

By Representatives Starks and Trovillion

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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1           (6) Nothing in this act shall create any rights by an  
2 employee against an employer if the employer is not a  
3 governmental agency.

4           Section 6. This act shall take effect upon becoming a  
5 law.

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8   HOUSE SUMMARY

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10           Creates the "Religious Freedom Restoration Act of 1998."  
11           Defines terms for purposes of the act. Provides that  
12           government may not substantially burden a person's  
13           exercise of religion, or the exercise of religion of a  
14           person incarcerated within a correctional facility within  
15           the state, even if the burden results from a rule of  
16           general applicability. Provides an exception in which  
17           government may substantially burden such persons'  
18           exercise of religion only if it demonstrates that the  
19           application of the burden to the person is in furtherance  
20           of a compelling governmental interest, or a substantial  
21           penological interest, and is the least restrictive means  
22           of furthering the compelling governmental interest or  
23           substantial penological interest. Provides for attorney's  
24           fees and costs. Provides applicability. Provides  
25           construction.  
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