

055453772

SENATE BILL NO. 1267

Offered January 18, 2005

A BILL to amend and reenact §§ 57-2.1, 57-7.1 through 57-11, 57-13 through 57-18, 57-21, 57-22, and 57-32 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 1-13.3:2, 1-13.12:1, and 57-16.1, relating to conversion of church entities and church property to corporate status.

Patrons—Mims and Miller; Delegates: McQuigg and Ware, R.L.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-2.1, 57-7.1 through 57-11, 57-13 through 57-18, 57-21, 57-22, and 57-32 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 1-13.3:2, 1-13.12:1, and 57-16.1 as follows:

§ 1-13.3:2. Church; definition.

Depending upon the context in which it is used, "church" means (a) a religious entity having a distinctive body of theological tenets, beliefs, and practices; (b) a congregation adhering to a distinctive body of theological tenets, beliefs, and practices; or (c) a building in which a congregation regularly gathers for public worship, including, but not limited to, a cathedral, chapel, meeting-house, mosque, synagogue, or temple.

§ 1-13.12:1. Minister; definition

"Minister" means an individual ordained, selected, or elected in accordance with the ritual, practice, or governing document of a church, as defined in § 1-13.3:2, to exercise religious authority or officiate in the leadership or clerical functions of the church. The term includes, but is not limited to, a bishop, imam, minister of the gospel, pastor, priest, or rabbi.

§ 57-2.1. Advertising by hotels, etc., that persons find objectionable because of religion.

(1) Definitions. - Except where the context clearly requires a different meaning, the following terms shall have the meaning respectively ascribed to them:

"Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

"Establishment" means any building or part thereof, including without being limited to public inns and hotels, any structure, enclosure, tract of land, and all improvements, appurtenances, and additions, bodies of water whether natural or artificial, and any other place of whatsoever nature to which the general public is or will be admitted, allowed or invited on payment of a fee, free of charge or otherwise.

(2) Methods of advertising; solicitation to violate section. - No person, directly or indirectly, for himself or for another, shall publish in any newspaper or magazine, post on any sign, or broadcast by radio or television any commercial advertisement that any person not otherwise prohibited by law from using an establishment is not welcome, or is objectionable, or is not acceptable because of his religion. No person shall cause or solicit another person to violate this section.

(3) Exemptions from section. - This section shall not apply (1) to any establishment which is private or restricted to membership only; (2) to any college, school, educational institution, or camp, admission to which is based on religious belief or affiliation; (3) to any gathering, meeting or assembly held under the auspices of any religious group or sectbody.

(4) Public nuisance; abatement by injunction. - Any commercial advertisement as set forth herein is declared a public nuisance and shall be subject to abatement by injunctive relief; any aggrieved individual or group of individuals may proceed to obtain an injunction enjoining and restraining the person from continuing such commercial advertisement.

§ 57-7.1. What transfers for religious purposes valid.

Every conveyance or transfer of real or personal property, whether inter vivos or by will, which is made to or for the benefit of any church, ~~church diocese, religious congregation~~ or religious society body, whether by purchase or gift, shall be valid, ~~subject to the provisions of § 57-12.~~

Any such conveyance or transfer that fails to state a specific purpose shall be used for the religious and benevolent purposes of the church, ~~church diocese, religious congregation~~ or religious society body as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof.

No such conveyance or transfer shall fail or be declared void for insufficient designation of the beneficiaries in any case where the church, ~~church diocese, religious congregation~~ or religious society

INTRODUCED

SB1267

59 *body* has lawful trustees in existence, is capable of securing the appointment of lawful trustees upon
60 application as prescribed in § 57-8, *is incorporated, has created a corporation pursuant to § 57-16.1, or*
61 *has ecclesiastical officers pursuant to the provisions of § 57-16.*

62 § 57-8. Appointment of trustees to effect the purposes of conveyances, etc.; validation of certain
63 appointments.

64 The circuit court of the county or the circuit ~~or corporation~~ court of the city, or the judge thereof in
65 vacation, wherein there is any parcel of such land or the greater part thereof may, on the application of
66 the proper authorities of ~~such an unincorporated church diocese, religious congregation, church, or~~
67 ~~religious society~~ *body* or branch or division thereof, from time to time appoint trustees, either where
68 there were, or are, none or in place of former trustees, and on such application and without notice to the
69 trustee or trustees change those so appointed whenever it may seem to the court or judge proper to
70 effect and promote the purpose and object of the conveyance, devise, or dedication, and the legal title to
71 such land shall for that purpose and object be vested in the trustees for the time being and their
72 successors.

