

1 **PROTECTION OF PERSONAL AND RELIGIOUS LIBERTY**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: A. Cory Maloy**

5 Senate Sponsor: Michael S. Kennedy

7 **LONG TITLE**

8 **General Description:**

9 This bill protects certain personal and religious liberties.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ prohibits the Department of Health and local health departments from taking an
- 14 action that has the effect of prohibiting certain religious exercises or entry into a
- 15 church;
- 16 ▶ prohibits a health care facility from prohibiting a patient from receiving a visit from
- 17 at least one family member or religious or spiritual minister or advisor at a time;
- 18 ▶ during a state of emergency, prohibits any government entity from taking an action
- 19 that has the effect of prohibiting certain religious exercises or entry into a church;
- 20 and
- 21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides a special effective date.

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **26-1-30**, as last amended by Laws of Utah 2019, Chapter 87

29 **26A-1-114**, as last amended by Laws of Utah 2011, Chapters 14 and 177

30 ENACTS:

31 **26-21-35**, Utah Code Annotated 1953

32 **53-2a-218**, Utah Code Annotated 1953



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

35 Section 1. Section **26-1-30** is amended to read:

36 **26-1-30. Powers and duties of department.**

37 (1) The department shall exercise the following powers and duties, in addition to other
38 powers and duties established in this chapter:

39 ~~[(1)]~~ (a) enter into cooperative agreements with the Department of Environmental
40 Quality to delineate specific responsibilities to assure that assessment and management of risk
41 to human health from the environment are properly administered;

42 ~~[(2)]~~ (b) consult with the Department of Environmental Quality and enter into
43 cooperative agreements, as needed, to ensure efficient use of resources and effective response
44 to potential health and safety threats from the environment, and to prevent gaps in protection
45 from potential risks from the environment to specific individuals or population groups;

46 ~~[(3)]~~ (c) promote and protect the health and wellness of the people within the state;

47 ~~[(4)]~~ (d) establish, maintain, and enforce rules necessary or desirable to carry out the
48 provisions and purposes of this title to promote and protect the public health or to prevent
49 disease and illness;

50 ~~[(5)]~~ (e) investigate and control the causes of epidemic, infectious, communicable, and
51 other diseases affecting the public health;

52 ~~[(6)]~~ (f) provide for the detection, reporting, prevention, and control of communicable,
53 infectious, acute, chronic, or any other disease or health hazard which the department considers
54 to be dangerous, important, or likely to affect the public health;

55 ~~[(7)]~~ (g) collect and report information on causes of injury, sickness, death, and
56 disability and the risk factors that contribute to the causes of injury, sickness, death, and
57 disability within the state;

58 ~~[(8)]~~ (h) collect, prepare, publish, and disseminate information to inform the public

59 concerning the health and wellness of the population, specific hazards, and risks that may affect
60 the health and wellness of the population and specific activities which may promote and protect
61 the health and wellness of the population;

62 [~~(9)~~] (i) establish and operate programs necessary or desirable for the promotion or
63 protection of the public health and the control of disease or which may be necessary to
64 ameliorate the major causes of injury, sickness, death, and disability in the state, except that the
65 programs may not be established if adequate programs exist in the private sector;

66 [~~(10)~~] (j) establish, maintain, and enforce isolation and quarantine, and for this purpose
67 only, exercise physical control over property and individuals as the department finds necessary
68 for the protection of the public health;

69 [~~(11)~~] (k) close theaters, schools, and other public places and forbid gatherings of
70 people when necessary to protect the public health;

71 [~~(12)~~] (l) abate nuisances when necessary to eliminate sources of filth and infectious
72 and communicable diseases affecting the public health;

73 [~~(13)~~] (m) make necessary sanitary and health investigations and inspections in
74 cooperation with local health departments as to any matters affecting the public health;

75 [~~(14)~~] (n) establish laboratory services necessary to support public health programs and
76 medical services in the state;

77 [~~(15)~~] (o) establish and enforce standards for laboratory services which are provided by
78 any laboratory in the state when the purpose of the services is to protect the public health;

