INTRODUCED

LLS NO. 18-1192.01 Esther van Mourik x4215

SENATE BILL 18-241

State, Veterans, & Military Affairs

A BILL FOR AN ACT

CONCERNING THE ESTABLISHMENT OF THE "COLORADO CHILDREN
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.

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

SECTION 1. In Colorado Revised Statutes, add part 10 to article
34 of title 24 as follows:

PART 10

COLORADO CHILDREN FIRST ACT

24-34-1001. Short title. The short title of this part 10 is the "COLORADO CHILDREN FIRST ACT".

24-34-1002. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Leading legal scholars concur that conflicts between same-sex marriage and religious liberty are real and should be addressed through legislation;

(b) After the Supreme Court of the United States declared the legalization of same-sex marriage, religious adoption and foster care agencies in Massachusetts, Illinois, and the District of Columbia were forced to close because of their sincerely held religious beliefs about marriage. Similarly, parents in Ohio lost custody of their child after concluding gender transition treatments were not in their child's best interest.

(c) Citizens of the state hold a wide range of views on the issue of same-sex marriage, and maintaining the state's commitment to religious freedom and freedom of conscience when faced with these good-faith differences of opinion is vital;

(d) Our nation has a long and honorable history of respecting and accommodating the religious freedom and freedom of conscience rights of its people, dating from before the American revolution to the present. For example, laws have protected the right of Quakers and other pacifists to serve the
NATION AS NONCOMBATANTS IN TIMES OF WAR, THE RIGHT OF JEWS AND OTHER SABBATH OBSERVERS TO DEDICATE THEIR TIME TO GOD AND FAMILY INSTEAD OF WORK ON THEIR SABBATH, AND THE RIGHT OF RELIGIOUS ORGANIZATIONS TO PROVIDE CHARITABLE SERVICES TO THE PUBLIC CONSISTENT WITH THEIR BELIEFS BY HIRING INDIVIDUALS WHO SHARE THE SAME BELIEFS. RELIGIOUS FREEDOM RIGHTS AND THE RIGHT TO CONSCIENCE HAVE, FOR DECADES, BEEN ESTABLISHED AS A NONCONTROVERSIAL FOUNDATION OF AMERICAN SOCIETY. THE UNITED STATES DOES NOT USE DISAGREEMENTS ABOUT RELIGION OR CONSCIENCE AS AN EXCUSE TO BANISH RELIGIOUS OR CONSCIENTIOUS ACTIVITY FROM THE VIEW OF THOSE IT MIGHT OFFEND.

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

24-34-1003. Definitions. As used in this Part 10, unless the context otherwise requires:

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

(a) ASSISTING ABUSED OR NEGLECTED CHILDREN;
(b) TEACHING CHILDREN AND PARENTS OCCUPATIONAL, HOMEMAKING, AND OTHER DOMESTIC SKILLS;
(c) PROMOTING FOSTER PARENTING;
(d) PROVIDING FOSTER HOMES, RESIDENTIAL CARE, GROUP HOMES,
OR TEMPORARY GROUP SHELTERS FOR CHILDREN;

(e) RECRUITING FOSTER PARENTS;

(f) PLACING CHILDREN IN FOSTER HOMES;

(g) LICENSED FOSTER HOMES;

(h) PROMOTING ADOPTION OR RECRUITING ADOPTIVE PARENTS;

(i) ASSISTING ADOPTIONS OR SUPPORTING ADOPTIVE FAMILIES;

(j) PERFORMING OR ASSISTING HOME STUDIES;

(k) ASSISTING KINSHIP GUARDIANSHIPS OR KINSHIP CAREGIVERS;

(l) PROVIDING FAMILY PRESERVATION SERVICES;

(m) PROVIDING FAMILY SUPPORT SERVICES; AND

(n) PROVIDING TEMPORARY FAMILY REUNIFICATION SERVICES.

