

By Senator Grant

13-469-98

See HB

1 A bill to be entitled
2 An act relating to religious freedom; creating
3 the "Religious Freedom Restoration Act of
4 1998"; providing that government shall not
5 substantially burden the exercise of religion;
6 providing exceptions; providing definitions;
7 providing for attorney's fees and costs;
8 providing applicability; providing
9 construction; providing an effective date.

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11 WHEREAS, it is the finding of the Legislature of the
12 State of Florida that the framers of the Florida Constitution,
13 recognizing free exercise of religion as an unalienable right,
14 secured its protection in s. 3, Art. I of the State
15 Constitution, and

16 WHEREAS, laws which are "neutral" toward religion may
17 burden the free exercise of religion as surely as laws
18 intended to interfere with the free exercise of religion, and

19 WHEREAS, governments should not substantially burden
20 the free exercise of religion without compelling
21 justification, and

22 WHEREAS, the compelling interest test as set forth in
23 certain federal court rulings is a workable test for striking
24 sensible balances between religious liberty and competing
25 prior governmental interests, and

26 WHEREAS, it is the intent of the Legislature of the
27 State of Florida to establish the compelling interest test as
28 set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and
29 *Wisconsin v. Yoder*, 406 U.S. 205 (1972), to guarantee its
30 application in all cases where free exercise of religion is
31 substantially burdened, and to provide a claim or defense to

1 persons whose religious exercise is substantially burdened by
2 government, NOW, THEREFORE,

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Short title.--This act may be cited as the
7 "Religious Freedom Restoration Act of 1998."

8 Section 2. Definitions.--As used in this act:

9 (1) "Government" or "state" includes any branch,
10 department, agency, instrumentality, or official or other
11 person acting under color of law of the state, a county,
12 special district, municipality, or any other subdivision of
13 the state.

14 (2) "Demonstrates" means to meet the burden of going
15 forward with the evidence and of persuasion.

16 (3) "Exercise of religion" means the exercise of
17 religion under s. 3, Art. I of the State Constitution.

18 (4) "Incarcerated" means confined within any
19 correctional facility in the state.

20 Section 3. Free exercise of religion protected.--

21 (1) The government shall not substantially burden a
22 person's exercise of religion, even if the burden results from
23 a rule of general applicability, except that government may
24 substantially burden a person's exercise of religion only if
25 it demonstrates that application of the burden to the person:

26 (a) Is in furtherance of a compelling governmental
27 interest; and

28 (b) Is the least restrictive means of furthering that
29 compelling governmental interest.

30 (2) The government shall not substantially burden an
31 incarcerated person's exercise of religion, even if the burden

1 results from a rule of general applicability, except that
2 government may substantially burden an incarcerated person's
3 exercise of religion only if the burden:

4 (a) Is in furtherance of a substantial penological
5 interest; and

6 (b) Is the least restrictive means of furthering that
7 substantial penological interest.

8 (3) A person whose religious exercise has been
9 burdened in violation of this section may assert that
10 violation as a claim or defense in a judicial proceeding and
11 obtain appropriate relief.

12 Section 4. Attorney's fees and costs.--The prevailing
13 party in any action or proceeding to enforce a provision of
14 this act is entitled to reasonable attorney's fees and costs
15 to be paid by the government.

16 Section 5. Applicability; construction.--

17 (1) This act applies to all state law, and the
18 implementation of that law, whether statutory or otherwise,
19 and whether adopted before or after the enactment of this act.

20 (2) State law adopted after the date of the enactment
21 of this act is subject to this act unless such law explicitly
22 excludes such application by reference to this act.

23 (3) Nothing in this act shall be construed to
24 authorize the government to burden any religious belief.

25 (4) Nothing in this act shall be construed to
26 circumvent the provisions of chapter 893, Florida Statutes.

27 (5) Nothing in this act shall be construed to affect,
28 interpret, or in any way address that portion of s. 3, Art. I
29 of the State Constitution prohibiting laws respecting the
30 establishment of religion.

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