

1 **RELIGIOUS LIBERTY RECOGNITION AND PROTECTION**

2 **ACT**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: LaVar Christensen**

6 Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

8 **General Description:**

9 This bill establishes the Religious Liberty Recognition and Protection Act and modifies  
10 provisions of the Utah Antidiscrimination Act and the Utah Fair Housing Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ establishes the Religious Liberty Recognition and Protection Act;
- 14 ▶ adds religious liberty provisions to the Utah Antidiscrimination Act and the Utah  
15 Fair Housing Act;
- 16 ▶ exempts the act from the provisions of the Governmental Immunity Act of Utah;
- 17 ▶ declares that the act is in furtherance of the rights and protections provided under  
18 the United States and Utah constitutions;
- 19 ▶ establishes that perfect toleration of religious sentiment is guaranteed and that rights  
20 of conscience shall never be infringed, as provided in the Utah Constitution;
- 21 ▶ requires government and private individuals that impose a law or action that  
22 substantially burdens another's religious liberty to balance certain requirements in  
23 order to lawfully enforce or recognize the law or action;
- 24 ▶ defines the act's relation to housing and employment regulations;
- 25 ▶ establishes that a person's lawful exercise of religious liberty under the act is a  
26 recognized defense to claims of discrimination; and  
27



28           ▶ permits a person or entity seeking relief under the act to obtain judicial relief,  
29 attorney fees, and costs against the government or other individuals or entities for  
30 violations of that person's religious liberty.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **34A-5-106**, as last amended by Laws of Utah 2013, Chapter 278

38           **57-21-3**, as last amended by Laws of Utah 1993, Chapter 114

39           **57-21-4**, as last amended by Laws of Utah 1993, Chapter 114

40           **57-21-5**, as last amended by Laws of Utah 2011, Chapter 366

41           **63G-7-301**, as last amended by Laws of Utah 2014, Chapter 145

42           **67-19-6.3**, as last amended by Laws of Utah 2006, Chapter 139

43 ENACTS:

44           **63G-19-101**, Utah Code Annotated 1953

45           **63G-19-102**, Utah Code Annotated 1953

46           **63G-19-103**, Utah Code Annotated 1953

47           **63G-19-104**, Utah Code Annotated 1953

48           **63G-19-105**, Utah Code Annotated 1953

49           **63G-19-106**, Utah Code Annotated 1953



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

52           Section 1. Section **34A-5-106** is amended to read:

53           **34A-5-106. Discriminatory or prohibited employment practices -- Approved**  
54 **practices.**

55           (1) All individuals are entitled to fair access to employment opportunities in the state.

56 Such opportunities are vital to the health and well being of all people. The laws of the state

57 shall be fairly applied in balanced recognition and protection of all affected interests and as

58 provided in Title 63G, Chapter 19, Religious Liberty Recognition and Protection Act, including

59 recognized principles of freedom of contract and employment-at-will considerations, when  
60 applicable.

61 (2) It is a discriminatory or prohibited employment practice to take any action  
62 described in Subsections [~~(1)~~] (2)(a) through (f).

63 (a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate  
64 any person, or to retaliate against, harass, or discriminate in matters of compensation or in  
65 terms, privileges, and conditions of employment against any person otherwise qualified,  
66 because of:

- 67 (A) race;
- 68 (B) color;
- 69 (C) sex;
- 70 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 71 (E) age, if the individual is 40 years of age or older;
- 72 (F) religion;
- 73 (G) national origin; or
- 74 (H) disability.

75 (ii) A person may not be considered "otherwise qualified," unless that person possesses  
76 the following required by an employer for any particular job, job classification, or position:

- 77 (A) education;
- 78 (B) training;
- 79 (C) ability, with or without reasonable accommodation;
- 80 (D) moral character;
- 81 (E) integrity;
- 82 (F) disposition to work;
- 83 (G) adherence to reasonable rules and regulations; and
- 84 (H) other job related qualifications required by an employer.

85 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means  
86 the payment of differing wages or salaries to employees having substantially equal experience,  
87 responsibilities, and skill for the particular job.