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

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

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

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

(d) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY ALTER THE TERMS OR CONDITIONS OF, OR OTHERWISE MAKE UNAVAILABLE
OR DENY ANY ENTITLEMENT OR BENEFIT UNDER A STATE BENEFIT
PROGRAM FROM OR TO ANY PERSON REFERRED TO IN SECTION 24-34-1004;
(e) IMPOSE, LEVY, OR ASSESS A MONETARY FINE, FEE, PENALTY,
DAMAGES AWARD, OR INJUNCTION ON ANY PERSON REFERRED TO IN
SECTION 24-34-1004;
(f) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY
ALTER THE TERMS OR CONDITIONS OF, OR OTHERWISE MAKE UNAVAILABLE
OR DENY ANY LICENSE, CERTIFICATION, ACCREDITATION, CUSTODY AWARD
OR AGREEMENT, DIPLOMA, GRADE, RECOGNITION, OR OTHER SIMILAR
BENEFIT, POSITION, OR STATUS FROM OR TO ANY PERSON REFERRED TO IN
SECTION 24-34-1004; OR
(g) REFUSE TO HIRE OR PROMOTE, FORCE TO RESIGN, FIRE,
DEMOTE, SANCTION, DISCIPLINE, MATERIALLY ALTER THE TERMS OR
CONDITIONS OF EMPLOYMENT, OR RETALIATE OR TAKE OTHER ADVERSE
EMPLOYMENT ACTION AGAINST ANY PERSON REFERRED TO IN SECTION
24-34-1004 WHO IS EMPLOYED OR COMMISSIONED BY THE STATE
GOVERNMENT.

(3) "PERSON" MEANS:
(a) A NATURAL PERSON, IN HIS OR HER INDIVIDUAL CAPACITY,
REGARDLESS OF RELIGIOUS AFFILIATION OR LACK THEREOF, OR IN HIS OR
HER CAPACITY AS A MEMBER, OFFICER, OWNER, VOLUNTEER, EMPLOYEE,
MANAGER, RELIGIOUS LEADER, CLERGY, OR MINISTER OF ANY ENTITY
DESCRIBED IN THIS PART 10;
(b) A RELIGIOUS ORGANIZATION;
(c) A SOLE PROPRIETORSHIP, PARTNERSHIP, TRUST, CLOSELY HELD
CORPORATION, OR OTHER CLOSELY HELD ENTITY; OR
(d) COOPERATIVES, VENTURES, OR ENTERPRISES COMPRISED OF
TWO OR MORE INDIVIDUALS OR ENTITIES DESCRIBED IN THIS SUBSECTION (3) REGARDLESS OF NONPROFIT OR FOR-PROFIT STATUS.

(4) "RELIGIOUS ORGANIZATION" MEANS:
   (a) A HOUSE OF WORSHIP, INCLUDING BUT NOT LIMITED TO CHURCHES, SYNAGOGUES, SHRINES, MOSQUES, AND TEMPLES;
   (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, SCHOOL OR EDUCATIONAL INSTITUTION, MINISTRY, ORDER, SOCIETY, OR SIMILAR ENTITY, REGARDLESS OF WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR OTHER HOUSE OF WORSHIP; AND
   (c) AN OFFICER, OWNER, EMPLOYEE, MANAGER, RELIGIOUS LEADER, CLERGY, OR MINISTER OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS SUBSECTION (4).

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

(6) "STATE GOVERNMENT" MEANS:
   (a) THE STATE OR A POLITICAL SUBDIVISION OF THE STATE;
   (b) ANY AGENCY OF THE STATE OR OF A POLITICAL SUBDIVISION OF THE STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION, COUNCIL, COURT, OR PUBLIC INSTITUTION OF HIGHER EDUCATION;
   (c) ANY PERSON ACTING UNDER COLOR OF STATE LAW; AND
   (d) ANY PRIVATE PERSON SUING UNDER OR ATTEMPTING TO ENFORCE A LAW, RULE, OR REGULATION ADOPTED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

24-34-1004. Protections for adoption and foster care providers. (1) THE STATE GOVERNMENT SHALL NOT TAKE ANY
DISCRIMINATORY ACTION AGAINST A PERSON THAT ADVERTISES, PROVIDES, OR FACILITATES ADOPTION OR FOSTER CARE, WHOLLY OR PARTLY ON THE BASIS THAT SUCH PERSON HAS PROVIDED OR DECLINED TO PROVIDE ANY ADOPTION OR FOSTER CARE SERVICE, OR RELATED SERVICE, BASED UPON OR IN A MANNER CONSISTENT WITH A SINCERELY HELD RELIGIOUS BELIEF OR MORAL CONVICTION.

