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HOUSE BILL NO. 2171

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact § 57-2.02 of the Code of Virginia, relating to religious freedom; applicability of certain executive orders.*

Patrons—Williams, Campbell, E.H., Walker and Wilt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 57-2.02 of the Code of Virginia is amended and reenacted as follows:****§ 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 any facility of the Department of Behavioral Health and Developmental 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. *No rule, regulation, or order issued by the Governor or other governmental entity pursuant to the Commonwealth of Virginia Emergency Services and Disaster Law (§ 44-146.13 et seq.) shall apply to the exercise of religion in a church, synagogue, or other place of worship.*

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.

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

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

INTRODUCED

HB2171