CHAPTER 32

South Carolina Religious Freedom Act

**SECTION 1‑32‑10.** Short title.

This chapter may be cited as the “South Carolina Religious Freedom Act”.

HISTORY: 1999 Act No. 38, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 78k1010.

Civil Rights 1010.

C.J.S. Civil Rights Sections 2, 6 to 7, 9 to 10, 19, 21.

RESEARCH REFERENCES

Encyclopedias

63 Am. Jur. Proof of Facts 3d 195, Interference With the Right to Free Exercise of Religion.

73 Am. Jur. Proof of Facts 3d 89, Proof of Religion in the Courtroom that Violates the Right to a Fair Trial.

S.C. Jur. Constitutional Law Section 35.1, South Carolina Religious Freedom Act.

**SECTION 1‑32‑20.** Definitions.

In this chapter:

(1) “Demonstrates” means meets the burdens of going forward with the evidence and of persuasion.

(2) “Exercise of religion” means the exercise of religion under the First Amendment to the United States Constitution or Article I, Section 2 of the State Constitution.

(3) “Person” includes, but is not limited to, an individual, corporation, firm, partnership, association, or organization.

(4) “State” means the State of South Carolina and any political subdivision of the State and includes a branch, department, agency, board, commission, instrumentality, entity, or officer, employee, official of the State or a political subdivision of the State, or any other person acting under color of law.

HISTORY: 1999 Act No. 38, Section 1.

**SECTION 1‑32‑30.** Purposes of chapter.

The purposes of this chapter are to:

(1) restore the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), and to guarantee that a test of compelling state interest will be imposed on all state and local laws and ordinances in all cases in which the free exercise of religion is substantially burdened; and

(2) provide a claim or defense to persons whose exercise of religion is substantially burdened by the State.

HISTORY: 1999 Act No. 38, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 78k1010; 92k84.

Civil Rights 1010.

Constitutional Law 84.

C.J.S. Civil Rights Sections 2, 6 to 7, 9 to 10, 19, 21.

C.J.S. Constitutional Law Sections 513 to 517.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 35.1, South Carolina Religious Freedom Act.

NOTES OF DECISIONS

In general 1

1. In general

Village ordinance that required individuals to obtain a permit prior to engaging in door‑to‑door advocacy and to display upon demand the permit, containing one’s name, violated the First Amendment as it applied to religious proselytizing, anonymous political speech, and the distribution of handbills; ordinance necessarily resulted in surrender of anonymity of individuals supporting causes, permit requirement imposed an objective burden on some speech of citizens holding religious or patriotic views, a significant amount of spontaneous speech would have been effectively banned under the ordinance, and ordinance was not tailored to the village’s interest in preventing fraud, the privacy of residents, and the prevention of crime. Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 2002, 122 S.Ct. 2080, 536 U.S. 150, 153 L.Ed.2d 205, on remand 42 Fed.Appx. 772, 2002 WL 1858720. Constitutional Law 1879; Municipal Corporations 621

**SECTION 1‑32‑40.** Restriction on state’s ability to burden exercise of religion.

The State may not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:

(1) in furtherance of a compelling state interest; and

(2) the least restrictive means of furthering that compelling state interest.

HISTORY: 1999 Act No. 38, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 78k1010; 92k84.

Civil Rights 1010.

Constitutional Law 84.

C.J.S. Civil Rights Sections 2, 6 to 7, 9 to 10, 19, 21.

C.J.S. Constitutional Law Sections 513 to 517.

RESEARCH REFERENCES

Encyclopedias

63 Am. Jur. Proof of Facts 3d 195, Interference With the Right to Free Exercise of Religion.

S.C. Jur. Constitutional Law Section 35.1, South Carolina Religious Freedom Act.

**SECTION 1‑32‑45.** Inmate litigation.

This chapter does not affect the application of and must be applied in conjunction with Chapter 27 of Title 24, concerning inmate litigation.

HISTORY: 1999 Act No. 38, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 92k84.5(14); 310k4(14).

Constitutional Law 84.5(14).

Prisons 4(14).

C.J.S. Constitutional Law Section 530.

C.J.S. Prisons and Rights of Prisoners Sections 91 to 95.

**SECTION 1‑32‑50.** Burden on exercise of religion a claim or defense; attorney’s fees.

If a person’s exercise of religion has been burdened in violation of this chapter, the person may assert the violation as a claim or defense in a judicial proceeding. If the person prevails in such a proceeding, the court shall award attorney’s fees and costs.

HISTORY: 1999 Act No. 38, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 92k84; 102k32; 102k194.14.

Constitutional Law 84.

Costs 32, 194.14.

C.J.S. Constitutional Law Sections 513 to 517.

C.J.S. Costs Sections 10, 126.

RESEARCH REFERENCES

Encyclopedias

63 Am. Jur. Proof of Facts 3d 195, Interference With the Right to Free Exercise of Religion.

S.C. Jur. Constitutional Law Section 35.1, South Carolina Religious Freedom Act.

**SECTION 1‑32‑60.** Applicability; construction.

(A) This chapter applies to all state and local laws and ordinances and the implementation of those laws and ordinances, whether statutory or otherwise, and whether adopted before or after the effective date of this act.

(B) Nothing in this chapter may be construed to authorize the State to burden any religious belief.

(C) Nothing in this chapter may be construed to affect, interpret, or in any way address:

(1) that portion of the First Amendment of the United States Constitution prohibiting laws respecting the establishment of religion;

(2) that portion of Article I, Section 2 of the State Constitution prohibiting laws respecting the establishment of religion.

(D) Granting state funding, benefits, or exemptions, to the extent permissible under the constitutional provisions enumerated in subsection (C)(1) and (2), does not constitute a violation of this chapter.

As used in this subsection, “granting”, with respect to state funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

HISTORY: 1999 Act No. 38, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 78k1010; 92k84.

Civil Rights 1010.

Constitutional Law 84.

C.J.S. Civil Rights Sections 2, 6 to 7, 9 to 10, 19, 21.

C.J.S. Constitutional Law Sections 513 to 517.

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63 Am. Jur. Proof of Facts 3d 195, Interference With the Right to Free Exercise of Religion.

S.C. Jur. Constitutional Law Section 35.1, South Carolina Religious Freedom Act.