

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;
- 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



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63G-2-302**, as last amended by Laws of Utah 2023, Chapters 329, 471

29 ENACTS:

30 **67-27-105**, Utah Code Annotated 1953



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

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

33 **63G-2-302. Private records.**

34 (1) The following records are private:

35 (a) records concerning an individual's eligibility for unemployment insurance benefits,
36 social services, welfare benefits, or the determination of benefit levels;

37 (b) records containing data on individuals describing medical history, diagnosis,
38 condition, treatment, evaluation, or similar medical data;

39 (c) records of publicly funded libraries that when examined alone or with other records
40 identify a patron;

41 (d) records received by or generated by or for:

42 (i) the Independent Legislative Ethics Commission, except for:

43 (A) the commission's summary data report that is required under legislative rule; and

44 (B) any other document that is classified as public under legislative rule; or

45 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
46 unless the record is classified as public under legislative rule;

47 (e) records received by, or generated by or for, the Independent Executive Branch
48 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
49 of Executive Branch Ethics Complaints;

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

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

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

55 (B) would create a danger of depriving a person of a right to a fair proceeding or
56

57 impartial hearing; and

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

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

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

65 (i) that part of a record indicating a person's social security number or federal employer
66 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,
67 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

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

69 (i) driver license or identification card number;

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

71 (iii) email address;

72 (iv) date of birth; or

73 (v) phone number;

74 (k) a voter registration record that is classified as a private record by the lieutenant
75 governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or
76 20A-2-204(4)(b);

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

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

80 (n) a record that:

81 (i) contains information about an individual;

82 (ii) is voluntarily provided by the individual; and

83 (iii) goes into an electronic database that:

84 (A) is designated by and administered under the authority of the Chief Information
85 Officer; and

86 (B) acts as a repository of information about the individual that can be electronically
87 retrieved and used to facilitate the individual's online interaction with a state agency;

- 88 (o) information provided to the Commissioner of Insurance under:
- 89 (i) Subsection 31A-23a-115(3)(a);
- 90 (ii) Subsection 31A-23a-302(4); or
- 91 (iii) Subsection 31A-26-210(4);
- 92 (p) information obtained through a criminal background check under Title 11, Chapter
- 93 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 94 (q) information provided by an offender that is:
- 95 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
- 96 Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
- 97 (ii) not required to be made available to the public under Subsection 77-41-110(4) or
- 98 77-43-108(4);
- 99 (r) a statement and any supporting documentation filed with the attorney general in
- 100 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 101 homeland security;
- 102 (s) electronic toll collection customer account information received or collected under
- 103 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
- 104 collected by a public transit district, including contact and payment information and customer
- 105 travel data;
- 106 (t) an email address provided by a military or overseas voter under Section
- 107 20A-16-501;
- 108 (u) a completed military-overseas ballot that is electronically transmitted under Title
- 109 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- 110 (v) records received by or generated by or for the Political Subdivisions Ethics Review
- 111 Commission established in Section 63A-15-201, except for:
- 112 (i) the commission's summary data report that is required in Section 63A-15-202; and
- 113 (ii) any other document that is classified as public in accordance with Title 63A,
- 114 Chapter 15, Political Subdivisions Ethics Review Commission;
- 115 (w) a record described in Section 53G-9-604 that verifies that a parent was notified of
- 116 an incident or threat;
- 117 (x) a criminal background check or credit history report conducted in accordance with
- 118 Section 63A-3-201;

- 119 (y) a record described in Subsection [53-5a-104\(7\)](#);
- 120 (z) on a record maintained by a county for the purpose of administering property taxes,
121 an individual's:
- 122 (i) email address;
- 123 (ii) phone number; or
- 124 (iii) personal financial information related to a person's payment method;
- 125 (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an
126 exemption, deferral, abatement, or relief under:
- 127 (i) Title 59, Chapter 2, Part 11, Exemptions;
- 128 (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
- 129 (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or
- 130 (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
- 131 (bb) a record provided by the State Tax Commission in response to a request under
132 Subsection [59-1-403\(4\)\(y\)\(iii\)](#);
- 133 (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual
134 child welfare case, as described in Subsection [36-33-103\(3\)](#); [~~and~~]
- 135 (dd) a record relating to drug or alcohol testing of a state employee under Section
136 [63A-17-1004\[-\]](#); and
- 137 (ee) a record including confidential information as that term is defined in Section
138 [67-27-105](#).
- 139 (2) The following records are private if properly classified by a governmental entity:
- 140 (a) records concerning a current or former employee of, or applicant for employment
141 with a governmental entity, including performance evaluations and personal status information
142 such as race, religion, or disabilities, but not including records that are public under Subsection
143 [63G-2-301\(2\)\(b\)](#) or [63G-2-301\(3\)\(o\)](#) or private under Subsection (1)(b);
- 144 (b) records describing an individual's finances, except that the following are public:
- 145 (i) records described in Subsection [63G-2-301\(2\)](#);
- 146 (ii) information provided to the governmental entity for the purpose of complying with
147 a financial assurance requirement; or
- 148 (iii) records that must be disclosed in accordance with another statute;
- 149 (c) records of independent state agencies if the disclosure of those records would

