

Representative LaVar Christensen proposes the following substitute bill:

**PROTECTIONS FOR RELIGIOUS EXPRESSION AND
BELIEFS ABOUT MARRIAGE, FAMILY, OR SEXUALITY**

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill provides certain protections and remedies for individuals, religious officials, religious organizations, and government officers and employees concerning the free exercise of religion and religious or deeply held beliefs about marriage, family, and sexuality.

Highlighted Provisions:

This bill:

- ▶ requires a county clerk, or a willing designee of the county clerk, to be available during business hours to solemnize a legal marriage;
- ▶ removes a requirement that a designee for solemnizing marriages be an office employee;
- ▶ creates a new chapter to establish certain religious protections;
- ▶ defines terms;
- ▶ requires that the chapter be broadly construed in favor of broad protection of religious beliefs, exercises, and conscience;
- ▶ addresses the scope of state and local governments' authority to enforce certain laws;



- 26 ▶ provides protections for a religious official or organization that declines to
- 27 solemnize or recognize for ecclesiastical purposes a marriage because of the
- 28 official's or organization's religious beliefs;
- 29 ▶ prohibits government from:
- 30 • removing a religious official's or organization's authority to solemnize a
- 31 marriage based on religious beliefs;
- 32 • requiring a religious official or organization to provide services or
- 33 accommodations for a marriage that is contrary to the official's or organization's
- 34 religious beliefs;
- 35 • requiring a religious official or organization to promote marriage that is contrary
- 36 to the official's or organization's religious beliefs; and
- 37 • retaliating against an individual, a religious official, or a religious organization
- 38 for exercising protections contained in this legislation;
- 39 ▶ prohibits government and a government officials from taking negative action
- 40 against a licensee who holds a professional or business license based on the
- 41 licensee's beliefs or the licensee's lawful expression of those beliefs in a
- 42 nonprofessional setting;
- 43 ▶ prohibits an individual from requiring a religious official or organization to provide
- 44 services or accommodations for a marriage that is contrary to the official's or
- 45 organization's religious beliefs;
- 46 ▶ provides remedies for violations; and
- 47 ▶ provides a severability clause and revisor instructions.

48 **Money Appropriated in this Bill:**

49 None

50 **Other Special Clauses:**

51 This bill provides revisor instructions.

52 **Utah Code Sections Affected:**

53 AMENDS:

54 17-20-4, as last amended by Laws of Utah 2001, Chapter 241

55 30-1-6, as last amended by Laws of Utah 2010, Chapter 132

56 ENACTS:

- 57 **63G-20-101**, Utah Code Annotated 1953
- 58 **63G-20-102**, Utah Code Annotated 1953
- 59 **63G-20-103**, Utah Code Annotated 1953
- 60 **63G-20-201**, Utah Code Annotated 1953
- 61 **63G-20-202**, Utah Code Annotated 1953
- 62 **63G-20-203**, Utah Code Annotated 1953
- 63 **63G-20-204**, Utah Code Annotated 1953
- 64 **63G-20-301**, Utah Code Annotated 1953
- 65 **63G-20-302**, Utah Code Annotated 1953
- 66 **63G-20-303**, Utah Code Annotated 1953

67 **Uncodified Material Affected:**
 68 ENACTS UNCODIFIED MATERIAL

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

71 Section 1. Section **17-20-4** is amended to read:

72 **17-20-4. Duties of county clerk.**

73 A county clerk shall:

74 (1) establish policies to issue all marriage licenses and keep a register of marriages as
 75 provided by law;

76 (2) establish policies to ensure that the county clerk, or a designee of the county clerk
 77 who is willing, is available during business hours to solemnize a legal marriage for which a
 78 marriage license has been issued;

79 [~~2~~] (3) execute under the clerk's seal and in the name of and for the county, all deeds
 80 and conveyances of all real estate conveyed by the county;

81 [~~3~~] (4) take and certify acknowledgments and administer oaths;

82 [~~4~~] (5) keep a fee book as provided by law; and

83 [~~5~~] (6) take charge of and safely keep the seal of the county, and keep other records
 84 and perform other duties as may be prescribed by law.

85 Section 2. Section **30-1-6** is amended to read:

86 **30-1-6. Who may solemnize marriages -- Certificate.**

87 [~~1~~] ~~Marriages may be solemnized by the following persons only:]~~

88 (1) Except for a county clerk, or a county clerk's designee, as provided below, the
89 following persons may solemnize a marriage at that person's discretion:

- 90 (a) ministers, rabbis, or priests of any religious denomination who are:
- 91 (i) in regular communion with any religious society; and
 - 92 (ii) 18 years of age or older;
- 93 (b) Native American spiritual advisors;
- 94 (c) the governor;
- 95 (d) the lieutenant governor;
- 96 (e) mayors of municipalities or county executives;
- 97 (f) a justice, judge, or commissioner of a court of record;
- 98 (g) a judge of a court not of record of the state;
- 99 (h) judges or magistrates of the United States;
- 100 (i) the county clerk of any county in the state ~~[, if the clerk chooses to solemnize~~
101 ~~marriages]~~ or the county clerk's designee as authorized by Section [17-20-4](#);
- 102 (j) the president of the Senate;
- 103 (k) the speaker of the House of Representatives; or
- 104 (l) a judge or magistrate who holds office in Utah when retired, under rules set by the
105 Supreme Court.

