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 a willing designee of the county clerk, to be available during business hours to solemnize a legal marriage;
- removes a requirement that a designee for solemnizing marriages be an office employee;
- creates a new chapter to establish certain religious protections;
- defines terms;
- requires that the chapter be broadly construed in favor of broad protection of religious beliefs, exercises, and conscience;
- addresses the scope of state and local governments' authority to enforce certain laws;
- provides protections for a religious official or organization that declines to solemnize or recognize for ecclesiastical purposes a marriage because of the official's or organization's religious beliefs;
- prohibits government from:

- removing a religious official's or organization's authority to solemnize a marriage based on religious beliefs;
- requiring a religious official or organization to provide services or accommodations for a marriage that is contrary to the official's or organization's religious beliefs;
- requiring a religious official or organization to promote marriage that is contrary to the official's or organization's religious beliefs; and
- retaliating against an individual, a religious official, or a religious organization for exercising protections contained in this legislation;

▸ prohibits government and a government officials from taking negative action against a licensee who holds a professional or business license based on the licensee's beliefs or the licensee's lawful expression of those beliefs in a nonprofessional setting;

▸ prohibits an individual from requiring a religious official or organization to provide services or accommodations for a marriage that is contrary to the official's or organization's religious beliefs;

▸ provides remedies for violations; and

▸ provides a severability clause and revisor instructions.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

63G-20-101, Utah Code Annotated 1953

63G-20-102, Utah Code Annotated 1953

63G-20-103, Utah Code Annotated 1953

63G-20-201, Utah Code Annotated 1953

63G-20-202, Utah Code Annotated 1953

63G-20-203, Utah Code Annotated 1953

63G-20-204, Utah Code Annotated 1953

63G-20-301, Utah Code Annotated 1953

63G-20-302, Utah Code Annotated 1953

63G-20-303, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

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

17-20-4. Duties of county clerk.

A county clerk shall:

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

(2) establish policies to ensure that the county clerk, or a designee of the county clerk who is willing, is available during business hours to solemnize a legal marriage for which a marriage license has been issued;

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

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

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

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

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

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

[~~(1) Marriages may be solemnized by the following persons only:~~]

(1) Except for a county clerk, or a county clerk's designee, as provided below, the following persons may solemnize a marriage at that person's discretion:

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

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

(ii) 18 years of age or older;

(b) Native American spiritual advisors;

(c) the governor;

(d) the lieutenant governor;

(e) mayors of municipalities or county executives;

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

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

(h) judges or magistrates of the United States;

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

(j) the president of the Senate;

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

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

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

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

(b) date of the license's issuance.

(3) As used in this section:

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

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

(ii) a judge of a court of appeals;

(iii) a judge of a district court;

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

(v) a judge of a bankruptcy court;

(vi) a judge of a tax court; or

(vii) a United States magistrate.

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

(A) [~~(I)~~] leads, instructs, or facilitates a Native American religious ceremony or service[~~;~~] or [~~(II)~~] provides religious counseling; and

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

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

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

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

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

Part 1. General Provisions

63G-20-101. Title.

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

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

63G-20-102. Definitions.

As used in this chapter:

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

(a) is taken in response to a person's exercise of a protection contained in Section 17-20-4, 63G-20-201, or 63G-20-301; and

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

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

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

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

(3) "Religious organization" means:

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

(b) a religious corporation sole; or

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

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

(5) "State or local government" means:

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

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

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

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

63G-20-103. Interpretation.

(1) Utah state courts and courts of the United States shall broadly construe this chapter

in favor of a broad protection of religious beliefs, exercises, and conscience to the maximum extent permitted by the terms of this chapter and the Utah and United States constitutions.

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

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

(b) the application of Utah's criminal laws;

(c) the application of Utah's laws barring discrimination in employment or housing; or

(d) the application of Utah's laws barring discrimination in public accommodations, subject to Section 63G-20-201.

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

Part 2. Government Entities Prohibited from Certain Burdens on Religious Beliefs

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

Notwithstanding any other provision of law, a state or local government or a state or local government official may not:

(1) require a religious official, when acting as such, or religious organization to solemnize or recognize for ecclesiastical purposes a marriage that is contrary to that religious official's or religious organization's religious beliefs;

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

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

(4) require a religious official, when acting as such, or religious organization to

promote marriage through religious programs, counseling, courses, or retreats in a way that is contrary to that religious official's or religious organization's religious beliefs.

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

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

Notwithstanding any other law, a state or local government or a state or local government official may not engage in government retaliation against an individual, a religious official when acting as such, or a religious organization for exercising the protections contained in Section 17-20-4, 63G-20-201, or 63G-20-301.

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

63G-20-203. Prohibition on licensing disadvantages based on beliefs.

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

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

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

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

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

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

(i) seek injunctive or other civil relief to require a state or local government or a state or local government official to comply with the requirements of this part; or

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

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

(2) (a) A person aggrieved by a violation of this part may bring a civil action in district

court.

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

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

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

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

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

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

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

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

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

(1) A person aggrieved by a violation of this part may bring a civil action in district court.

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

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

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

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

63G-20-303. Severability clause.

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

Section 13. **Revisor instructions.**

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the phrases "this bill" and "the bill" in Section 63G-20-303 with the bill's designated chapter number in the 2015 Laws of Utah.