

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1192.01 Esther van Mourik x4215

SENATE BILL 18-241

SENATE SPONSORSHIP

Lundberg,

HOUSE SPONSORSHIP

Humphrey,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE ESTABLISHMENT OF THE "COLORADO CHILDREN
102 FIRST ACT" IN COLORADO.

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 establishes the "Colorado Children First Act" in the state.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 10 to article

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

1 34 of title 24 as follows:

2

PART 10

3

COLORADO CHILDREN FIRST ACT

4

24-34-1001. Short title. THE SHORT TITLE OF THIS PART 10 IS THE

5

"COLORADO CHILDREN FIRST ACT".

6

24-34-1002. Legislative declaration. (1) THE GENERAL

7

ASSEMBLY HEREBY FINDS AND DECLARES THAT:

8

(a) LEADING LEGAL SCHOLARS CONCUR THAT CONFLICTS BETWEEN

9

SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY ARE REAL AND SHOULD BE

10

ADDRESSED THROUGH LEGISLATION;

11

(b) AFTER THE SUPREME COURT OF THE UNITED STATES

12

DECLARED THE LEGALIZATION OF SAME-SEX MARRIAGE, RELIGIOUS

13

ADOPTION AND FOSTER CARE AGENCIES IN MASSACHUSETTS, ILLINOIS,

14

AND THE DISTRICT OF COLUMBIA WERE FORCED TO CLOSE BECAUSE OF

15

THEIR SINCERELY HELD RELIGIOUS BELIEFS ABOUT MARRIAGE. SIMILARLY,

16

PARENTS IN OHIO LOST CUSTODY OF THEIR CHILD AFTER CONCLUDING

17

GENDER TRANSITION TREATMENTS WERE NOT IN THEIR CHILD'S BEST

18

INTEREST.

19

(c) CITIZENS OF THE STATE HOLD A WIDE RANGE OF VIEWS ON THE

20

ISSUE OF SAME-SEX MARRIAGE, AND MAINTAINING THE STATE'S

21

COMMITMENT TO RELIGIOUS FREEDOM AND FREEDOM OF CONSCIENCE

22

WHEN FACED WITH THESE GOOD-FAITH DIFFERENCES OF OPINION IS VITAL;

23

(d) OUR NATION HAS A LONG AND HONORABLE HISTORY OF

24

RESPECTING AND ACCOMMODATING THE RELIGIOUS FREEDOM AND

25

FREEDOM OF CONSCIENCE RIGHTS OF ITS PEOPLE, DATING FROM BEFORE

26

THE AMERICAN REVOLUTION TO THE PRESENT. FOR EXAMPLE, LAWS HAVE

27

PROTECTED THE RIGHT OF QUAKERS AND OTHER PACIFISTS TO SERVE THE

1 NATION AS NONCOMBATANTS IN TIMES OF WAR, THE RIGHT OF JEWS AND
2 OTHER SABBATH OBSERVERS TO DEDICATE THEIR TIME TO GOD AND
3 FAMILY INSTEAD OF WORK ON THEIR SABBATH, AND THE RIGHT OF
4 RELIGIOUS ORGANIZATIONS TO PROVIDE CHARITABLE SERVICES TO THE
5 PUBLIC CONSISTENT WITH THEIR BELIEFS BY HIRING INDIVIDUALS WHO
6 SHARE THE SAME BELIEFS. RELIGIOUS FREEDOM RIGHTS AND THE RIGHT TO
7 CONSCIENCE HAVE, FOR DECADES, BEEN ESTABLISHED AS A
8 NONCONTROVERSIAL FOUNDATION OF AMERICAN SOCIETY. THE UNITED
9 STATES DOES NOT USE DISAGREEMENTS ABOUT RELIGION OR CONSCIENCE
10 AS AN EXCUSE TO BANISH RELIGIOUS OR CONSCIENTIOUS ACTIVITY FROM
11 THE VIEW OF THOSE IT MIGHT OFFEND.

12 (e) PROTECTING RELIGIOUS FREEDOM AND FREEDOM OF
13 CONSCIENCE FROM GOVERNMENT INTRUSION IS A STATE INTEREST OF THE
14 HIGHEST ORDER. LEGISLATION ADVANCES THIS INTEREST BY REMEDYING,
15 DETERRING, AND PREVENTING GOVERNMENT INTERFERENCE WITH
16 RELIGIOUS EXERCISE IN A WAY THAT COMPLEMENTS THE PROTECTIONS
17 MANDATED BY THE STATE AND FEDERAL CONSTITUTIONS.