106 (2) A person authorized under Subsection (1) who solemnizes a marriage shall give to
107 the couple married a certificate of marriage that shows the:

- 108 (a) name of the county from which the license is issued; and
- 109 (b) date of the license's issuance.
- 110 (3) As used in this section:
- 111 (a) "Judge or magistrate of the United States" means:
 - 112 (i) a justice of the United States Supreme Court;
 - 113 (ii) a judge of a court of appeals;
 - 114 (iii) a judge of a district court;
 - 115 (iv) a judge of any court created by an act of Congress the judges of which are entitled
116 to hold office during good behavior;
 - 117 (v) a judge of a bankruptcy court;
 - 118 (vi) a judge of a tax court; or

- 119 (vii) a United States magistrate.
- 120 (b) (i) "Native American spiritual advisor" means a person who:
- 121 (A) (I) leads, instructs, or facilitates a Native American religious ceremony or service;
- 122 or
- 123 (II) provides religious counseling; and
- 124 (B) is recognized as a spiritual advisor by a federally recognized Native American
- 125 tribe.
- 126 (ii) "Native American spiritual advisor" includes a sweat lodge leader, medicine
- 127 person, traditional religious practitioner, or holy man or woman.

128 (4) ~~[Notwithstanding]~~ Except as provided in Section 17-20-4, and notwithstanding any
 129 other provision in law, no person authorized under Subsection (1) to solemnize a marriage may
 130 delegate or deputize another person to perform the function of solemnizing a marriage~~[-except~~
 131 ~~that only employees of the office responsible for the issuance of marriage licenses may be~~
 132 ~~deputized].~~

133 Section 3. Section **63G-20-101** is enacted to read:

134 **CHAPTER 20. RELIGIOUS PROTECTIONS IN RELATION TO MARRIAGE,**
 135 **FAMILY, OR SEXUALITY**
 136 **Part 1. General Provisions**

137 **63G-20-101. Title.**

138 This chapter is known as "Religious Protections in Relation to Marriage, Family, or
 139 Sexuality."

140 Section 4. Section **63G-20-102** is enacted to read:

141 **63G-20-102. Definitions.**

142 As used in this chapter:

143 (1) "Government retaliation" means an action by a state or local government or an
 144 action by a state or local government official that:

- 145 (a) is taken in response to a person's exercise of a protection contained in Section
- 146 17-20-4, 63G-20-201, or 63G-20-301; and
- 147 (b) (i) imposes a formal penalty on, fines, disciplines, discriminates against, denies the
- 148 rights of, denies benefits to, or denies tax-exempt status to a person; or
- 149 (ii) subjects a person to an injunction or to an administrative claim or proceeding.

150 (2) (a) "Religious official" means an officer or official of a religion, when acting as
151 such.

152 (b) "Religious official" includes an individual designated by the religion as clergy,
153 minister, priest, pastor, rabbi, imam, bishop, stake president, or sealer, when that individual is
154 acting as such.

155 (3) "Religious organization" means:

156 (a) a religious organization, association, educational institution, or society;

157 (b) a religious corporation sole; or

158 (c) any corporation or association constituting a wholly owned subsidiary, affiliate, or
159 agency of any religious organization, association, educational institution, society, or religious
160 corporation sole.

161 (4) "Sexuality" includes legal sexual conduct, legal sexual expression, sexual desires,
162 and the status of a person as male or female.

163 (5) "State or local government" means:

164 (a) a state government entity, agency, or instrumentality; or

165 (b) a local government entity, agency, or instrumentality.

166 (6) "State or local government official" means an officer, employee, or appointee of a
167 state or local government.

168 Section 5. Section **63G-20-103** is enacted to read:

169 **63G-20-103. Interpretation.**

170 (1) Utah state courts and courts of the United States shall broadly construe this chapter
171 in favor of a broad protection of religious beliefs, exercises, and conscience to the maximum
172 extent permitted by the terms of this chapter and the Utah and United States constitutions.

173 (2) Nothing in this chapter may be construed to limit:

174 (a) the authority of a state or local government or a state or local government official to
175 protect the health, safety, or property of Utah residents through lawful means;

176 (b) the application of Utah's criminal laws;

177 (c) the application of Utah's laws barring discrimination in employment or housing; or

178 (d) the application of Utah's laws barring discrimination in public accommodations,
179 subject to Section [63G-20-201](#).

180 Section 6. Section **63G-20-201** is enacted to read:

Part 2. Government Entities Prohibited from Certain Burdens on Religious Beliefs about Marriage, Family, or Sexuality

63G-20-201. Provisions governing solemnizing or recognizing a marriage -- Prohibition against employment actions.

