not for the Complaint being filed late but rather because they were given one extra day notice prior to filing of the Complaint. This is not a fair and just way of conducting government. The government cannot have their cake and eat it too! In *Litster*, the government won because Section 63-37-1 was not applied thereby causing defective notice of claim. In this case, it is the government who is attempting to use Section 63-37-1 to its favor. This time claiming that Mr. Harward filed his claim on June 6th, 1996 and not by relying on Section 63-30-1, which specifically mandates a "delivery." The statute fails to describe mailing or filing as specific conduct necessary for complying with the notice requirements of the Governmental Immunity Act.

Pursuant to Utah Law, under Section 63-30-14, the plaintiff must then allow the governmental entities 90 days to accept liability. Once the 90 days expires or when the entities otherwise deny liability, the plaintiff must file his suit within one year from that date or face being time-barred. The date of the expiration is the question before this Court. The defendants all claim that none of them admitted liability and

they all deny submitting to Plaintiff rejection letters. Thus, the only issue is when the actual 90 days expired. (R. at 262). The defendants all claim that the 90-days expired ninety-days from June 6th, 1996 or September 4th, 1996.⁸ *Id.*

The Plaintiff relying on the plain language of Section 63-30-11, requiring their “delivery” to the governmental bodies did not consider the claims delivered until June 7th, 1996. The delivery of said notices is specifically required by Section 63-30-11 to comply with the Governmental Immunity Act, 63-30-1 *et seq.* and the Plaintiff did not rely on other general provisions outside of the Act. The defendants on the other hand all argued that the Plaintiff’s delivery of said notice was accomplished on June 6th, 1996 claiming Section 63-37-1 *et seq.* application. The court ultimately bought the argument and concluded that Mr. Harward delivered his notices of claim on June 6th. (H. at 48-50). However, as stated above, this notion is misplaced. In order for a party to claim protection under Section 63-37-1, he needs to full compliance with the provisions outlined in Section 63-37-2. The minimum requirements provide that the documents need to be certified or registered mail delivered to the U.S. Mail with a follow up within 30 days thereafter. (H. at 34). No such action was taken by the Plaintiff for the defendants to seek protection under Section 63-37-1. As a matter of fact, no defendant raised an affirmative defense a violation of Section 63-37-1. (H. at

⁸ Except for Pleasant Grove who interestingly attempts to purport even a need to earlier file as soon as September 3rd, 1996. This argument was not adopted by the Court. Such an argument disregarded the well-established computation rule not to include the date of the “act, event, or default.” *See* Rule 6(a) of the Utah Rules of Civil Procedure.

25). Arguably, the defendants' failure to raise 63-37-1 as an affirmative defense may constitute a waiver of said claim pursuant to Rule 12 of the Utah Rules of Civil Procedure.

Nevertheless, still relying on the specific language of Section 63-30-11 the Plaintiff understandably believed that he had until September 5, 1997 in which to file his Complaint. (R. at 157). However, according to the defendants' claim and the Court's adopted position, the complaint allegedly should have been filed with the court on September 4th, 1997. But as the Court put it, "it appears to me that 63-37-1 does control in this case." (H. at 48). The court, however, has erred.

CONCLUSION

Mr. Harward has been unjustly treated in this matter. The trial court has erroneously imposed Section 63-37-1 against him which has unknowingly caused him to lose a day in which to file his Complaint. This effect has time-barred him from pursuing the merits of his claims. It has also caused him a deprivation of his substantive right to due process. The Governmental Immunity Act specifically has outlined the obligations of the claimant. Mr. Harward knew he had one year to file his notice of claim. He did so with the intentions of them being "delivered" on June 7th, 1996 consistent with Section 63-30-11. Mr. Harward also knew he had 90 days from that date to in which to wait for acceptance or rejection of the claim. If acceptance was

not made and there was no rejection within that time the claimant is to presume rejection at the end of the 90 days. Finally, once that 90 days has expired, Mr. Harward knew that he would have to file his Complaint within one year of that rejection. In this case, that date would be September 5, 1997—the date he filed. At no time prior to this was Mr. Harward ever on notice that he would have to file by September 4th, 1997. Within the Governmental Immunity Act there is no reference to, or even a suggestion that, he would be bound to the provisions contained within any other general provisions. The mailing provisions of Sections 63-37-1 *et seq.* were not attempted by Mr. Harward, nor did he comply with them. The court allowed the defendants to apply Section 63-37-1, however this was erroneous. It is clear that the defendants cannot show that the Plaintiff strictly complied with the plain language of Section 63-37-1. As in *Litster*, in order for Section 63-37-1 to apply, there must be a showing that Mr. Harward not only sent his claims via certified or registered mail, but that Mr. Harward also followed the mailing within 30 days. There was not even the case. Mr. Harward made suitable arrangements with a courier to effect delivery with three entities to their councils and their police chiefs. There is no way that all of the notice never made it to the governing bodies responsible.