88 (B) Notwithstanding Subsection [~~(1)~~] (2)(a)(iii)(A):

89 (I) nothing in this chapter prevents increases in pay as a result of longevity with the

90 employer, if the salary increases are uniformly applied and available to all employees on a  
91 substantially proportional basis; and

92 (II) nothing in this section prohibits an employer and employee from agreeing to a rate  
93 of pay or work schedule designed to protect the employee from loss of Social Security payment  
94 or benefits if the employee is eligible for those payments.

95 (b) An employment agency may not:

96 (i) refuse to list and properly classify for employment, or refuse to refer an individual  
97 for employment, in a known available job for which the individual is otherwise qualified,  
98 because of:

99 (A) race;

100 (B) color;

101 (C) sex;

102 (D) pregnancy, childbirth, or pregnancy-related conditions;

103 (E) religion;

104 (F) national origin;

105 (G) age, if the individual is 40 years of age or older; or

106 (H) disability; or

107 (ii) comply with a request from an employer for referral of applicants for employment  
108 if the request indicates either directly or indirectly that the employer discriminates in  
109 employment on account of:

110 (A) race;

111 (B) color;

112 (C) sex;

113 (D) pregnancy, childbirth, or pregnancy-related conditions;

114 (E) religion;

115 (F) national origin;

116 (G) age, if the individual is 40 years of age or older; or

117 (H) disability.

118 (c) A labor organization may not exclude any individual otherwise qualified from full  
119 membership rights in the labor organization, expel the individual from membership in the labor  
120 organization, or otherwise discriminate against or harass any of the labor organization's

121 members in full employment of work opportunity, or representation, because of:

- 122 (i) race;
- 123 (ii) sex;
- 124 (iii) pregnancy, childbirth, or pregnancy-related conditions;
- 125 (iv) religion;
- 126 (v) national origin;
- 127 (vi) age, if the individual is 40 years of age or older; or
- 128 (vii) disability.

129 (d) Unless based upon a bona fide occupational qualification, or required by and given  
130 to an agency of government for security reasons, an employer, employment agency, or labor  
131 organization may not print, or circulate, or cause to be printed or circulated, any statement,  
132 advertisement, or publication, use any form of application for employment or membership, or  
133 make any inquiry in connection with prospective employment or membership that expresses,  
134 either directly or indirectly:

- 135 (i) any limitation, specification, or discrimination as to:
  - 136 (A) race;
  - 137 (B) color;
  - 138 (C) religion;
  - 139 (D) sex;
  - 140 (E) pregnancy, childbirth, or pregnancy-related conditions;
  - 141 (F) national origin;
  - 142 (G) age, if the individual is 40 years of age or older; or
  - 143 (H) disability; or

144 (ii) the intent to make any limitation, specification, or discrimination described in  
145 Subsection ~~(1)~~ (2)(d)(i).

146 (e) A person, whether or not an employer, an employment agency, a labor organization,  
147 or the employees or members of an employer, employment agency, or labor organization, may  
148 not:

- 149 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a  
150 discriminatory or prohibited employment practice;
- 151 (ii) obstruct or prevent any person from complying with this chapter, or any order

152 issued under this chapter; or

153 (iii) attempt, either directly or indirectly, to commit any act prohibited in this section.

154 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational  
155 school, providing, coordinating, or controlling apprenticeship programs, or providing,  
156 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining  
157 programs may not:

158 (A) deny to, or withhold from, any qualified person, the right to be admitted to, or  
159 participate in any apprenticeship training program, on-the-job-training program, or other  
160 occupational instruction, training or retraining program because of:

161 (I) race;

162 (II) color;

163 (III) sex;

164 (IV) pregnancy, childbirth, or pregnancy-related conditions;

165 (V) religion;

166 (VI) national origin;

167 (VII) age, if the individual is 40 years of age or older; or

168 (VIII) disability;

169 (B) discriminate against or harass any qualified person in that person's pursuit of  
170 programs described in Subsection ~~[(1)]~~ (2)(f)(i)(A), or to discriminate against such a person in  
171 the terms, conditions, or privileges of programs described in Subsection ~~[(1)]~~ (2)(f)(i)(A),  
172 because of:

173 (I) race;

