

HB0322S03 compared with HB0322S02

~~{deleted text}~~ shows text that was in HB0322S02 but was deleted in HB0322S03.

inserted text shows text that was not in HB0322S02 but was inserted into HB0322S03.

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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;~~{~~

~~—▶ establishes that a person's lawful exercise of religious liberty under the Act is a valid defense to claims of others;}~~ and

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- ▶ 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:

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

ENACTS:

63G-19-101, Utah Code Annotated 1953

63G-19-102, Utah Code Annotated 1953

63G-19-103, Utah Code Annotated 1953

63G-19-104, Utah Code Annotated 1953

63G-19-105, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

(b) as to any action brought to foreclose mortgages or other liens on real or personal

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property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

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

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

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

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

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

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

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

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

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

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

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

(ii) a latent dangerous or latent defective condition of any public building, structure,

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dam, reservoir, or other public improvement.

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

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

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

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

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

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

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

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

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

(h) the collection of and assessment of taxes;

(i) the activities of the Utah National Guard;

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

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

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

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

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

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

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

(iii) the written agreement:

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

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

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

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

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

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

(s) the activities of:

(i) providing emergency medical assistance;

(ii) fighting fire;

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

(iv) emergency evacuations;

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

(vi) intervening during dam emergencies;

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

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

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

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

CHAPTER 19. RELIGIOUS LIBERTY ACT

63G-19-101. Title.

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

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

63G-19-102. Definitions.

As used in this chapter ~~†~~:

~~(1) †~~, "~~{Person}~~person" means:

~~{a} †~~1) an individual;

~~{b} †~~2) a closely held business or entity;

~~{c} †~~3) a religious institution;

~~{d} †~~4) a religious institution's wholly or partially owned subsidiary or affiliate;

~~{e} †~~5) a representative of a religious institution;

~~{ff} †~~6) an entity that is recognized under applicable law as an expressive association; or

~~{fg} †~~7) an independent education institution or association that holds and expresses

sincere and honest religious or moral principles and values that are essential to its existence and operation.

~~{~~ ~~(2) "Substantial burden on religious liberty" means:~~

~~(a) infringes upon or violates religious liberty;~~

~~(b) has the effect of compelling, restraining, or coercing a person to act, significantly modify behavior, or restrain from acting in a way that is contrary to the person's religious liberty; or~~

~~(c) significantly diminishes, interferes, or threatens a person's civil capacities or goods because of the person's religious liberty.~~

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

63G-19-103. Constitutional religious liberty~~{-- Compelling interest}~~.

(1) Religious liberty is an inherent, inalienable, and natural right of mankind. It is expressly recognized and guaranteed in the United States and state constitutions. ~~{ The state constitution expresses enduring gratitude to Almighty God for life and liberty and secures and perpetuates the principles of free government. Such rights and corresponding duties are owed to the Creator and Supreme Judge of the world as acknowledged and expressed in the nation's~~

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~~founding Declaration of Independence and shall not be substantially burdened by any person or law except as may, under limited circumstances, be approved and necessary according to statute and applicable constitutional standards and requirements.~~

(2) The citizens of the state affirm and seek to preserve the ~~same continuing firm reliance on divine providence as so abundantly marked and accompanied the founding of the nation and the United States Constitution. This includes reasonable and necessary protections that allow~~ right of all people to freely choose and practice their own faith and religious beliefs or none at all ~~. The~~ and to be free from government ~~shall not~~ acts that deny or exclude the rightful and lawful expression and exercise of religious liberty in private or public life.

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

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

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

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

~~(1) The state with the greatest respect for all citizens has adopted specific protections against discrimination as defined and included in Title 34A, Chapter 5, Utah Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act. Such definitions and protections are for the specific purposes stated in those chapters. They do not create specific or additional suspect classes for other purposes or applications and do not affect or alter the constitutional law of the state and the United States. Review and application of laws regarding race, religion, or national origin, are independently subject to heightened strict scrutiny and~~

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~~express constitutional protections:~~

‡ ~~(2)1~~ The state fully and independently reserves and affirms all rights and powers of state sovereignty, including the state's rights and powers regarding all domestic relations laws, and as provided in Section 63G-16-101, and as are adopted by the Legislature and the citizens of this state.

~~(3)2~~ This chapter is consistent with rights of conscientious objection applied elsewhere in Utah law, including a health care facility or health care provider based on religious or moral grounds as recognized and provided under Section 76-7-306.

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

~~(5) Religious beliefs and the lawful exercise thereof are not grounds for retaliation and does not constitute a wrongful injury to another person.~~

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

63G-19-105. Judicial relief.

~~(1) The lawful and proper exercise of religious liberty is:~~

~~(a) a recognized exemption to otherwise generally applicable laws and a valid defense to claims by others; and~~

~~(b) a proper basis for legal and equitable relief, claims, remedies, and actions when necessary to enforce such protections.~~

‡ ~~(2)~~ A person whose lawful and proper exercise of religious liberty is substantially burdened in violation of this chapter may obtain appropriate relief in a judicial proceeding, including recovery of reasonable attorney fees and costs.