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SENATE BILL NO. 137
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee for Courts of Justice
 on _____)

(Patron Prior to Substitute—Senator Pekarsky)

A *BILL* to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 8.01 a section numbered 8.01-44.8 and by adding a section numbered 18.2-404.1, relating to obstructing reproductive health services facility access; civil action; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 8.01 a section numbered 8.01-44.8 and by adding a section numbered 18.2-404.1 as follows:

§ 8.01-44.8. Civil action for obstructing reproductive health services facility access.

A. Any person injured by reason of a violation of § 18.2-404.1 may sue therefor and recover actual damages or \$5,000 per violation, whichever is greater for each action, punitive damages, and reasonable attorney fees and costs.

B. If the Attorney General on behalf of the Commonwealth, or the attorney for the Commonwealth or county attorney on behalf of a county, or the city attorney on behalf of a city, or the town attorney on behalf of a town has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation § 18.2-404.1, whether or not any individual has been charged with or convicted of the alleged violation, he may commence a civil action on behalf of such person or group of persons and the court may award injunctive relief.

§ 18.2-404.1. Obstructing reproductive health services facility access; penalties.

A. As used in this section, unless the context requires a different meaning:

"Facility" includes a hospital, clinic, and physician's office and the building or structure in which the facility is located.

"Interfere with" means to restrict a person's freedom of movement.

"Intimidate" means to place a person in reasonable apprehension of bodily harm to himself or to another person.

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

"Physical obstruction" means rending impassable ingress to or egress from a facility that provides reproductive health services or rending passage to or from such facility unreasonably or unnecessarily difficult or hazardous to another person.

"Reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes any institution, place, building, or agency that is licensed, certified, or otherwise authorized or permitted by law in the Commonwealth to administer or provide medical treatment, including medical, surgical, counseling, or referral services relating to the human reproductive system such as pregnancy or termination of a pregnancy.

B. Any person not authorized by a reproductive health services facility who (i) by force or threat of force, or by physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, another person because such other person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services or (ii) intentionally damages or destroys, or attempts to damage or destroy, a facility because such facility provides reproductive health services is guilty of a Class 1 misdemeanor.

C. A law-enforcement officer may order the immediate withdrawal of one or more individuals who have on that day interfered with access to or departure from an entrance or driveway to a reproductive health services facility. Any order issued pursuant to this subsection shall be in writing and shall include the following statements: (i) the individual or individuals have interfered with access to or departure from the reproductive health care facility; (ii) the individual or individuals so ordered shall, under the penalty of arrest and prosecution, immediately withdraw and cease to stand or be located within at least 25 feet of an entrance or driveway to the reproductive health care facility; and (iii) the order shall remain in place for eight hours or until the close of business of the reproductive health services facility, whichever is earlier. This subsection shall apply only if the 25-foot boundary is clearly marked pursuant to subsection E. Any person who violates any order issued pursuant to this subsection is guilty of a (a) Class 3 misdemeanor for a first or second offense or (b) Class 1 misdemeanor for any third or subsequent offense.

D. In addition to the penalties described in subsection B or C, any person who violates subsection B or a third or subsequent offense of subsection C is subject to a civil penalty in an amount not to exceed (i) \$10,000 for a nonviolent physical obstruction, (ii) \$15,000 for a violent physical obstruction, and (iii) \$25,000 for any subsequent violation. Such penalty shall be collected by the attorney for the Commonwealth for the locality where the violation occurred, and the proceeds shall be deposited into the Literary Fund.

60 *E. A reproductive health services facility shall post signage that clearly marks the boundary prescribed in*
61 *subsection C. Such facility shall consult with local law enforcement and those local authorities with*
62 *responsibilities specific to the approval of locations and size of the signs to ensure compliance with local*
63 *ordinances. No person shall be subject to the penalties listed in subsections C or D, and no injured person*
64 *shall have a cause of action subject to § 8.01-44.8, if such facility has failed to post signage pursuant to this*
65 *subsection.*

66 *F. The provisions of subsections C and D shall be effective only one hour before, one hour after, and*
67 *during the business hours of a reproductive health services facility.*

68 *G. Any local governing body may adopt an ordinance paralleling the provisions of this section, except*
69 *that in the case of a violation of a local ordinance, any civil penalty imposed shall be collected by the*
70 *attorney for the Commonwealth for the locality where the violation occurred, and the proceeds shall be*
71 *deposited into the local treasury.*

72 *H. Nothing in this section shall be construed to place any restriction on the content of any message that*
73 *anyone may wish to communicate to anyone else, either inside or outside the regulated areas.*