

Representative David Clark proposes the following substitute bill:

**FREE EXERCISE OF RELIGION WITHOUT
GOVERNMENT INTERFERENCE**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Buttar

House Sponsor: _____

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 on a person's free exercise of religion only if the state entity demonstrates by clear and convincing evidence that the law or action is:
 - essential to further a compelling government interest; and
 - is the least restrictive means of furthering the compelling 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;



- 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~~]
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 religiously motivated practices.

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 (4), 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) In determining whether or not a belief is sincerely held, a governmental entity or
166 court shall neither require nor determine that the act or refusal to act is motivated by a central
167 part or central requirement of the religious belief.

168 (4) A government entity may substantially burden a person's exercise of religion only if
169 it demonstrates, by clear and convincing evidence, that the application of the burden to the
170 person is both:

171 (a) essential to further a compelling government interest; and

172 (b) the least restrictive means of furthering the compelling governmental interest.

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

174 **63-90c-104. Remedies.**

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

177 (a) declaratory relief;

178 (b) temporary or permanent injunctive relief to prevent the threatened or continued
179 violation; or

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

181 (2) A prevailing party in an action brought under this chapter may recover its court
182 costs and reasonable attorney fees incurred.

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

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

187 **63-90c-105. Burden on exercise of religion as a defense.**

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

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

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

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

198 (2) State laws that are enacted or adopted on or after the effective date of this chapter
199 are subject to requirements of this chapter unless the law explicitly excludes application by
200 reference to this chapter.

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

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

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

208 (6) (a) Except to the extent prohibited by federal law, the provisions of this chapter do
209 not apply to an inmate, as defined in Section 64-13-1, if the burden on the inmate's free
210 expression of religion results from a law, rule, ordinance, policy, action, or omission that is
211 reasonably related to a legitimate government interest, including:

- 212 (i) the deterrence of crime;
- 213 (ii) the prudent use of institutional resources;
- 214 (iii) the health or safety of inmates, correctional staff, or the public;
- 215 (iv) the rehabilitation of inmates; or
- 216 (v) institutional security.
- 217 (b) Except as prohibited by law, and consistent with the requirements of Subsection
- 218 63-30d-202(4), officers and employees of a correctional facility or county jail are exempt from
- 219 liability in relation to any law, rule, ordinance, policy, action, or omission complained of under
- 220 the provisions of this chapter.

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

222 **63-90c-107. Severability.**

223 If any word, phrase, sentence, or section of this chapter or its application to any person

224 or circumstance is determined to be invalid, the invalidity does not affect other provisions or

225 applications of this chapter that can be given effect without the invalid provision or application,

226 and to this end the provisions of this chapter are severable.