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SENATE BILL NO. 5079

Offered August 18, 2020

Prefiled August 17, 2020

A BILL to amend the Code of Virginia by adding a section numbered 8.01-42.6, relating to civil action for law-enforcement free zones and standing down during a riot or unlawful assembly.

Patrons—Stanley and Ruff

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-42.6 as follows:

§ 8.01-42.6. Civil action for law-enforcement free zones and standing down during a riot or unlawful assembly.

A. For the purposes of this section:

"Law-enforcement free zone" means a geographical area, building, or other structure that law-enforcement officers are lawfully entitled to access but are instructed, demanded, or forced (i) not to access or (ii) to access only in exceptional circumstances. "Law-enforcement free zone" does not include a geographical area, building, or other structure from which law-enforcement officers are briefly not allowed to access as a tactical decision intended to resolve safely and expeditiously a specific and ongoing unlawful incident posing an imminent threat to the safety of individuals or law-enforcement officers.

"Riot" means the same as that term is defined in § 18.2-405.

"Unlawful assembly" means the same as that term is defined in § 18.2-406.

B. A person with the lawful authority to direct a law-enforcement agency shall be liable for civil damages to any person who suffers a bodily injury or death as the result of a third party's criminal conduct or any person whose property is damaged, destroyed, or otherwise rendered unusable as the result of a third party's criminal conduct if (i) the person directed the law-enforcement agency to establish or recognize, whether formally or informally, a law-enforcement free zone; (ii) the criminal conduct and associated harm was foreseeable and occurred in the law-enforcement free zone; and (iii) the law-enforcement free zone created an opportunity that otherwise would not have existed for the third party's crime to occur.

C. A person with the lawful authority to direct a law-enforcement agency who uses that authority to prohibit law-enforcement officers from taking law-enforcement action that would prevent or materially mitigate significant bodily injury or death or damage or destruction of property caused by or related to a riot or unlawful assembly for any reason other than to prevent imminent harm to the safety of law-enforcement officers shall be liable for civil damages to any person who subsequently suffers bodily injury or death or whose property is subsequently damaged, destroyed, or otherwise rendered unusable as the result of a third party's criminal conduct if the injury was caused by an act that is a violation of a criminal law.

D. For any action brought pursuant to this section, a plaintiff may sue to recover compensatory damages, punitive damages, and reasonable attorney fees and costs, including costs and reasonable fees for expert witnesses. If the plaintiff prevails in such action, the court shall award reasonable attorney fees and costs, including costs and reasonable fees for expert witnesses to the plaintiff.