~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 30, 2022

**H. 3105**

Introduced by Reps. Yow, Burns, Chumley, Magnuson, McCravy, Wooten, Fry, B. Cox, May, Haddon, Long, Gilliam, Forrest, Nutt, Trantham, Oremus, McGarry, Bennett, Jones, Thayer, Hiott, Willis, Huggins, Hixon, McCabe, Dabney, B. Newton, Bryant, Elliott, M.M. Smith, Pope, D.C. Moss, Ballentine, Lucas, Crawford, Erickson, Bradley, T. Moore, Wheeler, Herbkersman, W. Newton, Martin, Taylor and Davis

S. Printed 3/30/22--S. [SEC 3/31/22 8:18 PM]

Read the first time March 17, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3105) to amend Chapter 32, Title 1, Code of Laws of South Carolina, 1976, relating to the “South Carolina Religious Freedom Act”, so as to provide that religious, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Title 1 of the 1976 Code is amended by adding:

“CHAPTER 33

Protection of the Exercise of Religion During a State of Emergency

Section 1‑33‑10. For purposes of this chapter:

(1) ‘Discriminatory action’ means any action undertaken by the State to:

(a) alter in any way the tax treatment of a religious organization, or cause any tax, fine, civil or criminal penalty, payment, damages award, or injunction to be assessed against a religious organization;

(b) deny, delay, revoke, or otherwise make unavailable an exemption from taxation for a religious organization; or

(c) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any grant, contract, scholarship, license, accreditation, certification, entitlement, or other benefit under any government program.

(2) ‘Exercise of religion’ means the exercise of religion as protected under the First Amendment to the United States Constitution, Article I, Section 2 of the State Constitution, and Title 1, Chapter 32, of the South Carolina Code of Laws.

(3) ‘Religious organization’ includes, but is not limited to, houses of worship, religious ministries, organizations, social agencies, groups, corporations, educational institutions and other entities whose principal purpose is the study, practice, or advancement of religion and their officers, owners, clergy, religious leaders, and ministers.

(4) ‘Religious services’ means a meeting, gathering, or assembly of two or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that are deemed necessary by the religious organization for the exercise of religion.

(5) ‘State’ means the State of South Carolina and any political subdivision of the State and includes a branch, department, agency, board, commission, instrumentality, entity, or officer, employee, official of the State or a political subdivision of the State, or any other person acting under color of law or suing under or attempting to enforce a state law, rule, or regulation.

(6) ‘State of emergency’ means any declaration or proclamation issued under the authority of state law that an emergency has occurred including, but not limited to:

(a) a proclamation of emergency issued by the Governor pursuant to Section 1‑3‑420;

(b) a declaration of emergency issued by the Governor pursuant to Section 25‑1‑440;

(c) a declaration of emergency issued by a county governing body pursuant to Section 4‑9‑130; and

(d) a declaration of emergency issued by a municipal governing body pursuant to Section 5‑7‑250.

Section 1‑33‑20. (A) During a state of emergency, religious services are deemed an essential service and are considered necessary and vital to the health and welfare of the public.

(B) The State may not limit the ability of a religious organization to continue operating and to engage in religious services during a state of emergency to a greater extent than it limits operations or services of other organizations or businesses that provide essential services.

(C) The State may require a religious organization to comply with neutral health, safety, or occupancy requirements during a state of emergency that:

(1) are applicable to all organizations or businesses providing essential services; and

(2) do not impose a substantial burden on religious services, unless the State demonstrates that the burden is necessary to further a compelling state interest and is the least restrictive means of furthering that interest.

(D) The State may not take any discriminatory action against a religious organization on the basis that the organization is religious, operates or seeks to operate during a state of emergency, and engages in the exercise of religion.

Section 1‑33‑30. A religious organization may assert a violation of this title as a claim or defense in a judicial proceeding. If the religious organization prevails in such a proceeding, the court must award attorney’s fees and costs and may award other appropriate relief including, but not limited to, injunctive relief, declaratory relief, and compensatory damages for pecuniary and nonpecuniary losses.

Section 1‑33‑40. (A) This chapter applies to all state and local laws and ordinances and the implementation of those laws and ordinances, whether statutory or otherwise, and whether adopted before or after the effective date of this act.

(B) Nothing in this chapter may be construed to authorize the State to burden any religious belief.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill deems religious services as an essential service during a state emergency and specifies that the State may take no discriminatory actions against a religious organization, as defined in the bill, due to the organization operating or seeking to operate during a state of emergency. This bill does not materially alter the responsibilities of any state agency. Therefore, this bill will have no fiscal impact.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND CHAPTER 32, TITLE 1, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE “SOUTH CAROLINA RELIGIOUS FREEDOM ACT”, SO AS TO PROVIDE THAT RELIGIOUS SERVICES ARE DEEMED AN ESSENTIAL SERVICE DURING A STATE OF EMERGENCY AND MUST BE ALLOWED TO CONTINUE OPERATING THROUGHOUT THE STATE OF EMERGENCY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 32, Title 1 of the 1976 Code is amended to read:

“CHAPTER 32

South Carolina Religious Freedom Act

Section 1‑32‑10. This chapter may be cited as the ‘South Carolina Religious Freedom Act’.

