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SENATE BILL NO. 448

Offered January 21, 2000

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

Patrons—Mims, Byrne, Hanger, Martin, Newman, Quayle, Schrock, Stosch, Ticer and Williams;
Delegate: McEachin

Referred to Committee on General Laws

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 is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling government interest.

C. 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, §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.

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

D. This section shall apply to all state laws and local ordinances whether adopted before or after July 1, 2000. State laws enacted after July 1, 2000, shall be subject to the provisions of this section unless such law explicitly excludes the application of this section by specific reference to this section.

E. 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, § 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.

F. A person whose free exercise of religion has been burdened in violation of this section may assert such violation as a claim or defense in a judicial proceeding and the court may grant appropriate relief, including but not limited to, 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.

INTRODUCED

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