RESPECTFULLY SUBMITTED this 31st day of
January, 2000.



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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing

BRIEF OF APPELLANT, via U.S. Mail, postage prepaid, to:

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Dated this 31st day of January, 2000.



ADDENDUM

Sec. 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. 1988 (2nd S.S.)

Sec. 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. 1896

Sec. 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. 1996

Sec. 11. [Courts open — Redress of injuries.]

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, 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, by himself or counsel, any civil cause to which he is a party. 1896

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule. 1994

Sec. 13. [Prosecution by information or indictment — Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature. 1947

Sec. 14. [Unreasonable searches forbidden — Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized. 1896

Sec. 15. [Freedom of speech and of the press — Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. 1896

Sec. 16. [No imprisonment for debt — Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors. 1896

Sec. 17. [Elections to be free — Soldiers voting.]

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. 1896

Sec. 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. 1896

Sec. 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. 1896

Sec. 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. 1896

Sec. 21. [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State. 1896

Sec. 22. [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation. 1896

Sec. 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity. 1896

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation. 1896

Section 3. Appropriation.

There is appropriated from the Commerce Service Fund for fiscal year 1998-99:

(1) \$3,500 to the Senate to pay for the compensation and expenses of senators on the task force;

(2) \$5,000 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) \$15,000 to the Office of Legislative Research and General Counsel to pay for staffing the task force.

Section 4. Repeal date.

This act is repealed November 30, 1998.

S.B. 43

Passed 2/23/1998

Governor's Action: Sign 3/14/1998

Effective 5/04/1998

Laws of Utah 1998, Chapter 164

Governmental Immunity - Notice of Claim

Sponsor: Michael G. Waddoups

AN ACT Relating to Governmental Immunity; Modifying Provisions for Claims Against Government Entities; and Making Technical Corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-30-11, as last amended by Chapter 76, Laws of Utah 1991

63-30-12, as last amended by Chapter 75, Laws of Utah 1987

63-30-13, as last amended by Chapter 75, Laws of Utah 1987

Be it enacted by the Legislature of the state of Utah:**Section 1. Section 63-30-11 is amended to read:**

63-30-11. Claim for injury - Notice - Contents - Service - Legal disability.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against [an] its employee for an act or omission occurring during the performance of [his] 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; and

(iii) the damages incurred by the claimant so far as they are known.

(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; and

(ii) directed and delivered to [the responsible governmental entity according to the requirements of Section 63-30-12 or 63-30-13-];

(A) the city or town recorder, 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 president or secretary of the board, when the claim is against a special district;

(E) the attorney general, when the claim is against the State of Utah; or

(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.

(4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.

(b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

(c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining defense on the merits.

Section 2. Section 63-30-12 is amended to read:

63-30-12. Claim against state or its employee - Time for filing notice.

A claim against the state, or against its employee for an act or omission occurring during the performance of [his] the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general [and the agency concerned] within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Section 3. Section 63-30-13 is amended to read:

63-30-13. Claim against political subdivision or its employee - Time for filing notice.

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of [his] the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision according to the requirements of Section 63-30-11 within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(2) The state planning coordinator shall review and forward the comments and recommendations of the RDCC to:

- (a) the governor;
- (b) the initiating state agency, in the case of a proposed state action; and
- (c) the Office of Legislative Research and General Counsel.

63-28a-6. Powers of state agencies and local governments not limited.

This chapter shall not limit powers conferred upon departments, agencies, or instrumentalities of state or local governments by existing law.

63-28a-7. Repealed.

CHAPTER 29

UTAH STATE FIRE PREVENTION LAW

(Renumbered by L. 1991, ch. 220, §§ 1 to 22.)

63-29-1 to 63-29-27. Renumbered as §§ 63-27-101 to 63-27-122.

CHAPTER 29a

LIQUEFIED PETROLEUM GAS BOARD

(Renumbered by Laws 1993, ch. 234, §§ 324 to 338).

63-29a-101 to 63-29a-112. Renumbered as §§ 53-7-302 to 53-7-316.

CHAPTER 30

GOVERNMENTAL IMMUNITY ACT

Section	Short title.
63-30-1.	Definitions.
63-30-2.	Immunity of governmental entities from suit.
63-30-3.	Act provisions not construed as admission or denial of liability — Effect of waiver of immunity — Exclusive remedy — Joinder of employee — Limitations on personal liability.
63-30-4.	Waiver of immunity as to contractual obligations.
63-30-5.	Waiver of immunity as to actions involving property.
63-30-6.	Repealed.
63-30-7.	Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.
63-30-8.	Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement — Exception.
63-30-9.	Waiver of immunity for injury caused by negligent act or omission of employee — Exceptions.
63-30-10.	Waiver of immunity for taking private property without compensation.
63-30-10.5.	Attorneys' fees for records requests.
63-30-11.	Claim for injury — Notice — Contents — Service — Legal disability.
63-30-12.	Claim against state or its employee — Time for filing notice.
63-30-13.	Claim against political subdivision or its employee — Time for filing notice.
63-30-14.	Claim for injury — Approval or denial by

