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HOUSE BILL NO. 1315

Offered January 9, 2013

Prefiled October 3, 2012

A BILL to ensure the rights of conscience of Virginia citizens related to the purchase of health insurance.

Patrons—Marshall, R.G. and Gilbert; Senator: Black

Referred to Committee on Commerce and Labor

Whereas, the Preamble to the proposed amendments to the Constitution of the United States, which became the Bill of Rights, sent by Congress for consideration by the States, signed by Frederick Muhlenberg, Speaker of the House of Representatives, and John Adams, Vice-President and President of the Senate, and attested to by John Beckley, Clerk of the House of Representatives, and Samuel Otis, Secretary of the Senate, provides that "The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution"; and

Whereas, the Free Exercise and Establishment Clauses of the First Amendment were proposed in order to protect the rights of individual conscience and religious denominations from coercion by federal authorities; and

Whereas, protection of rights of conscience was, in eighteenth-century terms, synonymous with religious freedom; and

Whereas, the wording of initial versions of what became the First Amendment as reported in congressional debates expressly affirmed the protection of rights of conscience; and

Whereas, on August 24, 1789, the House of Representatives under the leadership of James Madison voted to send the following proposed amendment to the Constitution: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience"; and

Whereas, the omission of direct words affirming the protection of conscience in the final version of the First Amendment is consistent with the purpose of protecting rights of individual conscience as a legislative goal, as the Annals of Congress noted Congressman Daniel Carroll as stating: "As the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of the governmental hand . . . [h]e would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community."; and

Whereas, the public record and statements of members of the First Congress who supported the First Amendment affirm that they sought to protect freedom of conscience from federal interference; and

Whereas, the Virginia Statute for Religious Freedom was a legislative precursor to the First Amendment. The statements and words of the Virginians most responsible for the statute, Thomas Jefferson and James Madison, demonstrate that protection of the rights of conscience was intended with its passage; and

Whereas, the Virginia Statute for Religious Freedom provides "that no man shall be . . . molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief, but that all men shall be free . . . in matters of Religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities"; and

Whereas, the Virginia Statute for Religious Freedom declares that "the rights hereby asserted, are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right"; and

Whereas, the Supreme Court of the United States in *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947), expressly referenced the Virginia Statute for Religious Freedom and affirmed the judicial finding that "This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against the governmental intrusion on religious liberty as the Virginia statute"; and

Whereas, the First Congress, which included members of the 1787 Constitutional Convention, in addition to proposing the First Amendment, also reenacted in 1789 the Northwest Ordinance passed by the Continental Congress in 1787 for the governance of territories, which provided, "No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory. . . . [and] Religion, morality, and knowledge

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59 *being necessary to good government and the happiness of mankind"; and*

60 *Whereas, Article VI, Section 3 of the Constitution of the United States, which provides for the taking*
61 *of oaths or affirmation of office, and the ban on religious tests as a precondition for holding federal*
62 *office were enacted, in part, to ensure that citizens did not need to abandon their faith or right of*
63 *conscience to become public servants; and*

64 *Whereas, the Congress, the Supreme Court of the United States, and the Chief Executive have failed*
65 *to protect the rights of conscience adequately. All three branches of the federal government have*
66 *promoted and preferred some beliefs and the citizens who hold them over others, and such laws,*
67 *policies, and regulations are neither neutral nor generally applicable; and*

68 *Whereas, the federal requirement that health insurance policies cover contraception methods,*
69 *sterilization procedures, and abortifacient drugs or devices is not a neutral and generally applicable law*
70 *because it is not applicable to many millions of Americans; and*

71 *Whereas, the federal Religious Freedom Restoration Act protects the rights of conscience against*
72 *burdens imposed by federal law and provides that if any federal law substantially burdens a person's*
73 *exercise of religion, the application of that burden to that person must be the least restrictive means to*
74 *further a compelling government interest; and*

75 *Whereas, the Federalist Papers affirm that state legislatures have constitutional authority and*
76 *responsibility to protect and defend citizens against improper actions of the federal government, as*
77 *reflected in Federalist No. 26 by Alexander Hamilton, which provides that "the State legislatures, who*
78 *will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against*
79 *encroachments from the federal government, will constantly have their attention awake to the conduct of*
80 *the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the*
81 *people, and not only to be the VOICE, but, if necessary, the ARM of their discontent"; and*

82 *Whereas, the General Assembly, in keeping with Hamilton's understanding of the role of the states to*
83 *protect its citizens, acted to preserve religious freedom in 2007 by enacting § 57-2.02 of the Code of*
84 *Virginia, which provides that if any Virginia law substantially burdens a person's free exercise of*
85 *religion, the application of that burden to that person must be the least restrictive means of furthering a*
86 *compelling government interest; and*

87 *Whereas, the General Assembly finds that the proposed regulations from the U.S. Department of*
88 *Health and Human Services requiring individuals, businesses, and religious organizations to purchase*
89 *health insurance that includes coverage for contraceptive methods, sterilization procedures, and*
90 *abortifacient drugs or devices (i) constitute a taking of private property for private use in violation of*
91 *Article I, Section 11 of the Constitution of Virginia and the Fifth Amendment to the Constitution of the*
92 *United States and (ii) violate the rights of conscience and the free exercise of religion as protected and*
93 *provided for in the Virginia Statute for Religious Freedom; Article I, Section 16 of the Constitution of*
94 *Virginia; the First Amendment to the Constitution of the United States; and the Religious Freedom*
95 *Restoration Act; now, therefore,*

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

97 **1. § 1.** *No (i) individual or group accident and sickness insurance policy providing hospital, medical,*
98 *and surgical or major medical coverage on an expense-incurred basis issued by an insurer; (ii)*
99 *individual or group accident and sickness subscription contract provided by a corporation; or (iii)*
100 *health care plan for health care services provided by a health maintenance organization shall provide*
101 *for coverage for U.S. Food and Drug Administration-approved (a) contraception methods, (b)*
102 *sterilization procedures, or (c) abortifacient drugs or devices unless the subscriber or enrollee in the*
103 *policy, contract, or plan requests such coverage. No employer who provides for health and medical care*
104 *or reimbursement of medical expenses for his employees as a self-insurer is required to include*
105 *coverage for contraception methods, sterilization procedures, or abortifacient drugs or devices*

106 **§ 2.** *The provisions of § 1 of this enactment shall apply to any insurer, corporation, or health*
107 *maintenance organization offering a policy, contract, or plan through a health benefit exchange required*
108 *or authorized by the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the*
109 *Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).*