

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0018.01 Esther van Mourik x4215

HOUSE BILL 17-1013

HOUSE SPONSORSHIP

Humphrey and Williams D., Becker J., Buck, Carver, Everett, Leonard, Lewis, Navarro, Neville P., Nordberg, Ransom, Wist

SENATE SPONSORSHIP

Marble and Neville T., Holbert, Lundberg

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A PERSON'S FREE EXERCISE OF RELIGION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill:

- ! Specifies that no state action may burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to a person's exercise of religion is essential to further a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- ! Defines "exercise of religion" as the practice or observance of religion. The bill specifies that exercise of religion includes the ability to act or refuse to act in a manner substantially motivated by a person's sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger system of religious belief; except that it does not include the ability to act or refuse to act based on race or ethnicity.
- ! Provides a claim or defense to a person whose exercise of religion is burdened by state action; and
- ! Specifies that nothing in the bill creates any rights by an employee against an employer unless the employer is a government employer.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** The short title of this act is the
 3 "Colorado Freedom of Conscience Protection Act".

4 **SECTION 2.** In Colorado Revised Statutes, **add** part 10 to article
 5 34 of title 24 as follows:

6 PART 10

7 COLORADO FREEDOM OF CONSCIENCE

8 PROTECTION ACT

9 **24-34-1001. Legislative declaration.** (1) THE GENERAL
 10 ASSEMBLY HEREBY FINDS:

11 (a) THE FRAMERS OF THE UNITED STATES CONSTITUTION,
 12 RECOGNIZING FREE EXERCISE OF RELIGION AS AN UNALIENABLE RIGHT,
 13 SECURED ITS PROTECTION IN THE FIRST AMENDMENT TO THE
 14 CONSTITUTION;

15 (b) LAWS NEUTRAL TOWARD RELIGION MAY BURDEN RELIGIOUS
 16 EXERCISE AS SURELY AS LAWS INTENDED TO INTERFERE WITH RELIGIOUS
 17 EXERCISE;

18 (c) GOVERNMENTS SHOULD NOT BURDEN RELIGIOUS EXERCISE

1 WITHOUT COMPELLING JUSTIFICATION;

2 (d) IN *EMPLOYMENT DIVISION V. SMITH*, 494 U.S. 872 (1990), THE
3 UNITED STATES SUPREME COURT VIRTUALLY ELIMINATED THE
4 REQUIREMENT THAT THE GOVERNMENT JUSTIFY BURDENS ON RELIGIOUS
5 EXERCISE IMPOSED BY LAWS NEUTRAL TOWARD RELIGION; AND

6 (e) THE COMPELLING INTEREST TEST AS SET FORTH IN PRIOR
7 FEDERAL COURT RULINGS IS A WORKABLE TEST FOR STRIKING SENSIBLE
8 BALANCES BETWEEN RELIGIOUS LIBERTY AND COMPETING PRIOR
9 GOVERNMENTAL INTERESTS.

10 (2) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE
11 PURPOSES OF THIS PART 10 ARE:

12 (a) TO RESTORE THE COMPELLING INTERESTS TEST AS SET FORTH
13 IN *SHERBERT V. VERNER*, 374 U.S. 398 (1963) AND *WISCONSIN V. YODER*,
14 406 U.S. 205 (1972), AND TO GUARANTEE ITS APPLICATION IN ALL CASES
15 WHERE FREE EXERCISE OF RELIGION IS BURDENED; AND

16 (b) TO PROVIDE A CLAIM OR DEFENSE TO A PERSON WHOSE
17 EXERCISE OF RELIGION IS BURDENED BY STATE ACTION.

18 **24-34-1002. Definitions.** AS USED IN THIS PART 10, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "BURDEN" MEANS ANY ACTION THAT DIRECTLY OR INDIRECTLY
21 CONSTRAINS, INHIBITS, CURTAILS, OR DENIES THE EXERCISE OF RELIGION
22 BY ANY PERSON OR COMPELS ANY ACTION CONTRARY TO A PERSON'S
23 EXERCISE OF RELIGION, AND INCLUDES, BUT IS NOT LIMITED TO,
24 WITHHOLDING BENEFITS; ASSESSING CRIMINAL, CIVIL, OR ADMINISTRATIVE
25 PENALTIES; OR EXCLUDING A PERSON FROM GOVERNMENTAL PROGRAMS
26 OR ACCESS TO GOVERNMENTAL FACILITIES.

27 (2) "COMPELLING GOVERNMENTAL INTEREST" MEANS A

1 GOVERNMENTAL INTEREST OF THE HIGHEST MAGNITUDE THAT CANNOT
2 OTHERWISE BE ACHIEVED WITHOUT BURDENING THE EXERCISE OF
3 RELIGION.

