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HOUSE BILL NO. 1**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on February 11, 1998)

(Patrons Prior to Substitute—Delegates McEachin and Plum [HB 668])

A *BILL* to amend the Code of Virginia by adding a section numbered 57-2.02, relating to the preservation of religious freedom.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 57-2.02 as follows:

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

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

B. A government entity may substantially burden a person's free exercise of religion only if it demonstrates that application of the burden to the person (i) furthers a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest. Before the compelling governmental interest test required by this subsection is applied, a person asserting a violation of this section shall first prove that the law, ordinance or regulation as applied to him burdens the free exercise of his religion.

C. As used in this section:

"Demonstrates" means meets the burden of going forward with the evidence and of persuasion under the standard of a preponderance of the 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, instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of the state.

"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 meaningfully inhibit or curtail religiously motivated practice.

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 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 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.

E. A person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief, injunctive relief, and/or monetary damages as may properly be awarded by a court of competent jurisdiction. A person who prevails in any proceeding to enforce this section against a government entity may recover his reasonable costs and attorney's fees. Standing to assert a claim or defense under this section shall be governed by the general rule of standing under Article VI of the Constitution of Virginia. The provisions of this subsection relating to attorney's fees shall not apply to criminal prosecutions.

F. Any person found by a court with jurisdiction over the action to have abused the protections of this section by filing a frivolous or fraudulent claim may be assessed the government entity's court costs, if any, and may be enjoined from filing further claims under this section without leave of court.

G. No provision of this section shall be construed to afford any rights to any person incarcerated or detained in a state, regional, local or federal correctional, detention or penal facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising any other constitutional or statutory right relating to the free exercise of religion.

60 *H. A person who alleges that the free exercise of his religion has been substantially burdened in*
61 *violation of this section shall notify, in writing, the chief executive officer of the government entity of the*
62 *alleged violation, stating the factual basis for the claim and the relief requested. Within sixty days of*
63 *receipt of such claim, the government entity shall investigate the alleged violation and respond to such*
64 *person in writing. Thereafter, such person may assert the alleged violation as a claim in any equitable*
65 *proceeding and the court may grant appropriate relief, including attorney's fees.*