174 (II) color;

175 (III) sex;

176 (IV) pregnancy, childbirth, or pregnancy-related conditions;

177 (V) religion;

178 (VI) national origin;

179 (VII) age, if the individual is 40 years of age or older; or

180 (VIII) disability; or

181 (C) except as provided in Subsection ~~[(1)]~~ (2)(f)(ii), print, publish, or cause to be  
182 printed or published, any notice or advertisement relating to employment by the employer, or

183 membership in or any classification or referral for employment by a labor organization, or  
184 relating to any classification or referral for employment by an employment agency, indicating  
185 any preference, limitation, specification, or discrimination based on:

- 186 (I) race;
- 187 (II) color;
- 188 (III) sex;
- 189 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 190 (V) religion;
- 191 (VI) national origin;
- 192 (VII) age, if the individual is 40 years of age or older; or
- 193 (VIII) disability.

194 (ii) Notwithstanding Subsection [~~(1)~~] (2)(f)(i)(C), if the following is a bona fide  
195 occupational qualification for employment, a notice or advertisement described in Subsection  
196 [~~(1)~~] (2)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based  
197 on:

- 198 (A) race;
- 199 (B) color;
- 200 (C) religion;
- 201 (D) sex;
- 202 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 203 (F) age;
- 204 (G) national origin; or
- 205 (H) disability.

206 [~~(2)~~] (3) Nothing contained in Subsections [~~(1)~~] (2)(a) through [~~(1)~~] (f) shall be  
207 construed to prevent:

- 208 (a) the termination of employment of an individual who, with or without reasonable  
209 accommodation, is physically, mentally, or emotionally unable to perform the duties required  
210 by that individual's employment;
- 211 (b) the variance of insurance premiums or coverage on account of age; or
- 212 (c) a restriction on the activities of individuals licensed by the liquor authority with  
213 respect to persons under 21 years of age.

214           ~~[(3)]~~ (4) (a) It is not a discriminatory or prohibited employment practice:  
215           (i) for an employer to hire and employ employees, for an employment agency to  
216 classify or refer for employment any individual, for a labor organization to classify its  
217 membership or to classify or refer for employment any individual or for an employer, labor  
218 organization, or joint labor-management committee controlling apprenticeship or other training  
219 or retraining programs to admit or employ any individual in any such program, on the basis of  
220 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or  
221 disability in those certain instances where religion, sex, pregnancy, childbirth, or  
222 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,  
223 or disability is a bona fide occupational qualification reasonably necessary to the normal  
224 operation of that particular business or enterprise;  
225           (ii) for a school, college, university, or other educational institution to hire and employ  
226 employees of a particular religion if:  
227           (A) the school, college, university, or other educational institution is, in whole or in  
228 substantial part, owned, supported, controlled, or managed by a particular religious corporation,  
229 association, or society; or  
230           (B) the curriculum of the school, college, university, or other educational institution is  
231 directed toward the propagation of a particular religion;  
232           (iii) for an employer to give preference in employment to:  
233           (A) the employer's:  
234           (I) spouse;  
235           (II) child; or  
236           (III) son-in-law or daughter-in-law;  
237           (B) any person for whom the employer is or would be liable to furnish financial  
238 support if those persons were unemployed;  
239           (C) any person to whom the employer during the preceding six months has furnished  
240 more than one-half of total financial support regardless of whether or not the employer was or  
241 is legally obligated to furnish support; or  
242           (D) any person whose education or training was substantially financed by the employer  
243 for a period of two years or more.  
244           (b) Nothing in this chapter applies to any business or enterprise on or near an Indian



245 reservation with respect to any publicly announced employment practice of the business or  
246 enterprise under which preferential treatment is given to any individual because that individual  
247 is a native American Indian living on or near an Indian reservation.