79 [~~(16)~~] (p) cooperate with the Labor Commission to conduct studies of occupational
80 health hazards and occupational diseases arising in and out of employment in industry, and
81 make recommendations for elimination or reduction of the hazards;

82 [~~(17)~~] (q) cooperate with the local health departments, the Department of Corrections,
83 the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the
84 Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual
85 offenders, convicted sexual offenders, and any victims of a sexual offense;

86 [~~(18)~~] (r) investigate the causes of maternal and infant mortality;

87 [~~(19)~~] (s) establish, maintain, and enforce a procedure requiring the blood of adult
88 pedestrians and drivers of motor vehicles killed in highway accidents be examined for the
89 presence and concentration of alcohol;

90 ~~[(20)]~~ (t) provide the Commissioner of Public Safety with monthly statistics reflecting
91 the results of the examinations provided for in Subsection ~~[(19)]~~ (1)(s) and provide safeguards
92 so that information derived from the examinations is not used for a purpose other than the
93 compilation of statistics authorized in this Subsection ~~[(20)]~~ (1)(t);

94 ~~[(21)]~~ (u) establish qualifications for individuals permitted to draw blood pursuant to
95 Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), 72-10-502(5)(a)(vi), or
96 77-23-213(3)(a)(vi), and to issue permits to individuals it finds qualified, which permits may
97 be terminated or revoked by the department;

98 ~~[(22)]~~ (v) establish a uniform public health program throughout the state which
99 includes continuous service, employment of qualified employees, and a basic program of
100 disease control, vital and health statistics, sanitation, public health nursing, and other
101 preventive health programs necessary or desirable for the protection of public health;

102 ~~[(23)]~~ (w) adopt rules and enforce minimum sanitary standards for the operation and
103 maintenance of:

104 ~~[(a)]~~ (i) orphanages;

105 ~~[(b)]~~ (ii) boarding homes;

106 ~~[(c)]~~ (iii) summer camps for children;

107 ~~[(d)]~~ (iv) lodging houses;

108 ~~[(e)]~~ (v) hotels;

109 ~~[(f)]~~ (vi) restaurants and all other places where food is handled for commercial
110 purposes, sold, or served to the public;

111 ~~[(g)]~~ (vii) tourist and trailer camps;

112 ~~[(h)]~~ (viii) service stations;

113 ~~[(i)]~~ (ix) public conveyances and stations;

114 ~~[(j)]~~ (x) public and private schools;

115 ~~[(k)]~~ (xi) factories;

116 ~~[(l)]~~ (xii) private sanatoria;

117 ~~[(m)]~~ (xiii) barber shops;

118 ~~[(n)]~~ (xiv) beauty shops;

119 ~~[(o)]~~ (xv) physician offices;

120 ~~[(p)]~~ (xvi) dentist offices;

- 121 ~~[(q)]~~ (xvii) workshops;
- 122 ~~[(r)]~~ (xviii) industrial, labor, or construction camps;
- 123 ~~[(s)]~~ (xix) recreational resorts and camps;
- 124 ~~[(t)]~~ (xx) swimming pools, public baths, and bathing beaches;
- 125 ~~[(u)]~~ (xxi) state, county, or municipal institutions, including hospitals and other
- 126 buildings, centers, and places used for public gatherings; and
- 127 ~~[(v)]~~ (xxii) any other facilities in public buildings or on public grounds;
- 128 ~~[(24)]~~ (x) conduct health planning for the state;
- 129 ~~[(25)]~~ (y) monitor the costs of health care in the state and foster price competition in
- 130 the health care delivery system;
- 131 ~~[(26)]~~ (z) adopt rules for the licensure of health facilities within the state pursuant to
- 132 Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
- 133 ~~[(27)]~~ (aa) license the provision of child care;
- 134 ~~[(28)]~~ (bb) accept contributions to and administer the funds contained in the Organ
- 135 Donation Contribution Fund created in Section [26-18b-101](#);
- 136 ~~[(29)]~~ (cc) serve as the collecting agent, on behalf of the state, for the nursing care
- 137 facility assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment
- 138 Act, and adopt rules for the enforcement and administration of the nursing facility assessment
- 139 consistent with the provisions of Title 26, Chapter 35a, Nursing Care Facility Assessment Act;
- 140 ~~[(30)]~~ (dd) establish methods or measures for health care providers, public health
- 141 entities, and health care insurers to coordinate among themselves to verify the identity of the
- 142 individuals they serve;
- 143 ~~[(31)]~~ ~~(a)~~ (ee) (i) designate Alzheimer's disease and related dementia as a public health
- 144 issue and, within budgetary limitations, implement a state plan for Alzheimer's disease and
- 145 related dementia by incorporating the plan into the department's strategic planning and
- 146 budgetary process; and
- 147 ~~[(b)]~~ (ii) coordinate with other state agencies and other organizations to implement the
- 148 state plan for Alzheimer's disease and related dementia;
- 149 ~~[(32)]~~ (ff) ensure that any training or certification required of a public official or public
- 150 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter
- 151 22, State Training and Certification Requirements, if the training or certification is required:

