

HB0460S03 compared with HB0460S02

~~deleted text~~ shows text that was in HB0460S02 but was deleted in HB0460S03.

inserted text shows text that was not in HB0460S02 but was inserted into HB0460S03.

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Representative Michael J. Petersen proposes the following substitute bill:

GOVERNMENT EMPLOYEE CONSCIENCE PROTECTION

AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael J. Petersen

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill addresses required reasonable accommodations for government employees in certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a governmental entity to grant an employee's request to be relieved from performing a certain task if granting the request would not place an undue hardship on the governmental entity;
- ▶ creates protections for employees who request to be relieved from a certain task;

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and

- ▶ creates a cause of action for a government employee whose request to be relieved from performing a certain task was denied.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[63G-2-302, as last amended by Laws of Utah 2023, Chapters 329, 471](#)

ENACTS:

67-27-105, Utah Code Annotated 1953

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

Section 1. Section 63G-2-302 is amended to read:

63G-2-302. Private records.

- (1) The following records are private:
 - (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
 - (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
 - (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
 - (d) records received by or generated by or for:
 - (i) the Independent Legislative Ethics Commission, except for:
 - (A) the commission's summary data report that is required under legislative rule; and
 - (B) any other document that is classified as public under legislative rule; or
 - (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
 - (e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review

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of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) social security number, or last four digits of the social security number;

(iii) email address;

(iv) date of birth; or

(v) phone number;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or 20A-2-204(4)(b);

(l) a voter registration record that is withheld under Subsection 20A-2-104(7);

(m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any verification submitted in support of the form;

(n) a record that:

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- (i) contains information about an individual;
- (ii) is voluntarily provided by the individual; and
- (iii) goes into an electronic database that:
 - (A) is designated by and administered under the authority of the Chief Information Officer; and
 - (B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;
- (o) information provided to the Commissioner of Insurance under:
 - (i) Subsection 31A-23a-115(3)(a);
 - (ii) Subsection 31A-23a-302(4); or
 - (iii) Subsection 31A-26-210(4);
- (p) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- (q) information provided by an offender that is:
 - (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
 - (ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);
- (r) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;
- (s) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;
- (t) an email address provided by a military or overseas voter under Section 20A-16-501;
- (u) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- (v) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, except for:

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(i) the commission's summary data report that is required in Section 63A-15-202; and
(ii) any other document that is classified as public in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;

(w) a record described in Section 53G-9-604 that verifies that a parent was notified of an incident or threat;

(x) a criminal background check or credit history report conducted in accordance with Section 63A-3-201;

(y) a record described in Subsection 53-5a-104(7);

(z) on a record maintained by a county for the purpose of administering property taxes, an individual's:

(i) email address;

(ii) phone number; or

(iii) personal financial information related to a person's payment method;

(aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an exemption, deferral, abatement, or relief under:

(i) Title 59, Chapter 2, Part 11, Exemptions;

(ii) Title 59, Chapter 2, Part 12, Property Tax Relief;

(iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or

(iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;

(bb) a record provided by the State Tax Commission in response to a request under Subsection 59-1-403(4)(y)(iii);

(cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual child welfare case, as described in Subsection 36-33-103(3); and

(dd) a record relating to drug or alcohol testing of a state employee under Section 63A-17-1004[-]; and

(ee) a record including confidential information as that term is defined in Section 67-27-105.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection

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63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 26B-6-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics,

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doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section ~~f1~~2. Section **67-27-105** is enacted to read:

67-27-105. Reasonable accommodations for government employees.

(1) As used in this section:

(a) "Confidential information" means any:

(i) information related to an employee's request under Subsection (2); or

(ii) record created under Subsection (3) or (4).

(b) "Conscience" means a sincerely held belief as to the rightness or wrongness of an action or inaction ~~f that guides all aspects of an individual's choices~~.

(~~f~~~~b~~~~c~~) (i) "Employee" means an individual employed by a governmental entity.

(ii) "Employee" does not include:

(A) an elected official;

(B) an individual employed by the Legislature; or

(C) an individual who is appointed or employed to be on an elected official's personal staff to assist the elected official in fulfilling the elected official's duties.

(~~f~~~~c~~~~d~~) "First responder" means:

(i) a law enforcement officer, as that term is defined in Section 53-13-103;

(ii) an emergency medical technician, as that term is defined in Section 53-2e-101;

(iii) an advanced emergency medical technician, as that term is defined in Section 53-2e-101;

(iv) a paramedic, as that term is defined in Section 53-2e-101;

(v) a firefighter, as that term is defined in Section 53B-8c-102; or

(vi) a dispatcher, as that term is defined in Section 53-6-102.