18 **24-34-1003. Definitions.** AS USED IN THIS PART 10, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "ADOPTION OR FOSTER CARE" OR "ADOPTION OR FOSTER CARE
21 SERVICE" MEANS SOCIAL SERVICES PROVIDED TO OR ON BEHALF OF
22 CHILDREN, INCLUDING:

- 23 (a) ASSISTING ABUSED OR NEGLECTED CHILDREN;
- 24 (b) TEACHING CHILDREN AND PARENTS OCCUPATIONAL,
25 HOMEMAKING, AND OTHER DOMESTIC SKILLS;
- 26 (c) PROMOTING FOSTER PARENTING;
- 27 (d) PROVIDING FOSTER HOMES, RESIDENTIAL CARE, GROUP HOMES,

- 1 OR TEMPORARY GROUP SHELTERS FOR CHILDREN;
- 2 (e) RECRUITING FOSTER PARENTS;
- 3 (f) PLACING CHILDREN IN FOSTER HOMES;
- 4 (g) LICENSING FOSTER HOMES;
- 5 (h) PROMOTING ADOPTION OR RECRUITING ADOPTIVE PARENTS;
- 6 (i) ASSISTING ADOPTIONS OR SUPPORTING ADOPTIVE FAMILIES;
- 7 (j) PERFORMING OR ASSISTING HOME STUDIES;
- 8 (k) ASSISTING KINSHIP GUARDIANSHIPS OR KINSHIP CAREGIVERS;
- 9 (l) PROVIDING FAMILY PRESERVATION SERVICES;
- 10 (m) PROVIDING FAMILY SUPPORT SERVICES; AND
- 11 (n) PROVIDING TEMPORARY FAMILY REUNIFICATION SERVICES.

12 (2) "DISCRIMINATORY ACTION" MEANS AND INCLUDES ANY ACTION
13 TAKEN BY THE STATE GOVERNMENT TO:

14 (a) ALTER IN ANY WAY THE TAX TREATMENT OF, OR CAUSE ANY
15 TAX, PENALTY, OR PAYMENT TO BE ASSESSED AGAINST, OR DENY, DELAY,
16 REVOKE, OR OTHERWISE MAKE UNAVAILABLE AN EXEMPTION FROM
17 TAXATION OF ANY PERSON REFERRED TO IN SECTION 24-34-1004;

18 (b) DISALLOW, DENY, OR OTHERWISE MAKE UNAVAILABLE A
19 DEDUCTION FOR STATE TAX PURPOSES OF ANY CHARITABLE CONTRIBUTION
20 MADE TO OR BY ANY PERSON REFERRED TO IN SECTION 24-34-1004;

21 (c) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY
22 ALTER THE TERMS OR CONDITIONS OF, OR OTHERWISE MAKE UNAVAILABLE
23 OR DENY ANY STATE GRANT, CONTRACT, SUBCONTRACT, COOPERATIVE
24 AGREEMENT, GUARANTEE, LOAN, SCHOLARSHIP, OR OTHER SIMILAR
25 BENEFIT FROM OR TO ANY PERSON REFERRED TO IN SECTION 24-34-1004;

26 (d) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY
27 ALTER THE TERMS OR CONDITIONS OF, OR OTHERWISE MAKE UNAVAILABLE

1 OR DENY ANY ENTITLEMENT OR BENEFIT UNDER A STATE BENEFIT
2 PROGRAM FROM OR TO ANY PERSON REFERRED TO IN SECTION 24-34-1004;

3 (e) IMPOSE, LEVY, OR ASSESS A MONETARY FINE, FEE, PENALTY,
4 DAMAGES AWARD, OR INJUNCTION ON ANY PERSON REFERRED TO IN
5 SECTION 24-34-1004;

6 (f) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY
7 ALTER THE TERMS OR CONDITIONS OF, OR OTHERWISE MAKE UNAVAILABLE
8 OR DENY ANY LICENSE, CERTIFICATION, ACCREDITATION, CUSTODY AWARD
9 OR AGREEMENT, DIPLOMA, GRADE, RECOGNITION, OR OTHER SIMILAR
10 BENEFIT, POSITION, OR STATUS FROM OR TO ANY PERSON REFERRED TO IN
11 SECTION 24-34-1004; OR

12 (g) REFUSE TO HIRE OR PROMOTE, FORCE TO RESIGN, FIRE,
13 DEMOTE, SANCTION, DISCIPLINE, MATERIALLY ALTER THE TERMS OR
14 CONDITIONS OF EMPLOYMENT, OR RETALIATE OR TAKE OTHER ADVERSE
15 EMPLOYMENT ACTION AGAINST ANY PERSON REFERRED TO IN SECTION
16 24-34-1004 WHO IS EMPLOYED OR COMMISSIONED BY THE STATE
17 GOVERNMENT.