152 ~~[(a)]~~ (i) under this title;
 153 ~~[(b)]~~ (ii) by the department; or
 154 ~~[(c)]~~ (iii) by an agency or division within the department; and
 155 ~~[(33)]~~ (gg) oversee public education vision screening as described in Section
 156 53G-9-404.

157 (2) (a) As used in this Subsection (2):

158 (i) "Church" means a building:

159 (A) set apart for worship;

160 (B) in which religious services are held;

161 (C) with which clergy is associated; and

162 (D) that is tax exempt under the laws of this state.

163 (ii) "Religious rite or exercise" means an act that is substantially motivated by sincere
 164 religious belief, whether or not the act is compulsory or central to a larger system of religious
 165 belief, including the use of a church.

166 (b) In exercising the department's authority under this section, the department may not
 167 take an action that has the effect of:

168 (i) prohibiting a religious organization from holding a religious service in a church;

169 (ii) prohibiting an individual's attendance or any other gathering at or in a church for
 170 the purpose of performing a religious rite or exercise; or

171 (iii) closing or otherwise prohibiting entry into a church.

172 (c) (i) The protection of religious freedom that this Subsection (2) affords is in addition
 173 to the protections provided under federal law and the constitutions of Utah and the United
 174 States.

175 (ii) Nothing in this Subsection (2) may be construed to affect, interpret, or in any way
 176 address that portion of the First Amendment to the United States Constitution prohibiting laws
 177 respecting an establishment of religion.

178 Section 2. Section **26-21-35** is enacted to read:

179 **26-21-35. Access to spiritual ministering or family within a healthcare facility.**

180 (1) As used in this section:

181 (a) "Family member" means a patient's:

182 (i) parent, step-parent, spouse, child, sibling, step-sibling, grandparent of any

183 generation, grandchild of any generation, uncle, aunt, nephew, niece, first cousin,
184 mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law; or

185 (ii) non-relative who has established a familial relationship with the patient.

186 (b) "Patient" means an individual who is a patient of or resident at a health care facility.

187 (c) "Religious or spiritual minister or advisor" means:

188 (i) an individual who is authorized by a religious denomination to minister or otherwise
189 provide spiritual support to a patient;

190 (ii) an individual who leads, instructs, or facilitates the patient's religious rite or
191 exercise; or

192 (iii) is recognized in the community and to the patient as a spiritual advisor.

193 (d) "Religious rite or exercise" means an act that is substantially motivated by sincere
194 religious belief, whether or not the act is compulsory or central to a larger system of religious
195 belief.

196 (2) Notwithstanding the declaration of a state of emergency related to a public health
197 risk or any local restrictions placed on access to a health care facility in relation to a public
198 health risk, and subject to Subsection (3), a healthcare facility may not prohibit:

199 (a) a patient from receiving a visit within the health care facility from a family member
200 or a religious or spiritual minister or advisor; or

201 (b) a family member or a religious or spiritual minister or advisor from visiting, within
202 the health care facility, a patient who requests or consents to the visit.

203 (3) A health care facility may limit the number of individuals described in Subsection
204 (2) who may visit the patient at a time if the health care facility allows at least one individual
205 described in Subsection (2) to visit the patient at a time.

