

VIRGINIA ACTS OF ASSEMBLY -- 2007 RECONVENED SESSION

CHAPTER 889

An Act 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.

[H 3082]

Approved April 4, 2007

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.

"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 and does not include the Department of Corrections, the Department of Juvenile Justice, and facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services that treats civilly committed sexually violent predators, or any local, regional or federal correctional facility.

"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. No government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability 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.

C. 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.

D. 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 declaratory and injunctive relief from a circuit court, but shall not obtain monetary damages. A person who prevails in any proceeding to enforce this section against a government entity may recover his reasonable costs and attorney fees. The provisions of this subsection relating to attorney fees shall not apply to criminal prosecutions.

E. Nothing in this section shall prevent any governmental institution or facility from maintaining health, safety, security or discipline.

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