73 All such changes and appointments heretofore [before March 31, 1966] made are hereby validated,
74 ratified, approved and confirmed.

75 § 57-9. How property rights determined on division of church or body.

76 A. If a division has heretofore occurred or shall hereafter occur in a church ~~or religious society~~, to
77 which any ~~such~~ *congregation whose property is held by trustees* is attached, the ~~communicants,~~
78 ~~pewholders, and pewowners~~ *members* of such congregation, over ~~eighteen~~ 18 years of age, may, by a
79 vote of a majority of the whole number, determine to which branch of the church ~~or society~~ such
80 congregation shall thereafter belong. Such determination shall be reported to the circuit court of the
81 county, or circuit ~~or corporation~~ court of the city, wherein the property held in trust for such
82 congregation or the greater part thereof is; and if the determination be approved by the court, it shall be
83 so entered in its chancery order book, and shall be conclusive as to the title to and control of any
84 property held in trust for such congregation, and be respected and enforced accordingly in all of the
85 courts of this Commonwealth.

86 B. If a division has heretofore occurred or shall hereafter occur in a congregation *whose property is*
87 *held by trustees*, which, in its organization and government, is a church ~~or society~~ entirely independent
88 of any other church ~~or general society~~, a majority of the members of such congregation, entitled to vote
89 by its constitution as existing at the time of the division, or where it has no written constitution, entitled
90 to vote by its ordinary practice ~~of or~~ custom, may decide the right, title, and control of all property held
91 in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall
92 be so entered as aforesaid, and shall be final as to such right of property so held.

93 § 57-10. How trustees to hold personal property.

94 When ~~books or furniture~~ *personal property* shall be given or acquired for the benefit of ~~such an~~
95 ~~unincorporated church diocese, religious congregation, church, or religious society, or branch or division~~
96 ~~thereof~~ *body*, to be used ~~on such land in the ceremonies of public worship or at the residence of such~~
97 ~~bishop, or minister or clergyman for its religious purposes~~, the same shall stand vested in the trustees
98 having the legal title to the land, to be held by them as the land is held, and upon the same trusts *or, if*
99 *the church has created a corporation pursuant to § 57-16.1, to be held by it as its land is held, and for*
100 *the same purposes.*

101 § 57-11. Suits by and against trustees.

102 Such trustees, and such as are mentioned in §§ 57-21, 57-22, and 57-23, may, in their own names,
103 sue for and recover any real or personal estate held by them respectively in trust, or damages for injury
104 thereto, and be sued in relation to the same. Such suit notwithstanding the death of any of the trustees,
105 or the appointment of others, shall proceed in the names of the trustees by or against whom it was
106 instituted.

107 In any case where such trustees shall have given any deed of trust, or encumbered such real or
108 personal estate in any manner to secure any debt, and such trustees have since died, and such church
109 ~~diocese, religious congregation~~ *body*, or organization has become extinct, or has ceased to occupy the
110 property, so that it may be regarded as abandoned property, the beneficiary entitled to the debt secured
111 by such deed of trust or encumbrance, may for the purpose of subjecting the estate to the payment of
112 such lien, institute a suit in equity in the circuit ~~or corporation~~ court of the county or city in which the
113 property or the greater part thereof is, against the members of such church ~~diocese or~~, religious
114 ~~congregation~~ *body*, or organization as parties unknown, proceeding by order of publication as provided
115 by Chapter 8 (§ 8.01-285 et seq.) of Title 8.01.

116 § 57-13. Suits by members against trustees to compel proper application of property.

117 Any one or more members of any church ~~diocese or religious congregation~~ *whose property is held*
118 *by trustees* may, in his or their names, on behalf of such church ~~diocese or congregation~~, commence and
119 prosecute a suit in equity against any such trustee to compel him to apply such real or personal estate
120 for the use or benefit of the church ~~diocese or congregation~~, as his duty shall require. No member of the

church ~~diocese or congregation~~ need be made a defendant to such suit, but, in other respects, the same shall be proceeded in, heard, and determined as other suits in equity, except that it may be proceeded in, notwithstanding the death of the plaintiff, as if he were still living.