206 Section 3. Section **26A-1-114** is amended to read:

207 **26A-1-114. Powers and duties of departments.**

208 (1) A local health department may:

209 (a) subject to the provisions in Section **26A-1-108**, enforce state laws, local ordinances,
210 department rules, and local health department standards and regulations relating to public
211 health and sanitation, including the plumbing code administered by the Division of
212 Occupational and Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction
213 Code Administration Act, and under Title 26, Chapter 15a, Food Safety Manager Certification

214 Act, in all incorporated and unincorporated areas served by the local health department;

215 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical
216 control over property and over individuals as the local health department finds necessary for
217 the protection of the public health;

218 (c) establish and maintain medical, environmental, occupational, and other laboratory
219 services considered necessary or proper for the protection of the public health;

220 (d) establish and operate reasonable health programs or measures not in conflict with
221 state law which:

222 (i) are necessary or desirable for the promotion or protection of the public health and
223 the control of disease; or

224 (ii) may be necessary to ameliorate the major risk factors associated with the major
225 causes of injury, sickness, death, and disability in the state;

226 (e) close theaters, schools, and other public places and prohibit gatherings of people
227 when necessary to protect the public health;

228 (f) abate nuisances or eliminate sources of filth and infectious and communicable
229 diseases affecting the public health and bill the owner or other person in charge of the premises
230 upon which this nuisance occurs for the cost of abatement;

231 (g) make necessary sanitary and health investigations and inspections on its own
232 initiative or in cooperation with the Department of Health or Environmental Quality, or both,
233 as to any matters affecting the public health;

234 (h) pursuant to county ordinance or interlocal agreement:

235 (i) establish and collect appropriate fees for the performance of services and operation
236 of authorized or required programs and duties;

237 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
238 property, services, or materials for public health purposes; and

239 (iii) make agreements not in conflict with state law which are conditional to receiving a
240 donation or grant;

241 (i) prepare, publish, and disseminate information necessary to inform and advise the
242 public concerning:

243 (i) the health and wellness of the population, specific hazards, and risk factors that may
244 adversely affect the health and wellness of the population; and

245 (ii) specific activities individuals and institutions can engage in to promote and protect
246 the health and wellness of the population;

247 (j) investigate the causes of morbidity and mortality;

248 (k) issue notices and orders necessary to carry out this part;

249 (l) conduct studies to identify injury problems, establish injury control systems,
250 develop standards for the correction and prevention of future occurrences, and provide public
251 information and instruction to special high risk groups;

252 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules
253 within the jurisdiction of the boards;

254 (n) cooperate with the state health department, the Department of Corrections, the
255 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
256 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,
257 convicted sexual offenders, and any victims of a sexual offense;

258 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

259 (p) provide public health assistance in response to a national, state, or local emergency,
260 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
261 of the United States or other federal official requesting public health-related activities.

262 (2) The local health department shall:

263 (a) establish programs or measures to promote and protect the health and general
264 wellness of the people within the boundaries of the local health department;

265 (b) investigate infectious and other diseases of public health importance and implement
266 measures to control the causes of epidemic and communicable diseases and other conditions
267 significantly affecting the public health which may include involuntary testing of alleged sexual
268 offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims
269 of sexual offenses for HIV infection pursuant to Section 76-5-503;

270 (c) cooperate with the department in matters pertaining to the public health and in the
271 administration of state health laws; and

272 (d) coordinate implementation of environmental programs to maximize efficient use of
273 resources by developing with the Department of Environmental Quality a Comprehensive
274 Environmental Service Delivery Plan which:

275 (i) recognizes that the Department of Environmental Quality and local health

276 departments are the foundation for providing environmental health programs in the state;

277 (ii) delineates the responsibilities of the department and each local health department
278 for the efficient delivery of environmental programs using federal, state, and local authorities,
279 responsibilities, and resources;

280 (iii) provides for the delegation of authority and pass through of funding to local health
281 departments for environmental programs, to the extent allowed by applicable law, identified in
282 the plan, and requested by the local health department; and

283 (iv) is reviewed and updated annually.

