

Senator J. Stuart Adams proposes the following substitute bill:

**PROTECTIONS FOR RELIGIOUS EXPRESSION AND
BELIEFS ABOUT MARRIAGE, FAMILY, OR SEXUALITY**

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill provides certain protections and remedies for individuals, religious officials, religious organizations, and government officers and employees concerning the free exercise of religion and religious or deeply held beliefs about marriage, family, and sexuality.

Highlighted Provisions:

This bill:

- ▶ requires a county clerk or the county clerk's designee to solemnize a legal marriage;
- ▶ requires a county clerk to require a designee to be readily available to solemnize a marriage;
- ▶ requires a county clerk to provide certain accommodations for a conscientious objector while still making services readily available;
- ▶ provides protections for a religious official, when acting as such, or a religious organization that decline to solemnize a marriage because of the official's or the organization's beliefs about marriage, family, or sexuality;
- ▶ requires certain officers and employees of a state or local government to elect to either solemnize all legal marriages or decline to solemnize any marriages, with



26 certain exceptions;

27 ▶ prohibits retaliation against an individual, a religious official, when acting as such,
28 or a religious organization for exercising protections contained in this legislation;

29 ▶ prohibits government and a government official from taking certain action against a
30 licensee holding a professional or business license based on the licensee's beliefs or
31 the licensee's lawful expression of those beliefs in a nonprofessional setting;

32 ▶ provides remedies for violations; and

33 ▶ provides a severability clause and revisor instructions.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides revisor instructions.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 17-20-4, as last amended by Laws of Utah 2001, Chapter 241

41 30-1-6, as last amended by Laws of Utah 2010, Chapter 132

42 ENACTS:

43 63G-20-101, Utah Code Annotated 1953

44 63G-20-102, Utah Code Annotated 1953

45 63G-20-103, Utah Code Annotated 1953

46 63G-20-201, Utah Code Annotated 1953

47 63G-20-202, Utah Code Annotated 1953

48 63G-20-203, Utah Code Annotated 1953

49 63G-20-204, Utah Code Annotated 1953

50 63G-20-301, Utah Code Annotated 1953

51 63G-20-302, Utah Code Annotated 1953

52 63G-20-303, Utah Code Annotated 1953

53 **Uncodified Material Affected:**

54 ENACTS UNCODIFIED MATERIAL

55

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

57 Section 1. Section 17-20-4 is amended to read:

58 **17-20-4. Duties of county clerk.**

59 A county clerk shall:

60 (1) establish policies to issue all marriage licenses and keep a register of marriages as
61 provided by law;

62 (2) establish policies to ensure that the county clerk or the county clerk's designee is
63 reasonably available to solemnize a legal marriage for which a marriage license has been
64 issued;

65 ~~[(2)]~~ (3) execute under the clerk's seal and in the name of and for the county, all deeds
66 and conveyances of all real estate conveyed by the county;

67 ~~[(3)]~~ (4) take and certify acknowledgments and administer oaths;

68 ~~[(4)]~~ (5) keep a fee book as provided by law; and

69 ~~[(5)]~~ (6) take charge of and safely keep the seal of the county, and keep other records
70 and perform other duties as may be prescribed by law.

71 Section 2. Section 30-1-6 is amended to read:

72 **30-1-6. Who may solemnize marriages -- Certificate.**

73 (1) ~~[Marriages]~~ Subject to Subsection (5), marriages may be solemnized by the
74 following persons only:

75 (a) ministers, rabbis, or priests of any religious denomination who are:

76 (i) in regular communion with any religious society; and

77 (ii) 18 years of age or older;

78 (b) Native American spiritual advisors;

79 (c) the governor;

80 (d) the lieutenant governor;

81 (e) mayors of municipalities or county executives;

82 (f) a justice, judge, or commissioner of a court of record;

83 (g) a judge of a court not of record of the state;

84 (h) judges or magistrates of the United States;

85 (i) the county clerk of any county in the state~~[, if the clerk chooses to solemnize~~
86 ~~marriages]~~ or the county clerk's designee as authorized by Section 17-20-4;

87 (j) the president of the Senate;

88 (k) the speaker of the House of Representatives; or

89 (l) a judge or magistrate who holds office in Utah when retired, under rules set by the
90 Supreme Court.

