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FINAL FISCAL NOTE

Drafting Number: LLS 18-0730 Date: July 31, 2018
Prime Sponsors: Rep. Humphrey Bill Status: Postponed Indefinitely
Sen. Lundberg Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: LIVE AND LET LIVE ACT

- Summary of Fiscal Impact: State Revenue (potential), State Expenditure (potential), State Transfer, TABOR Refund, Local Government (potential), Statutory Public Entity (potential)

If a religious organization or an individual acts on their religious beliefs or moral convictions regarding sexual orientation or gender identity, this bill would have prohibited the State of Colorado from taking any action against them for excluding a group or an individual from their services.

Appropriation Summary: No appropriation was required.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill prohibits the State of Colorado from taking any action against a religious organization or individual for acting on religious beliefs or moral convictions regarding sexual orientation or gender identity. Under the bill, protected actions include the right:

- for a religious organization to refuse to perform, or an individual to recuse themselves from performing, marriage solemnization;
to refuse to provide marriage-related accommodations, facilities, goods, and services;
to establish sex-specific standards related to dress, grooming, or restroom-access;
for a religious organization to make housing and employment decisions based on an individual's sexual orientation or gender identity;
for a religious organization to refuse an individual's participation in adoption and foster care programs;
to an individual's speech or expressive conduct related to beliefs or convictions in and out of the workplace;

- for a medical provider to refuse to participate in treatments, counseling, or surgeries related to sex reassignment or gender identity transitioning, or to refuse psychological, counseling, or fertility services, unless a medically necessary emergency procedure; and
- for an individual to be accredited, licensed, or certified for related professions regardless of their beliefs or convictions.

An organization or individual may make a claim against any state agency, with the exception of the Judicial Department, for a violation under the bill. The claim must be filed within two years of the alleged action. The bill does not require an organization or individual to seek or exhaust administrative remedies before filing a claim. Successful claimants are allowed certain remedies, including declaratory relief, injunctive relief, compensatory damages, reasonable attorneys' fees, and any other appropriate relief.

State Revenue and TABOR Impact

To the extent that the bill increases trial court workload in the Judicial Department to hear the new type of claim created by the bill, court filing fees will increase. For informational purposes, the filing fee is \$97 for county courts, which may hear civil cases up to \$15,000, and \$224 for district court, which may hear any case. While the number of new cases is difficult to estimate, the fiscal note assumes that the state will comply with the law, and this revenue impact will be minimal. Revenue from filing fees is primarily credited to the Judicial Stabilization Fund and is subject to TABOR.

The bill may also cause more organizations to register as religious organizations which may increase filing fees with the Secretary of State's office and also change the organization's tax rate. This fiscal note does not estimate how the measure will affect individuals' wages and the subsequent impact on tax collections nor does it estimate the overall impact to businesses and the economy. Such an estimate would rely on many secondary factors outside the scope of this analysis.

State Expenditures

Overall, the bill may increase state expenditures and workload, as discussed below. The fiscal note also assumes that some of the agencies listed below will not have a fiscal impact, and explains these assumptions below.

All state agencies. The new causes of action under the bill will increase expenditures from any state agency that has a lawsuit filed against it or its employee. Successful claims will also create an expenditure impact to the extent compensatory damages and attorneys' fees are awarded to the claimant and paid by the state. These expenditures are expected to be paid from the General Fund, and requested through the annual budget process if necessary.

Department of Health Care Policy and Financing (HCPF). HCPF must adhere to federal rules regarding program eligibility and benefits as a condition of accepting federal funds. Federal regulations require nondiscrimination in health insurance and other health coverage on the basis of sex, specifically including gender transition surgery. The fiscal note assumes that the bill would not require any changes to HCPF's policies. If access is limited for certain services, it may affect utilization rates, which would be addressed during the annual budget process.

Department of Human Services (DHS). The Office of Children, Youth, and Families Domestic Violence Program in DHS receives \$20 from each marriage and civil union license. Because the bill requires the Secretary of State's Office to ensure a marriage solemnization is not impeded upon any state officiant's recusal, the fiscal note assumes this fee will not be impacted.

Judicial Department. The bill may increase trial court workload in the Judicial Department to hear the new type of claim created by the bill. While the number of new cases is difficult to estimate, the fiscal note assumes that the state will comply with the law. If additional appropriations are necessary, they will be requested through the annual budget process.

Office of Respondent Parents' Counsel (ORPC). The ORPC in the Judicial Department is expected to have a workload increase related to child welfare cases that result in adoption. Based on ORPC data that show that 9 percent of its annual 5,680 appointments result in adoption, and the assumption that the bill will require additional attorney time per adoption case between 1 to 10 hours at the rate of \$80 per hour, the ORPC may have an increase in General Fund expenditures ranging from \$40,880 to \$408,800 per year. The increase in appropriations will be addressed through the annual budget process when a more precise impact is known.

Department of Labor and Employment (CDLE). The bill may increase workload in the Division of Unemployment Insurance in CDLE in two ways. First, division workload related to the adjudication and appeals process may increase if employees are terminated as a result of the bill. Workload and revenue to the UI Trust Fund may also be impacted if businesses reclassify as religious organizations as a result of the bill. If additional appropriations are necessary, they will be requested through the annual budget process.

Department of Law. This bill will increase workload in the Attorney General's office in the Department of Law to represent the state or state employees in any litigation, as well as to assist with any necessary review of current state policies to avoid potential legal action. While the number of new cases is difficult to estimate, the fiscal note assumes the workload increase will not require a change in appropriations. If additional appropriations are necessary, they will be requested through the annual budget process.

Department of Personnel and Administration (DPA). The Colorado Governmental Immunity Act grants the state and its political subdivisions freedom from liability in tort cases. Because the bill creates remedies that are not subject to the act, the bill may increase the state's liability and DPA may need additional funding to its Liability Fund in the Office of Risk Management if more claims are paid. If additional appropriations are necessary, they will be requested through the annual budget process.

Department of Regulatory Agencies (DORA). The Colorado Civil Rights Division in DORA enforces Colorado's anti-discrimination laws in the areas of employment, housing, and public accommodations, and also provides training to groups and individuals throughout Colorado. The division receives funding from the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development/Office of Fair Housing and Equal Opportunity. This funding is predicated on Colorado's anti-discrimination laws being substantially equivalent to federal anti-discrimination laws in the areas of employment and housing. If the federal government deems the state out of compliance with federal anti-discrimination law, Colorado's civil rights enforcement funding may be reduced or curtailed. The state is expected to receive approximately \$500,000 from this funding source in FY 2018-19.

Local Government, School District, and Statutory Public Entity Impact

The bill applies to local government, school district, and special district actions. Similar to state agencies, the legal workload for these entities will increase to the extent that they are involved in claims filed under the bill. If any of these entities are a party to a claim under this bill, they may be responsible for paying out judgments. The bill may also increase revenue and workload in Denver County Court, which is funded by the City and County of Denver. County clerk and recorder offices may also see an increase in workload to the extent a clerk recuses themselves from performing a marriage solemnization.

Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on March 27, 2018.

State and Local Government Contacts

All State and Local Agencies