

Representative LaVar Christensen proposes the following substitute bill:

RELIGIOUS LIBERTY ACT

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: Alvin B. Jackson

LONG TITLE

General Description:

This bill establishes the Religious Liberty Act.

Highlighted Provisions:

This bill:

- ▶ adds religious liberty to the list of exceptions in the Governmental Immunity Act of Utah;
- ▶ establishes the Religious Liberty Act;
- ▶ declares that the Act is in furtherance of the rights and protections provided under the United States and Utah constitutions;
- ▶ coordinates the application of the bill to other statutory provisions; and
- ▶ permits a person or entity seeking relief under the Act to obtain judicial relief, attorney fees, and costs for violations of that person's religious liberty.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 63G-7-301, as last amended by Laws of Utah 2014, Chapter 145

27 ENACTS:

28 63G-19-101, Utah Code Annotated 1953

29 63G-19-102, Utah Code Annotated 1953

30 63G-19-103, Utah Code Annotated 1953

31 63G-19-104, Utah Code Annotated 1953

32 63G-19-105, Utah Code Annotated 1953



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

35 Section 1. Section 63G-7-301 is amended to read:

36 **63G-7-301. Waivers of immunity -- Exceptions.**

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

39 (b) Actions arising out of contractual rights or obligations are not subject to the
40 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

41 (c) The Division of Water Resources is not liable for failure to deliver water from a
42 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
43 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
44 condition, or safety condition that causes a deficiency in the amount of available water.

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

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

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

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

56 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of

57 Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the
58 governmental entity when the governmental entity has taken or damaged private property for
59 public uses without just compensation;

60 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
61 fees under Sections 63G-2-405 and 63G-2-802;

62 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
63 Act; ~~or~~

64 (g) as to any action brought to obtain relief from a land use regulation that imposes a
65 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
66 Land Use Act~~[-];~~ or

67 (h) as to any action brought to obtain relief from governmental action under Title 63G,
68 Chapter 19, Religious Liberty Act.

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

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

73 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
74 or other public improvement.

75 (b) Immunity from suit of each governmental entity is not waived if the injury arises
76 out of, in connection with, or results from:

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

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

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

84 (5) Immunity from suit of each governmental entity is not waived under Subsections
85 (3) and (4) if the injury arises out of, in connection with, or results from:

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

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

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

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

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

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

98 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil
99 disturbances;

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

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

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

104 (k) any natural condition on publicly owned or controlled lands;

105 (l) any condition existing in connection with an abandoned mine or mining operation;

106 (m) any activity authorized by the School and Institutional Trust Lands Administration
107 or the Division of Forestry, Fire, and State Lands;

108 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
109 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
110 if:

111 (i) the trail is designated under a general plan adopted by a municipality under Section
112 [10-9a-401](#) or by a county under Section [17-27a-401](#);

113 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
114 use as evidenced by a written agreement between the owner or operator of the trail
115 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
116 where the trail is located; and

117 (iii) the written agreement:

118 (A) contains a plan for operation and maintenance of the trail; and

119 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
120 where the trail is located has, at minimum, the same level of immunity from suit as the
121 governmental entity in connection with or resulting from the use of the trail.

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

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

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

125 (r) the operation of an emergency vehicle, while being driven in accordance with the
126 requirements of Section 41-6a-212;

127 (s) 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 (t) 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;

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

140 (v) injury related to the activity of wildlife, as defined in Section 23-13-2, that arises
141 during the use of a public or private road.

142 Section 2. Section 63G-19-101 is enacted to read:

143 **CHAPTER 19. RELIGIOUS LIBERTY ACT**

144 **63G-19-101. Title.**

145 This chapter is known as the "Religious Liberty Act."

146 Section 3. Section 63G-19-102 is enacted to read:

147 **63G-19-102. Definitions.**

148 As used in this chapter, "person" means:

149 (1) an individual;

- 150 (2) a closely held business or entity;
- 151 (3) a religious institution;
- 152 (4) a religious institution's wholly or partially owned subsidiary or affiliate;
- 153 (5) a representative of a religious institution;
- 154 (6) an entity that is recognized under applicable law as an expressive association; or
- 155 (7) an independent education institution or association that holds and expresses sincere
156 and honest religious or moral principles and values that are essential to its existence and
157 operation.

158 Section 4. Section **63G-19-103** is enacted to read:

159 **63G-19-103. Constitutional religious liberty.**

160 (1) Religious liberty is an inherent, inalienable, and natural right of mankind. It is
161 expressly recognized and guaranteed in the United States and state constitutions.

162 (2) The citizens of the state affirm and seek to preserve the right of all people to freely
163 choose and practice their own faith and religious beliefs or none at all and to be free from
164 government acts that deny or exclude the rightful and lawful expression and exercise of
165 religious liberty in private or public life.

166 (3) The affirmation of religious liberty afforded by this chapter is in furtherance of
167 those provided under the constitutions of this state and the United States. As expressly
168 provided since statehood in Utah Constitution, Article III, Section 1, perfect toleration of
169 religious sentiment is guaranteed, as expressly provided in Utah Constitution, Article I, Section
170 4, rights of conscience shall never be infringed, and in Utah Constitution, Article IV, Section 1,
171 all citizens of this state shall enjoy equally all civil, political, and religious rights and
172 privileges. There is a substantial public and government interest in protecting order and
173 morality.

174 (4) The lawful and proper expression and exercise of religious liberty and rights of
175 conscience recognized and protected in the constitutions of the state and the United States and
176 this chapter do not constitute nor shall they be applied in such manner as would result in
177 wrongful discrimination under other laws and statutory protections, including Title 34A,
178 Chapter 5, Utah Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act.

179 Section 5. Section **63G-19-104** is enacted to read:

180 **63G-19-104. Application of chapter to certain provisions.**

181 (1) The state fully and independently reserves and affirms all rights and powers of state
182 sovereignty, including the state's rights and powers regarding all domestic relations laws, and
183 as provided in Section [63G-16-101](#), and as are adopted by the Legislature and the citizens of
184 this state.

185 (2) This chapter is consistent with rights of conscientious objection applied elsewhere
186 in Utah law, including a health care facility or health care provider based on religious or moral
187 grounds as recognized and provided under Section [76-7-306](#).

188 (3) Nothing in this chapter shall be construed to prohibit the granting of government
189 funding, benefits, or exemptions, to the extent permissible under the Establishment Clause of
190 the United States Constitution or Utah Constitution, Article I, Section 4.

191 Section 6. Section **63G-19-105** is enacted to read:

192 **63G-19-105. Judicial relief.**

193 A person whose lawful and proper exercise of religious liberty is substantially burdened
194 in violation of this chapter may obtain appropriate relief in a judicial proceeding, including
195 recovery of reasonable attorney fees and costs.