18 (3) "PERSON" MEANS:

19 (a) A NATURAL PERSON, IN HIS OR HER INDIVIDUAL CAPACITY,
20 REGARDLESS OF RELIGIOUS AFFILIATION OR LACK THEREOF, OR IN HIS OR
21 HER CAPACITY AS A MEMBER, OFFICER, OWNER, VOLUNTEER, EMPLOYEE,
22 MANAGER, RELIGIOUS LEADER, CLERGY, OR MINISTER OF ANY ENTITY
23 DESCRIBED IN THIS PART 10;

24 (b) A RELIGIOUS ORGANIZATION;

25 (c) A SOLE PROPRIETORSHIP, PARTNERSHIP, TRUST, CLOSELY HELD
26 CORPORATION, OR OTHER CLOSELY HELD ENTITY; OR

27 (d) COOPERATIVES, VENTURES, OR ENTERPRISES COMPRISED OF

1 TWO OR MORE INDIVIDUALS OR ENTITIES DESCRIBED IN THIS SUBSECTION
2 (3) REGARDLESS OF NONPROFIT OR FOR-PROFIT STATUS.

3 (4) "RELIGIOUS ORGANIZATION" MEANS:

4 (a) A HOUSE OF WORSHIP, INCLUDING BUT NOT LIMITED TO
5 CHURCHES, SYNAGOGUES, SHRINES, MOSQUES, AND TEMPLES;

6 (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, SCHOOL OR
7 EDUCATIONAL INSTITUTION, MINISTRY, ORDER, SOCIETY, OR SIMILAR
8 ENTITY, REGARDLESS OF WHETHER IT IS INTEGRATED OR AFFILIATED WITH
9 A CHURCH OR OTHER HOUSE OF WORSHIP; AND

10 (c) AN OFFICER, OWNER, EMPLOYEE, MANAGER, RELIGIOUS
11 LEADER, CLERGY, OR MINISTER OF AN ENTITY OR ORGANIZATION
12 DESCRIBED IN THIS SUBSECTION (4).

13 (5) "STATE BENEFIT PROGRAM" MEANS ANY PROGRAM
14 ADMINISTERED OR FUNDED BY THE STATE, OR BY ANY AGENT ON BEHALF
15 OF THE STATE, PROVIDING CASH, PAYMENTS, GRANTS, CONTRACTS, LOANS,
16 OR IN-KIND ASSISTANCE.

17 (6) "STATE GOVERNMENT" MEANS:

18 (a) THE STATE OR A POLITICAL SUBDIVISION OF THE STATE;

19 (b) ANY AGENCY OF THE STATE OR OF A POLITICAL SUBDIVISION OF
20 THE STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION,
21 COUNCIL, COURT, OR PUBLIC INSTITUTION OF HIGHER EDUCATION;

22 (c) ANY PERSON ACTING UNDER COLOR OF STATE LAW; AND

23 (d) ANY PRIVATE PERSON SUING UNDER OR ATTEMPTING TO
24 ENFORCE A LAW, RULE, OR REGULATION ADOPTED BY THE STATE OR A
25 POLITICAL SUBDIVISION OF THE STATE.

26 **24-34-1004. Protections for adoption and foster care**
27 **providers.** (1) THE STATE GOVERNMENT SHALL NOT TAKE ANY

1 DISCRIMINATORY ACTION AGAINST A PERSON THAT ADVERTISES,
2 PROVIDES, OR FACILITATES ADOPTION OR FOSTER CARE, WHOLLY OR
3 PARTLY ON THE BASIS THAT SUCH PERSON HAS PROVIDED OR DECLINED TO
4 PROVIDE ANY ADOPTION OR FOSTER CARE SERVICE, OR RELATED SERVICE,
5 BASED UPON OR IN A MANNER CONSISTENT WITH A SINCERELY HELD
6 RELIGIOUS BELIEF OR MORAL CONVICTION.