§ 57-14. Suits by members to have land sold or mortgaged.

Whenever the governing body of any church ~~diocese or any religious congregation~~ *whose property is held by trustees*, for whose use a conveyance, devise, or dedication of land has been lawfully made, shall deem that ~~their~~ *the interest of the church* will be promoted by a sale of the whole or a part of such land, or by a mortgage thereof, or deed of trust thereon, it shall be lawful for any member of such church ~~diocese or congregation~~, in his name and on behalf of the other members thereof, to prosecute a suit for either of such purposes in the circuit court of the county, or circuit ~~or corporation~~ court of the city, in which such land or the greater part thereof lies, against the trustees or the survivors of them in whom the legal title is; and it shall be lawful for such court, if a proper case be made, and it appears that the governing body of the church ~~diocese or the congregation~~ has given its assent thereto in the mode prescribed by its authorities, and the court be of opinion that the rights of others will not be violated thereby, to order the sale of such land or part thereof, or the execution of such mortgage or deed of trust, and make such disposition of the proceeds of such sale as the governing body of the church ~~diocese or congregation~~ may desire.

§ 57-15. Proceedings by trustees or members for similar purposes, exception for certain transfers.

A. The trustees of such a church ~~diocese, congregation, or church~~ or religious ~~denomination, or society or branch or division thereof~~ *body*, in whom is vested the legal title to such land held for any of the purposes mentioned in § 57-7.1, may file their petition in the circuit court of the county or the city wherein the land, or the greater part thereof held by them as trustees, lies, or before the judge of such court in vacation, asking leave to sell, encumber, extend encumbrances, improve, make a gift of, or exchange the land, or a part thereof, or to settle boundaries between adjoining property by agreement. Upon evidence being produced before the court that it is the wish of the ~~congregation, or church or religious denomination or society, or branch or division thereof, or the constituted authorities thereof~~ *having jurisdiction in the premises, or of the governing body of any church diocese body*, to sell, exchange, encumber, extend encumbrances, make a gift of, or improve the property or settle boundaries by agreement, the court shall make such order as may be proper, providing for the sale of such land, or a part thereof, or that the same may be exchanged, encumbered, improved, or given as a gift, or that encumbrances thereon be extended, and in case of sale for the proper investment of the proceeds or for the settlement of such boundaries by agreement.

When any such ~~religious congregation~~ *church* has become extinct or has ceased to occupy such property as a place of worship, so that it may be regarded as abandoned property, the petition may be filed either by the surviving trustee or trustees, should there be any, or by any one or more members of ~~such its congregation~~, should there be any, or by the ~~church or religious body~~ which by the laws of the church or ~~denomination religious body~~ to which the ~~congregation church~~ belongs has the charge or custody of the property, or in which it may be vested by the laws of such church or ~~denomination religious body~~. The court shall either (i) make a decree for the sale of the property or the settlement of boundaries between adjoining properties by agreement, and the disposition of the proceeds in accordance with the laws of the ~~denomination church or religious body~~, and the printed acts of the church or ~~denomination religious body~~ issued by its authority, embodied in book or pamphlet form, shall be taken and regarded as the law and acts of such ~~denomination church or religious body~~ or (ii) at the request of the surviving trustees and after notice in accordance with law to all necessary parties, make such order as may be proper providing for the gift of such property to any willing local, state or federal entity or to a willing private, nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided the court finds that (a) the property includes a historic building or landmark so designated by the Commonwealth and (b) the purpose of such gift is historical preservation of the property.

The court may make such order as to the costs in all these proceedings as may seem proper.

B. *As an alternative to proceeding under subsection A, (i) the trustees of a church that incorporates may transfer the title to the real and personal property of the church held by them to the incorporated church; and (ii) the trustees of a church that does not incorporate under subdivision (i) hereof may transfer title to the real and personal property of the church held by them to a corporation created pursuant to § 57-16.1 without, in either instance, obtaining court permission if the transfer is authorized in accordance with the church's polity. If no petition seeking to set such a transfer aside is filed within one year of the recordation of the trustees' deed transferring title to real estate, or the date of the transfer of any personal property, it shall be conclusively presumed that the transfer was made in accordance with the church's polity insofar as a good faith purchaser or lender is concerned.*

C. *No transfer made pursuant to subsection A or subsection B shall operate as a transfer for purposes of a provision contained in any note or deed of trust that purports to accelerate an indebtedness upon a transfer*

of title. Any such transfers of real estate shall be entitled to the exemptions set forth in § 58.1-811.