91 (2) A person authorized under Subsection (1) who solemnizes a marriage shall give to
92 the couple married a certificate of marriage that shows the:

93 (a) name of the county from which the license is issued; and

94 (b) date of the license's issuance.

95 (3) As used in this section:

96 (a) "Judge or magistrate of the United States" means:

97 (i) a justice of the United States Supreme Court;

98 (ii) a judge of a court of appeals;

99 (iii) a judge of a district court;

100 (iv) a judge of any court created by an act of Congress the judges of which are entitled
101 to hold office during good behavior;

102 (v) a judge of a bankruptcy court;

103 (vi) a judge of a tax court; or

104 (vii) a United States magistrate.

105 (b) (i) "Native American spiritual advisor" means a person who:

106 (A) (I) leads, instructs, or facilitates a Native American religious ceremony or service;

107 or

108 (II) provides religious counseling; and

109 (B) is recognized as a spiritual advisor by a federally recognized Native American

110 tribe.

111 (ii) "Native American spiritual advisor" includes a sweat lodge leader, medicine
112 person, traditional religious practitioner, or holy man or woman.

113 (4) ~~[Notwithstanding]~~ Except as provided in Section [17-20-4](#), and notwithstanding any
114 other provision in law, no person authorized under Subsection (1) to solemnize a marriage may
115 delegate or deputize another person to perform the function of solemnizing a marriage, except
116 that only employees of the office responsible for the issuance of marriage licenses may be
117 deputized.

118 (5) (a) As used in this Subsection (5):

119 (i) "Government official" means the governor, the lieutenant governor, a municipal
 120 mayor, a county executive, a justice, judge, or commissioner of a court of record, a judge of a
 121 court not of record, a judge or magistrate of the United States, the president of the Senate, the
 122 speaker of the House of Representatives, or a judge or magistrate who held office in Utah when
 123 retired.

124 (ii) "Relative" means a government official's child, stepchild, adopted child, foster
 125 child, parent, stepparent, adoptive parent, foster parent, brother, sister, brother-in-law,
 126 sister-in-law, first cousin, grandparent, ~~§~~→ **grandchild**, ←~~§~~ or stepgrandparent.

127 (b) Except as provided in Subsection (5)(c), a government official, in exercising
 128 authority to solemnize marriages under Subsection (1), shall either:

129 (i) agree to solemnize all legal marriages; or

130 (ii) decline to solemnize any marriage, except the marriage of a relative.

131 (c) A government official who generally agrees and undertakes to solemnize any legal
 132 marriage under Subsection (5)(b)(i) may decline to solemnize a specific request for marriage
 133 based upon legitimate, non-discriminatory reasons, including absence, scheduling conflicts, or
 134 other similar reasons.

135 (6) (a) A county clerk may not designate an individual employee who objects to
 136 solemnizing any marriage if such solemnizing would cause the individual to violate the
 137 individual's sincerely held religious or other deeply held beliefs.

138 (b) Notwithstanding Subsection (6)(a), a county clerk is required to comply with the
 139 requirements of Subsection [17-20-4\(2\)](#).

140 Section 3. Section **63G-20-101** is enacted to read:

141 **CHAPTER 20. RELIGIOUS PROTECTIONS IN RELATION TO MARRIAGE,**
 142 **FAMILY, OR SEXUALITY**

143 **Part 1. General Provisions**

144 **63G-20-101. Title.**

145 This chapter is known as "Religious Protections in Relation to Marriage, Family, or
 146 Sexuality."

147 Section 4. Section **63G-20-102** is enacted to read:

148 **63G-20-102. Definitions.**

149 As used in this chapter:

150 (1) "Government retaliation" means an action by a state or local government or an
151 action by a state or local government official that:

152 (a) imposes a formal penalty on, fines, disciplines, discriminates against, denies the
153 rights of, denies benefits to, or denies tax-exempt status to a person; or

154 (b) subjects a person to an injunction or to an administrative claim or proceeding.