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~~(f)(e)~~ "Governmental entity" means:

(i) the state;

(ii) a political subdivision of the state, including a county, city, town, school district, special district, institution of higher education, or special service district; or

(iii) an entity created by the state, including an agency, board, bureau, commission, committee, department, division, institution, instrumentality, or office.

~~(f)(f)~~ "Retaliatory action" means any of the following actions taken by a governmental entity against an employee as a result of the employee filing a request under Subsection (2):

(i) a dismissal;

(ii) a reduction of compensation;

(iii) a failure to increase compensation by an amount that the employee is otherwise entitled to or was promised;

(iv) a failure to promote if the employee would otherwise be promoted; or

(v) a threat to take an action described in Subsections (1)~~(f)(f)~~(i) through (iv).

~~(f)(g)~~ "Task" means a specific job, duty, or function.

~~(f)(h)~~ "Undue hardship" means a substantial ~~increase in costs to~~ burden, privation, or adversity on a governmental ~~entity's budget, or a substantial disruption of a governmental entity's operations,~~ entity that would result from granting an ~~employee being~~ employee's request to be relieved from performing a certain task when considering all relevant factors, including:

(i) the practical impact on the governmental entity in light of the nature, size, and operating cost of the governmental entity;

(ii) the disruption of the governmental entity's operations;

(iii) the nature of the employee's duties;

(iv) the number of employees the governmental entity will be required to grant a request to if the governmental entity grants the employee's request;

(v) the type of workplace; and

(vi) the number of requests by the employee in the preceding 12 months from the day on which the employee submitted the request.

(2) (a) Except as provided in Subsection (2)(b), a governmental entity may not deny an employee's reasonable request to be relieved from performing a certain task if:

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(i) performing the task would conflict with the employee's sincerely held religious beliefs or conscience;

~~{ (ii) the employee's asserted religious beliefs or conscience described in Subsection (2)(a)(i) is not asserted for an improper purpose;~~

~~{ (iii) ii) the employee has complied with the requirements of Subsection (3); and (iv) iii) relieving the employee from the task would not impose an undue hardship on the governmental entity.~~

(b) A governmental entity is not required to grant an employee's request under Subsection (2)(a) if:

(i) the request is to be relieved from performing a task that is part of training or safety instructions directly related to the employee's employment;

(ii) granting the request would result in a deficit in the amount of work for which the employee is compensated;

(iii) granting the request would create a conflict with an existing legal obligation and the governmental entity cannot avoid the conflict if the governmental entity grants the employee's request under Subsection (3); ~~{ or }~~

(iv) the employee is a first responder and the request by the employee under Subsection (2)(a) is to be relieved from performing a task that involves protecting the safety of the public; ~~{~~

~~{ (c) In making a determination as to whether an employee's request under Subsection (2) will cause undue hardship to the governmental entity through a substantial disruption of a governmental entity's operations, the governmental entity may take into account the number of previous requests the employee has made in the preceding 12 months from the day on which the employee submitted the request.~~

~~{ (3) (a); or~~

~~{ (v) the employee's asserted religious beliefs or conscience described in Subsection (2)(a)(i) is being asserted for an improper purpose.~~

(3) Except as provided in Subsection (3)(b), an employee seeking to be relieved from performing a certain task under Subsection (2) shall ~~{, within at least};~~

(a) (i) as soon as practicable but not more than two ~~{ business }~~ days after the day on which the employee received the assignment to perform the task, submit a written request to the employee's supervisor providing an explanation as to why the task would conflict with the

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employee's sincerely held religious beliefs or conscience ~~};~~ or

~~(b)ii) If an~~ if the employee receives ~~an~~ the assignment to perform ~~a~~ the task ~~that is to be performed~~ within two ~~business~~ days after the day on which the employee received the assignment ~~and seeks to be relieved from performing the task under Subsection (2)~~, ~~the employee shall~~ orally or in writing immediately request to be relieved from performing the task; and

(b) provide the governmental entity with a reasonable opportunity to grant the employee's request or otherwise address the employee's concerns.

(4) (a) Except as provided in Subsection (4)(c), a governmental entity that receives a request under Subsection (3) shall respond to the request ~~;~~

~~—— (i) within 10 business~~ as soon as practicable but at least five days ~~after~~ before the day on which the ~~request was received; or~~

~~—— (ii) before the assigned~~ certain task is required to be performed ~~if the assigned task is to be performed within 10 business days after the day on which the employee received the assignment to perform the task~~.

