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SENATE BILL NO. 332

Offered January 10, 2024

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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—Salim, Hashmi and Carroll Foy

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

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

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

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

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

75 G. The Board of Education shall establish standards to ensure compliance with the federal Improving
 76 America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with §
 77 22.1-277.07.

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

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

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

94 **§ 33.2-802. Dumping trash; penalty.**

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

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

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

106 C. Any person convicted of a violation of this section is guilty of a misdemeanor punishable by
 107 confinement in jail for not more than ~~12 months~~ 364 days and a fine of not less than \$500 or more than
 108 \$2,500, either or both. In lieu of the imposition of confinement in jail, the court may order the defendant to
 109 perform a mandatory minimum of 10 hours of community service in litter abatement activities.

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

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

113 **§ 36-85.12. Violation; civil and criminal penalties.**

114 It ~~shall be~~ is unlawful for any person, firm, or corporation, to violate any provisions of this law, the rules
 115 and regulations enacted under authority of this law, or the Federal ~~Law Act~~ and *Federal Regulations*. Any
 116 person, firm, or corporation violating any provision of ~~said laws, rules and such law or regulations~~, or any
 117 final order issued thereunder, shall be liable for a civil penalty not to exceed \$1,000 for each violation. Each
 118 violation shall constitute a separate violation with respect to each manufactured home or with respect to each
 119 failure or refusal to allow or to perform an act required by ~~the legislation~~ *such law or regulations*. The

120 maximum civil penalty may not exceed ~~one \$1 million dollars~~ for any related series of violations occurring
121 within one year from the date of the first violation.

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

127 § 62.1-44.32. (Effective until July 1, 2024) Penalties.

128 (a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or
129 who fails, neglects, or refuses to comply with any order of the Board, or order of a court, issued as herein
130 provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of
131 the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties
132 shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental
133 Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations
134 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
135 regulation, administrative or judicial order, or term or condition of approval relating to or issued under those
136 articles.

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

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

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

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

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

172 § 62.1-44.32. (Effective July 1, 2024) Penalties.

173 (a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or
174 who fails, neglects, or refuses to comply with any regulation, certificate, land-disturbance approval, or order
175 of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed
176 \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall
177 constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the
178 State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-
179 2500 et seq.) of Title 10.1, excluding penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.),
180 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

181 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of
182 approval relating to or issued under those articles.

183 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the
184 treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating
185 environmental pollution therein in such manner as the court may, by order, direct, except that where the
186 owner in violation is such county, city, or town itself, or its agent, the court shall direct such penalty to be
187 paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency
188 Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article
189 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
190 condition of approval relating to or issued under those articles.

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

195 (b) Except as otherwise provided in this chapter, any person who willfully or negligently violates (1) any
196 provision of this chapter, any regulation or order of the Board, or any condition of a certificate or land-
197 disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of a locality serving
198 as a Virginia Erosion and Stormwater Management Program authority, or (3) any order of a court shall be
199 guilty of a misdemeanor punishable by confinement in jail for not more than ~~12 months~~ 364 days and a fine
200 of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates (A) any
201 provision of this chapter, any regulation or order of the Board, or any condition of a certificate or land-
202 disturbance approval of the Board, (B) any land-disturbance approval, ordinance, or order of a locality
203 serving as a Virginia Erosion and Stormwater Management Program authority, or (C) any order of a court
204 issued as herein provided, or who knowingly makes any false statement in any form required to be submitted
205 under this chapter or knowingly renders inaccurate any monitoring device or method required to be
206 maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less
207 than one year nor more than three years, or in the discretion of the jury or the court trying the case without a
208 jury, confinement in jail for not more than ~~12 months~~ 364 days and a fine of not less than \$5,000 nor more
209 than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation
210 under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each
211 requirement shall constitute a separate offense.

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

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

222 **§ 62.1-44.34:20. Enforcement and penalties.**

223 A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued
224 pursuant to this article, the Board is authorized to issue a special order requiring any person to cease and
225 desist from causing or permitting such violation or requiring any person to comply with any such provision,
226 regulation or term or condition of approval. Such special orders shall be issued only after notice and an
227 opportunity for hearing except that, if the Board finds that any discharge in violation of this article poses a
228 serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life;
229 (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses,
230 the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of
231 any facility, vehicle or vessel to cease such discharge immediately, to implement any applicable contingency
232 plan and to effect containment and cleanup. Such emergency special order may also require the operator of a
233 facility to modify or cease regular operation of the facility, or any portion thereof, until the Board determines
234 that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of
235 additional or continued discharges. The Board shall affirm, modify, amend or cancel any such emergency
236 order after providing notice and opportunity for hearing to the operator charged with the violation. The notice
237 of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued
238 such a special order or an emergency special order is not complying with the terms thereof, the Board may
239 proceed in accordance with subsection B of this section, and where the order is based on a finding of an
240 imminent and substantial danger, the court shall issue an injunction compelling compliance with the
241 emergency special order pending a hearing by the Board. If an emergency special order requires modification

242 or cessation of operations, the Board shall provide an opportunity for a hearing within 48 hours of the
243 issuance of the injunction.

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

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

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

256 2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not less than
257 \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of violation
258 thereafter;

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

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

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

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

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

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

288 2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits such
289 discharge ~~shall be~~ *is* guilty of a felony punishable by a term of imprisonment of not less than one year nor
290 more than 10 years and a fine of not more than \$100,000, either or both.

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

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

298 1. \$1 million; or

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

301 H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility
302 required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon state waters, may be

303 detained and held as security for payment to the Commonwealth of any damages or penalties assessed under
304 this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs
305 of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be
306 liable. The vessel shall be released upon posting of a bond with surety in the maximum amount of such
307 damages or penalties.