

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0882.01 Esther van Mourik

SENATE BILL 08-112

SENATE SPONSORSHIP

Renfroe, and Brophy

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans & Military Affairs

House 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 necessarily reflect any amendments that may be subsequently adopted.)

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.

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.

Specifies that the grant of permissible state moneys, benefits, or exemptions is not a violation of the act.

Specifies that a person whose exercise of religion has been burdened by a government 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. Establishes that if a person prevails in a proceeding to enforce the act, he or she may recover reasonable costs and attorney fees.

Specifies that if a court finds a person abused the protections of this section 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.

Defines terms.

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

2 **SECTION 1.** Title 24, Colorado Revised Statutes, is amended BY
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 116**

5 **Preservation of a Person's Exercise of Religion**

6 **24-116-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "BURDEN" MEANS TO INHIBIT OR CURTAIL A RELIGIOUSLY
9 MOTIVATED PRACTICE.

10 (2) "DEMONSTRATES" MEANS THAT A GOVERNMENTAL ENTITY
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,

1 SUCH AS TO HARASS A PERSON.

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

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

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

13 **24-116-102. Religious freedom preserved - remedies.** (1) NO
14 GOVERNMENTAL ENTITY SHALL SUBSTANTIALLY BURDEN A PERSON'S
15 EXERCISE OF RELIGION, EVEN IF THE BURDEN RESULTS FROM A RULE OF
16 GENERAL APPLICABILITY, UNLESS THE GOVERNMENTAL ENTITY
17 DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE PERSON IS:

18 (a) ESSENTIAL TO FURTHER A COMPELLING GOVERNMENTAL
19 INTEREST; AND

20 (b) THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT
21 COMPELLING GOVERNMENTAL INTEREST.

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

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

25 (II) AFFECT, INTERPRET, OR IN ANY WAY ADDRESS THOSE
26 PORTIONS OF SECTION 4 OF ARTICLE II OF THE STATE CONSTITUTION OR
27 THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION THAT

1 PROHIBIT LAWS RESPECTING AN ESTABLISHMENT OF RELIGION.

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

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

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

24 **SECTION 2. Effective date - applicability.** (1) This act shall
25 take effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly that is
27 allowed for submitting a referendum petition pursuant to article V,

1 section 1 (3) of the state constitution, (August 6, 2008, if adjournment
2 sine die is on May 7, 2008); except that, if a referendum petition is filed
3 against this act or an item, section, or part of this act within such period,
4 then the act, item, section, or part, if approved by the people, shall take
5 effect on the date of the official declaration of the vote thereon by
6 proclamation of the governor.

7 (2) The provisions of this act shall apply to actions filed on or
8 after the applicable effective date of this act.