248 (c) Nothing in this chapter shall be interpreted to require any employer, employment  
249 agency, labor organization, vocational school, joint labor-management committee, or  
250 apprenticeship program subject to this chapter to grant preferential treatment to any individual  
251 or to any group because of the race, color, religion, sex, age, national origin, or disability of the  
252 individual or group on account of an imbalance which may exist with respect to the total  
253 number or percentage of persons of any race, color, religion, sex, age, national origin, or  
254 disability employed by any employer, referred or classified for employment by an employment  
255 agency or labor organization, admitted to membership or classified by any labor organization,  
256 or admitted to or employed in, any apprenticeship or other training program, in comparison  
257 with the total number or percentage of persons of that race, color, religion, sex, age, national  
258 origin, or disability in any community or county or in the available work force in any  
259 community or county.

260 [~~(4)~~] (5) It is not a discriminatory or prohibited practice with respect to age to observe  
261 the terms of a bona fide seniority system or any bona fide employment benefit plan such as a  
262 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this  
263 chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.

264 [~~(5)~~] (6) Notwithstanding Subsection [~~(4)~~] (5), or any other statutory provision to the  
265 contrary, a person may not be subject to involuntary termination or retirement from  
266 employment on the basis of age alone, if the individual is 40 years of age or older, except:

267 (a) under Subsection [~~(6)~~] (7); and

268 (b) when age is a bona fide occupational qualification.

269 [~~(6)~~] (7) Nothing in this section prohibits compulsory retirement of an employee who  
270 has attained at least 65 years of age, and who, for the two-year period immediately before  
271 retirement, is employed in a bona fide executive or a high policymaking position, if:

272 (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit  
273 from the employee's employer's pension, profit-sharing, savings, or deferred compensation  
274 plan, or any combination of those plans; and

275 (b) the benefit described in Subsection [~~(6)~~] (7)(a) equals, in the aggregate, at least

276 \$44,000.

277 Section 2. Section 57-21-3 is amended to read:

278 **57-21-3. Exemptions -- Sale by private individuals -- Nonprofit organizations --**  
279 **Noncommercial transactions.**

280 (1) This chapter does not apply to any single-family dwelling unit sold or rented by its  
281 owner if:

282 (a) the owner is not a partnership, association, corporation, or other business entity;

283 (b) the owner does not own any interest in four or more single-family dwelling units  
284 held for sale or lease at the same time;

285 (c) during a 24-month period, the owner does not sell two or more single-family  
286 dwelling units in which the owner was not residing or was not the most recent resident at the  
287 time of sale;

288 (d) the owner does not retain or use the facilities or services of any real estate broker or  
289 salesperson; and

290 (e) the owner does not use any discriminatory housing practice under Subsection  
291 57-21-5[(2)](3) in the sale or rental of the dwelling.

292 (2) This chapter does not apply to a temporary or permanent residence facility operated  
293 by a nonprofit or charitable organization, including any dormitory operated by a public or  
294 private educational institution, if the discrimination is by sex or familial status for reasons of  
295 personal modesty or privacy or in the furtherance of a religious institution's free exercise of  
296 religious rights under the First Amendment of the United States Constitution.

297 (3) This chapter, except for Subsection 57-21-5[(2)](3), does not apply to the rental of  
298 a room in the dwelling by an owner-occupant of a single-family dwelling to another person if  
299 the dwelling is designed for occupancy by four or fewer families, and the owner-occupant  
300 resides in one of the units.

301 (4) This chapter does not prohibit a religious organization, association, or society, or  
302 any nonprofit institution or organization operated, supervised, or controlled by or in  
303 conjunction with a religious organization, association, or society, from limiting the sale, rental,  
304 or occupancy of dwellings it owns or operates for primarily noncommercial purposes to  
305 persons of the same religion, or from giving preference to such persons, unless membership in  
306 the religion is restricted by race, color, sex, or national origin.

307 (5) This chapter does not prohibit a private club not open to the public, including  
308 fraternities and sororities associated with institutions of higher education, from limiting the  
309 rental or occupancy of lodgings to members or from giving preference to its members, but only  
310 if it owns or operates the lodgings as an incident to its primary purpose and not for a  
311 commercial purpose.

312 (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and  
313 conditions, including financial obligations, of a lease, rental agreement, contract of purchase or  
314 sale, mortgage, trust deed, or other financing agreement.