Section

63-30-15.	governmental entity or insurance carrier within ninety days.
63-30-16.	Denial of claim for injury — Authority and time for filing action against governmental entity.
63-30-17.	Jurisdiction of district courts over actions — Application of Rules of Civil Procedure.
63-30-18.	Venue of actions.
63-30-19.	Compromise and settlement of actions.
63-30-20.	Undertaking required of plaintiff in action.
63-30-21.	Judgment against governmental entity bars action against employee.
63-30-22.	Repealed.
63-30-23.	Exemplary or punitive damages prohibited — Governmental entity exempt from execution, attachment, or garnishment.
63-30-24.	Payment of claim or judgment against state — Presentment for payment.
63-30-25.	Payment of claim or judgment against political subdivision — Procedure by governing body.
63-30-26.	Payment of claim or judgment against political subdivision — Installment payments.
63-30-27.	Reserve funds for payment of claims or purchase of insurance created by political subdivisions.
63-30-28.	Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.
63-30-29.	Liability insurance — Purchase of insurance or self-insurance by governmental entity authorized — Establishment of trust accounts, for self-insurance.
63-30-29.5.	Repealed.
63-30-30.	Liability insurance — Government vehicles, operated by employees outside scope of employment.
63-30-31.	Repealed.
63-30-32.	Liability insurance — Construction of policy not in compliance with act.
63-30-33.	Liability insurance — Methods for purchase or renewal.
63-30-34.	Liability insurance — Insurance for employees authorized — No right to indemnification or contribution from governmental agency.
63-30-35.	Limitation of judgments against governmental entity or employee — Insurance coverage exception.
63-30-36.	Expenses of attorney general, general counsel, for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.
63-30-37.	Defending government employee — Request Cooperation — Payment of judgment.
63-30-38.	Recovery of judgment paid and defense costs by government employee.
63-30-39.	Indemnification of governmental entity by employee not required.

63-30-1. Short title.

This act shall be known and may be cited as the "Utah Governmental Immunity Act."

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, officers and employees in accordance with Section 67-5b-104, 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.

1994

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

(1) Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally-owned hospital, nursing home, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.

(2) (a) For the purposes of this chapter only, the following state medical programs and services performed at a state-owned university hospital are unique or essential to the core of governmental activity in this state and are considered to be governmental functions:

(i) care of a patient referred by another hospital or physician because of the high risk nature of the patient's medical condition;

(ii) high risk care or procedures available in Utah only at a state-owned university hospital or provided in Utah only by physicians employed at a state-owned university acting in the scope of their employment;

(iii) care of patients who cannot receive appropriate medical care or treatment at another medical facility in Utah; and

(iv) any other service or procedure performed at a state-owned university hospital or by physicians employed at a state-owned university acting in the scope of their employment that a court finds is unique or essential to the core of governmental activity in this state.

(b) If any claim under this subsection exceeds the limits established in Section 63-30-34, the claimant may submit the excess claim to the Board of Examiners and the Legislature under Title 63, Chapter 6.

(3) The management of flood waters and other natural disasters and the construction, repair, and operation of flood and storm systems by governmental entities are considered to be governmental functions, and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.

(4) Officers and employees of a Children's Justice Center are immune from suit for any injury which results from their joint intergovernmental functions at a center created in Title 62A, Chapter 4.

1991

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.

(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 governmental entities or their 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 (b), an action under this chapter against a governmental entity or its employee for an injury caused by an act or omission that occurs during the performance of the employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.

(b) A plaintiff may not bring or pursue any other 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 malice; or

(ii) the injury or damage resulted from the conditions set forth in Subsection 63-30-36(3)(c).

(4) An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee may be held personally liable for acts or omissions occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, unless it is established that the employee acted or failed to act due to fraud or malice.

1991

63-30-5. Waiver of immunity as to contractual obligations.

(1) Immunity from suit of all governmental entities is waived as to any contractual obligation. Actions arising out of contractual rights or obligations shall not be subject to the requirements of Sections 63-30-11, 63-30-12, 63-30-13, 63-30-14, 63-30-15, or 63-30-19.

(2) Notwithstanding Subsection (1), 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. 1991

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. 1965

63-30-7. Repealed.

1991

63-30-8. Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.

Unless the injury arises out of one or more of the exceptions to waiver set forth in Section 63-30-10, 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 on them. 1991

63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement — Exception.

