

**Representative Gregory H. Hughes** proposes the following substitute bill:

**FREE EXERCISE OF RELIGION WITHOUT  
GOVERNMENT INTERFERENCE**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: D. Chris Butters**

House Sponsor: Gregory H. Hughes

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**LONG TITLE**

**General Description:**

This bill enacts provisions creating a legal standard for the free exercise of religion.

**Highlighted Provisions:**

This bill:

- ▶ enacts Title 63, Chapter 90c, Free Exercise of Religion;
- ▶ waives governmental immunity for cases brought to enforce or obtain remedies for violation of this chapter;
- ▶ provides that the state entity may justify a law or action that substantially burdens a person's free exercise of religion only if the state entity demonstrates by a preponderance of the evidence that the law or action is substantially related to an important government interest;
- ▶ provides that the above standard applies even if the state law is generally applicable to all persons;
- ▶ authorizes a person whose right to free exercise of religion is burdened to recover injunctive relief, declaratory relief, and recovery of reasonable costs and attorney fees;
- ▶ prohibits the assessment of attorney fees against a person in certain situations;



- 26           ▶ permits a person to use a violation of this chapter as a defense in a judicial or
- 27 administrative proceeding;
- 28           ▶ provides for the application of the requirements of the chapter;
- 29           ▶ exempts inmates from the provisions of the chapter in certain circumstances; and
- 30           ▶ provides a severability clause.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **63-30d-301**, as last amended by Chapters 2 and 99, Laws of Utah 2005

38 ENACTS:

39           **63-90c-101**, Utah Code Annotated 1953

40           **63-90c-102**, Utah Code Annotated 1953

41           **63-90c-103**, Utah Code Annotated 1953

42           **63-90c-104**, Utah Code Annotated 1953

43           **63-90c-105**, Utah Code Annotated 1953

44           **63-90c-106**, Utah Code Annotated 1953

45           **63-90c-107**, Utah Code Annotated 1953



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

48           Section 1. Section **63-30d-301** is amended to read:

49           **63-30d-301. Waivers of immunity -- Exceptions.**

50           (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
51 obligation.

52           (b) Actions arising out of contractual rights or obligations are not subject to the  
53 requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.

54           (c) The Division of Water Resources is not liable for failure to deliver water from a  
55 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
56 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

57 condition, or safety condition that causes a deficiency in the amount of available water.

58 (2) Immunity from suit of each governmental entity is waived:

59 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
60 personal property;

61 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
62 property, to determine any adverse claim on real or personal property, or to obtain an  
63 adjudication about any mortgage or other lien that the governmental entity may have or claim  
64 on real or personal property;

65 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
66 merchandise, or other property while it is in the possession of any governmental entity or  
67 employee, if the property was seized for the purpose of forfeiture under any provision of state  
68 law;

69 (d) subject to Subsection 63-30d-302(1), as to any action brought under the authority of  
70 Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the  
71 governmental entity when the governmental entity has taken or damaged private property for  
72 public uses without just compensation;

73 (e) subject to Subsection 63-30d-302(2), as to any action brought to recover [~~attorneys~~<sup>4</sup>]  
74 attorney fees under Sections 63-2-405 and 63-2-802;

75 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
76 Act; [~~or~~]

77 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
78 substantial burden on the free exercise of religion under Title 63, Chapter 90b, Utah Religious  
79 Land Use Act[-]; or

80 (h) as to an action brought to obtain relief from governmental action that substantially  
81 burdens the free exercise of religion under the requirements of Title 63, Chapter 90c, Free  
82 Exercise of Religion.

83 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each  
84 governmental entity is waived as to any injury caused by:

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

87 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,

88 or other public improvement.

89 (b) Immunity is not waived if the injury arises out of, in connection with, or results  
90 from:

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

93 (ii) a latent dangerous or latent defective condition of any public building, structure,  
94 dam, reservoir, or other public improvement.

95 (4) Immunity from suit of each governmental entity is waived as to any injury  
96 proximately caused by a negligent act or omission of an employee committed within the scope  
97 of employment.

98 (5) Immunity is not waived under Subsections (3) and (4) if the injury arises out of, in  
99 connection with, or results from:

100 (a) the exercise or performance, or the failure to exercise or perform, a discretionary  
101 function, whether or not the discretion is abused;

102 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional  
103 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of  
104 mental anguish, or violation of civil rights;

105 (c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to  
106 issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar  
107 authorization;

108 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

109 (e) the institution or prosecution of any judicial or administrative proceeding, even if  
110 malicious or without probable cause;

111 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

112 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil  
113 disturbances;

114 (h) the collection of and assessment of taxes;

115 (i) the activities of the Utah National Guard;

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

118 (k) any natural condition on publicly owned or controlled lands, any condition existing

119 in connection with an abandoned mine or mining operation, or any activity authorized by the  
120 School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State  
121 Lands;

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

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

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

125 (o) the operation of an emergency vehicle, while being driven in accordance with the  
126 requirements of Section 41-6a-208;

127 (p) the activities of:

128 (i) providing emergency medical assistance;

129 (ii) fighting fire;

130 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

131 (iv) emergency evacuations;

132 (v) transporting or removing injured persons to a place where emergency medical  
133 assistance can be rendered or where the person can be transported by a licensed ambulance  
134 service; or

135 (vi) intervening during dam emergencies;

136 (q) the exercise or performance, or the failure to exercise or perform, any function  
137 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

138 (r) unauthorized access to government records, data, or electronic information systems  
139 by any person or entity.

