

# Arkansas Religious Freedom Restoration Act

## **16-123-401. Title.**

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This subchapter shall be known and may be cited as the "Religious Freedom Restoration Act".

## **16-123-402. Legislative intent.**

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It is the intent of the General Assembly:

- (1) To restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases in which free exercise of religion is substantially burdened;
- (2) That this subchapter be interpreted consistent with the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, federal case law, and federal jurisprudence; and
- (3) To provide a claim or defense to persons whose religious exercise is substantially burdened by government.

## **16-123-403. Definitions.**

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As used in this subchapter:

- (1) "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion;
- (2) "Exercise of religion" means religious exercise;
- (3) "Government" includes a branch, department, agency, instrumentality, political subdivision, official, or other person acting under color of state law; and
- (4) "State law" includes without limitation a law of a political subdivision.

## **16-123-404. Free exercise of religion protected.**

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(a) A government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except that a government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is:

- (1) In furtherance of a compelling governmental interest; and
- (2) The least restrictive means of furthering that compelling governmental interest.

(b)

(1) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

(2) Standing to assert a claim or defense under this section is governed by the general rules of standing under statute, the Arkansas Rules of Criminal Procedure, the Arkansas Rules of Civil Procedure, or any court holding from the state's appellate courts.

**16-123-405. Construction and applicability.**

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(a) This subchapter applies to all state law, and the implementation of state law, whether statutory or otherwise, and whether adopted before or after April 2, 2015.

(b) State statutory law adopted after April 2, 2015, is subject to this subchapter unless the state statutory law explicitly excludes the application by reference to this subchapter.

(c) This subchapter does not authorize any part of a government to burden a religious belief.

**16-123-406. Interpretation.**

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(a) This subchapter does not affect, interpret, or in any way address that portion of the United States Constitution, Amendment I, prohibiting laws respecting the establishment of religion or of Arkansas Constitution, Article 2, § 25, concerning protection of religion.

(b) Granting government funding, benefits, or exemptions, to the extent permissible under the United States Constitution, Amendment I, prohibiting laws respecting the establishment of religion or of Arkansas Constitution, Article 2, § 25, shall not constitute a violation of this subchapter.

(c) As used in this section, "granting", with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

**16-123-407. Exemptions.**

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The Department of Correction, the Department of Community Correction, a county jail, and a detention facility are exempt from this subchapter.