Unless the injury arises out of one or more of the exceptions to waiver set forth in Section 63-30-10, 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. 1991

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 employment except if the injury arises out of, in connection with, or results from:

- (1) the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;
- (2) 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;
- (3) 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;
- (4) a failure to make an inspection or by making an inadequate or negligent inspection;
- (5) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;
- (6) a misrepresentation by an employee whether or not it is negligent or intentional;
- (7) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;
- (8) the collection of and assessment of taxes;
- (9) the activities of the Utah National Guard;

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

(11) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State Lands;

(12) research or implementation of cloud management or seeding for the clearing of fog;

(13) the management of flood waters, earthquakes, or natural disasters;

(14) the construction, repair, or operation of flood or storm systems;

(15) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

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

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

(18) the activities of:

(a) providing emergency medical assistance;

(b) fighting fire;

(c) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(d) emergency evacuations; or

(e) intervening during dam emergencies; or

(19) the exercise or performance or the failure to exercise or perform any function pursuant to Title 73, Chapter 5a or Title 73, Chapter 10 which immunity is in addition to all other immunities granted by law. 1996

63-30-10.5. Waiver of immunity for taking private property without compensation.

(1) As provided by Article I, Section 22 of the Utah Constitution, immunity from suit of all governmental entities is waived 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.

(2) Compensation and damages shall be assessed according to the requirements of Title 78, Chapter 34, Eminent Domain. 1991

63-30-10.6. Attorneys' fees for records requests.

(1) Immunity from suit of all governmental entities is waived for recovery of attorneys' fees under Sections 63-2-405 and 63-2-802.

Notwithstanding Section 63-30-11:

(a) a notice of claim for attorneys' fees under Subsection (1) may be filed contemporaneously with a petition for review under Section 63-2-404; and

(b) Sections 63-30-14 and 63-30-19 shall not apply.

(2) Any other claim under this chapter that is related to a claim for attorneys' fees under Subsection (1) may be brought contemporaneously with the claim for attorneys' fees or in a subsequent action. 1999

63-30-11. Claim for injury — Notice — Contents Service — Legal disability.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against an employee for an act or omission occurring during the performance of his 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; and
 - (iii) the damages incurred by the claimant so far as they are known.
- (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; and
 - (ii) directed and delivered to the responsible governmental entity according to the requirements of Section 63-30-12 or 63-30-13.
- (4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.
- (b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.
- (ii) The court may not grant an extension that exceeds the applicable statute of limitations.
- (c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

1991

63-30-12. Claim against state or its employee — Time for filing notice.

A claim against the state, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general and the agency concerned within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

1987

63-30-13. Claim against political subdivision or its employee — Time for filing notice.

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

1987

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.

1965

63-30-15. Denial of claim for injury — Authority and time for filing action against governmental entity.

(1) If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity.

(2) The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

1987

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 chapter, and such actions shall be governed by the Utah Rules of Civil Procedure in so far as they are consistent with this chapter.

1983

63-30-17. Venue of actions.

Actions against the state may be brought in the county in which the claim arose or in Salt Lake County. Actions against a county may be brought in the county in which the claim 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. Leave may be granted ex parte. 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.

1983

63-30-18. Compromise and settlement of actions.

(1) 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.

(2) The risk manager in the Department of Administrative Services may:

(a) compromise and settle any claim of \$25,000 or less in damages filed against the state for which the Risk Management Fund may be liable;

(b) with the concurrence of the attorney general or his representative and the executive director of the Department of Administrative Services, compromise and settle any claim of \$25,000 to \$100,000 in damages for which the Risk Management Fund may be liable; and

(3) The risk manager shall comply with procedures and requirements of Title 63, Chapter 38b, in compromising and settling any claim of \$100,000 or more.

1995

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

1965

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.

1965

63-30-21. Repealed.

1978

63-30-22. Exemplary or punitive damages prohibited — Governmental entity exempt from execution, attachment, or garnishment.

(1) (a) No judgment may be rendered against the governmental entity for exemplary or punitive damages.

(b) The state shall pay any judgment or portion of any judgment entered against a state employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages if the state

would be required to pay the judgment under Section 63-30-36 or 63-30-37.

(2) Execution, attachment, or garnishment may not issue against a governmental entity. 1991

63-30-23. Payment of claim or judgment against state — Presentment for payment.

Any claim approved by the state as defined by Subsection 63-30-2(1) or any final judgment obtained against the state shall be presented to the state risk manager, or 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. 1987

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. 1985

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. 1985

63-30-26. 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 making payment of claims against the co-operating subdivisions when they become payable pursuant to this chapter, or for the purpose of purchasing liability insurance to protect the co-operating subdivisions from any or all risks created by this chapter. 1983

63-30-27. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.

(1) Notwithstanding any provision of law to the contrary, all political subdivisions may levy an annual property tax sufficient to pay the following:

- (a) any claim;
- (b) any settlement;
- (c) any judgment, including any judgment against an elected official or employee of any political subdivision, including peace officers, based upon a claim for punitive damages but the authority of a political subdivision for the payment of any judgment for punitive damages is limited in any individual case to \$10,000;
- (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. 1988

63-30-28. Liability insurance — Purchase of insurance or self-insurance by governmental entity authorized — Establishment of trust accounts for self-insurance.

