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## HOUSE BILL NO. 3082

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 19, 2007)

(Patron Prior to Substitute—Delegate Lingamfelter)

A *BILL to amend and reenact § 17.1-406 and to amend the Code of Virginia by adding a section numbered 57-2.02, relating to religious freedom.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 17.1-406 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 57-2.02 as follows:**

§ 17.1-406. Petitions for appeal; cases over which Court of Appeals does not have jurisdiction.

A. Any aggrieved party may present a petition for appeal to the Court of Appeals from (i) any final conviction in a circuit court of a traffic infraction or a crime, except where a sentence of death has been imposed, (ii) any final decision of a circuit court on an application for a concealed weapons permit pursuant to subsection D of § 18.2-308, ~~or~~ (iii) any final order of a circuit court involving involuntary treatment of prisoners pursuant to § 53.1-40.1, *or (iv) any final order for declaratory or injunctive relief under § 57-2.02.* The Commonwealth or any county, city or town may petition the Court of Appeals for an appeal pursuant to this subsection in any case in which such party previously could have petitioned the Supreme Court for a writ of error under § 19.2-317. The Commonwealth may also petition the Court of Appeals for an appeal in a criminal case pursuant to § 19.2-398.

B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court from a conviction in which a sentence of death is imposed, from a final decision, judgment or order of a circuit court involving a petition for a writ of habeas corpus, from any final finding, decision, order, or judgment of the State Corporation Commission, and from proceedings under §§ 54.1-3935 and 54.1-3937. Complaints of the Judicial Inquiry and Review Commission shall be filed with the Supreme Court of Virginia. The Court of Appeals shall not have jurisdiction over any cases or proceedings described in this subsection.

§ 57-2.02. *Religious freedom preserved; definitions; applicability; construction; remedies.*

A. As used in this section:

"Demonstrates" means meets the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence.

"Exercise of religion" means the exercise of religion under Article I, Section 16 of the Constitution of Virginia, the Virginia Act for Religious Freedom (§ 57-1 et seq.), and the First Amendment to the United States Constitution.

"Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party.

"Frivolous claim" means a claim that completely lacks merit under existing law and cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.

"Government entity" means any branch, department, agency, or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of the Commonwealth.

"Prevails" means to obtain "prevailing party" status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988.

"Substantially burden" means to inhibit or curtail religiously motivated practice.

B. Except as provided in subsections C and F, no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

C. No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.

D. Nothing in this section shall be construed to (i) authorize any government entity to burden any religious belief or (ii) affect, interpret or in any way address those portions of Article 1, Section 16 of the Constitution of Virginia, the Virginia Act for Religious Freedom (§ 57-1 et seq.), and the First Amendment to the United States Constitution that prohibit laws respecting the establishment of religion. Granting government funds, benefits or exemptions, to the extent permissible under clause (ii) of this subsection, shall not constitute a violation of this section. As used in this subsection, "granting" used with respect to government funding, benefits, or exemptions shall not include the denial of government funding, benefits, or exemptions.

60       *E. A person whose religious exercise has been burdened by government in violation of this section*  
61       *may assert that violation as a claim or defense in any judicial or administrative proceeding and may*  
62       *obtain declaratory and injunctive relief from a circuit court, but shall not obtain monetary damages. A*  
63       *person who prevails in any proceeding to enforce this section against a government entity may recover*  
64       *his reasonable costs and attorney fees. The provisions of this subsection relating to attorney fees shall*  
65       *not apply to criminal prosecutions.*

66       *F. The provisions of this section shall not apply to persons who are incarcerated in a state, local or*  
67       *federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii)*  
68       *operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or who are civilly*  
69       *committed to the Department of Mental Health, Mental Retardation and Substance Abuse Services*  
70       *pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.*

71       *G. The decision of the circuit court to grant or deny declaratory and injunctive relief may be*  
72       *appealed by petition to the Court of Appeals of Virginia.*