(b) If a governmental entity denies an employee's request submitted ~~under~~ as described in Subsection (3), the governmental entity shall include in the response required under Subsection (4)(a):

(i) an explanation of the governmental entity's decision and why:

(A) granting the request would impose an undue hardship on the governmental entity;

or

(B) the governmental entity is not required to grant the employee's request for a reason described in Subsection (2)(b); and

(ii) that the employee may seek redress in a court as described in Subsection (6) if the employee has exhausted the internal process allowing the governmental entity to address the employee's concerns under Subsection (3)(b).

(c) An employee and governmental entity may agree in writing to waive or extend the time ~~limits~~ limit described in Subsection (4)(a).

(5) (a) A governmental entity may adopt a policy detailing the requirements of this section.

(b) A policy adopted under Subsection (5)(a) shall:

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(i) provide the governmental entity's employees a process for making a request under this section;

(ii) designate an individual to receive an employee request described in Subsection (3);

(iii) outline the information an employee is required to provide to the governmental entity in a request described in Subsection (3);

(iv) describe the process the employee is required to undertake to allow the governmental entity a reasonable opportunity to grant the employee's request or otherwise address the employee's concerns under Subsection (3)(b); and

(~~iv~~v) outline the process the governmental entity will use to evaluate a request received under Subsection (3) in determining if the request will impose an undue hardship on the governmental entity.

(c) A governmental entity establishing a policy under this Subsection (5) shall ensure that:

(i) the governmental entity's employees receive notice of the policy and access to a copy of the policy when the policy is adopted or when an employee begins working for the governmental entity, whichever occurs first; and

(ii) if the governmental agency receives a request under Subsection (3), the governmental entity includes a reference to the governmental entity's policy in the governmental entity's response.

(6) (a) An employee has a right of action against the governmental entity that employs the employee if:

(i) the employee has complied with Subsection (3) in good faith;

(ii) the employee has complied with any policy created under Subsection (5) after receiving notice and a reference of the policy as described in Subsection (5)(c);

(iii) the employee's asserted religious beliefs or conscience described in Subsection (2)(a)(i) is not asserted for an improper purpose; and

(iv) ~~(A)~~ granting the request would not have imposed an undue hardship on the governmental entity~~(A)~~; or

~~(B) the governmental entity cannot meet an exception described in Subsection (2)(b).~~

(b) An employee seeking to assert a right of action under this section shall bring the action in a court within 180 calendar days after the day on which the employee received the

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governmental entity's response described in Subsection (4).

(c) If an employee establishes, by a preponderance of the evidence, that the employee meets the requirements described in Subsection (6)(a), the court:

(i) shall grant the employee relief by:

~~}(i)}~~(A) issuing an injunction ordering the governmental entity to relieve the employee from the specific task if the task is still to be performed; or

(B) ordering the governmental entity to reinstate or rehire the employee, **with an award of back pay,** if the employee ~~resigned~~**was constructively discharged,** ~~was~~ demoted, or ~~was~~ terminated as a direct result of the governmental entity's violation of Subsection (2); and

(ii) ~~awarding~~**may award to** the employee ~~back pay,~~ reasonable attorney fees, and court costs.

(7) ~~(a) Unless required by another provision of the Utah Code and subject to Subsections (7)(b) and (c), a governmental entity may not make public comments about an employee's request to be relieved from performing a certain task or about the dispute between the governmental entity and employee after:~~

~~—— (i) the employee has submitted the employee's request described in Subsection (3) and the employee has not yet brought the employee's right of action in court and before the time for the employee to bring a right of action has expired under Subsection (6);~~

~~—— (ii) the employee has brought a right of action in court under Subsection (6); or~~

~~—— (iii) the employee successfully establishes the employee's right of action under Subsection (6);~~

~~—— (b) A governmental entity that receives request under Subsection (3) may only publicly comment that the governmental entity does not comment on an ongoing personnel matter;~~

~~—— (c) A court shall impose a fine on a governmental entity of at least \$5,000 for each violation of Subsection (7)(a);~~ **The classification of an employee's confidential information is governed by Title 63G, Chapter 2, Government Records Access and Management Act.**

(8) A governmental entity may not take retaliatory action against an employee for submitting a request under Subsection (3).

(9) Nothing in this section:

(a) limits the employee's right to bring any other claim the employee may have against the governmental entity; or

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(b) prevents a governmental entity from implementing a policy required by state or federal law.

Section ~~{2}~~3. **Effective date.**

This bill takes effect on May 1, 2024.