(1) Any governmental entity within the state may purchase commercial insurance, self-insure, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against any risk created or recognized by this chapter or 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 under the management of an independent private trustee having authority with respect to claims of that character to 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 to pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon.

(b) The monies and interest earned on said trust fund shall be subject to investment pursuant to Title 51, Chapter 7, State Money Management Act of 1974, and shall be subject to audit by the state auditor.

(3) Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to employ counsel to defend actions against the entity and its employees and to protect and safeguard the assets of the trust, to provide for claims investigation and adjustment services, to employ expert witnesses and consultants, and to provide such other services and functions necessary and proper to carry out the purposes of the trust. 1991

63-30-29. Repealed.

1983

63-30-29.5. Liability insurance — Government vehicles operated by employees outside scope of employment.

A governmental entity that owns vehicles driven by employees 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 considered to provide the driver with the insurance coverage required by Title 41, Chapter 12a. However, the liability coverages considered provided are the minimum limits under Section 31A-22-304. 1986

63-30-30. Repealed.

1979

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 chapter, which contains any condition or provision not in compliance with the requirements of the chapter, 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 chapter, provided the policy is otherwise valid. 1989

63-30-32. Liability insurance — Methods for purchase or renewal.

No contract or policy of insurance may be purchased or renewed under this chapter except upon public bid to be let to the lowest and best bidder; except that the purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Sections 63-56-1 through 63-56-73. 1983

63-30-33. 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 63-30-36. 1991

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

- (1) (a) Except as provided in Subsection (2), 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.

(b) A court may not award judgment of more than \$250,000 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 \$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.

(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. 1991

63-30-35. Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.

- (1) (a) After consultation with appropriate state agencies, the state risk manager shall provide a comprehensive liability plan, with limits not lower than those set forth in

Section 63-30-34, that will protect the state and its indemnified employees from claims and liability.

(b) The risk manager shall establish deductibles and maximum limits of coverage in consultation with the executive director of the Department of Administrative Services.

- (2) (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 Risk Management Fund coverage 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. The decision for settlement of monetary claims in those cases, however, lies with the attorney general and the state risk manager.

- (3) (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.

- (4) (a) If the Legislative Management Committee, after consultation with 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.

- (5) (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of this code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Administrative Services 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. 1990

63-30-36. 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 him:

- (i) within ten days after service of process upon him; or
- (ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on his 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, 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 his employment; or
 - (iii) under color of authority;
- (b) that the injury or damage resulted from the fraud or malice of the employee; or
- (c) that the injury or damage on which the claim was based resulted from:

(i) 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; or

(ii) the employee being physically or mentally impaired so as to be unable to reasonably perform his job function because of the use of alcohol, because of the nonprescribed use of a controlled substance as defined in Section 58-37-4, or because of the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4.

(4) (a) Within ten 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 the conditions set forth in Subsection (3) are established.

(7) (a) Nothing in this section or Section 63-30-37 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63-30-29.5.

(b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Sections 31A-22-304 and 63-30-29.5. 1991

63-30-37. 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, which the governmental entity is required to pay under Section 63-30-36, the employee may recover from the governmental entity the amount of the payment and the reasonable costs incurred in his defense.

(2) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under an agreement as provided in Subsection 63-30-36(6), the employee may recover from the governmental entity under Subsection (1) if:

(a) the employee establishes that the act or omission upon which the judgment is based occurred during the performance of his duties, within the scope of his employment, or under color of authority, and that he conducted the defense in good faith; and

(b) the governmental entity does not establish that the injury or damage resulted from:

(i) the fraud or malice of the employee;

(ii) 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;

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(iii) the employee being physically or mentally impaired so as to be unable to reasonably perform his job function because of the use of alcohol, because of the nonprescribed use of a controlled substance as defined in Section 58-37-4, or because of the combined use of alcohol and a nonprescribed controlled substance as defined in Section 58-37-4. 1997

63-30-38. Indemnification of governmental entity by employee not required.

If a governmental entity pays all or part of a judgment based on or a compromise or settlement of a claim against the governmental entity or an employee, the employee may not be required to indemnify the governmental entity for the payment. 1998

CHAPTER 30a

REIMBURSEMENT OF LEGAL FEES AND COSTS TO OFFICERS AND EMPLOYEES

Section

63-30a-1. Definitions.

63-30a-2. Indictment or information against officer or employee.

(e) identify state or local government actions that have potential takings implications and, if appropriate, advise those state or local government entities about those implications;

(f) provide information to private citizens, civic groups, government entities, and other interested parties about takings law and their rights and responsibilities under it; and

(g) if appropriate and requested to do so by one of the parties, mediate disputes between private property owners and government entities that involve takings issues.

(4) The private property ombudsman may not represent private property owners, state agencies, or local governments in court or in adjudicative proceedings under Title 63, Chapter 46b, Administrative Procedures Act.