4 (3) "DEMONSTRATED" MEANS MEETS THE BURDENS OF GOING
5 FORWARD WITH THE EVIDENCE AND OF PERSUASION.

6 (4) "EXERCISE OF RELIGION" MEANS THE PRACTICE OR
7 OBSERVANCE OF RELIGION. IT INCLUDES, BUT IS NOT LIMITED TO, THE
8 ABILITY TO ACT OR REFUSE TO ACT IN A MANNER SUBSTANTIALLY
9 MOTIVATED BY A PERSON'S SINCERELY HELD RELIGIOUS BELIEFS, WHETHER
10 OR NOT THE EXERCISE IS COMPULSORY OR CENTRAL TO A LARGER SYSTEM
11 OF RELIGIOUS BELIEF; EXCEPT THAT IT DOES NOT INCLUDE THE ABILITY TO
12 ACT OR REFUSE TO ACT BASED ON RACE OR ETHNICITY.

13 (5) "GOVERNMENT EMPLOYER" MEANS THE STATE OR ANY
14 POLITICAL SUBDIVISION THEREOF, AND INCLUDES ANY EMPLOYER THAT
15 ENGAGES IN STATE ACTION.

16 (6) "PERSON" MEANS ANY INDIVIDUAL, ASSOCIATION,
17 PARTNERSHIP, CORPORATION, CHURCH, RELIGIOUS INSTITUTION, ESTATE,
18 TRUST, FOUNDATION, OR OTHER LEGAL ENTITY.

19 (7) "STATE ACTION" MEANS THE IMPLEMENTATION OR
20 APPLICATION OF ANY LAW, INCLUDING, BUT NOT LIMITED TO, STATE AND
21 LOCAL LAWS, ORDINANCES, RULES, REGULATIONS, AND POLICIES,
22 WHETHER STATUTORY OR OTHERWISE, OR OTHER ACTION BY THE STATE OR
23 ANY POLITICAL SUBDIVISION THEREOF, OTHER ACTION BY A LOCAL
24 GOVERNMENT, MUNICIPALITY, OR INSTRUMENTALITY, OR OTHER ACTION
25 BY A PUBLIC OFFICIAL AUTHORIZED BY LAW.

26 **24-34-1003. Free exercise of religion protected.**

27 (1) NOTWITHSTANDING PART 1 AND PARTS 3 TO 8 OF THIS ARTICLE 34, NO

1 STATE ACTION MAY BURDEN A PERSON'S EXERCISE OF RELIGION, EVEN IF
2 THE BURDEN RESULTS FROM A RULE OF GENERAL APPLICABILITY, UNLESS
3 IT IS DEMONSTRATED THAT APPLYING THE BURDEN TO A PERSON'S
4 EXERCISE OF RELIGION IS:

5 (a) ESSENTIAL TO FURTHER A COMPELLING GOVERNMENTAL
6 INTEREST; AND

7 (b) THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT
8 COMPELLING GOVERNMENTAL INTEREST.

9 (2) A PERSON WHOSE EXERCISE OF RELIGION HAS BEEN BURDENED,
10 OR IS LIKELY TO BE BURDENED, IN VIOLATION OF THIS PART 10 MAY
11 ASSERT SUCH VIOLATION OR IMPENDING VIOLATION AS A CLAIM OR
12 DEFENSE IN A JUDICIAL PROCEEDING, REGARDLESS OF WHETHER THE STATE
13 OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL GOVERNMENT,
14 MUNICIPALITY, OR INSTRUMENTALITY IS A PARTY TO THE PROCEEDING.
15 THE PERSON ASSERTING SUCH A CLAIM OR DEFENSE MAY OBTAIN
16 APPROPRIATE RELIEF, INCLUDING RELIEF AGAINST THE STATE OR ANY
17 POLITICAL SUBDIVISION THEREOF OR ANY LOCAL GOVERNMENT,
18 MUNICIPALITY, OR INSTRUMENTALITY. APPROPRIATE RELIEF INCLUDES,
19 BUT IS NOT LIMITED TO, INJUNCTIVE RELIEF, DECLARATORY RELIEF,
20 COMPENSATORY DAMAGES, AND COSTS AND ATTORNEY FEES.

21 (3) NOTHING IN THIS PART 10 CREATES ANY RIGHTS BY AN
22 EMPLOYEE AGAINST AN EMPLOYER UNLESS THE EMPLOYER IS A
23 GOVERNMENT EMPLOYER.

24 **SECTION 3. Severability.** If any provision of this act or the
25 application thereof to any person or circumstance is held invalid, such
26 invalidity does not affect other provisions or applications of the act that
27 can be given effect without the invalid provision or application, and to

1 this end the provisions of this act are declared to be severable.

2 **SECTION 4. Applicability.** This act applies to state actions
3 occurring on or after the effective date of this act.

4 **SECTION 5. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.