

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

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

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 the county clerk's designee to solemnize a legal marriage;
- ▶ requires a county clerk to require a designee to be readily available to solemnize a marriage;
- ▶ requires a county clerk to provide certain accommodations for a conscientious objector while still making services readily available;
- ▶ provides protections for a religious official or a religious organization that decline to solemnize a marriage because of the official's or the organization's beliefs about marriage, family, or sexuality;
- ▶ requires certain officers and employees of a state or local government to elect to either solemnize all legal marriages or decline to solemnize any marriages, with certain exceptions;
- ▶ prohibits retaliation against an individual, a religious official, or a religious



28 organization for invoking or exercising constitutional rights guaranteeing free exercise of
29 religion and conscience, or based upon religious or deeply held beliefs, teachings, exercises,
30 practices, or policies regarding marriage, family, or sexuality or expressions of religious or
31 deeply held beliefs, teachings, exercise, practices, or policies regarding marriage, family, or
32 sexuality;

33 ▶ prohibits government and a government official from taking action against a
34 licensee holding a professional or business license based on the licensee's beliefs or
35 lawful expression of those beliefs;

36 ▶ prohibits a private individual or entity from requiring a religious official or
37 organization to provide goods, accommodations, or services in connection with a
38 marriage that is contrary to the official's or the organization's religious beliefs;

39 ▶ provides remedies for violations; and

40 ▶ provides a severability clause.

41 **Money Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill provides revisor instructions.

45 **Utah Code Sections Affected:**

46 AMENDS:

47 17-20-4, as last amended by Laws of Utah 2001, Chapter 241

48 30-1-6, as last amended by Laws of Utah 2010, Chapter 132

49 ENACTS:

50 63G-20-101, Utah Code Annotated 1953

51 63G-20-102, Utah Code Annotated 1953

52 63G-20-103, Utah Code Annotated 1953

53 63G-20-201, Utah Code Annotated 1953

54 63G-20-202, Utah Code Annotated 1953

55 63G-20-203, Utah Code Annotated 1953

56 63G-20-204, Utah Code Annotated 1953

57 63G-20-301, Utah Code Annotated 1953

58 63G-20-302, Utah Code Annotated 1953

59 **63G-20-303**, Utah Code Annotated 1953

60 **Uncodified Material Affected:**

61 ENACTS UNCODIFIED MATERIAL



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

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

65 **17-20-4. Duties of county clerk.**

66 A county clerk shall:

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

69 (2) establish policies to ensure that the county clerk or the county clerk's designee is
70 reasonably available to solemnize a legal marriage for which a marriage license has been
71 issued;

72 [~~2~~] (3) execute under the clerk's seal and in the name of and for the county, all deeds
73 and conveyances of all real estate conveyed by the county;

74 [~~3~~] (4) take and certify acknowledgments and administer oaths;

75 [~~4~~] (5) keep a fee book as provided by law; and

76 [~~5~~] (6) take charge of and safely keep the seal of the county, and keep other records
77 and perform other duties as may be prescribed by law.

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

79 **30-1-6. Who may solemnize marriages -- Certificate.**

80 (1) [~~Marriages~~] Subject to Subsection (5), marriages may be solemnized by the
81 following persons only:

82 (a) ministers, rabbis, or priests of any religious denomination who are:

83 (i) in regular communion with any religious society; and

84 (ii) 18 years of age or older;

85 (b) Native American spiritual advisors;

86 (c) the governor;

87 (d) the lieutenant governor;

88 (e) mayors of municipalities or county executives;

89 (f) a justice, judge, or commissioner of a court of record;

- 90 (g) a judge of a court not of record of the state;
- 91 (h) judges or magistrates of the United States;
- 92 (i) the county clerk of any county in the state~~[, if the clerk chooses to solemnize~~
- 93 ~~marriages]~~ or the county clerk's designee as authorized by Section 17-20-4;
- 94 (j) the president of the Senate;
- 95 (k) the speaker of the House of Representatives; or
- 96 (l) a judge or magistrate who holds office in Utah when retired, under rules set by the
- 97 Supreme Court.

98 (2) A person authorized under Subsection (1) who solemnizes a marriage shall give to

99 the couple married a certificate of marriage that shows the:

- 100 (a) name of the county from which the license is issued; and
- 101 (b) date of the license's issuance.

102 (3) As used in this section:

103 (a) "Judge or magistrate of the United States" means:

- 104 (i) a justice of the United States Supreme Court;
- 105 (ii) a judge of a court of appeals;
- 106 (iii) a judge of a district court;
- 107 (iv) a judge of any court created by an act of Congress the judges of which are entitled
- 108 to hold office during good behavior;
- 109 (v) a judge of a bankruptcy court;
- 110 (vi) a judge of a tax court; or
- 111 (vii) a United States magistrate.