155 (2) (a) "Religious official" means an officer or official of a religion, when acting as
156 such.

157 (b) "Religious official" includes an individual designated by the religion as clergy,
158 minister, priest, pastor, rabbi, imam, bishop, stake president, or sealer, when that individual is
159 acting as such.

160 (3) "Religious organization" means:

161 (a) a religious organization, association, educational institution, or society;

162 (b) a religious corporation sole; or

163 (c) any corporation or association constituting a wholly owned subsidiary, affiliate, or
164 agency of any religious organization, association, educational institution, society, or religious
165 corporation sole.

166 (4) "Sexuality" includes legal sexual conduct, legal sexual expression, sexual desires,
167 and the status of a person as male or female.

168 (5) "State or local government" means:

169 (a) a state government entity, agency, or instrumentality; or

170 (b) a local government entity, agency, or instrumentality.

171 (6) "State or local government official" means an officer, employee, or appointee of a
172 state or local government.

173 Section 5. Section **63G-20-103** is enacted to read:

174 **63G-20-103. Interpretation.**

175 (1) Utah state courts and courts of the United States shall broadly construe this chapter
176 in favor of a broad protection of religious beliefs, exercises, and conscience to the maximum
177 extent permitted by the terms of this chapter and the Utah and United States constitutions.

178 (2) Nothing in this chapter may be construed to limit:

179 (a) the authority of a state or local government or a state or local government official to
180 protect the health, safety, or property of Utah residents through lawful means;

- 181 (b) the application of Utah's criminal laws;
- 182 (c) the application of Utah's laws barring discrimination in employment or housing; or
- 183 (d) the application of Utah's laws barring discrimination in public accommodations,
- 184 subject to Section 63G-20-201.

185 Section 6. Section 63G-20-201 is enacted to read:

186 **Part 2. Government Entities Prohibited from Certain Burdens on**
187 **Religious Beliefs about Marriage, Family, or Sexuality**

188 **63G-20-201. Provisions governing solemnizing or recognizing a marriage --**
189 **Prohibition against employment actions.**

190 (1) Notwithstanding any other provision of law, a state or local government or a state
191 or local government official may not:

192 (a) require a religious official, when acting as such, or religious organization to
193 solemnize or recognize a marriage that is contrary to that religious official's or religious
194 organization's religious beliefs;

195 (b) if the religious official or religious organization is authorized to solemnize a
196 marriage by Section 30-1-6, deny a religious official, when acting as such, or religious
197 organization the authority to legally solemnize a legal marriage based on the religious official's
198 or religious organization's refusal to solemnize any legal marriage that is contrary to the
199 religious official's or religious organization's religious beliefs;

200 (c) require a religious official, when acting as such, or religious organization to provide
201 goods, accommodations, advantages, privileges, services, facilities, or grounds for activities
202 connected with the solemnization or celebration of a marriage that is contrary to that religious
203 official's or religious organization's religious beliefs; or

204 (d) require a religious official, when acting as such, or religious organization to
205 promote marriage through religious programs, counseling, courses, or retreats in a way that is
206 contrary to that religious official's or religious organization's religious beliefs.

207 (2) Except as required by Section 17-20-4, and notwithstanding any other provision of
208 law other than Section 17-20-4, a state or local government or a state or local government
209 official may not terminate, discriminate against, discipline, penalize, retaliate against,
210 reprimand, censure, or otherwise disadvantage an officer or employee of the state or local
211 government for refusing to solemnize a marriage as authorized by Subsection 30-1-6(5).

212 Section 7. Section **63G-20-202** is enacted to read:

213 **63G-20-202. Prohibition on government retaliation.**

214 Notwithstanding any other law, a state or local government or a state or local
215 government official may not engage in government retaliation against an individual, a religious
216 official when acting as such, or a religious organization for exercising the protections contained
217 in Section [30-1-6](#), [63G-20-201](#), or [63G-20-301](#).