Section 1‑32‑20. In this chapter:

(1) ‘Demonstrates’ means meets the burdens of going forward with the evidence and of persuasion.

(2) ‘Discriminatory action’ means any action undertaken by the State to:

(a) alter the tax treatment of a religious organization, cause any tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable from exemption;

(b) disallow, deny, or otherwise make available a deduction for state tax purposes of a charitable contribution made to or by a religious organization;

(c) impose, levy, or assess a monetary fine, fee, penalty, damage award, or injunction; or

(d) withhold, reduce, exclude, terminate, or materially alter the terms or conditions of:

(i) a state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefits from or to a religious organization;

(ii) an entitlement or benefit under a state program from or to a religious organization; or

(iii) a license, certification, accreditation, recognition, or other similar benefit, position, or status to or from a religious organization.

(3) ‘Exercise of religion’ means the exercise of religion under the First Amendment to the United States Constitution or Article I, Section 2 of the State Constitution.

~~(3)~~(4) ‘Person’ includes, but is not limited to, an individual, corporation, firm, partnership, association, or organization.

(5) ‘Religious organization’ includes, but is not limited to, houses of worship, religious ministries, organizations, social agencies, groups, corporations, educational institutions and other entities whose principal purpose is the study, practice, or advancement of religion and their officers, owners, clergy, religious leaders, and ministers.

(6) ‘Religious services’ means a meeting, gathering, or assembly of two or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that are deemed necessary by the religious organization for the exercise of religion.

~~(4)~~(7) ‘State’ means the State of South Carolina and any political subdivision of the State and includes a branch, department, agency, board, commission, instrumentality, entity, or officer, employee, official of the State or a political subdivision of the State, or any other person acting under color of law.

Section 1‑32‑30. The purposes of this chapter are to:

(1) restore the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), and to guarantee that a test of compelling state interest will be imposed on all state and local laws and ordinances in all cases in which the free exercise of religion is substantially burdened; and

(2) provide a claim or defense to persons whose exercise of religion is substantially burdened by the State.

Section 1‑32‑40. The State may not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:

(1) in furtherance of a compelling state interest; and

(2) the least restrictive means of furthering that compelling state interest.

Section 1‑32‑45. This chapter does not affect the application of and must be applied in conjunction with Chapter 27 ~~of~~, Title 24, concerning inmate litigation.

Section 1‑32‑50. If a person’s exercise of religion or a religious organization’s ability to operate during a state of emergency has been burdened in violation of this chapter, the person may assert the violation as a claim or defense in a judicial proceeding. If the person prevails in such a proceeding, the court shall award attorney’s fees and costs. A religious organization also may seek declaratory and injunctive relief and compensatory damages for pecuniary and nonpecuniary losses.

Section 1‑32‑55. (A) During a state of emergency, religious services are deemed an essential service and are considered necessary and vital to the health and welfare of the public.

(B) The State may not limit the ability of a religious organization to continue operating or engage in religious services during a state of emergency to the same or greater extent that other organizations or businesses that provide essential services are permitted to operate.

(C) Nothing in this section may be construed to prohibit the State from requiring religious organizations to comply with neutral health, safety, and occupancy requirements issued by the state or federal government that are applicable to other businesses and organizations that provide essential services. However, the State may not enforce any requirements that would substantially burden the religious organization unless the State demonstrates that the burden is:

(1) in furtherance of a compelling state interest; and

(2) the least restrictive means of furthering that compelling state interest.

(D) The State may not take any discriminatory action against a religious organization on the basis that the organization:

(1) is religious;

(2) operates or seeks to operate during a properly declared state of emergency; or

(3) engages in the exercise of religion.

Section 1‑32‑60. (A) This chapter applies to all state and local laws and ordinances and the implementation of those laws and ordinances, whether statutory or otherwise, and whether adopted before or after the effective date of this act.

(B) Nothing in this chapter may be construed to authorize the State to burden any religious belief.

(C) Nothing in this chapter may be construed to affect, interpret, or in any way address:

(1) that portion of the First Amendment of the United States Constitution prohibiting laws respecting the establishment of religion;

(2) that portion of Article I, Section 2 of the State Constitution prohibiting laws respecting the establishment of religion.

(D) Granting state funding, benefits, or exemptions, to the extent permissible under the constitutional provisions enumerated in subsection (C)(1) and (2), does not constitute a violation of this chapter.

As used in this subsection, ‘granting’, with respect to state funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.”

SECTION 2. This act takes effect upon approval by the Governor.

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