

STATE FREEDOM OF CONSCIENCE PROTECTION ACT HB15-1171

Summary of Legislation

This bill prohibits state and local governments in Colorado from directly or indirectly constraining the exercise of religion, except in cases involving a compelling governmental interest. State and local governments, including individual public officials in their official capacity, must use the least restrictive means of furthering any such compelling governmental interest. Persons whose exercise of religion is burdened, or likely to be burdened, may assert a violation of the bill as a new claim or as a defense in court. The bill authorizes various remedies, including damages or an injunction, as well as costs and attorney fees.

Background

Colorado free exercise litigation. The state of Colorado is periodically involved in litigation involving the assertion of a right to the free exercise of religion. On this basis, persons have presented claims and defended violations of state law in various contexts. Examples of such cases include failure to pay taxes or adhere to licensing requirements, agricultural regulations, and public accommodation laws. The Attorney General's Office (AGO) in the Department of Law represents state agencies in these cases. Under current law, the AGO typically resolves cases with a motion to dismiss.

State Expenditures

This bill results in a minimal workload increase for trial courts in the Judicial Department and for state agencies involved in litigation in which the free exercise of religion is a material issue. The bill affects pretrial litigation in these cases. State agencies will generally be required to present additional argument in pleadings. This workload increase, typically involving legal services from the AGO, is not expected to require new appropriations. State agencies and the trial courts in the Judicial Department will also experience increased workload from additional trials. Under the bill, a trial will be required in some cases to adjudicate the existence of a compelling governmental interest and whether the state has taken the least burdensome course of action. Because the number of free exercise cases is relatively small, any additional resources necessary for this litigation will be addressed in the annual budget process.

Local Government, School District, and Statutory Public Entity Impact

The bill covers governmental actions by cities, towns, counties, special districts, school districts, and statutory public entities. Similar to state agencies, legal workload for these local agencies will increase to address the bill in cases involving a free exercise claim. The bill is also expected to increase workload by a minimal amount in municipal courts, where the bill authorizes an affirmative defense to municipal offenses on the basis of the free exercise of religion.