218 Section 8. Section **63G-20-203** is enacted to read:

219 **63G-20-203. Prohibition on licensing disadvantages based on beliefs regarding**
220 **marriage, family, or sexuality.**

221 Notwithstanding any other law, a state or local government, a state or local government
222 official, or another accrediting, certifying, or licensing body may not:

223 (1) deny, revoke, or suspend a licensee's professional or business license based on that
224 licencee's beliefs or other lawful expressions of those beliefs in a nonprofessional setting,
225 including the licensee's religious beliefs regarding marriage, family, or sexuality; or

226 (2) penalize, discipline, censure, disadvantage, discriminate against, or retaliate against
227 a licensee who holds a professional or business license based on that licensee's beliefs or lawful
228 expressions of those beliefs in a nonprofessional setting, including the licensee's religious
229 beliefs regarding marriage, family, or sexuality.

230 Section 9. Section **63G-20-204** is enacted to read:

231 **63G-20-204. Remedies -- Attorney fees and costs.**

232 (1) (a) A person aggrieved by a violation of this part may:

233 (i) file an extraordinary writ under Rule 19, Utah Rules of Appellate Procedure, to
234 require a state or local government or a state or local government official to comply with the
235 requirements of this part; or

236 (ii) seek removal of the local government official for malfeasance in office according
237 to the procedures and requirements of Title 77, Chapter 6, Removal by Judicial Proceedings.

238 (b) The court may award reasonable attorney fees and costs to the prevailing party.

239 (2) (a) In addition to other remedies available under this section and civil or criminal
240 law, a person aggrieved by a violation of this part may bring a civil action in district court by
241 filing a sworn, written accusation detailing the violation.

242 (b) If the plaintiff establishes one or more violations of this part by a preponderance of

243 the evidence, the court:

244 (i) shall grant the plaintiff appropriate legal or equitable relief; and

245 (ii) may award reasonable attorney fees and costs to the prevailing party.

246 Section 10. Section **63G-20-301** is enacted to read:

247 **Part 3. Prohibitions on Certain Burdens on a Religious Official's or Religious**
248 **Organization's Religious Beliefs about Marriage, Family, or Sexuality**

249 **63G-20-301. Prohibitions relating to refusing to solemnize a marriage.**

250 Notwithstanding any other provision of law, an individual may not require a religious
251 official, when acting as such, or religious organization to provide goods, accommodations,
252 advantages, privileges, services, facilities, or grounds for activities connected with the
253 solemnization or celebration of a marriage that is contrary to that religious official's or religious
254 organization's religious beliefs about marriage, family, or sexuality.

255 Section 11. Section **63G-20-302** is enacted to read:

256 **63G-20-302. Remedies -- Civil action -- Attorney fees and costs.**

257 (1) In addition to any other remedies available under this section and civil or criminal
258 law, a person aggrieved by a violation of this part may bring a civil action in district court by
259 filing a sworn, written accusation detailing the violation.

260 (2) If the plaintiff establishes one or more violations of this part by a preponderance of
261 the evidence, the court:

262 (a) shall grant the plaintiff appropriate legal or equitable relief; and

263 (b) may award reasonable attorney fees and costs to the prevailing party.

264 Section 12. Section **63G-20-303** is enacted to read:

265 **63G-20-303. Severability clause.**

266 If any provision of this bill or its application to any person or circumstance is found to
267 be unconstitutional, or in conflict with or superseded by federal law, the remainder of the bill
268 and the application of the provision to other persons or circumstances is not affected by the
269 finding.

270 Section 13. **Revisor instructions.**

271 It is the intent of the Legislature that, in preparing the Utah Code database for
272 publication, the Office of Legislative Research and General Counsel shall replace the phrases
273 "this bill" and "the bill" in Section [63G-20-303](#) with the bills designated chapter number in the