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

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

24-34-1005. Claim or defense against state action. (1) Cause of action and defense. A PERSON MAY ASSERT A VIOLATION OF THIS PART 10 AS A CLAIM AGAINST THE STATE GOVERNMENT IN ANY JUDICIAL OR
ADMINISTRATIVE PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING WITHOUT REGARD TO WHETHER THE PROCEEDING IS BROUGHT BY OR IN THE NAME OF THE STATE GOVERNMENT, ANY PRIVATE PERSON, OR ANY OTHER PARTY.

(2) Administrative remedies not required. Notwithstanding any other provision of law to the contrary, an action under this part 10 may be commenced, and relief may be granted, in a court of the state without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

24-34-1006. Remedies. (1) Except as provided in subsection (2) of this section, any person who successfully asserts a claim or defense under this part 10 may recover:

(a) Declaratory relief;

(b) Injunctive relief to prevent or remedy a violation of this part 10 or the effects of such a violation;

(c) Compensatory damages for pecuniary and nonpecuniary losses;

(d) Reasonable attorneys' fees and costs; and

(e) Any other appropriate relief.

(2) Only declaratory relief and injunctive relief shall be available against a private person not acting under color of state law upon a successful assertion of a defense under this part 10.

24-34-1007. Immunity waived. (1) Notwithstanding any law to the contrary, sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to
THE EXTENT OF LIABILITY CREATED BY THIS PART 10, AND A PERSON MAY
SUE THE STATE GOVERNMENT, EXCEPT STATE COURTS, FOR DAMAGES
ALLOWED BY THIS PART 10.

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

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


(1) Broad construction. THIS PART 10 MUST BE CONSTRUED IN FAVOR OF A BROAD PROTECTION OF
FREE EXERCISE OF RELIGIOUS BELIEFS AND MORAL CONVICTIONS, TO THE
MAXIMUM EXTENT PERMITTED BY THE STATE AND FEDERAL
CONSTITUTIONS.

(2) No preemption, repeal, or narrow construction. THE
PROTECTION OF FREE EXERCISE OF RELIGIOUS BELIEFS AND MORAL
CONVICTIONS AFFORDED BY THIS PART 10 ARE IN ADDITION TO THE
PROTECTIONS PROVIDED UNDER FEDERAL LAW, STATE LAW, AND THE
STATE AND FEDERAL CONSTITUTIONS. NOTHING IN THIS PART 10 MAY BE
CONSTRUED TO PREEMPT OR REPEAL ANY STATE OR LOCAL LAW THAT IS
EQUALLY OR MORE PROTECTIVE OF FREE EXERCISE OF RELIGIOUS BELIEFS
OR MORAL CONVICTIONS. NOTHING IN THIS PART 10 MAY BE CONSTRUED
TO NARROW THE MEANING OR APPLICATION OF ANY STATE OR LOCAL LAW
PROTECTING FREE EXERCISE OF RELIGIOUS BELIEFS OR MORAL
CONVICTIONS. NOTHING IN THIS PART 10 MAY BE CONSTRUED TO PREVENT THE STATE GOVERNMENT FROM PROVIDING, EITHER DIRECTLY OR THROUGH AN INDIVIDUAL OR ENTITY NOT SEEKING PROTECTION UNDER THIS PART 10, ANY BENEFIT OR SERVICE AUTHORIZED UNDER STATE LAW.

(3) Supersede other state law. This part 10 applies to, and in cases of conflict supersedes, each statute of the state that impinges upon the free exercise of religious beliefs and moral convictions protected by this Part 10, unless a conflicting statute is expressly made exempt from the application of this part 10. This part 10 also applies to, and in cases of conflict supersedes, any ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of the state government's authority that impinges upon the free exercise of religious beliefs and moral convictions protected by this part 10.

(4) Severability. If any provision of this part 10 or any application of such provision to any particular person or circumstance is held to be invalid under law, the remainder of this part 10 and the application of its provisions to any other person or circumstance is not affected.

SECTION 2. Act subject to petition - effective date. 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 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (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 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.