1997

63-34-14. Species Protection Account.

(1) As used in this section, "species protection" means an action to protect any plant or animal species identified as sensitive by the state or as threatened or endangered under the Endangered Species Act of 1973, U.S.C. 16 Sec. 1531 et seq.

(2) There is created within the General Fund a restricted account known as the Species Protection Account.

(3) The account shall consist of:

(a) revenue generated by the brine shrimp tax provided for in Title 59, Chapter 23, Brine Shrimp Royalty Act; and

(b) interest earned on monies in the account.

(4) Monies in the account may be appropriated by the Legislature for the following purposes:

(a) to develop and implement species status assessments and species protection measures;

(b) to obtain biological opinions of proposed species protection measures;

(c) to conduct studies, investigations, and research into the effects of proposed species protection measures;

(d) to verify species protection proposals that are not based on valid biological data;

(e) for Great Salt Lake wetlands mitigation projects in connection with the western transportation corridor;

(f) to pay for the state's voluntary contributions to the Utah Reclamation Mitigation and Conservation Account under the Central Utah Project Completion Act, Pub. L. No. 102-575, titles II-VI, 106 Stat. 4605-4655; and

(g) to pay for expenses of the State Tax Commission under Title 59, Chapter 23, Brine Shrimp Royalty Act.

(5) The purposes specified in Subsections (4)(a) through (4)(d) may be accomplished by the state or, in an appropriation act, the Legislature may authorize the Department of Natural Resources to award grants to political subdivisions of the state to accomplish those purposes.

(6) Monies in the account may not be used to develop or implement a habitat conservation plan required under federal law unless the federal government pays for at least 1/3 of the habitat conservation plan costs.

1997

CHAPTER 34a

SEISMIC SAFETY

(Terminated by Laws 1977, ch. 234, § 10.)

63-34a-1 to 63-34a-9. Terminated.

CHAPTER 35

SOCIAL SERVICES

(Repealed by Laws 1988, ch. 1, § 407.)

63-35a-1 to 63-35-13. Repealed.

CHAPTER 35a

SOCIAL SERVICE LICENSURE

(Repealed by Laws 1988, ch. 1, § 407.)

63-35a-1 to 63-35a-16. Repealed.

CHAPTER 36

INDIAN AFFAIRS

(Renumbered by Laws 1992, ch. 241, §§ 342 to 367.)

Section

63-36-1 to 63-36-8. Repealed.

63-36-9 to 63-36-21. Renumbered.

63-36-101 to 63-36-213. Renumbered.

63-36-1 to 63-36-8. Repealed.

1991

63-36-9 to 63-36-21. Renumbered as §§ 63-36-201 to 63-36-213.

1991

63-36-101 to 63-36-213. Renumbered as §§ 9-9-101 to 9-9-213.

1992

CHAPTER 36a

TASK FORCE ON INDIAN AFFAIRS

(Repealed by Laws 1991, ch. 218, § 1.)

63-36a-1 to 63-36a-4. Repealed.

1991

CHAPTER 37

MAILING REPORTS, CLAIMS, RETURNS, STATEMENTS AND OTHER DOCUMENTS TO STATE OR POLITICAL SUBDIVISIONS

Section

63-37-1.

When postmark date deemed filing date — When mailing date deemed filing date.

63-37-2.

Registered or certified mail — Record as proof of delivery.

63-37-3.

Filing date falling on Saturday, Sunday or legal holiday.

63-37-1.

When postmark date deemed filing date — When mailing date deemed filing date.

Any report, claim, tax return, statement or other document or any payment required or authorized to be filed or made to the state of Utah, or to any political subdivision thereof, which is:

(1) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivisions on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(2) Mailed but not received by the state or political subdivisions where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, tax return, statement, or other document

required by law to be filed, the sender files with the state or political subdivision a duplicate within thirty days after written notification is given to the sender by the state or political subdivisions of its nonreceipt of such report, tax return, statement, or other document 1967

63-37-2. Registered or certified mail — Record as proof of delivery.

If any such report, claim, tax return, statement or other document or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, statement or other document or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date. 1967

63-37-3. Filing date falling on Saturday, Sunday or legal holiday.