315 (7) This chapter does not prohibit any nonprofit educational institution from:

316 (a) requiring its single students to live in housing approved, operated, or owned by the  
317 institution;

318 (b) segregating housing that the institution approves, operates, or owns on the basis of  
319 sex or familial status or both for reasons of personal modesty or privacy, or in the furtherance  
320 of a religious institution's free exercise of religious rights under the First Amendment of the  
321 United States Constitution; or

322 (c) otherwise assisting others in making sex-segregated housing available to students as  
323 may be permitted by regulations implementing the federal Fair Housing Amendments Act of  
324 1988 and Title IX of the Education Amendments of 1972.

325 (8) This chapter does not prohibit any reasonable local, state, or federal restrictions  
326 regarding the maximum number of occupants permitted to occupy a dwelling.

327 (9) The provisions pertaining to familial status do not apply to the existence,  
328 development, sale, rental, advertisement, or financing of any apartment complex,  
329 condominium, or other housing development designated as housing for older persons, as  
330 defined by Title VIII of the Civil Rights Act of 1968, as amended.

331 Section 3. Section **57-21-4** is amended to read:

332 **57-21-4. Conduct and requirements excluded -- Defenses.**

333 (1) Except as provided in Subsection **57-21-5**~~(4)~~(5), this chapter does not:

334 (a) require any person to exercise a higher degree of care toward a person who has a  
335 disability than toward a person who does not have a disability;

336 (b) relieve any person of obligations generally imposed on all persons regardless of  
337 disability in a written lease, rental agreement, contract of purchase or sale, mortgage, trust

338 deed, or other financing agreement; [~~or~~]

339 (c) prohibit any program, service, facility, or privilege intended to habilitate,  
340 rehabilitate, or accommodate a person with a disability[-]; or

341 (d) preclude or deny lawful exercise of rights of religious liberty and conscience as  
342 recognized and protected under Title 63G, Chapter 19, Religious Liberty Recognition and  
343 Protection Act.

344 (2) It is a defense to a complaint or action brought under this chapter that the  
345 complainant has a disability that, in the circumstances and even with reasonable  
346 accommodation, poses a serious threat to the health or safety of the complainant or others. The  
347 burden of proving this defense is upon the respondent.

348 Section 4. Section 57-21-5 is amended to read:

349 **57-21-5. Discriminatory practices enumerated -- Protected persons enumerated.**

350 (1) All individuals are entitled to fair access to housing under this chapter. All  
351 protections and requirements shall be reasonably and fairly applied with the greatest sensitivity  
352 and balanced recognition of the liberties and rights of all individuals under the Utah  
353 Constitution, the United States Constitution, and Title 63G, Chapter 19, Religious Liberty  
354 Recognition and Protection Act.

355 (2) It is a discriminatory housing practice to do any of the following because of a  
356 person's race, color, religion, sex, national origin, familial status, source of income, or  
357 disability:

358 (a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the  
359 sale or rental, or otherwise deny or make unavailable any dwelling from any person;

360 (b) discriminate against any person in the terms, conditions, or privileges of the sale or  
361 rental of any dwelling or in providing facilities or services in connection with the dwelling; or

362 (c) represent to any person that any dwelling is not available for inspection, sale, or  
363 rental when in fact the dwelling is available.

364 [~~(2)~~] (3) It is a discriminatory housing practice to make a representation orally or in  
365 writing or make, print, circulate, publish, post, or cause to be made, printed, circulated,  
366 published, or posted any notice, statement, or advertisement, or to use any application form for  
367 the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation,  
368 or discrimination based on race, color, religion, sex, national origin, familial status, source of

369 income, or disability, or expresses any intent to make any such preference, limitation, or  
370 discrimination.

371 ~~[(3)]~~ (4) It is a discriminatory housing practice to induce or attempt to induce, for  
372 profit, any person to buy, sell, or rent any dwelling by making representations about the entry  
373 or prospective entry into the neighborhood of persons of a particular race, color, religion, sex,  
374 national origin, familial status, source of income, or disability.