284 (3) The local health department has the following duties regarding public and private
285 schools within its boundaries:

286 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
287 persons attending public and private schools;

288 (b) exclude from school attendance any person, including teachers, who is suffering
289 from any communicable or infectious disease, whether acute or chronic, if the person is likely
290 to convey the disease to those in attendance; and

291 (c) (i) make regular inspections of the health-related condition of all school buildings
292 and premises;

293 (ii) report the inspections on forms furnished by the department to those responsible for
294 the condition and provide instructions for correction of any conditions that impair or endanger
295 the health or life of those attending the schools; and

296 (iii) provide a copy of the report to the department at the time the report is made.

297 (4) If those responsible for the health-related condition of the school buildings and
298 premises do not carry out any instructions for corrections provided in a report in Subsection
299 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
300 persons responsible.

301 (5) The local health department may exercise incidental authority as necessary to carry
302 out the provisions and purposes of this part.

303 (6) Nothing in this part may be construed to authorize a local health department to
304 enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon
305 monoxide detector in a residential dwelling against anyone other than the occupant of the
306 dwelling.

307 (7) (a) As used in this Subsection (7):

308 (i) "Church" means a building:

309 (A) set apart for worship;

310 (B) in which religious services are held;

311 (C) with which clergy is associated; and

312 (D) that is tax exempt under the laws of this state.

313 (ii) "Religious rite or exercise" means an act that is substantially motivated by sincere

314 religious belief, whether or not the act is compulsory or central to a larger system of religious

315 belief, including the use of a church.

316 (b) In exercising a local health department's authority under this section, a local health

317 department may not take an action that has the effect of:

318 (i) prohibiting a religious organization from holding a religious service in a church;

319 (ii) prohibiting an individual's attendance or any other gathering at or in a church for

320 the purpose of performing a religious rite or exercise; or

321 (iii) closing or otherwise prohibiting entry into a church.

322 (c) (i) The protection of religious freedom that this Subsection (7) affords is in addition

323 to the protections provided under federal law and the constitutions of Utah and the United

324 States.

325 (ii) Nothing in this Subsection (7) may be construed to affect, interpret, or in any way

326 address that portion of the First Amendment to the United States Constitution prohibiting laws

327 respecting an establishment of religion.

328 Section 4. Section **53-2a-218** is enacted to read:

329 **53-2a-218. Protection of the free exercise of religion.**

330 (1) As used in this section:

331 (a) "Church" means a building:

332 (i) set apart for worship;

333 (ii) in which religious services are held;

334 (iii) with which clergy is associated; and

335 (iv) that is tax exempt under the laws of this state.

336 (b) "Government entity" means:

337 (i) the state, a department, a division, or any other unit of the state;

338 (ii) a county, municipality, local district, special service district, other political
339 subdivision, or any unit of a political subdivision; or

340 (iii) a state institution of higher education as defined in Section 53B-2-101, or a local
341 education agency as defined in Section 53G-7-401.

342 (c) "Religious rite or exercise" means an act that is substantially motivated by sincere
343 religious belief, whether or not the act is compulsory or central to a larger system of religious
344 belief, including the use of a church.

345 (2) Notwithstanding the provisions of this chapter, regardless of the declaration of a
346 state of emergency, a government entity may not take an action that has the effect of:

347 (a) prohibiting a religious organization from holding a religious service in a church;

348 (b) prohibiting an individual's attendance or any other gathering at or in a church for
349 the purpose of performing a religious rite or exercise; or

350 (c) closing or otherwise prohibiting entry into a church.

351 (3) (a) The protection of religious freedom that this section affords is in addition to the
352 protections provided under federal law and the constitutions of Utah and the United States.

353 (b) Nothing in this section may be construed to affect, interpret, or in any way address
354 that portion of the First Amendment to the United States Constitution prohibiting laws
355 respecting an establishment of religion.

356 **Section 5. Effective date.**

357 If approved by two-thirds of all the members elected to each house, this bill takes effect
358 upon approval by the governor, or the day following the constitutional time limit of Utah
359 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
360 the date of veto override.