112 (b) (i) "Native American spiritual advisor" means a person who:

- 113 (A) (I) leads, instructs, or facilitates a Native American religious ceremony or service;
- 114 or
- 115 (II) provides religious counseling; and
- 116 (B) is recognized as a spiritual advisor by a federally recognized Native American
- 117 tribe.

118 (ii) "Native American spiritual advisor" includes a sweat lodge leader, medicine

119 person, traditional religious practitioner, or holy man or woman.

120 (4) ~~[Notwithstanding]~~ Except as provided in Section 17-20-4, and notwithstanding any

121 other provision in law, no person authorized under Subsection (1) to solemnize a marriage may
 122 delegate or deputize another person to perform the function of solemnizing a marriage, except
 123 that only employees of the office responsible for the issuance of marriage licenses may be
 124 deputized.

125 (5) (a) As used in this Subsection (5):

126 (i) "Government official" means the governor, the lieutenant governor, a municipal
 127 mayor, a county executive, a justice, judge, or commissioner of a court of record, a judge of a
 128 court not of record, a judge or magistrate of the United States, the president of the Senate, the
 129 speaker of the House of Representatives, or a judge or magistrate who held office in Utah when
 130 retired.

131 (ii) "Relative" means a government official's child, stepchild, adopted child, foster
 132 child, parent, stepparent, adoptive parent, foster parent, brother, sister, brother-in-law,
 133 sister-in-law, first cousin, grandparent, or stepgrandparent.

134 (b) Except as provided in Subsection (5)(c), a government official, in exercising
 135 authority to solemnize marriages under Subsection (1), shall either:

136 (i) agree to solemnize all legal marriages; or

137 (ii) decline to solemnize any marriage, except the marriage of a relative.

138 (c) A government official who generally agrees and undertakes to solemnize any legal
 139 marriage under Subsection (5)(b)(i) may decline to solemnize a specific request for marriage
 140 based upon legitimate, non-discriminatory reasons, including absence, scheduling conflicts, or
 141 other similar reasons.

142 (6) (a) A county clerk may not designate an individual employee who objects to
 143 solemnizing any marriage if such solemnizing would cause the individual to violate the
 144 individual's sincerely held religious or other deeply held beliefs.

145 (b) Notwithstanding Subsection (6)(a), a county clerk is required to comply with the
 146 requirements of Subsection [17-20-4\(2\)](#).

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

148 **CHAPTER 20. RELIGIOUS PROTECTIONS IN RELATION TO MARRIAGE,**

149 **FAMILY, OR SEXUALITY**

150 **Part 1. General Provisions**

151 **63G-20-101. Title.**

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

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

155 **63G-20-102. Definitions.**

156 As used in this chapter:

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

159 (a) imposes a formal penalty on, fines, disciplines, discriminates against, denies the
160 rights of, denies benefits to, or denies tax-exempt status to a person; or

161 (b) subjects a person to an injunction or to an administrative claim or proceeding.

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

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

167 (3) "Religious organization" means:

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

169 (b) a religious corporation sole; or

170 (c) any corporation or association constituting a wholly owned subsidiary, affiliate, or
171 agency of any religious organization, association, educational institution, society, or religious
172 corporation sole.

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

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

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

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

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

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

181 **63G-20-103. Interpretation.**

182 Utah state courts and courts of the United States shall broadly construe this chapter in

183 favor of a broad protection of religious beliefs, exercises, and conscience to the maximum
184 extent permitted by the terms of this chapter and the Utah and United States constitutions.

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

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

188 **63G-20-201. Provisions governing solemnizing or recognizing a marriage --**
189 **Prohibition against employment actions.**

190 (1) Notwithstanding any other provision of law, a state or local government or a state
191 or local government official may not:

192 (a) require a religious official or religious organization to solemnize or recognize a
193 marriage that is contrary to that religious official's or religious organization's religious beliefs;

194 (b) if the religious official or religious organization is authorized to solemnize a
195 marriage by Section [30-1-6](#), deny a religious official or religious organization the authority to
196 legally solemnize a legal marriage based on the religious official's or religious organization's
197 refusal to solemnize any legal marriage that is contrary to the religious official's or religious
198 organization's religious beliefs;

199 (c) require a religious official or religious organization to provide goods,
200 accommodations, advantages, privileges, services, facilities, or grounds for activities connected
201 with the solemnization or celebration of a marriage that is contrary to that religious official's or
202 religious organization's religious beliefs; or

203 (d) require a religious official or religious organization to promote marriage through
204 programs, counseling, courses, or retreats in a way that is contrary to that religious official's or
205 religious organization's religious beliefs.