D. Any transfer of real or personal property made pursuant to subsection B, and any similar transfer made pursuant to subsection A after April 23, 2002, shall be deemed to assign to the incorporated church or the corporation created pursuant to § 57-16.1, as the case may be, the beneficial interest in every policy of insurance of every kind, type, and description, relating to the property transferred, contemporaneously with the transfer, and the transferee shall have all of the rights and obligations of the transferor relating thereto.

§ 57-15.1. Order may provide that fiscal officer may sign instrument without personal liability.

Any order entered pursuant to §§ 57-14 and 57-15 may provide that any instrument evidencing a debt secured by a deed of trust or mortgage made in behalf of a ~~church diocese, congregation, church or religious denomination or society or branch or division thereof~~ *body*, hereinafter referred to inclusively as "church," may be signed without personal liability by the treasurer or other fiscal officer of such church and thereupon become the obligation solely of the church named therein.

To carry out any order entered pursuant to §§ 57-14 and 57-15, the judge may appoint a special commissioner to convey or encumber any real estate held for the benefit of any church in connection with any transaction involving any conveyance or debt in the name of the church.

Any such instrument when recorded shall be indexed in the name of the church as grantor.

§ 57-16. Property held, etc., by ecclesiastical officers.

(1) How property acquired, held, transferred, etc. - Whenever the laws, rules or ecclesiastic polity of any church or religious ~~seet, society or denomination~~ *body* commits to its duly elected or appointed ~~bishop, minister or other ecclesiastical officer~~, authority to administer its affairs, such duly elected or appointed ~~bishop, minister or other ecclesiastical officer~~ shall have power to acquire by deed, devise, gift, purchase or otherwise, any real or personal property, for any purpose authorized and permitted by its laws, rules or ecclesiastic polity, and not prohibited by the laws of Virginia, and the power to hold, improve, mortgage, sell and convey the same in accordance with such laws, rules and ecclesiastic polity, and in accordance with the laws of Virginia.

(2) Transfer, removal, resignation or death of ecclesiastical officer. - In the event of the transfer, removal, resignation or death of any such ~~bishop, minister, or other ecclesiastical officer~~, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon election or appointment, and pending election or appointment of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules, or ecclesiastical polity of such church or religious ~~seet, society or denomination~~ *body*.

(3) Validation of deeds, etc. - All deeds, deeds of trust, mortgages, wills or other instruments made prior to March 18, 1942, to or by a duly elected or appointed ~~bishop, minister or other ecclesiastical officer~~, who at the time of the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church or religious ~~seet, society or denomination~~ *body* under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church or religious ~~seet, society or denomination~~ *body*, are hereby ratified and declared valid. All transfers of title and rights with respect to property, prior to such date from a predecessor ~~bishop, minister or other ecclesiastical officer~~ who has resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church or religious ~~seet, society or denomination~~ *body*, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

(4) Insufficient designation of beneficiaries or objects of trust. - No gift, grant, bequest or devise made on or after March 18, 1942, to any such church or religious ~~seet, society or denomination~~ *body* or the duly elected or appointed ~~bishop, minister or other ecclesiastical officer~~ authorized to administer its affairs, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, bequest or devise; but such gift, grant, bequest or devise shall be valid; provided, that whenever the objects of any such trust shall be undefined, or so uncertain as not to admit of specific enforcement by the chancery courts of the Commonwealth, such gift, grant, bequest or devise shall be held, managed, and the principal or income appropriated, for the religious and benevolent uses of such church or religious ~~seet, society or denomination~~ *body* by its duly elected or appointed ~~bishop, minister or other ecclesiastical officer~~ authorized to administer its affairs.

(5) ~~Limitation on amount of land to be held.~~ - This section shall not be construed, however, so as to authorize any parish or congregation of such church to hold more land, money, securities or other personal estate than authorized under the provisions of § 57-12, as amended from time to time.

~~(6)~~(5) Rights and remedies cumulative. - The rights created and the remedies provided in this section shall be construed as cumulative and not exclusive.

~~(7)~~(6) No implied repeal of other provisions. - This section shall not be so construed as to effect an implied repeal of any other provisions of this chapter.

