



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1033

FINAL FISCAL NOTE

Drafting Number: LLS 20-0586
Prime Sponsors: Rep. Humphrey

Date: April 21, 2020
Bill Status: Postponed Indefinitely
Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: **LIVE AND LET LIVE ACT**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Statutory Public Entity

This bill would have prohibited the State of Colorado from taking any action against a religious organization or an individual for acting on their religious beliefs or moral convictions regarding sexual orientation or gender identity for excluding a group or an individual from its services. The organization or individual may have filed a claim against the state within two years of an alleged action violating the bill. This bill would have created ongoing potential revenue, expenditure, and workload increases for all state and local agencies.

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, its political subdivisions, any person acting under state law, and any private person suing under or attempting to enforce a state law 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 it is 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

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 beginning in FY 2020-21. 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, which are also subject to TABOR.

State Expenditures

Beginning in FY 2020-21, the bill will impact state expenditures and workload, as discussed 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 one of its employees. 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.

Generally, if the bill causes any state agency or program to be out of compliance with federal anti-discrimination laws, federal funding may be reduced or curtailed.

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 by a 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.

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, this 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, this 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 9.1 percent of its annual 6,161 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 \$85 per hour, the ORPC may have an increase in General Fund expenditures ranging from \$47,655 to \$476,553 per year. The increase in appropriations will be addressed through the annual budget process when a more precise impact is known.

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, this 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. The division receives funding from the U.S. Equal Employment Opportunity Commission and the Office of Fair Housing and Equal Opportunity in the U.S. Department of Housing and Urban Development. 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 to be out of compliance with federal anti-discrimination law, federal funding to DORA may be reduced or curtailed.

TABOR refunds. The bill is expected to minimally increase state General Fund obligations for TABOR refunds in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the measure will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government, School District, and Statutory Public Entity Impact

The bill applies to local government, school district, special district, and statutory public entity actions. Similar to state agencies, 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 that clerks recuse themselves from performing a marriage solemnization.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on February 13, 2020.

State and Local Government Contacts

All State and Local Agencies