375 ~~[(4)]~~ (5) A discriminatory housing practice includes:

376 (a) a refusal to permit, at the expense of the person with a disability, reasonable  
377 modifications of existing premises occupied or to be occupied by the person if the  
378 modifications are necessary to afford that person full enjoyment of the premises, except that in  
379 the case of a rental, the landlord, where it is reasonable to do so, may condition permission for  
380 a modification on the renter agreeing to restore the interior of the premises, when reasonable, to  
381 the condition that existed before the modification, reasonable wear and tear excepted;

382 (b) a refusal to make reasonable accommodations in rules, policies, practices, or  
383 services when the accommodations may be necessary to afford the person equal opportunity to  
384 use and enjoy a dwelling; and

385 (c) in connection with the design and construction of covered multifamily dwellings for  
386 first occupancy after March 13, 1991, a failure to design and construct those dwellings in a  
387 manner that:

388 (i) the dwellings have at least one building entrance on an accessible route, unless it is  
389 impracticable to have one because of the terrain or unusual characteristics of the site; and

390 (ii) with respect to dwellings with a building entrance on an accessible route:

391 (A) the public use and common use portions of the dwelling are readily accessible to  
392 and usable by a person with a disability;

393 (B) all the doors designed to allow passage into and within the dwellings are  
394 sufficiently wide to allow passage by a person with a disability who is in a wheelchair; and

395 (C) all premises within these dwellings contain the following features of adaptive  
396 design:

397 (I) an accessible route into and through the dwelling;

398 (II) light switches, electrical outlets, thermostats, and other environmental controls in  
399 accessible locations;

400 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and  
401 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver  
402 about and use the space.

403 [~~5~~] (6) This section also applies to discriminatory housing practices because of race,  
404 color, religion, sex, national origin, familial status, source of income, or disability based upon a  
405 person's association with another person.

406 Section 5. Section **63G-7-301** is amended to read:

407 **63G-7-301. Waivers of immunity -- Exceptions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

482 (i) the trail is designated under a general plan adopted by a municipality under Section  
483 [10-9a-401](#) or by a county under Section [17-27a-401](#);

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

488 (iii) the written agreement:

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

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



- 493 (o) research or implementation of cloud management or seeding for the clearing of fog;
- 494 (p) the management of flood waters, earthquakes, or natural disasters;
- 495 (q) the construction, repair, or operation of flood or storm systems;
- 496 (r) the operation of an emergency vehicle, while being driven in accordance with the
- 497 requirements of Section 41-6a-212;
- 498 (s) the activities of:
  - 499 (i) providing emergency medical assistance;
  - 500 (ii) fighting fire;
  - 501 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
  - 502 (iv) emergency evacuations;
  - 503 (v) transporting or removing injured persons to a place where emergency medical
  - 504 assistance can be rendered or where the person can be transported by a licensed ambulance
  - 505 service; or
  - 506 (vi) intervening during dam emergencies;
- 507 (t) the exercise or performance, or the failure to exercise or perform, any function
- 508 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 509 (u) unauthorized access to government records, data, or electronic information systems
- 510 by any person or entity; or
- 511 (v) injury related to the activity of wildlife, as defined in Section 23-13-2, that arises
- 512 during the use of a public or private road.

513 Section 6. Section 63G-19-101 is enacted to read:

514 **CHAPTER 19. RELIGIOUS LIBERTY RECOGNITION AND PROTECTION ACT**

515 **63G-19-101. Title.**

516 This chapter is known as the "Religious Liberty Recognition and Protection Act."

517 Section 7. Section 63G-19-102 is enacted to read:

518 **63G-19-102. Definitions.**

519 As used in this chapter:

520 (1) "Civil capacities" means the inherent and inalienable constitutional and statutory  
521 rights and freedoms of persons and the lawful and protected activities, associations, and  
522 exercise of those rights and freedoms in relation to others.

523 (2) "Goods" means:

- 524 (a) property; or
- 525 (b) economic or business interests or activities.
- 526 (3) "Person" means:
- 527 (a) an individual;
- 528 (b) a closely held business or entity;
- 529 (c) a religious institution;
- 530 (d) a religious institution's wholly or partially owned subsidiary or affiliate;
- 531 (e) a representative of a religious institution; or
- 532 (f) an entity that is recognized under applicable law as an expressive association.
- 533 (4) "Religious liberty" means the free exercise of religion and rights of conscience,
- 534 including acts or refusals to act that are substantially motivated by sincerely held religious
- 535 principles, beliefs, and honest convictions.

