

2018 SESSION

LEGISLATION NOT PREPARED BY DLS
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18105609D

HOUSE BILL NO. 1601

Offered January 19, 2018

A BILL to amend the Code of Virginia by adding sections numbered 18.2-46.11 through 18.2-46.15, relating to domestic terrorism offenses.

Patron—Price

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered §§ 18.2-46.11 through 18.2-46.15 as follows:

§ 18.2-46.11. Definitions.

As used in this article, unless the context requires otherwise or it is otherwise provided:

"Act of domestic terrorism" means (i) an act of violence, as defined in § 19.2-297.1 or (ii) any violation of §§ 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-56.1, 18.2-57, 18.2-83, 18.2-108.1, 18.2-119, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-186.4, 18.2-279, 18.2-282, 18.2-282.1, 18.2-287.4, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-312, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, committed against a person or his property with the intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion, national origin, gender, sexual orientation, or disability, or that is committed against such person for the purpose of restraining that person from exercising his rights under the Constitution or laws of this Commonwealth or of the United States.

"Domestic terrorist organization" means any organization, association, or group of three or more persons, whether formal or informal, which has an identifiable name or identifying sign or symbol and either (i) has as one of its primary objectives or activities an act of domestic terrorism; or (ii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more acts of domestic terrorism, provided such acts were not part of a common act or transaction.

"Material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.

"Pattern of domestic terrorism" requires at least two acts of domestic terrorism, one of which occurred after the effective date of this article and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of domestic terrorism.

§ 18.2-46.12. Designation of domestic terrorist organizations.

(A) The Superintendent of the Department of State Police shall promulgate regulations, to be updated annually, designating all organizations, groups, or associations meeting the definition of a domestic terrorist organization. Such regulations shall be published in the Virginia Register of Regulations.

(B) In making a designation under this section, the Superintendent shall create an administrative record supporting the designation.

(C) A designation under this section shall be effective for all purposes until revoked or set aside pursuant to subsection (D).

(D) Designated domestic terrorist organizations may seek judicial review in the Circuit Court for the City of Richmond within 30 days of the publication of the regulation in the Virginia Register of Regulations. Review under this subsection shall be based solely upon the administrative record. The pendency of an action for judicial review of a designation shall not affect the designation as a domestic terrorist organization, unless the court issues a final order setting aside the designation. Domestic terrorist organizations and the Superintendent may petition the Court of Appeals for review of the circuit court's decision within 15 days of the date of decision. Domestic terrorist organizations and the Superintendent may petition the Supreme Court of Virginia for review of the Court of Appeals' decision within 15 days of the date of decision.

(E) The court shall hold unlawful and set aside a designation if the court finds the designation to be (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (ii) contrary to constitutional right, power, privilege, or immunity; (iii) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; (iv) lacking substantial support in the administrative record taken as a whole; or (v) not in accord with the procedures required by law.

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59 (F) Any domestic terrorist organization shall have the annual right to petition the Superintendent for
60 revocation of the designation, and the Superintendent shall revoke the designation if he finds that the
61 circumstances that were the basis for the designation have changed in such a manner as to warrant
62 revocation. The Superintendent's revocation decision is subject to judicial review in accordance with
63 subsections (D) and (E).

64 **§ 18.2-46.13. Prohibition on assembly of members of domestic terrorist organizations.**

65 It shall be unlawful for three or more members of a domestic terrorist organization to assemble
66 together with the intent of advancing some unlawful goal, mission, or purpose of the domestic terrorist
67 organization. Every person who participates in such an unlawful assembly shall be guilty of a Class 1
68 misdemeanor. If any member of a domestic terrorist organization carried, at the time of his
69 participation in the unlawful assembly, any firearm or other deadly or dangerous weapon, he shall be
70 guilty of a Class 5 felony.

71 **§ 18.2-46.14. Prohibited domestic terrorist organization participation; penalty**

72 (A) Any person who actively participates in or is a member of a domestic terrorist organization and
73 who knowingly and willfully participates in any act of domestic terrorism committed for the benefit of,
74 at the direction of, or in association with any domestic terrorist organization shall be guilty of a Class
75 5 felony.

76 (B) Violation of this section shall constitute a separate and distinct offense. If the acts or activities
77 violating this section also violate another provision of law, a prosecution under this section shall not
78 prohibit or bar any prosecution or proceeding under such other provision or the imposition of any
79 penalties provided for thereby.

80 **§ 18.2-46.15. Prohibition on providing material support to a domestic terrorist organization.**

81 (A) Whoever knowingly provides material support or resources to a domestic terrorist organization,
82 or attempts or conspires to do so, shall be guilty of a Class 5 felony, and, if the death of any person
83 results, shall be guilty of a Class 2 felony. To violate this paragraph, a person must have knowledge
84 that the organization is a designated domestic terrorist organization under § 18.2-46.13, or that the
85 organization has engaged or engages in a pattern of domestic terrorism.

86 (B) Whoever provides material support or resources or conceals or disguises the nature, location,
87 source, or ownership of material support or resources, knowing or intending that they are to be used in
88 preparation for, or in carrying out, an act of domestic terrorism, or in the preparation for, or in
89 carrying out, the concealment of an escape from the commission of any act of domestic terrorism, or
90 attempts or conspires to do such an act, shall be guilty of a Class 5 felony, and, if the death of any
91 person results, shall be guilty of a Class 2 felony..

92 (C) Whoever, by any means, directly or indirectly, unlawfully and willfully provides or collects funds
93 with the intention that such funds are to be used, in full or in part, in order to carry out an act of
94 domestic terrorism, shall be fined under this title, imprisoned for not more than 10 years, or both. For
95 an act to constitute an offense under this subsection, it shall not be necessary that the funds were
96 actually used to carry out a predicate act.

97 (D) Whenever it appears to the Attorney General that any person is engaged in, or is about to
98 engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General
99 may initiate a civil action in a circuit court to enjoin such a violation.

100 (E) In addition to any other criminal, civil, or administrative liability or penalty, if it can be shown
101 by a preponderance of the evidence that a person provided material support or resources in connection
102 with an act of domestic terrorism, such person shall be subject to civil liability in an action brought by
103 an individual directly affected by the act of domestic terrorism.

104 (F) Nothing in this section shall be construed or applied so as to abridge the exercise of rights
105 guaranteed under the First Amendment to the Constitution of the United States or Article I, § 12 of the
106 Constitution of Virginia.

107 **§ 18.2-46.16. Civil liability for acts of domestic terrorism**

108 No provisions of this article shall be construed to relieve any member of a domestic terrorist
109 organization from civil liability for any acts of domestic terrorism committed for the benefit of, at the
110 direction of, or in association with any domestic terrorist organization.

111 **§ 18.2-46.17. Local law enforcement reporting of acts of domestic terrorism.**

112 State, county, and municipal law-enforcement agencies shall report to the Department of State Police
113 all acts of domestic terrorism occurring in their jurisdictions in a form, time, and manner prescribed by
114 the Superintendent. Such reports shall not be open to public inspection except insofar as the
115 Superintendent permits.