

1 **As Amended by House Committee**

2 *Session of 2003*

3
4 **HOUSE BILL No. 2040**

5
6 By Committee on Federal and State Affairs

7
8 1-21

9
10 AN ACT enacting the religious freedom restoration act.

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12 WHEREAS, It is the finding of the Legislature that the framers of the
13 Kansas Constitution, recognizing free exercise of religion as an unalien-
14 able right, secured its protection in the Kansas Constitution; and

15 WHEREAS, Laws which are “neutral” toward religion may burden
16 the free exercise of religion just as laws intended to interfere with the
17 free exercise of religion; and

18 WHEREAS, Governments should not substantially burden the free
19 exercise of religion without compelling justification; and

20 WHEREAS, The compelling interest test as set forth in certain federal
21 court rulings is a workable test for striking sensible balances between
22 religious liberty and competing prior governmental interests; and

23 WHEREAS, It is the intent of the Legislature of the State of Kansas
24 to establish the compelling interest test as set forth in *Sherbert v. Verner*,
25 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), to
26 guarantee the application of the test in all cases where free exercise of
27 religion is substantially burdened, and to provide a claim or defense to
28 persons whose religious exercise is substantially burdened by government:
29 Now, therefore,

30 *Be it enacted by the Legislature of the State of Kansas:*

31 Section 1. As used in this act:

32 (a) “Demonstrates” means to meet the burden of going forward with
33 the evidence and of persuasion.

34 (b) “Exercise of religion” means an act or refusal to act that is sub-
35 stantially motivated by a religious belief, whether or not the religious
36 exercise is compulsory or central to a larger system of religious belief.

37 (c) “Government” or “state” includes any branch, department,
38 agency or instrumentality of the state; any state official or other person
39 acting under color of law of the state; and any county, special district,
40 municipality or any other subdivision of the state.

41 Sec. 2. (a) The government shall not substantially burden a person’s
42 **or group’s** exercise of religion, even if the burden results from a rule of
43 general applicability, except that government may substantially burden a

1 person's **or group's** exercise only if:

2 (1) ~~The person is in custody in a correctional institution, as defined~~
3 ~~in K.S.A. 75-5202, and amendments thereto;~~ **The burden is related to**
4 **the management and operation of the department of corrections**
5 **or the person is in custody in a** juvenile correctional facility or juvenile
6 detention facility, as defined in K.S.A. 38-1602, and amendments thereto;
7 community corrections facility for detention or confinement of offenders;
8 or city or county jail; or

9 (2) the government demonstrates that application of the burden to
10 the person **or group** is in furtherance of a compelling governmental
11 interest and is the least restrictive means of furthering that compelling
12 governmental interest.

13 (b) A person **or group** whose religious exercise has been burdened
14 in violation of this section may assert that violation as a claim or defense
15 in a judicial proceeding and obtain appropriate relief.

16 ~~Sec. 3. The prevailing party in any action or proceeding to enforce a~~
17 ~~provision of this act is entitled to reasonable attorney fees and costs to be~~
18 ~~paid by the government.~~

19 **Sec. 3. A party prevailing against the state in a proceeding**
20 **pursuant to this act shall be entitled to reasonable attorney fees**
21 **and costs.**

22 Sec. 4. (a) This act applies to all state law, and the implementation
23 of that law, whether statutory or otherwise and whether adopted before
24 or after the effective date of this act.

25 (b) State law adopted after the effective date of this act is subject to
26 this act unless such law explicitly excluded such application by reference
27 to this act.

28 (c) Nothing in this act shall be construed to authorize the government
29 to burden any religious belief.

30 Sec. 5. This act shall take effect and be in force from and after its
31 publication in the statute book.

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