

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH30073-MA-36 (3/8)

Short Title: Religious Freedom Restoration Act.

(Public)

Sponsors: Representative Capps.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA RELIGIOUS FREEDOM
3 RESTORATION ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The North Carolina General Statutes are amended by adding a
6 new Chapter to read:

7 "Chapter 143C.

8 "Religious Freedom Restoration Act.

9 "**§ 143C-1. Definitions.**

10 The following definitions apply in this Chapter:

- 11 (1) "Demonstrates" means meets the burdens of going forward with the
12 evidence and of persuasion.
13 (2) "Exercise of religion" means an act or refusal to act that is
14 substantially motivated by religious belief, whether or not the religious
15 exercise is compulsory or central to a larger system of religious belief.
16 (3) "Government" includes a branch, department, agency, instrumentality,
17 and official (or other person acting under color of law) of the State of
18 North Carolina or a political subdivision of the State.

19 "**§ 143C-2. Findings and purposes.**

20 (a) The General Assembly finds the following:

- 21 (1) The free exercise of religion is an inherent, fundamental, and
22 inalienable right secured by Article I, Section 13 of the North Carolina
23 Constitution.
24 (2) Laws 'neutral' toward religion, as well as laws intended to interfere
25 with the exercise of religion, may burden the exercise of religion.
26 (3) Government should not substantially burden the exercise of religion
27 without compelling justification.

1 (4) In Employment Division v. Smith, 494 U.S. 872 (1990), the Supreme
2 Court virtually eliminated the requirement under the First Amendment
3 of the United States Constitution that government justify burdens on
4 the exercise of religion imposed by laws neutral toward religion.

5 (5) In City of Boerne v. P. F. Flores, 521 U.S. 507 (1997), the Supreme
6 Court held that an act passed by Congress to address the matter of
7 burdens placed on the exercise of religion infringed on the legislative
8 powers reserved to the states under the United States Constitution.

9 (6) The compelling interest test, as set forth in Wisconsin v. Yoder, 406
10 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), is a
11 workable test for striking sensible balances between religious liberty
12 and competing governmental interests.

13 (b) The purposes of this Chapter are as follows:

14 (1) To restore the compelling interest test as set forth in Wisconsin v.
15 Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398
16 (1963), and to guarantee that a test of compelling governmental
17 interest will be imposed on all State and local laws, ordinances,
18 policies, procedures, practices, and governmental actions in all cases in
19 which the free exercise of religion is substantially burdened.

20 (2) To provide a claim or defense to persons whose exercise of religion is
21 substantially burdened by government.

22 **"§ 143C-3. Free exercise of religion protected.**

23 Government may not substantially burden a person's exercise of religion, even if the
24 burden results from a rule of general applicability, unless it demonstrates that
25 application of the burden to the person (i) is in furtherance of a compelling
26 governmental interest and (ii) is the least restrictive means of furthering that compelling
27 governmental interest.

28 **"§ 143C-4. Judicial belief.**

29 If a person's exercise of religion has been burdened in violation of this Chapter, that
30 person may assert that violation as a claim or defense in a judicial proceeding and may
31 obtain appropriate relief against a government. A party who prevails in an action to
32 enforce this Chapter against a government is entitled to recover attorneys' fees and costs
33 incurred in maintaining the claim or defense.

34 **"§ 143C-5. Application of Chapter.**

35 (a) This Chapter applies to all State and local laws, ordinances, policies,
36 procedures, practices, and governmental actions and their implementation, whether
37 statutory or otherwise and whether adopted before or after the effective date of this
38 Chapter.

39 (b) Nothing in this Chapter shall be construed to authorize a government to
40 burden any religious belief.

41 (c) Nothing in this Chapter shall be construed to affect, interpret, or in any way
42 address any of the following: (i) that portion of the First Amendment of the United
43 States Constitution prohibiting laws respecting the establishment of religion, or (ii)
44 Article I, Section 13 of the North Carolina Constitution, or (iii) the second sentence of

1 Article I, Section 19 of the North Carolina Constitution. Granting government funding,
2 benefits, or exemptions, to the extent permissible under the three constitutional
3 provisions described in items (i), (ii), and (iii) does not constitute a violation of this
4 Chapter. In this subsection, 'granting', used with respect to government funding,
5 benefits, or exemptions, does not include the denial of government funding, benefits, or
6 exemptions.

7 (d) The governing body of a municipality or other unit of local government may
8 enact ordinances, standards, rules, or regulations that protect the free exercise of
9 religion in a manner or to an extent equal to or greater than the protection provided in
10 this Chapter. If an ordinance, standard, rule, or regulation enacted under the authority of
11 this section or under the authority of the unit of local government prohibits, restricts,
12 narrows, or burdens a person's exercise of religion or permits the prohibitions,
13 restriction, narrowing, or burdening of a person's exercise of religion, that ordinance,
14 standard, rule, or regulation is void and unenforceable as to that person if it (i) is not in
15 furtherance of a compelling governmental interest and (ii) is not the least restrictive
16 means of furthering that governmental interest."

17 **SECTION 2.** This act becomes effective July 1, 2005.