§ 57-16.1. Property of unincorporated church held by corporation.

Whenever the laws, rules, or ecclesiastic polity of an unincorporated church or religious *body* provide for it to create a corporation to hold, administer, and manage its real and personal property,

such corporation shall have the power to (i) acquire by deed, devise, gift, purchase, or otherwise, any real or personal property for any purpose authorized and permitted by the laws, rules, or ecclesiastic polity of the church or body, and not prohibited by the law of the Commonwealth; and (ii) hold, improve, mortgage, sell, and convey the same in accordance with such law, rules, and ecclesiastic polity, and in accordance with the law of the Commonwealth.

§ 57-17. Conveyance of church land held in adverse possession.

Whenever any church in this Commonwealth has been in the undisputed possession, for a period of ~~twenty-five~~ 25 years or more, of any real estate, and for which there is no deed of record, the trustees of the church, after giving notice once a week for four successive weeks in some newspaper published in, or having general circulation in, the county or city in which such real estate is, may file a petition in the circuit court of such county, or any court of record of such city, duly sworn to, which petition shall set forth the fact that the real estate mentioned therein has been in the undisputed possession of such church for a period of ~~twenty-five~~ 25 years or more and shall give the true boundaries of such real estate. Upon the hearing of such petition, if the court shall be satisfied that the real estate mentioned has been in the undisputed possession of such church for a period of ~~twenty-five~~ 25 years or more; that the boundaries mentioned in the petition are the true boundaries of such real estate; and that the trustees who file such petition are the duly appointed trustees of such church has been filed by the proper party, it may appoint a special commissioner to make conveyance of such real estate to the trustees of the church, with covenant of special warranty; provided that such real estate so acquired shall not increase the holdings of such trustees in the aggregate at any one time to more than four acres of land in a city or town, nor more than seventy-five acres out of a city or town.

§ 57-18. Conveyance for charitable purpose to unincorporated bodies or societies.

In any case where, since June 18, 1914, there has been, or at any time hereafter there may be, any gift, grant or devise of real estate for charitable purposes to an unincorporated body or society whether such gift, grant or devise be directly to such body or society, or to it in trust for charitable uses, trustees to hold the same may, if such unincorporated body or society so elects, be appointed in accordance with the procedure prescribed by § 57-8, and such trustees shall hold the trust subject in accordance with the provisions of §§ 57-11, 57-13, 57-14 and 57-15, in like manner as if such sections had been made expressly applicable to such unincorporated body or society. For the purposes of this section the words church, society, denomination, congregation, religious congregation, religious body, religious denomination and religious congregation or organization, appearing in the aforesaid sections, shall be interpreted to refer to such unincorporated body or society.

§ 57-21. May hold personal property through trustees.

Any such association may acquire ~~books or furniture~~ personal property for its use, and hold the same and any such as it may have heretofore acquired, through the intervention of trustees in whom the legal title shall be vested for its benefit; and the circuit court of the county, or the circuit or corporation court of the city, in which the meetings of such association are usually held, or the judge of such court in vacation, may, on the application of the proper authorities of the association, from time to time, appoint trustees, either where there were or are none, or in place of former trustees, and change those so appointed, as may seem to the court or judge to be proper; and the legal title to such ~~books or furniture~~ personal property shall be vested in the trustees, for the time being, and their successors, for the use and benefit of the association.

§ 57-22. Conveyance of land to trustees or local governing body for cemetery use.

A. Land may be conveyed to trustees, not less than five nor more than nine in number, for the use of any city, town, county, magisterial district, cemetery association, ~~ecclesiastical~~ religious, or other society body, as a cemetery. It shall be held by such trustees and their successors for such use and no other.

B. Land may also be conveyed to a county, city, or town, in the name of the county, city or town, for use as a cemetery. Any perpetual care fund associated with the land or cemetery shall also be transferred upon such conveyance.

§ 57-32. Who may hold such property.

Any cemetery company chartered under the laws of this Commonwealth, or the trustees of a church, or any trustees holding title to a cemetery, or burial ground, may take and hold any property granted, ~~bequeath~~ bequeathed, devised, or given upon trust to apply its income to the improvement, repair, or embellishment of the cemetery, or any burial lot or monument or tomb or vault or other erections in such cemetery, according to the terms of such grant, bequest, devise, or gift.