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HOUSE BILL NO. 1414

Offered January 14, 2015

Prefiled December 19, 2014

A *BILL to ensure the rights of conscience of Virginia citizens related to the obtaining or renewing of government-issued licenses, etc.; conscience clause.*

Patron—Marshall, R.G.

Referred to Committee on General Laws

Whereas, the Preamble to the proposed amendments to the United States Constitution, 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 "[t]he 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, and 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 "[t]his 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 being

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

60 Whereas, paragraph 3 of Article VI of the United States Constitution, 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, was enacted, in part, to ensure that citizens did not need to abandon their faith or right of
63 conscience to become public servants; now, therefore,

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

65 *1. § 1. A person seeking to obtain or renew a license, registration, or certificate from the*
66 *Commonwealth, its political subdivisions, or any agency, authority, board, department, or other entity*
67 *thereof, shall not be required to perform, assist, consent to, or participate in any action or refrain from*
68 *performing, assisting, consenting to, or participating in any action as a condition of obtaining or*
69 *renewing the license, registration, or certificate where such condition would violate the religious or*
70 *moral convictions of such person with respect to same-sex "marriage" or homosexual behavior.*