2021 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 5

BY REPRESENTATIVES MCCORMICK AND HODGES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana. CRIMINAL/PENALTIES: Suspends criminal penalties for emergency order violations

1	A CONCURRENT RESOLUTION
2	To suspend until sixty days after final adjournment of the 2022 Regular Session of the
3	Legislature of Louisiana criminal penalties and restrictions related to the free
4	exercise of religion, including but not limited to R.S. 14:329.6(A)(3), R.S. 29:724(E)
5	and 727(G), and any other criminal penalty or restriction that could be imposed on
6	religious assembly provided for in Title 14, Title 29, or any other Title or Code of
7	the Louisiana Revised Statutes of 1950 that provides a criminal penalty for violations
8	of any COVID-19 proclamation or declaration of emergency order or any other order
9	declared by any state or local official that is related to the free exercise of religion
10	guaranteed by the Constitution of Louisiana and the Constitution of the United States
11	of America.
12	WHEREAS, the Constitution of Louisiana, as provided by Article III, Section 20,
13	authorizes the legislature to suspend a law and fix the period of suspension which shall not
14	extend beyond the sixtieth day after final adjournment of the next regular session; and
15	WHEREAS, this House Concurrent Resolution is intended to follow the form and
16	precedent set forth in Louisiana Chem. Ass'n v. State through Louisiana Dep't of Revenue,
17	2016-0501 (La. App. 1 Cir. 4/7/17), 217 So. 3d 455, writ denied, 2017-0761 (La. 9/22/17),
18	227 So. 3d 826 affirming the legislature's constitutional role to suspend the application of
19	certain laws related to certain categories of individuals in House Concurrent Resolution No.
20	8 of the 2015 Regular Session of the Legislature of Louisiana; and

WHEREAS, on March 11, 2020, the World Health Organization declared the novel
 coronavirus (COVID-19) outbreak a global pandemic; and

WHEREAS, since March 11, 2020, various executives of the state and local governing authorities have issued proclamations to declare a public health emergency due to COVID-19 as well as various declarations of disaster related to hurricanes and other emergencies; and

WHEREAS, in response to the declarations of public health or other emergencies
various states including Louisiana have issued executive orders at the state and local level
which restricted attendance to religious services and have directly or indirectly closed
churches; and

11 WHEREAS, the United States Supreme Court in Roman Catholic Diocese of 12 Brooklyn v. Cuomo, 141 S. Ct. 63 (2020), struck down the New York governor's COVID-19 13 executive order that restricted churches so severely that it effectively closed them down 14 while the same executive order allowed secular businesses to operate with few or no 15 restrictions. The court further noted that "Catholics who watch a Mass at home cannot 16 receive communion. . . " and stated that "But even in a pandemic, the Constitution cannot be 17 put away and forgotten. The restrictions at issue here, by effectively barring many from 18 attending religious services, strike at the very heart of the First Amendment's guarantee of 19 religious liberty"; and

WHEREAS, Louisiana pastors, clergy, and other persons met and continue to meet under the assumption that, in America and in Louisiana, their guarantee of religious liberty found in the Constitution of the United States of America and the Constitution of Louisiana protects their free exercise of religion so that they can ultimately succeed if they follow the instruction found in the Holy Bible in Hebrews 10:25 not to engage in "forsaking the assembling of ourselves together, as the manner of some is; but exhorting one another: and so much the more, as ye see the day approaching"; and

WHEREAS, even a technical violation of R.S. 14:329.6, R.S. 29:721, or R.S. 29:727,
et seq. can impose fines, or imprisonment, or both on any person who violates a governor's,
mayor's, or parish president's executive order declaring an emergency or disaster, and a two

year time limitation on prescription would apply to any violation thereof, pursuant to Code
 of Criminal Procedure Article 572; and

3 WHEREAS, the legislature declares that it is not the intention of the legislature that 4 any provision of law which would be construed to authorize the arrest, imprisonment, or imposition of a monetary fine against any person in Louisiana for exercising that person's 5 6 constitutionally guaranteed right of free exercise of religion, including but not limited to the 7 right to attend or conduct a religious service at a church, house of worship, or one's home 8 because such an implementation would violate Article I, Section 8 of the Constitution of 9 Louisiana and the First Amendment of the Constitution of the United States of America and 10 thereby violate the oaths that we took as legislators to uphold the Constitution of Louisiana 11 and the Constitution of the United States of America.

12 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby suspends all criminal penalties and restrictions related to religious assembly including but not limited 13 14 to R.S. 14:329.6(A)(3), R.S. 29:724(E), R.S. 29:727(G) and any other criminal penalty or 15 restriction on religious assembly provided for in Title 14, Title 29, or any other Title or Code 16 of the Louisiana Revised Statutes of 1950 that provides a criminal penalty for violations of 17 any COVID-19 proclamation or declaration of emergency order or any other order declared 18 by any state or local official that is related to the free exercise of religion guaranteed by the 19 Constitution of Louisiana and the Constitution of the United States of America. 20 BE IT FURTHER RESOLVED that this suspension shall become effective upon 21 adoption of this Resolution and shall extend through the sixtieth day after final adjournment

22 of the 2022 Regular Session of the Legislature of Louisiana.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Suspends the enforcement of criminal penalties relative to religious assembly for violation of R.S. 14:329.6(A)(3), R.S. 29:724(E), R.S. 29:727(G), and all others as they relate to emergency proclamations and violations of emergency proclamations.

<u>Present law</u> (R.S. 14:329.6(A)(3)) provides that during a state of emergency and following a proclamation by the governor, the chief law enforcement officer of the political subdivision affected by the proclamation may, in order to protect life and property and to bring the

emergency situation under control, promulgate orders affecting any part or all of the territorial limits of the municipality or parish, which includes regulating and closing of places of amusement and assembly.

<u>Present law</u> (R.S. 29:724(E)) provides that in the event of an emergency declared by the governor, any person or representative of any firm, partnership, or corporation violating any promulgated order, rule, or regulation shall be fined not more than \$500 or confined in the parish jail for not more than six months, or both. Provides that no executive order, proclamation, or regulation shall create or define a crime or fix penalties.

<u>Present law</u> (R.S. 29:727(G)) provides that in the event of an emergency declared by the parish president, any person or representative of any firm, partnership, or corporation violating any promulgated order, rule, or regulation shall be fined not more than \$500 or confined in the parish jail for not more than six months, or both.

(Suspends R.S. 14:329.6(A)(3) and R.S. 29:724(E) and 727(G))