## First Regular Session Sixty-ninth General Assembly STATE OF COLORADO

## **INTRODUCED**

LLS NO. 13-0191.01 Jane Ritter x4342

**HOUSE BILL 13-1066** 

HOUSE SPONSORSHIP

Priola,

SENATE SPONSORSHIP

(None),

House Committees State, Veterans, & Military Affairs **Senate Committees** 

## A BILL FOR AN ACT

101 CONCERNING THE PRESERVATION OF A PERSON'S EXERCISE OF

102 **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://www.leg.state.co.us/billsummaries.)

The bill restricts a governmental entity from substantially burdening a person's exercise of religion, even if the burden results from a rule of general applicability, unless the governmental entity demonstrates that the application of the burden to the person is both essential to furthering a compelling governmental interest and is the least restrictive means of doing so. The grant of permissible state moneys, benefits, or exemptions is not a violation of the act.

A person whose exercise of religion has been burdened by a governmental entity may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief or monetary damages as may be properly awarded by a court. If a person prevails in a proceeding to enforce the act, he or she may recover reasonable costs and attorney fees. If a court finds a person abused the protections of this act by filing a frivolous or fraudulent claim, that person may be assessed the governmental entity's court costs and may be enjoined from filing further claims.

1 Be it enacted by the General Assembly of the State of Colorado: 2 **SECTION 1.** In Colorado Revised Statutes, add article 116 to 3 title 24 as follows: 4 **ARTICLE 116** 5 Preservation of a Person's Exercise of Religion 24-116-101. Definitions. As used in this article, unless the 6 7 CONTEXT OTHERWISE REQUIRES: 8 (1) "BURDEN" MEANS TO INHIBIT OR CURTAIL A RELIGIOUSLY 9 MOTIVATED PRACTICE. (2) "DEMONSTRATES" MEANS THAT A GOVERNMENTAL ENTITY 10 11 MEETS THE BURDEN OF PROOF UNDER THE STANDARD OF CLEAR AND 12 CONVINCING EVIDENCE. 13 (3) "EXERCISE OF RELIGION" MEANS RELIGIOUS FREEDOM AS 14 SPECIFIED IN SECTION 4 OF ARTICLE II OF THE STATE CONSTITUTION AND 15 THE FREE EXERCISE OF RELIGION ESTABLISHED BY THE FIRST AMENDMENT 16 TO THE UNITED STATES CONSTITUTION. 17 (4) "FRAUDULENT CLAIM" MEANS A CLAIM THAT IS DISHONEST IN 18 FACT OR THAT IS MADE PRINCIPALLY FOR A PATENTLY IMPROPER PURPOSE, 19 SUCH AS TO HARASS A PERSON.

(5) "FRIVOLOUS CLAIM" MEANS A CLAIM THAT LACKS MERIT
 UNDER EXISTING LAW AND CANNOT BE SUPPORTED BY A GOOD FAITH
 ARGUMENT FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF
 EXISTING LAW OR THE ESTABLISHMENT OF NEW LAW.

5 (6) "GOVERNMENTALENTITY" MEANS ANY BRANCH, DEPARTMENT,
6 AGENCY, OR INSTRUMENTALITY OF STATE GOVERNMENT, OR ANY OFFICIAL
7 OR OTHER PERSON ACTING UNDER STATE LAW, OR ANY POLITICAL
8 SUBDIVISION OF THE STATE.

9 (7) "PREVAILS" MEANS TO OBTAIN PREVAILING PARTY STATUS AS
10 DEFINED BY COURTS CONSTRUING THE FEDERAL "CIVIL RIGHTS
11 ATTORNEY'S FEES AWARDS ACT OF 1976", 42 U.S.C. SEC. 1988.

12 24-116-102. Religious freedom preserved - remedies. (1) A
13 GOVERNMENTAL ENTITY MUST NOT SUBSTANTIALLY BURDEN A PERSON'S
14 EXERCISE OF RELIGION, EVEN IF THE BURDEN RESULTS FROM A RULE OF
15 GENERAL APPLICABILITY, UNLESS THE GOVERNMENTAL ENTITY
16 DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE PERSON IS:

17 (a) ESSENTIAL TO FURTHER A COMPELLING GOVERNMENTAL18 INTEREST; AND

19 (b) THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT20 COMPELLING GOVERNMENTAL INTEREST.

21 (2) (a) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

(I) AUTHORIZE ANY GOVERNMENTAL ENTITY TO BURDEN ANY
 RELIGIOUS BELIEF; OR

(II) AFFECT, INTERPRET, OR IN ANY WAY ADDRESS THOSE
PORTIONS OF SECTION 4 OF ARTICLE II OF THE STATE CONSTITUTION OR
THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION THAT
PROHIBIT LAWS RESPECTING AN ESTABLISHMENT OF RELIGION.

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(b) GRANTING STATE MONEYS, BENEFITS, OR EXEMPTIONS, TO THE
 EXTENT PERMISSIBLE UNDER SUBPARAGRAPH (II) OF PARAGRAPH (a) OF
 THIS SUBSECTION (2), DOES NOT CONSTITUTE A VIOLATION OF THIS
 ARTICLE. AS USED IN THIS SUBSECTION (2), "GRANTING" USED WITH
 RESPECT TO STATE FUNDING, BENEFITS, OR EXEMPTIONS DOES NOT
 INCLUDE THE DENIAL OF STATE FUNDING, BENEFITS, OR EXEMPTIONS.

7 (3) A PERSON WHOSE EXERCISE OF RELIGION HAS BEEN BURDENED 8 BY A GOVERNMENTAL ENTITY IN VIOLATION OF THIS ARTICLE MAY ASSERT 9 THAT VIOLATION AS A CLAIM OR DEFENSE IN ANY JUDICIAL OR 10 ADMINISTRATIVE PROCEEDING AND MAY OBTAIN SUCH DECLARATORY 11 RELIEF OR MONETARY DAMAGES AS MAY BE PROPERLY AWARDED BY A 12 COURT OF COMPETENT JURISDICTION. A PERSON WHO PREVAILS IN ANY 13 PROCEEDING TO ENFORCE THIS ARTICLE AGAINST A GOVERNMENTAL 14 ENTITY MAY RECOVER REASONABLE COSTS AND ATTORNEY FEES. THE 15 PROVISIONS OF THIS SUBSECTION (3) RELATING TO ATTORNEY FEES DO NOT 16 APPLY TO CRIMINAL PROSECUTIONS.

17 (4) IF A COURT OF COMPETENT JURISDICTION FINDS A PERSON TO
18 HAVE ABUSED THE PROTECTIONS OF THIS ARTICLE BY FILING A FRIVOLOUS
19 OR FRAUDULENT CLAIM, THAT PERSON MAY BE ASSESSED THE
20 GOVERNMENTAL ENTITY'S COURT COSTS, IF ANY, AND MAY BE ENJOINED
21 FROM FILING FURTHER CLAIMS UNDER THIS ARTICLE WITHOUT LEAVE OF
22 COURT.

SECTION 2. Act subject to petition - effective date applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly (August 7, 2013, if adjournment sine die is on May 8,
2013); except that, if a referendum petition is filed pursuant to section 1

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(3) of article V of the state constitution against this act or an item, section,
or part of this act within such period, then the act, item, section, or part
will not take effect unless approved by the people at the general election
to be held in November 2014 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.

6 (2) The provisions of this act apply to actions filed on or after the7 applicable effective date of this act.