7 (2) THE STATE GOVERNMENT SHALL NOT TAKE ANY
8 DISCRIMINATORY ACTION AGAINST A PERSON WHO THE STATE GRANTS
9 CUSTODY OF A FOSTER OR ADOPTIVE CHILD, OR WHO SEEKS FROM THE
10 STATE CUSTODY OF A FOSTER OR ADOPTIVE CHILD, WHOLLY OR PARTIALLY
11 ON THE BASIS THAT THE PERSON GUIDES, INSTRUCTS, OR RAISES A CHILD,
12 OR INTENDS TO GUIDE, INSTRUCT, OR RAISE A CHILD, BASED UPON OR IN A
13 MANNER CONSISTENT WITH A SINCERELY HELD RELIGIOUS BELIEF OR
14 MORAL CONVICTION, PROVIDED THAT THE STATE GOVERNMENT MAY
15 PROTECT A MINOR FROM CONDITIONS OR ACTIONS THAT IMMINENTLY AND
16 SERIOUSLY ENDANGER THE MINOR'S PHYSICAL HEALTH.

17 (3) THE STATE GOVERNMENT SHALL CONSIDER ACCREDITED,
18 LICENSED, OR CERTIFIED ANY PERSON THAT ADVERTISES, PROVIDES, OR
19 FACILITATES ADOPTION OR FOSTER CARE THAT WOULD OTHERWISE BE
20 ACCREDITED, LICENSED, OR CERTIFIED, RESPECTIVELY, UNDER STATE LAW
21 BUT FOR A DETERMINATION AGAINST SUCH PERSON WHOLLY OR PARTIALLY
22 ON THE BASIS THAT THE PERSON BELIEVES, SPEAKS, OR ACTS IN
23 ACCORDANCE WITH A SINCERELY HELD RELIGIOUS BELIEF OR MORAL
24 CONVICTION.

25 **24-34-1005. Claim or defense against state action. (1) Cause**
26 **of action and defense.** A PERSON MAY ASSERT A VIOLATION OF THIS PART
27 10 AS A CLAIM AGAINST THE STATE GOVERNMENT IN ANY JUDICIAL OR

1 ADMINISTRATIVE PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR
2 ADMINISTRATIVE PROCEEDING WITHOUT REGARD TO WHETHER THE
3 PROCEEDING IS BROUGHT BY OR IN THE NAME OF THE STATE GOVERNMENT,
4 ANY PRIVATE PERSON, OR ANY OTHER PARTY.

5 (2) **Administrative remedies not required.** NOTWITHSTANDING
6 ANY OTHER PROVISION OF LAW TO THE CONTRARY, AN ACTION UNDER THIS
7 PART 10 MAY BE COMMENCED, AND RELIEF MAY BE GRANTED, IN A COURT
8 OF THE STATE WITHOUT REGARD TO WHETHER THE PERSON COMMENCING
9 THE ACTION HAS SOUGHT OR EXHAUSTED AVAILABLE ADMINISTRATIVE
10 REMEDIES.

11 **24-34-1006. Remedies.** (1) EXCEPT AS PROVIDED IN SUBSECTION
12 (2) OF THIS SECTION, ANY PERSON WHO SUCCESSFULLY ASSERTS A CLAIM
13 OR DEFENSE UNDER THIS PART 10 MAY RECOVER:

- 14 (a) DECLARATORY RELIEF;
- 15 (b) INJUNCTIVE RELIEF TO PREVENT OR REMEDY A VIOLATION OF
16 THIS PART 10 OR THE EFFECTS OF SUCH A VIOLATION;
- 17 (c) COMPENSATORY DAMAGES FOR PECUNIARY AND
18 NONPECUNIARY LOSSES;
- 19 (d) REASONABLE ATTORNEYS' FEES AND COSTS; AND
- 20 (e) ANY OTHER APPROPRIATE RELIEF.

21 (2) ONLY DECLARATORY RELIEF AND INJUNCTIVE RELIEF SHALL BE
22 AVAILABLE AGAINST A PRIVATE PERSON NOT ACTING UNDER COLOR OF
23 STATE LAW UPON A SUCCESSFUL ASSERTION OF A DEFENSE UNDER THIS
24 PART 10.

25 **24-34-1007. Immunity waived.** (1) NOTWITHSTANDING ANY
26 LAW TO THE CONTRARY, SOVEREIGN, GOVERNMENTAL, AND QUALIFIED
27 IMMUNITIES TO SUIT AND FROM LIABILITY ARE WAIVED AND ABOLISHED TO

1 THE EXTENT OF LIABILITY CREATED BY THIS PART 10, AND A PERSON MAY
2 SUE THE STATE GOVERNMENT, EXCEPT STATE COURTS, FOR DAMAGES
3 ALLOWED BY THIS PART 10.