Notwithstanding any other provision of law, a state or local government or a state or local government official may not:

(1) require a religious official, when acting as such, or religious organization to solemnize or recognize for ecclesiastical purposes a marriage that is contrary to that religious official's or religious organization's religious beliefs;

(2) if the religious official or religious organization is authorized to solemnize a marriage by Section 30-1-6, deny a religious official, when acting as such, or religious organization the authority to legally solemnize a legal marriage based on the religious official's or religious organization's refusal to solemnize any legal marriage that is contrary to the religious official's or religious organization's religious beliefs;

(3) require a religious official, when acting as such, or religious organization to provide goods, accommodations, advantages, privileges, services, facilities, or grounds for activities connected with the solemnization or celebration of a marriage that is contrary to that religious official's or religious organization's religious beliefs; or

(4) require a religious official, when acting as such, or religious organization to promote marriage through religious programs, counseling, courses, or retreats in a way that is contrary to that religious official's or religious organization's religious beliefs.

Section 7. Section 63G-20-202 is enacted to read:

63G-20-202. Prohibition on government retaliation.

Notwithstanding any other law, a state or local government or a state or local government official may not engage in government retaliation against an individual, a religious official when acting as such, or a religious organization for exercising the protections contained in Section 17-20-4, 63G-20-201, or 63G-20-301.

Section 8. Section 63G-20-203 is enacted to read:

63G-20-203. Prohibition on licensing disadvantages based on beliefs regarding marriage, family, or sexuality.

Notwithstanding any other law, a state or local government, a state or local government

212 official, or another accrediting, certifying, or licensing body may not:

213 (1) deny, revoke, or suspend a licensee's professional or business license based on that
214 licencee's beliefs or the licensee's lawful expressions of those beliefs in a nonprofessional
215 setting, including the licensee's religious beliefs regarding marriage, family, or sexuality; or

216 (2) penalize, discipline, censure, disadvantage, discriminate against, or retaliate against
217 a licensee who holds a professional or business license based on that licensee's beliefs or lawful
218 expressions of those beliefs in a nonprofessional setting, including the licensee's religious
219 beliefs regarding marriage, family, or sexuality.

220 Section 9. Section **63G-20-204** is enacted to read:

221 **63G-20-204. Remedies -- Attorney fees and costs.**

222 (1) (a) A person aggrieved by a violation of this part may:

223 (i) seek injunctive or other civil relief to require a state or local government or a state
224 or local government official to comply with the requirements of this part; or

225 (ii) seek removal of the local government official for malfeasance in office according
226 to the procedures and requirements of Title 77, Chapter 6, Removal by Judicial Proceedings.

227 (b) The court may award reasonable attorney fees and costs to the prevailing party.

228 (2) (a) A person aggrieved by a violation of this part may bring a civil action in district
229 court.

230 (b) If the plaintiff establishes one or more violations of this part by a preponderance of
231 the evidence, the court:

232 (i) shall grant the plaintiff appropriate legal or equitable relief; and

233 (ii) may award reasonable attorney fees and costs to the prevailing party.

234 Section 10. Section **63G-20-301** is enacted to read:

235 **Part 3. Prohibitions on Certain Burdens on a Religious Official's or Religious**

236 **Organization's Religious Beliefs about Marriage, Family, or Sexuality**

237 **63G-20-301. Prohibitions relating to refusing to solemnize a marriage.**

238 Notwithstanding any other provision of law, an individual may not require a religious
239 official, when acting as such, or religious organization to provide goods, accommodations,
240 advantages, privileges, services, facilities, or grounds for activities connected with the
241 solemnization or celebration of a marriage that is contrary to that religious official's or religious
242 organization's religious beliefs about marriage, family, or sexuality.

243 Section 11. Section **63G-20-302** is enacted to read:

244 **63G-20-302. Remedies -- Civil action -- Attorney fees and costs.**

245 (1) A person aggrieved by a violation of this part may bring a civil action in district
246 court.

247 (2) If the plaintiff establishes one or more violations of this part by a preponderance of
248 the evidence, the court:

249 (a) shall grant the plaintiff appropriate legal or equitable relief; and

250 (b) may award reasonable attorney fees and costs to the prevailing party.

251 Section 12. Section **63G-20-303** is enacted to read:

252 **63G-20-303. Severability clause.**

253 If any provision of this bill or its application to any person or circumstance is found to
254 be unconstitutional, or in conflict with or superseded by federal law, the remainder of the bill
255 and the application of the provision to other persons or circumstances is not affected by the
256 finding.

257 Section 13. **Revisor instructions.**

258 It is the intent of the Legislature that, in preparing the Utah Code database for
259 publication, the Office of Legislative Research and General Counsel shall replace the phrases
260 "this bill" and "the bill" in Section [63G-20-303](#) with the bills designated chapter number in the
261 2015 Laws of Utah.