If the date for filing any such report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday or legal holiday, such acts shall be considered timely if performed on the next business day. 1967

CHAPTER 38

BUDGETARY PROCEDURES ACT

Section	
63-38-1.	Short title,
63-38-1.1.	State Budget Office — Creation — Duties and responsibilities.
63-38-1.2.	State budget officer — Appointment — Responsibilities — Compensation.
63-38-1.3.	State budget officer's duty to provide staff support and advise governor with regard to work programs.
63-38-1.4.	Governor's authority to combine functions of State Budget Office and Office of State Planning Coordinator.
63-38-2.	Governor to submit budget to Legislature — Contents — Preparation — Appropriations based on current tax laws and not to exceed estimated revenues.
63-38-2.5.	Establishing a Budget Reserve Account — Providing for deposits and expenditures from the account.
63-38-2.8.	Repealed.
63-38-3.	Appropriations governed by chapter — Restrictions on expenditures — Transfer of funds.
63-38-3.2.	Fees — Adoption, procedure, and approval — Establishing and assessing fees without legislative approval.
63-38-3.5.	Internal service funds — Governance and review.
63-38-4.	Duplicate payment of claims prohibited.
63-38-5.	Appropriations from special funds or accounts — Transfer by proper official only.
63-38-6.	Warrants — Not to be drawn until claim processed — Redemption.
63-38-7.	Cash funds — Petty cash, application for — Cash advances — Revolving fund established by law excepted.
63-38-8.	End of fiscal year — Unexpended balances — Funds not to be closed out — Pending claims — Transfer of amounts from item of appropriation.

Section

63-38-8.1.	Nonlapsing authority.
63-38-9.	Revenue types — Disposition of funds collected or credited by a state agency.
63-38-9.5.	Agencies exempt from act.
63-38-10.	Overexpenditure of budget by agency — Pro-rating budget income shortfall.
63-38-11.	Director of finance to exercise accounting control — Work programs — Allotments and expenditures.
63-38-12.	Uniform School Fund — Appropriations.
63-38-13.	Conditions on appropriations binding.
63-38-14.	Request for in-depth budget review of agency or program — Form of budget submitted.
63-38-15.	Purpose of review — Information submitted.
63-38-16.	Selection of activities for review — Coordination with audits.
63-38-17.	Repealed.

63-38-1. Short title.

This act shall be known and may be cited as the "Budgetary Procedures Act." 1969

63-38-1.1. State Budget Office — Creation — Duties and responsibilities.

There is created an office to be known as the State Budget Office attached to the office of the governor. The State Budget Office shall assist the governor in the preparation of the state budget and perform such duties and responsibilities as may be assigned by the governor or as are contained within this act. 1979

63-38-1.2. State budget officer — Appointment — Responsibilities — Compensation.

The state budget officer shall be under the supervision, direction, and control of an officer known as the state budget officer. The state budget officer shall be responsible for carrying out the governor's directions with regard to the preparation of the state budget in conformance with the specifications of this chapter. The state budget officer shall be appointed by the governor and shall serve at the pleasure of the governor. The governor shall establish the state budget officer's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation. 1991

63-38-1.3. State budget officer's duty to provide staff support and advise governor with regard to work programs.

The state budget officer, under the direct supervision of the governor, shall provide appropriate staff support to assist in the preparation of the state budget specified in Section 63-38-2. The state budget officer shall also advise the governor with regard to approval or revision of agency work programs as specified in Section 63-38-11. 1979

63-38-1.4. Governor's authority to combine functions of State Budget Office and Office of State Planning Coordinator.

The governor may combine the functions of the State Budget Office with the functions of the Office of the State Planning Coordinator, if in the governor's judgment, such combination will provide improved staff support and policy advice on both budgetary and nonbudgetary matters. 1979

63-38-2. Governor to submit budget to Legislature — Contents — Preparation — Appropriations based on current tax laws and not to exceed estimated revenues.

(1) (a) The governor shall, within three days after the convening of the Legislature in the annual general session, submit a budget for the ensuing fiscal year by

—Default judgment.

—Appeal.

Cited.

Filed depositions

Sealed pretrial depositions filed with a court are presumptively public under the Utah Public and Private Writings Act (former § 78-26-1 et seq.; see now Title 63, Chapter 2) and can be kept secret only on a showing of good cause. *Carter v. Utah Power & Light Co.*, 800 P.2d 1095 (Utah 1990).

Service upon attorney

—Presumption of authorization

Where defendant engaged attorney only to file motion but never so notified court or attorney, appearance of attorney to file motion raised presumption that he represented defendant in full action. Where defendant presented no clear and convincing evidence to refute presumption, notice given to attorney of date set for trial was good notice to defendant. *Blake v. Blake*, 17 Utah 2d 369, 412 P.2d 454 (1966).

When service required

—Default judgment

Plaintiff was under no duty to notify defendants of default judgment entered against them. *Central Bank & Trust Co. v. Jensen*, 656

P.2d 1009 (Utah 1982) (decided before 1985 addition of reference to Rule 55).

Plaintiffs' failure to mail a copy of the default judgment to defendants did not invalidate the default judgment when defendants received the notice of default in time to move to set aside the judgment. *Lincoln Benefit Life Ins. Co. v. D.T. Southern Properties*, 838 P.2d 672 (Utah Ct. App. 1992).

—Appeal

Under former Rule 73(h), time for appeal from default judgment in city court runs from date of notice of entry of such judgment, rather than from the date of judgment. *Buckner v. Main Realty & Ins. Co.*, 4 Utah 2d 124, 288 P.2d 786 (1955) (but see Rule 58A(d)).

