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HOUSE BILL NO. 956

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 18.2-11, 22.1-279.6, 33.2-802, 36-85.12, 62.1-44.32, as it is currently effective and as it shall become effective, and 62.1-44.34:20 of the Code of Virginia, relating to misdemeanor; maximum term of confinement.

Patrons—Lopez, Shin, Clark, Henson, Martinez and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-11, 22.1-279.6, 33.2-802, 36-85.12, 62.1-44.32, as it is currently effective and as it shall become effective, and 62.1-44.34:20 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-11. Punishment for conviction of misdemeanor.

The authorized punishments for conviction of a misdemeanor are:

(a) 1. For Class 1 misdemeanors, confinement in jail for not more than ~~twelve months~~ 364 days and a fine of not more than \$2,500, either or both.

(b) 2. For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.

(c) 3. For Class 3 misdemeanors, a fine of not more than \$500.

(d) 4. For Class 4 misdemeanors, a fine of not more than \$250.

For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct; school board regulations.

A. The Board of Education shall establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies shall include (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, gang-related activity, hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others, self-defense, bullying, the use of electronic means for purposes of bullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and school personnel; (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies; (iv) standards for dress or grooming codes; and (v) standards for reducing bias and harassment in the enforcement of any code of student conduct.

In accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.

In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.

B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the requirements of this section, regulations on codes of student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include in the regulations on codes of student conduct procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.

C. Each school board shall include in its code of student conduct prohibitions against hazing and profane or obscene language or conduct. School boards shall also cite in their codes of student conduct the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor

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59 penalty for violations, that is, confinement in jail for not more than ~~12 months~~ *364 days* and a fine of
60 not more than \$2,500, either or both.

61 D. Each school board shall include in its code of student conduct policies and procedures that
62 include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the
63 standards for school board policies on bullying and the use of electronic means for purposes of bullying
64 developed by the Board pursuant to subsection A and (ii) direct the principal or his designee to notify
65 the parent of any student involved in an alleged incident of bullying within 24 hours of learning of the
66 allegation of bullying.

67 Such policies and procedures shall not be interpreted to infringe upon the First Amendment rights of
68 students and are not intended to prohibit expression of religious, philosophical, or political views,
69 provided that such expression does not cause an actual, material disruption of the work of the school.

70 E. A school board may regulate the use or possession of beepers or other portable communications
71 devices and laser pointers by students on school property or attending school functions or activities and
72 establish disciplinary procedures pursuant to this article to which students violating such regulations will
73 be subject.

74 F. Nothing in this section shall be construed to require any school board to adopt policies requiring
75 or encouraging any drug testing in schools. However, a school board may, in its discretion, require or
76 encourage drug testing in accordance with the Board of Education's guidelines and model student
77 conduct policies required by subsection A and the Board's guidelines for student searches required by
78 § 22.1-279.7.

79 G. The Board of Education shall establish standards to ensure compliance with the federal Improving
80 America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with
81 § 22.1-277.07.

82 This subsection shall not be construed to diminish the authority of the Board of Education or to
83 diminish the Governor's authority to coordinate and provide policy direction on official communications
84 between the Commonwealth and the United States government.

85 H. Each school board shall include in its code of student conduct a prohibition on possessing any
86 tobacco product or nicotine vapor product, as those terms are defined in § 18.2-371.2, on a school bus,
87 on school property, or at an on-site or off-site school-sponsored activity.

88 I. Any school board may include in its code of student conduct a dress or grooming code. Any dress
89 or grooming code included in a school board's code of student conduct or otherwise adopted by a school
90 board shall (i) permit any student to wear any religiously and ethnically specific or significant head
91 covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and cornrows; (ii) maintain
92 gender neutrality by subjecting any student to the same set of rules and standards regardless of gender;
93 (iii) not have a disparate impact on students of a particular gender; (iv) be clear, specific, and objective
94 in defining terms, if used; (v) prohibit any school board employee from enforcing the dress or grooming
95 code by direct physical contact with a student or a student's attire; and (vi) prohibit any school board
96 employee from requiring a student to undress in front of any other individual, including the enforcing
97 school board employee, to comply with the dress or grooming code.

98 **§ 33.2-802. Dumping trash; penalty.**

99 A. It is unlawful for any person to dump or otherwise dispose of trash, garbage, refuse, litter, a
100 companion animal as defined in § 3.2-6500 for the purpose of disposal, or other unsightly matter on (i)
101 public property, including a public highway, right-of-way, or property adjacent to such highway or
102 right-of-way, or (ii) private property without the written consent of the owner or his agent.

103 B. If a person is arrested for a violation of this section and the matter alleged to have been illegally
104 dumped or disposed of has been ejected from a motor vehicle or transported to the disposal site in a
105 motor vehicle, the arresting officer may comply with the provisions of § 46.2-936 in making an arrest.

106 If a violation of this section has been observed by any person and the matter illegally dumped or
107 disposed of has been ejected or removed from a motor vehicle, the owner or operator of the motor
108 vehicle shall be presumed to be the person ejecting or disposing of the matter. However, such
109 presumption shall be rebuttable by competent evidence.

110 C. Any person convicted of a violation of this section is guilty of a misdemeanor punishable by
111 confinement in jail for not more than ~~12 months~~ *364 days* and a fine of not less than \$500 or more than
112 \$2,500, either or both. In lieu of the imposition of confinement in jail, the court may order the
113 defendant to perform a mandatory minimum of 10 hours of community service in litter abatement
114 activities.

115 D. The governing body of any locality may adopt ordinances not in conflict with the provisions of
116 this section and may repeal or amend such ordinances.