140 Section 2. Section **63-90c-101** is enacted to read:

141 **CHAPTER 90c. FREE EXERCISE OF RELIGION**

142 **63-90c-101. Title.**

143 This chapter is known as "Free Exercise of Religion."

144 Section 3. Section **63-90c-102** is enacted to read:

145 **63-90c-102. Definitions.**

146 As used in this chapter:

147 (1) "Exercise of religion" means the ability to act or refusal to act in a manner  
148 substantially motivated by a sincerely held religious belief, whether or not the exercise is  
149 compulsory or central to a larger system of religious belief.

150 (2) "Government entity" means:

151 (a) the state, a county, a municipality, a local school district, a higher education  
152 institution, a special district, or any other political subdivision of the state; or

153 (b) any administrative subunit of an entity described in Subsection (2)(a).

154 (3) "Person" means a natural person or individual, corporation, organization, or any  
155 other legal entity.

156 (4) "Substantially burden" means to inhibit or curtail the free exercise of religion.

157 Section 4. Section **63-90c-103** is enacted to read:

158 **63-90c-103. Free exercise of religion protected.**

159 (1) Free exercise of religion is a fundamental right that applies in this state under the  
160 Utah Constitution Article I, Section 4, even if laws, rules, ordinances, or other government  
161 actions are facially neutral.

162 (2) Except as provided in Subsection (3), a government entity shall not substantially  
163 burden a person's exercise of religion even if the burden results from a law, rule, or ordinance  
164 of general applicability.

165 (3) A government entity may substantially burden a person's exercise of religion only if  
166 it demonstrates, by a preponderance of the evidence, that the application of the burden to the  
167 person is substantially related to an important governmental interest.

168 Section 5. Section **63-90c-104** is enacted to read:

169 **63-90c-104. Remedies.**

170 (1) A person who asserts a claim or defense against a government entity under this  
171 chapter may request:

172 (a) declaratory relief;

173 (b) temporary or permanent injunctive relief to prevent the threatened or continued  
174 violation; or

175 (c) a combination of declaratory and injunctive relief.

176 (2) (a) Except as provided in Subsection (b), a prevailing party in an action brought  
177 under this chapter may recover its court costs and reasonable attorney fees incurred.

178 (b) No costs or attorney fees may be assessed against a person asserting a claim or  
179 defense against a government entity under this chapter unless the claim or defense is:

180 (i) frivolous, unreasonable, or without foundation; and

181 (ii) not brought in good faith.

182 (3) A person may not bring an action under this chapter against an individual, other  
183 than an action against an individual acting in the individual's official capacity as an officer of a  
184 government entity.

185 Section 6. Section **63-90c-105** is enacted to read:

186 **63-90c-105. Burden on exercise of religion as a defense.**

187 A person whose religious exercise is substantially burdened in violation of this chapter  
188 may assert that violation as a defense in a judicial or administrative proceeding without regard  
189 to whether the proceeding is brought in the name of the state or by any other person.

190 Section 7. Section **63-90c-106** is enacted to read:

191 **63-90c-106. Application of chapter -- Constitutions and establishment clause**  
192 **unaffected -- Application to inmates.**

193 (1) Subject to Subsection (2), this chapter applies to all state laws and administrative  
194 rules, all local laws and ordinances, and the implementation of those laws, rules, and  
195 ordinances, whether statutory or otherwise, and whether enacted or adopted before, on, or after  
196 the effective date of this chapter.

197 (2) This chapter does not apply if a law, rule or ordinance, or case law interpreting a  
198 law, rule, or ordinance:

199 (a) requires a government entity to meet a more stringent standard than the standard  
200 required in Subsection 63-90c-103(3) in defense to a person's claim that the government entity  
201 has unlawfully burdened the person's free exercise of religion; or

202 (b) has more specific application to the person's claim that the governmental entity has  
203 unlawfully burdened the person's free exercise of religion.

204 (3) The protection of free exercise of religion afforded by this chapter is in addition to  
205 the protections provided under federal law and the constitutions of Utah and the United States.

206 (4) This chapter shall not be construed to authorize a government entity to burden a  
207 person's free exercise of religion.

208 (5) This chapter shall not be construed to affect, interpret, or in any way address that  
209 portion of the First Amendment to the United States Constitution prohibiting laws respecting  
210 an establishment of religion.

211 (6) (a) Except to the extent prohibited by federal law, the provisions of this chapter do

212 not apply to an inmate, as defined in Section 64-13-1, if the burden on the inmate's free  
213 expression of religion results from a law, rule, ordinance, policy, action, or omission that is  
214 reasonably related to a legitimate government interest, including:

215 (i) the deterrence of crime;

216 (ii) the prudent use of institutional resources;

217 (iii) the health or safety of inmates, correctional staff, or the public;

218 (iv) the rehabilitation of inmates; or

219 (v) institutional security.

220 (b) Except as prohibited by law, and consistent with the requirements of Subsection  
221 63-30d-202(4), officers and employees of a correctional facility or county jail are exempt from  
222 liability in relation to any law, rule, ordinance, policy, action, or omission complained of under  
223 the provisions of this chapter.

224 Section 8. Section **63-90c-107** is enacted to read:

225 **63-90c-107. Severability.**

226 If any word, phrase, sentence, or section of this chapter or its application to any person  
227 or circumstance is determined to be invalid, the invalidity does not affect other provisions or  
228 applications of this chapter that can be given effect without the invalid provision or application,  
229 and to this end the provisions of this chapter are severable.