Cited in *Remington-Rand, Inc. v. O'Neil*, 4 Utah 2d 270, 293 P.2d 416 (1956); *Pillsbury Mills, Inc. v. Nephi Processing Plant, Inc.*, 7 Utah 2d 286, 323 P.2d 266 (1958); *Dehm v. Dehm*, 545 P.2d 525 (Utah 1976); *Triple I Supply, Inc. v. Sunset Rail, Inc.*, 652 P.2d 1298 (Utah 1982); *Sperry v. Smith*, 694 P.2d 581 (Utah 1984); *Williams v. State*, 716 P.2d 806 (Utah 1986); *Walker v. Carlson*, 740 P.2d 1372 (Utah Ct. App. 1987); *Maverik Country Stores, Inc. v. Industrial Comm'n*, 860 P.2d 944 (Utah Ct. App. 1993).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 6; 61A Am. Jur. 2d Pleading §§ 350 to 352.

C.J.S. — 7 C.J.S. Attorney and Client § 15; 71 C.J.S. Pleading §§ 408, 409, 411, 413.

A.L.R. — Construction of phrase "usual

place of abode," or similar terms referring to abode, residence, or domicile, as used in statutes relating to service of process, 32 A.L.R.3d 112.

Service of process by mail in international civil action as permissible under Hague Convention, 112 A.L.R. Fed. 241.

Rule 6. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, after including any additional time under subsection (e), is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), 60(b) and 73(a) and (g), except to the extent and under the conditions stated in them.

(c) *Unaffected by expiration of term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or

expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) *For motions — Affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules, by CJA 4-501, or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period. (Amended effective November 1, 1997; April 1, 1999.)

Advisory Committee Note. — The 1999 amendment to subdivision (a) conforms the state rule to the federal rule. The amendment also makes it clear that weekends and holidays will be included in the computation of time only if the relevant period, including the three-day mailing period under subsection (e), is 11 days or more.

Amendment Notes. — The 1997 amendment inserted “by CJA 4-501” in the first sentence of Subdivision (d).

The 1999 amendment inserted “after including any additional time under subsection (e)” and substituted “11 days” for “seven days” in the last sentence in Subdivision (a).

Compiler’s Notes. — Subdivisions (a), (b), (d), and (e) of this rule are substantially similar to Rule 6, F.R.C.P.

Rule 73, cited near the end of Subdivision (b), was repealed upon adoption of the Rules of Appellate Procedure.

Cross References. — Amendment to pleadings to conform to evidence, time of motion for, U.R.C.P. 15(b).

Commencement of action, time of service, U.R.C.P. 4(b).

Corporation or association, mailing of process to, U.R.C.P. 4(e)(5).

Depositions, objections to errors and irregularities, U.R.C.P. 32(c).

Discharge of attachment or release of property, U.R.C.P. 64C(f).

Documents for state or subdivision, filing date on weekend or holiday, § 63-37-3.

Election laws, weekends and holidays included in computation of time, § 20A-1-401.

Failure of term or vacancy in office of judge, proceeding not affected, § 78-7-21.

Juvenile Court Act, time computed according to Rules of Civil Procedure, § 78-3a-27.

Legal holidays enumerated, § 63-13-2.

New trial, time of motion for, after judgment notwithstanding the verdict, U.R.C.P. 50(c)(2).

Order defined, U.R.C.P. 7(b)(2).

Pleadings and other papers, service by mail, U.R.C.P. 5(b)(1).

Probate Code, mailing of notice of hearing, § 75-1-401.

Reference to master, time of first meeting of parties after, U.R.C.P. 53(d)(1).

Relief from judgment or order, time for motion, U.R.C.P. 60.

Rules by district courts, U.R.C.P. 83.

Service by mail, U.R.C.P. 5(b)(1).

Substitution of parties, time of motion for, U.R.C.P. 25.

Summons mailed as alternative to personal service, U.R.C.P. 4(g).

Time, how computed, § 68-3-7.

Tribunal, board or office exceeding jurisdiction, notice, U.R.C.P. 65B(e).

Undertaking by nonresident plaintiff, timely filing, U.R.C.P. 12(k).

When a day appointed is a holiday, § 68-3-8.

NOTES TO DECISIONS

Additional time after service by mail.

—Administrative procedure.

—Failure to add days.

—Waiver of objection.

—Industrial Commission.

Computation.

—Months and years.

—Sundays.

Enlargement.

—Motion for new trial.

—Notice of appeal.

—Designation of record.

—Redemption from execution sales.

Motions and affidavits.

—Applicability of rule.

—Court orders.

—New trial.

—Compliance with rule.

—Actual notice.

—Ineffective notice.

—Time to prepare.

—Continuance.

—Surprise.

Cited.

Additional time after service by mail

—**Administrative procedure**

Subdivision (e) does not apply to extend the