4 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THIS
5 PART 10 DOES NOT WAIVE OR ABOLISH SOVEREIGN IMMUNITY TO SUIT AND
6 FROM LIABILITY UNDER THE ELEVENTH AMENDMENT TO THE UNITED
7 STATES CONSTITUTION.

8 **24-34-1008. Two-year limitation period.** A PERSON MUST BRING
9 AN ACTION TO ASSERT A CLAIM UNDER THIS PART 10 NOT LATER THAN TWO
10 YEARS AFTER THE DATE THAT THE PERSON KNEW OR SHOULD HAVE
11 KNOWN THAT A DISCRIMINATORY ACTION WAS TAKEN AGAINST THAT
12 PERSON.

13 **24-34-1009. Rules of construction. (1) Broad construction.**
14 THIS PART 10 MUST BE CONSTRUED IN FAVOR OF A BROAD PROTECTION OF
15 FREE EXERCISE OF RELIGIOUS BELIEFS AND MORAL CONVICTIONS, TO THE
16 MAXIMUM EXTENT PERMITTED BY THE STATE AND FEDERAL
17 CONSTITUTIONS.

18 (2) **No preemption, repeal, or narrow construction.** THE
19 PROTECTION OF FREE EXERCISE OF RELIGIOUS BELIEFS AND MORAL
20 CONVICTIONS AFFORDED BY THIS PART 10 ARE IN ADDITION TO THE
21 PROTECTIONS PROVIDED UNDER FEDERAL LAW, STATE LAW, AND THE
22 STATE AND FEDERAL CONSTITUTIONS. NOTHING IN THIS PART 10 MAY BE
23 CONSTRUED TO PREEMPT OR REPEAL ANY STATE OR LOCAL LAW THAT IS
24 EQUALLY OR MORE PROTECTIVE OF FREE EXERCISE OF RELIGIOUS BELIEFS
25 OR MORAL CONVICTIONS. NOTHING IN THIS PART 10 MAY BE CONSTRUED
26 TO NARROW THE MEANING OR APPLICATION OF ANY STATE OR LOCAL LAW
27 PROTECTING FREE EXERCISE OF RELIGIOUS BELIEFS OR MORAL

1 CONVICTIONS. NOTHING IN THIS PART 10 MAY BE CONSTRUED TO PREVENT
2 THE STATE GOVERNMENT FROM PROVIDING, EITHER DIRECTLY OR
3 THROUGH AN INDIVIDUAL OR ENTITY NOT SEEKING PROTECTION UNDER
4 THIS PART 10, ANY BENEFIT OR SERVICE AUTHORIZED UNDER STATE LAW.

5 (3) **Supersede other state law.** THIS PART 10 APPLIES TO, AND IN
6 CASES OF CONFLICT SUPERSEDES, EACH STATUTE OF THE STATE THAT
7 IMPINGES UPON THE FREE EXERCISE OF RELIGIOUS BELIEFS AND MORAL
8 CONVICTIONS PROTECTED BY THIS PART 10, UNLESS A CONFLICTING
9 STATUTE IS EXPRESSLY MADE EXEMPT FROM THE APPLICATION OF THIS
10 PART 10. THIS PART 10 ALSO APPLIES TO, AND IN CASES OF CONFLICT
11 SUPERSEDES, ANY ORDINANCE, RULE, REGULATION, ORDER, OPINION,
12 DECISION, PRACTICE, OR OTHER EXERCISE OF THE STATE GOVERNMENT'S
13 AUTHORITY THAT IMPINGES UPON THE FREE EXERCISE OF RELIGIOUS
14 BELIEFS AND MORAL CONVICTIONS PROTECTED BY THIS PART 10.

15 (4) **Severability.** IF ANY PROVISION OF THIS PART 10 OR ANY
16 APPLICATION OF SUCH PROVISION TO ANY PARTICULAR PERSON OR
17 CIRCUMSTANCE IS HELD TO BE INVALID UNDER LAW, THE REMAINDER OF
18 THIS PART 10 AND THE APPLICATION OF ITS PROVISIONS TO ANY OTHER
19 PERSON OR CIRCUMSTANCE IS NOT AFFECTED.

20 **SECTION 2. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.