150 conflict with the fiduciary obligations of the agency;

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

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

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

160 (g) audio and video recordings created by a body-worn camera, as defined in Section
161 77-7a-103, that record sound or images inside a home or residence except for recordings that:

162 (i) depict the commission of an alleged crime;

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

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

167 (iv) contain an officer involved critical incident as defined in Subsection
168 76-2-408(1)(f); or

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

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

173 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
174 doctors, or affiliated entities are not private records or controlled records under Section
175 63G-2-304 when the records are sought:

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

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

180 (c) Medical records are subject to production in a legal or administrative proceeding

181 according to state or federal statutes or rules of procedure and evidence as if the medical
182 records were in the possession of a nongovernmental medical care provider.

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

184 **67-27-105. Reasonable accommodations for government employees.**

185 (1) As used in this section:

186 (a) "Confidential information" means any:

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

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

189 (b) "Conscience" means a sincerely held belief as to the rightness or wrongness of an
190 action or inaction.

191 (c) (i) "Employee" means an individual employed by a governmental entity.

192 (ii) "Employee" does not include:

193 (A) an elected official;

194 (B) an individual employed by the Legislature; or

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

197 (d) "First responder" means:

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

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

200 (iii) an advanced emergency medical technician, as that term is defined in Section
201 [53-2e-101](#);

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

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

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

205 (e) "Governmental entity" means:

206 (i) the state;

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

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

211 (f) "Retaliatory action" means any of the following actions taken by a governmental

212 entity against an employee as a result of the employee filing a request under Subsection (2):

213 (i) a dismissal;

214 (ii) a reduction of compensation;

215 (iii) a failure to increase compensation by an amount that the employee is otherwise

216 entitled to or was promised;

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

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

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

220 (h) "Undue hardship" means a substantial burden, privation, or adversity on a

221 governmental entity that would result from granting an employee's request to be relieved from

222 performing a certain task when considering all relevant factors, including:

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

224 operating cost of the governmental entity;

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

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

227 (iv) the number of employees the governmental entity will be required to grant a

228 request to if the governmental entity grants the employee's request;

229 (v) the type of workplace; and

230 (vi) the number of requests by the employee in the preceding 12 months from the day

231 on which the employee submitted the request.

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

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

236 (ii) the employee has complied with the requirements of Subsection (3); and

237 (iii) relieving the employee from the task would not impose an undue hardship on the
238 governmental entity.

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

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

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

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

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

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

253 (3) Except as provided in Subsection (3)(b), an employee seeking to be relieved from
254 performing a certain task under Subsection (2) shall:

255 (a) (i) as soon as practicable but not more than two days after the day on which the
256 employee received the assignment to perform the task, submit a written request to the
257 employee's supervisor providing an explanation as to why the task would conflict with the
258 employee's sincerely held religious beliefs or conscience; or

259 (ii) if the employee receives the assignment to perform the task within two days after
260 the day on which the employee received the assignment, orally or in writing immediately
261 request to be relieved from performing the task; and

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

264 (4) (a) Except as provided in Subsection (4)(c), a governmental entity that receives a
265 request under Subsection (3) shall respond to the request as soon as practicable but at least five
266 days before the day on which the certain task is required to be performed.

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

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

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

272 or

273 (B) the governmental entity is not required to grant the employee's request for a reason

274 described in Subsection (2)(b); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

312 (b) An employee seeking to assert a right of action under this section shall bring the
313 action in a court within 180 calendar days after the day on which the employee received the
314 governmental entity's response described in Subsection (4).

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

317 (i) shall grant the employee relief by:

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

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

323 (ii) may award to the employee reasonable attorney fees, and court costs.

324 (7) The classification of an employee's confidential information is governed by Title
325 63G, Chapter 2, Government Records Access and Management Act.

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

328 (9) Nothing in this section:

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

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

333 **Section 3. Effective date.**

334 This bill takes effect on May 1, 2024.