536 (5) "Substantial burden on religious liberty" means a private action or demand, or a  
 537 government law, statute, ordinance, or regulation that:

- 538 (a) infringes on religious liberty, has the effect of coercing a person to act, or requires a
- 539 person to act or significantly modify behavior in a way that is contrary to sincerely held
- 540 religious principles and beliefs and rights of conscience;
- 541 (b) compels, restrains, or burdens a person in that person's goods or civil capacities in a
- 542 way that infringes on a person's religious liberty; or
- 543 (c) restricts or denies a person's religious speech and the free expression of religious
- 544 and moral beliefs, duties, or practices.

545 Section 8. Section **63G-19-103** is enacted to read:

546 **63G-19-103. Recognition and protection of religious liberty -- Compelling interest.**

547 The rights and protections of religious liberty afforded by this chapter are in furtherance  
 548 of those provided under the constitutions of this state and the United States. As provided in the  
 549 constitution of this state, perfect toleration of religious sentiment is guaranteed and rights of  
 550 conscience shall never be infringed, and all citizens of this state, both male and female, shall  
 551 enjoy equally all civil, political, and religious rights and privileges. There is a substantial  
 552 public and government interest in protecting order and morality.

553 Section 9. Section **63G-19-104** is enacted to read:

554 **63G-19-104. Prohibitions on actions -- Compelling interest and individual**

555 **protections.**

556 (1) Except in the most limited circumstances, no law, regulation, or action by the state  
557 or a political subdivision of the state, or other private action or demand, may substantially  
558 burden a person's religious liberty unless the state, political subdivision, or individual or entity  
559 imposing the burden demonstrates by clear and convincing evidence that:

560 (a) the application of the burden to the person is:

561 (i) in furtherance of a compelling state interest required to protect public health and  
562 safety; and

563 (ii) strictly necessary to fulfill a constitutionally recognized and paramount interest of  
564 public health and safety; and

565 (b) there are no less restrictive means available to properly achieve and satisfy the  
566 narrow public interest.

567 (2) The exercise of religious liberty and recognized protections under this chapter shall  
568 not be substantially burdened contrary to this chapter.

569 Section 10. Section **63G-19-105** is enacted to read:

570 **63G-19-105. Application of act to certain provisions.**

571 All individuals are entitled to fair access to employment and housing under Title 34A,  
572 Chapter 5, Utah Antidiscrimination Act, and Title 57, Chapter 21, Utah Fair Housing Act,  
573 subject to the fair and balanced application of rights of religious liberty and rights of  
574 conscience held by others as recognized and protected in this chapter.

575 Section 11. Section **63G-19-106** is enacted to read:

576 **63G-19-106. Judicial relief.**

577 (1) Subject to the provisions of Section [63G-19-103](#), the exercise of religious liberty is:

578 (a) a recognized exemption to otherwise generally applicable laws and a valid defense  
579 to claims of discrimination by others; and

580 (b) a proper basis for legal and equitable affirmative relief, claims, remedies, and  
581 actions when necessary to enforce such protections as provided in this chapter.

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

585 Section 12. Section **67-19-6.3** is amended to read:

586           **67-19-6.3. Equal employment opportunity plan.**

587           (1) In conjunction with the director's duties under Section 67-19-6, and  
588 notwithstanding the general prohibition in Subsection 34A-5-106[~~(3)~~](4)(c), the executive  
589 director shall prepare an equal employment opportunity plan for state employment consistent  
590 with the guidelines provided in federal equal employment opportunity laws and in related  
591 federal regulations.

592           (2) The equal employment opportunity plan required by this section applies only to  
593 state career service employees described in Section 67-19-15.

594           (3) The Legislature shall review the equal employment opportunity plan required by  
595 this section before it may be implemented.

596           (4) Nothing in this section requires the establishment of hiring quotas or preferential  
597 treatment of any identifiable group.

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**Legislative Review Note**  
**as of 2-11-15 9:06 AM**

**Office of Legislative Research and General Counsel**