

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 15-0540.01 Esther van Mourik x4215

HOUSE BILL 15-1171

HOUSE SPONSORSHIP

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House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A STATE FREEDOM OF CONSCIENCE PROTECTION ACT.**

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:

- ! 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.

1 FEDERAL COURT RULINGS IS A WORKABLE TEST FOR STRIKING SENSIBLE
2 BALANCES BETWEEN RELIGIOUS LIBERTY AND COMPETING PRIOR
3 GOVERNMENTAL INTERESTS.

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

6 (a) TO RESTORE THE COMPELLING INTERESTS TEST AS SET FORTH
7 IN *SHERBERT V. VERNER*, 374 U.S. 398 (1963) AND *WISCONSIN V. YODER*,
8 406 U.S. 205 (1972), AND TO GUARANTEE ITS APPLICATION IN ALL CASES
9 WHERE FREE EXERCISE OF RELIGION IS BURDENED; AND

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

12 **24-34-1002. Definitions.** AS USED IN THIS PART 10, UNLESS THE
13 CONTEXT OTHERWISE REQUIRES:

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

21 (2) "COMPELLING GOVERNMENTAL INTEREST" MEANS A
22 GOVERNMENTAL INTEREST OF THE HIGHEST MAGNITUDE THAT CANNOT
23 OTHERWISE BE ACHIEVED WITHOUT BURDENING THE EXERCISE OF
24 RELIGION.

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

27 (4) "EXERCISE OF RELIGION" MEANS THE PRACTICE OR

1 OBSERVANCE OF RELIGION. IT INCLUDES, BUT IS NOT LIMITED TO, THE
2 ABILITY TO ACT OR REFUSE TO ACT IN A MANNER SUBSTANTIALLY
3 MOTIVATED BY A PERSON'S SINCERELY HELD RELIGIOUS BELIEFS, WHETHER
4 OR NOT THE EXERCISE IS COMPULSORY OR CENTRAL TO A LARGER SYSTEM
5 OF RELIGIOUS BELIEF.

6 (5) "GOVERNMENT EMPLOYER" MEANS THE STATE OR ANY
7 POLITICAL SUBDIVISION THEREOF, AND INCLUDES ANY EMPLOYER THAT
8 ENGAGES IN STATE ACTION.

9 (6) "PERSON" MEANS ANY INDIVIDUAL, ASSOCIATION,
10 PARTNERSHIP, CORPORATION, CHURCH, RELIGIOUS INSTITUTION, ESTATE,
11 TRUST, FOUNDATION, OR OTHER LEGAL ENTITY.

12 (7) "STATE ACTION" MEANS THE IMPLEMENTATION OR
13 APPLICATION OF ANY LAW, INCLUDING, BUT NOT LIMITED TO, STATE AND
14 LOCAL LAWS, ORDINANCES, RULES, REGULATIONS, AND POLICIES,
15 WHETHER STATUTORY OR OTHERWISE, OR OTHER ACTION BY THE STATE OR
16 ANY POLITICAL SUBDIVISION THEREOF, OTHER ACTION BY A LOCAL
17 GOVERNMENT, MUNICIPALITY, OR INSTRUMENTALITY, OR OTHER ACTION
18 BY A PUBLIC OFFICIAL AUTHORIZED BY LAW.

19 **24-34-1003. Free exercise of religion protected.**

20 (1) NOTWITHSTANDING PART 1 AND PARTS 3 TO 8 OF THIS ARTICLE, NO
21 STATE ACTION MAY BURDEN A PERSON'S EXERCISE OF RELIGION, EVEN IF
22 THE BURDEN RESULTS FROM A RULE OF GENERAL APPLICABILITY, UNLESS
23 IT IS DEMONSTRATED THAT APPLYING THE BURDEN TO A PERSON'S
24 EXERCISE OF RELIGION IS:

25 (a) ESSENTIAL TO FURTHER A COMPELLING GOVERNMENTAL
26 INTEREST; AND

27 (b) THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT

1 COMPELLING GOVERNMENTAL INTEREST.

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

14 (3) NOTHING IN THIS PART 10 CREATES ANY RIGHTS BY AN
15 EMPLOYEE AGAINST AN EMPLOYER UNLESS THE EMPLOYER IS A
16 GOVERNMENT EMPLOYER.

17 **SECTION 3. Severability.** If any provision of this act or the
18 application thereof to any person or circumstance is held invalid, such
19 invalidity does not affect other provisions or applications of the act that
20 can be given effect without the invalid provision or application, and to
21 this end the provisions of this act are declared to be severable.

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

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