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**HOUSE BILL NO. 2208**

Offered January 11, 2023

Prefiled January 11, 2023

*A BILL to amend and reenact §§ 2.2-3900, 2.2-3902, 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 of the Code of Virginia, relating to hate crimes and discrimination; anti-Semitism; penalties.*

Patrons—Kilgore, Austin, Avoli, Ballard, Bloxom, Campbell, E.H., Cherry, Cordoza, Durant, Fariss, Fowler, Greenhalgh, Head, Hodges, LaRock, McGuire, Runion, Scott, P.A., Tata, Taylor, Wachsmann, Walker, Webert, Wiley, Williams and Wyatt

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3900, 2.2-3902, 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 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, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, *anti-Semitism*, 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, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, *anti-Semitism*, 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 national origin *or anti-Semitism* 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.

**§ 8.01-42.1. Civil action for racial, religious, ethnic, etc., harassment, violence, or vandalism.**

A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment, (ii) violence directed against his person, or (iii) vandalism directed against his real or personal property, where such acts are motivated by racial, religious, gender, disability, gender identity, sexual orientation, or ethnic animosity *or anti-Semitism*.

B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorney fees in an amount to be fixed by the court.

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57 C. The provisions of this section shall not apply to any actions between an employee and his  
58 employer, or between or among employees of the same employer, for damages arising out of incidents  
59 occurring in the workplace or arising out of the employee-employer relationship.

60 D. As used in this section:

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

63 **§ 8.01-49.1. Liability for defamatory material on the Internet.**

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

73 B. As used in this section:

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

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

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

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

84 **§ 18.2-57. Assault and battery; penalty.**

85 A. Any person who commits a simple assault or assault and battery is guilty of a Class 1  
86 misdemeanor, and if the person intentionally selects the person against whom a simple assault is  
87 committed because of his race, religious conviction, gender, disability, gender identity, sexual  
88 orientation, color, or national origin, *or because of anti-Semitism*, the penalty upon conviction shall  
89 include a term of confinement of at least six months.

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

95 C. In addition, if any person commits an assault or an assault and battery against another knowing or  
96 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as  
97 defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the  
98 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an  
99 employee of a local or regional correctional facility directly involved in the care, treatment, or  
100 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or  
101 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,  
102 an employee or other individual who provides control, care, or treatment of sexually violent predators  
103 committed to the custody of the Department of Behavioral Health and Developmental Services, a  
104 firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services  
105 personnel member who is employed by or is a volunteer of an emergency medical services agency or as  
106 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,  
107 regardless of whether a resolution has been adopted by the governing body of a political subdivision  
108 recognizing such firefighters or emergency medical services personnel as employees, engaged in the  
109 performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6  
110 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of  
111 confinement of six months.

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

115 D. In addition, if any person commits a battery against another knowing or having reason to know  
116 that such other person is a full-time or part-time employee of any public or private elementary or  
117 secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1  
118 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in

jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

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

F. 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.

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

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

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2.1.

"School security officer" means the same as that term is defined in § 9.1-101.

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

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

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

A. 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.

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

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

#### **§ 52-8.5. Reporting hate crimes.**

180 A. The Superintendent shall establish and maintain within the Department of State Police a central  
181 repository for the collection and analysis of information regarding hate crimes and groups and  
182 individuals carrying out such acts.

183 B. State, county, and municipal law-enforcement agencies shall report to the Department all hate  
184 crimes occurring in their jurisdictions in a form, time, and manner prescribed by the Superintendent.  
185 Such reports shall not be open to public inspection except insofar as the Superintendent shall permit.

186 C. As used in this section:

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

189 "Hate crime" means (i) a criminal act committed against a person or his property with the specific  
190 intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of  
191 race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin *or*  
192 *because of anti-Semitism*, or that is committed for the purpose of restraining that person from exercising  
193 his rights under the Constitution or laws of the Commonwealth or of the United States; (ii) any illegal  
194 act directed against any persons or their property because of those persons' race, religion, gender,  
195 disability, gender identity, sexual orientation, or ethnic or national origin *or because of anti-Semitism*;  
196 and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate or  
197 harass any individual or group because of race, religion, gender, disability, gender identity, sexual  
198 orientation, or ethnic or national origin *or because of anti-Semitism*.

199 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
200 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
201 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
202 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**  
203 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**  
204 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
205 **appropriation cannot be determined for periods of commitment to the custody of the Department**  
206 **of Juvenile Justice.**

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