117 E. The provisions of this section shall not apply to the lawful disposal of such matter in landfills.

118 **§ 36-85.12. Violation; civil and criminal penalties.**

119 It ~~shall be~~ is unlawful for any person, firm, or corporation, to violate any provisions of this law, the
120 rules and regulations enacted under authority of this law, or the Federal ~~Law~~ Act and Federal

Regulations. Any person, firm, or corporation violating any provision of ~~said laws, rules and such law~~ or regulations, or any final order issued thereunder, shall be liable for a civil penalty not to exceed \$1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by ~~the legislation~~ *such law* or regulations. The maximum civil penalty may not exceed ~~one~~ \$1 million dollars for any related series of violations occurring within one year from the date of the first violation.

An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section § 610 of the ~~National Manufactured Housing Construction and Safety Standards~~ *Federal Act* in a manner ~~which~~ *that* threatens the health or safety of any purchaser ~~shall be deemed is~~ guilty of a Class 1 misdemeanor and, upon conviction, *shall be* fined not more than \$1,000 or imprisoned not more than ~~one year~~ *364 days*, or both.

§ 62.1-44.32. (Effective until July 1, 2024) Penalties.

(a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

(b) Except as otherwise provided in this chapter, any person who willfully or negligently violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate, or any order of a court ~~shall be~~ *is* guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ *364 days* and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate, or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, ~~shall be~~ *is* guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than ~~12 months~~ *364 days* and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

(c) Except as otherwise provided in this chapter, any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

§ 62.1-44.32. (Effective July 1, 2024) Penalties.

(a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any regulation, certificate, land-disturbance

approval, or order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), 2.4 (§ 62.1-44.15:51 et seq.), 2.5 (§ 62.1-44.15:67 et seq.), 9 (§ 62.1-44.34:8 et seq.), or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city, or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 2.3, 2.4, 2.5, 9, or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

(b) Except as otherwise provided in this chapter, any person who willfully or negligently violates (1) any provision of this chapter, any regulation or order of the Board, or any condition of a certificate or land-disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program authority, or (3) any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than ~~42 months~~ 364 days and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates (A) any provision of this chapter, any regulation or order of the Board, or any condition of a certificate or land-disturbance approval of the Board, (B) any land-disturbance approval, ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program authority, or (C) any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than ~~42 months~~ 364 days and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

(c) Except as otherwise provided in this chapter, any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

§ 62.1-44.34:20. Enforcement and penalties.

A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued pursuant to this article, the Board is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the Board finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge immediately, to implement any applicable contingency plan and to effect containment and cleanup. Such

emergency special order may also require the operator of a facility to modify or cease regular operation of the facility, or any portion thereof, until the Board determines that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The Board shall affirm, modify, amend or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with subsection B of this section, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires modification or cessation of operations, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

B. In the event of a violation of this article or a regulation, administrative or judicial order, or term or condition of approval issued under this article, or in the event of failure to comply with a special order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate and to recover all costs, damages and civil penalties resulting from such violation or failure to comply. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action in which it is a prevailing party.

C. Any person who violates or causes or permits to be violated a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, shall be subject to a civil penalty for each such violation as follows:

1. For failing to obtain approval of an oil discharge contingency plan as required by § 62.1-44.34:15, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not less than \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or operating any facility, vessel or vehicle from which such discharge originates in violation of § 62.1-44.34:18, up to \$100 per gallon of oil discharged;

4. For failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:18 or for failing to report a discharge as required by § 62.1-44.34:19, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

5. For violating or causing or permitting to be violated any other provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, up to \$32,500 for each violation. Each day of violation of each requirement shall constitute a separate offense.

D. Civil penalties may be assessed under this article either by a court in an action brought by the Board pursuant to this section, as specified in § 62.1-44.15, or with the consent of the person charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank Fund as established in § 62.1-44.34:11. In determining the amount of any penalty, consideration shall be given to the willfulness of the violation, any history of noncompliance, the actions of the person in reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of injury to or interference with general health, welfare and property, and the available technology for preventing, containing, reducing or eliminating the discharge.

E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article ~~shall be~~ *is* guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ *364 days* and a fine of not more than \$100,000, either or both. Any person who knowingly or willfully makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by this article or by administrative or judicial order issued under this article ~~shall be~~ *is* guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years and a fine of not more than \$100,000, either or both. In the case of a discharge of oil into or upon state waters:

1. Any person who negligently discharges or negligently causes or permits such discharge ~~shall be~~ *is* guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ *364 days* and a fine of not more than \$50,000, either or both.

2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits

305 such discharge ~~shall be~~ *is* guilty of a felony punishable by a term of imprisonment of not less than one
306 year nor more than 10 years and a fine of not more than \$100,000, either or both.

307 F. Each day of violation of each requirement shall constitute a separate offense. In the event the
308 violation of this article follows a prior felony conviction under subdivision E 2 of this section, such
309 violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than
310 two years nor more than 10 years and a fine of not more than \$200,000, either or both.

311 G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or
312 judicial order, or term or condition of approval issued under this article, a defendant who is not an
313 individual shall be sentenced to pay a fine not exceeding the greater of:

314 1. \$1 million; or

315 2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of
316 the offense.

317 H. Any tank vessel entering upon state waters which fails to provide evidence of financial
318 responsibility required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon
319 state waters, may be detained and held as security for payment to the Commonwealth of any damages or
320 penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel
321 and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case
322 may be, for which the operator may be liable. The vessel shall be released upon posting of a bond with
323 surety in the maximum amount of such damages or penalties.