206 (2) Except as required by Section [17-20-4](#), and notwithstanding any other provision of
207 law other than Section [17-20-4](#), a state or local government or a state or local government
208 official may not terminate, discriminate against, discipline, penalize, retaliate against,
209 reprimand, censure, or otherwise disadvantage an officer or employee of the state or local
210 government for refusing to solemnize a marriage as authorized by Subsection [30-1-6\(5\)](#).

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

212 **63G-20-202. Prohibition on government retaliation.**

213 (1) Notwithstanding any other law, a state or local government or a state or local

214 government official may not engage in government retaliation against an individual, a religious
215 official, or a religious organization:

216 (a) for invoking or exercising the protections established in this chapter;

217 (b) for invoking or exercising constitutional rights guaranteeing free exercise of
218 religion or conscience as protected under the United States Constitution or the Utah
219 Constitution;

220 (c) based in whole or in part, for religious or other deeply held beliefs, teachings,
221 exercise, practices, or policies regarding marriage, family, or sexuality; or

222 (d) based in whole or in part, for expressions of religious or other deeply held beliefs,
223 teachings, exercise, practices, or policies regarding marriage, family, or sexuality.

224 (2) Notwithstanding any other law, the following actions by a person, a religious
225 official, or a religious organization may not be considered to result in an injury done to a
226 person or that person's property or reputation:

227 (a) invoking or exercising the protections established in this chapter;

228 (b) exercising constitutional rights guaranteeing free exercise of religion; or

229 (c) holding beliefs or lawfully expressing those beliefs, including religious beliefs
230 about marriage, family, or sexuality.

231 (3) Nothing in this section may be construed to limit the authority of the state or a
232 political subdivision of the state to protect the health, safety, or property of Utah residents
233 through lawful means.

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

235 **63G-20-203. Prohibition on licensing disadvantages based on beliefs regarding**
236 **marriage, family, or sexuality.**

237 Notwithstanding any other law, a state or local government, a state or local government
238 official, or another accrediting, certifying, or licensing body may not:

239 (1) deny, revoke, or suspend a licensee's professional or business license based on that
240 licensee's beliefs or lawful expressions of those beliefs, including the licensee's religious
241 beliefs regarding marriage, family, or sexuality; or

242 (2) penalize, discipline, censure, disadvantage, discriminate against, or retaliate against
243 a licensee who holds a professional or business license based on that licensee's beliefs or lawful
244 expressions of those beliefs, including the licensee's religious beliefs regarding marriage,

245 family, or sexuality.

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

247 **63G-20-204. Remedies -- Attorney fees and costs.**

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

249 (i) file an extraordinary writ under Rule 19, Utah Rules of Appellate Procedure, to
250 require a state or local government or a state or local government official to comply with the
251 requirements of this part; or

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

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

255 (2) (a) In addition to other remedies available under this section and civil or criminal
256 law, a person aggrieved by a violation of this part may bring a civil action in district court by
257 filing a sworn, written accusation detailing the violation.

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

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

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

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

263 **Part 3. Prohibitions on Certain Burdens on a Religious Official's or Religious**
264 **Organization's Religious Beliefs about Marriage, Family, or Sexuality**

265 **63G-20-301. Prohibitions relating to refusing to solemnize a marriage.**

266 Notwithstanding any other provision of law, an individual may not require a religious
267 official or religious organization to provide goods, accommodations, advantages, privileges,
268 services, facilities, or grounds for activities connected with the solemnization or celebration of
269 a marriage that is contrary to that religious official's or religious organization's religious beliefs
270 about marriage, family, or sexuality.

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

272 **63G-20-302. Remedies -- Civil action -- Attorney fees and costs.**

273 (1) In addition to any other remedies available under this section and civil or criminal
274 law, a person aggrieved by a violation of this part may bring a civil action in district court by
275 filing a sworn, written accusation detailing the violation.

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

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

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

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

281 **63G-20-303. Severability clause.**

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

286 Section 13. **Revisor instructions.**

287 It is the intent of the Legislature that, in preparing the Utah Code database for
288 publication, the Office of Legislative Research and General Counsel shall replace the phrases
289 "this bill" and "the bill" in Section [63G-20-303](#) with the bills designated chapter number in the
290 2015 Laws of Utah.

Legislative Review Note
as of 3-5-15 12:16 PM

Office of Legislative Research and General Counsel