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SENATE BILL NO. 364

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, 18.2-461, 24.2-418, 24.2-1000, and 52-8.5 of the Code of Virginia, relating to elections; protection of election officials; penalty.

Patron—Ebbin

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, 18.2-461, 24.2-418, 24.2-1000, and 52-8.5 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-42.1. Civil action for racial, religious, or ethnic 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 animosity premised on the person's current or former status as an election official or status as an employee of an election official.*

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.

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

D. 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.

§ 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~~ national origin, *or current or former status as an election official or employee of an election official*, 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.

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

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

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

§ 18.2-57. Assault and battery; penalty.

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, ~~or~~ national origin, *or current or former status as an election official or employee of an election official*, the penalty upon conviction shall include a term of confinement of at least six months.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, gender, disability, gender

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59 identity, sexual orientation, color, ~~or~~ national origin, *or current or former status as an election official*
60 *or status as an employee of an election official*, the person is guilty of a Class 6 felony, and the penalty
61 upon conviction shall include a term of confinement of at least six months.

62 C. In addition, if any person commits an assault or an assault and battery against another knowing or
63 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as
64 defined in subsection G, a correctional officer as defined in § 53.1-1, a person directly involved in the
65 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an
66 employee of a local or regional correctional facility directly involved in the care, treatment, or
67 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or
68 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,
69 an employee or other individual who provides control, care, or treatment of sexually violent predators
70 committed to the custody of the Department of Behavioral Health and Developmental Services, a
71 firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services
72 personnel member who is employed by or is a volunteer of an emergency medical services agency or as
73 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,
74 regardless of whether a resolution has been adopted by the governing body of a political subdivision
75 recognizing such firefighters or emergency medical services personnel as employees, engaged in the
76 performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6
77 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of
78 confinement of six months.

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

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

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

95 F. In addition, any person who commits an assault or an assault and battery against another knowing
96 or having reason to know that such individual is an operator of a vehicle operated by a public
97 transportation service as defined in § 18.2-160.2 who is engaged in the performance of his duties is
98 guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall also prohibit such
99 person from entering or riding in any vehicle operated by the public transportation service that employed
100 such operator for a period of not less than six months as a term and condition of such sentence.

101 G. As used in this section:

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

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

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

111 "Law-enforcement officer" means any full-time or part-time employee of a police department or
112 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
113 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
114 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
115 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage
116 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn
117 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
118 § 46.2-217, and any employee with internal investigations authority designated by the Department of
119 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local
120 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.

H. "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, *or current or former status as an election official or status as an employee of an election official* of the owner, user, or occupant of the property, 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.

§ 18.2-461. Falsely summoning or giving false reports to law-enforcement officials.

It shall be unlawful for any person (i) to knowingly give a false report as to the commission of any crime to any law-enforcement official with intent to mislead; (ii) to knowingly, with the intent to mislead a law-enforcement agency, cause another to give a false report to any law-enforcement official by publicly simulating a violation of Chapter 4 (§ 18.2-30 et seq.) or Chapter 5 (§ 18.2-77 et seq.); or (iii) without just cause and with intent to interfere with the operations of any law-enforcement official, to call or summon any law-enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm. Violation of the provisions of this section shall be punishable as a Class 1 misdemeanor. However, if a person intentionally gives a false report as to the commission of any crime to any law-enforcement official, causes another to give a false report to any law-enforcement official, or calls or summons any law-enforcement official against another person because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, ~~or~~ national origin, *or current or former status as an election official or status as an employee of an election official*, the person is guilty of a Class 6 felony.

§ 24.2-418. Application for registration.

A. Each applicant to register shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless physically disabled, he shall sign the application. The application to register shall be only on a form or forms prescribed by the State Board.

The form of the application to register shall require the applicant to provide the following information: full name; gender; date of birth; social security number, if any; whether the applicant is presently a United States citizen; address of residence in the precinct; place of last previous registration to vote; and whether the applicant has ever been adjudicated incapacitated and disqualified to vote or convicted of a felony, and if so, whether the applicant's right to vote has been restored. The form shall contain a statement that whoever votes more than once in any election in the same or different jurisdictions is guilty of a Class 6 felony. Unless directed by the applicant or as permitted in § 24.2-411.2 or 24.2-411.3, the registration application shall not be pre-populated with information the applicant is required to provide.

The form of the application to register shall request that the applicant provide his telephone number

and email address, but no application shall be denied for failure to provide such information.

B. The form shall permit any individual, as follows, or member of his household, to furnish, in addition to his residence street address, a post office box address located within the Commonwealth to be included in lieu of his street address on the lists of registered voters and persons who voted, which are furnished pursuant to §§ 24.2-405 and 24.2-406, on voter registration records made available for public inspection pursuant to § 24.2-444, or on lists of absentee voter applicants furnished pursuant to § 24.2-706 or 24.2-710. The voter shall comply with the provisions of § 24.2-424 for any change in the post office box address provided under this subsection.

1. Any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5 U.S.C. § 8331(20), but excluding officers whose duties relate to detention as defined in 5 U.S.C. § 8331(20);

2. Any party granted a protective order issued by or under the authority of any court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia;

3. Any party who has furnished a signed written statement by the party that he is in fear for his personal safety from another person who has threatened or stalked him;

4. Any party participating in the address confidentiality program pursuant to § 2.2-515.2;

5. Any active or retired federal or Virginia justice, judge, or magistrate and any active or retired attorney employed by the United States Attorney General or Virginia Attorney General; ~~and~~

6. Any person who has been approved to be a foster parent pursuant to Chapter 9 (§ 63.2-900 et seq.) of Title 63.2; ~~and~~

7. *Any election official or employee of an election official.*

C. If the applicant formerly resided in another state, the general registrar shall send the information contained in the applicant's registration application to the appropriate voter registration official or other authority of another state where the applicant formerly resided, as prescribed in subdivision 15 of § 24.2-114.

§ 24.2-1000. Intimidation of election officials.

Any person who, by bribery, intimidation, threats, coercion, or other means in violation of the election laws willfully hinders or prevents, or attempts to hinder or prevent, ~~the officers of an election at any polling place, voter satellite office, or other location being used by a locality for voting purposes from holding an election official or employee of an election official from administering elections pursuant to this title~~ is guilty of a Class 5 felony.

§ 52-8.5. Reporting hate crimes.

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

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

C. 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.

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

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.