

23107018D

HOUSE BILL NO. 2208

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary on February 15, 2023)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact §§ 2.2-3900, 2.2-3902, 8.01-49.1, 18.2-57, and 18.2-121 of the Code of Virginia, relating to hate crimes and discrimination; antisemitism; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3900, 2.2-3902, 8.01-49.1, 18.2-57, and 18.2-121 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3900. Short title; declaration of policy.

A. This chapter shall be known and cited as the Virginia Human Rights Act.

B. It is the policy of the Commonwealth to:

1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, ethnic or national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, or disability in places of public accommodation, including educational institutions and in real estate transactions;

2. Safeguard all individuals within the Commonwealth from unlawful discrimination in employment because of race, color, religion, ethnic or national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or military status;

3. Preserve the public safety, health, and general welfare;

4. Further the interests, rights, and privileges of individuals within the Commonwealth; and

5. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors, and the elderly.

The provisions of this chapter shall be construed liberally for the accomplishment of its policies.

Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, military status, disability, or ethnic or national origin is an unlawful discriminatory practice under this chapter.

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

In addition, nothing in this chapter shall be construed to affect any governmental program, law or activity differentiating between persons on the basis of age over the age of 18 years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the Commonwealth for the general health, safety and welfare of the population at large.

Complaints filed with the Office of Civil Rights of the Department of Law (the Office) in accordance with § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that is enforced by a Virginia agency shall be referred to that agency. The Office may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Office shall have no further jurisdiction over the complaint. The Office shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

§ 8.01-49.1. Liability for defamatory material on the Internet.

A. No provider or user of an interactive computer service on the Internet shall be treated as the publisher or speaker of any information provided to it by another information content provider. No provider or user of an interactive computer service shall be liable for (i) any action voluntarily taken by it in good faith to restrict access to, or availability of, material that the provider or user considers to be obscene, lewd, lascivious, excessively violent, harassing, or intended to incite hatred on the basis of race, religious conviction, gender, disability, gender identity, sexual orientation, color, or ethnic or national origin, whether or not such material is constitutionally protected, or (ii) any action taken to enable, or make available to information content providers or others, the technical means to restrict access to information provided by another information content provider.

B. As used in this section:

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

SENATE SUBSTITUTE

HB2208S1

2/24/23 9:20

60 "Information content provider" means any person or entity that is responsible, in whole or in part, for  
61 the creation or development of information provided through the Internet or any other interactive  
62 computer service.

63 "Interactive computer service" means any information service, system, or access software provider  
64 that provides or enables computer access by multiple users to a computer server, including specifically a  
65 service or system that provides access to the Internet and such systems operated or services offered by  
66 libraries or educational institutions.

67 "Internet" means the international computer network of interoperable packet-switched data networks.

68 **§ 18.2-57. Assault and battery; penalty.**

69 A. Any person who commits a simple assault or assault and battery is guilty of a Class 1  
70 misdemeanor, and if the person intentionally selects the person against whom a simple assault is  
71 committed because of his race, religious conviction, gender, disability, gender identity, sexual  
72 orientation, color, or *ethnic or* national origin, the penalty upon conviction shall include a term of  
73 confinement of at least six months.

74 B. However, if a person intentionally selects the person against whom an assault and battery resulting  
75 in bodily injury is committed because of his race, religious conviction, gender, disability, gender  
76 identity, sexual orientation, color, or *ethnic or* national origin, the person is guilty of a Class 6 felony,  
77 and the penalty upon conviction shall include a term of confinement of at least six months.

78 C. In addition, if any person commits an assault or an assault and battery against another knowing or  
79 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as  
80 defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the  
81 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an  
82 employee of a local or regional correctional facility directly involved in the care, treatment, or  
83 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or  
84 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,  
85 an employee or other individual who provides control, care, or treatment of sexually violent predators  
86 committed to the custody of the Department of Behavioral Health and Developmental Services, a  
87 firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services  
88 personnel member who is employed by or is a volunteer of an emergency medical services agency or as  
89 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,  
90 regardless of whether a resolution has been adopted by the governing body of a political subdivision  
91 recognizing such firefighters or emergency medical services personnel as employees, engaged in the  
92 performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6  
93 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of  
94 confinement of six months.

95 Nothing in this subsection shall be construed to affect the right of any person charged with a  
96 violation of this section from asserting and presenting evidence in support of any defenses to the charge  
97 that may be available under common law.

98 D. In addition, if any person commits a battery against another knowing or having reason to know  
99 that such other person is a full-time or part-time employee of any public or private elementary or  
100 secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1  
101 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in  
102 jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is  
103 committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1,  
104 the person shall serve a mandatory minimum sentence of confinement of six months.

105 E. In addition, any person who commits a battery against another knowing or having reason to know  
106 that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the  
107 performance of his duties in a hospital or in an emergency room on the premises of any clinic or other  
108 facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such  
109 person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall  
110 be a mandatory minimum term of confinement.

111 F. As used in this section:

112 "Disability" means a physical or mental impairment that substantially limits one or more of a  
113 person's major life activities.

114 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of  
115 Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

116 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge  
117 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore  
118 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'  
119 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute  
120 judge of such district court.

121 "Law-enforcement officer" means any full-time or part-time employee of a police department or

122 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof  
 123 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or  
 124 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and  
 125 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage  
 126 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn  
 127 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to  
 128 § 46.2-217, and any employee with internal investigations authority designated by the Department of  
 129 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local  
 130 and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court  
 131 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to  
 132 §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers  
 133 of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed  
 134 pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

135 "School security officer" means the same as that term is defined in § 9.1-101.  
 136 G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any  
 137 school security officer or full-time or part-time employee of any public or private elementary or  
 138 secondary school while acting in the course and scope of his official capacity, any of the following: (i)  
 139 incidental, minor or reasonable physical contact or other actions designed to maintain order and control;  
 140 (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a  
 141 disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and  
 142 necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and  
 143 necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain  
 144 possession of weapons or other dangerous objects or controlled substances or associated paraphernalia  
 145 that are upon the person of the student or within his control.

146 In determining whether a person was acting within the exceptions provided in this subsection, due  
 147 deference shall be given to reasonable judgments that were made by a school security officer or  
 148 full-time or part-time employee of any public or private elementary or secondary school at the time of  
 149 the event.

150 **§ 18.2-121. Entering property of another for purpose of damaging it, etc.**

151 A. As used in this section, "disability" means a physical or mental impairment that substantially  
 152 limits one or more of a person's major life activities.

153 B. It is unlawful for any person to enter the land, dwelling, outhouse, or any other building of  
 154 another for the purpose of damaging such property or any of the contents thereof or in any manner to  
 155 interfere with the rights of the owner, user, or occupant thereof to use such property free from  
 156 interference.

157 Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. However, if a  
 158 person intentionally selects the property entered because of the race, religious conviction, color, gender,  
 159 disability, gender identity, sexual orientation, or *ethnic or* national origin of the owner, user, or occupant  
 160 of the property, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a  
 161 term of confinement of at least six months.

162 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
 163 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
 164 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
 165 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**  
 166 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**  
 167 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
 168 **appropriation cannot be determined for periods of commitment to the custody of the Department**  
 169 **of Juvenile Justice.**

170 **3. That the provisions of this act shall not be construed to diminish or infringe upon any right**  
 171 **protected under the First Amendment to the United States Constitution or the Constitution of the**  
 172 **Commonwealth of Virginia.**