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SENATE BILL NO. 440

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 15.2-1627 and 18.2-56 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-56.01, relating to unlawful hazing; penalty.

Patrons—Boysko and McClellan

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1627 and 18.2-56 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-56.01 as follows:

§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.

A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required to carry out any duties as a part of his office in civil matters of advising the governing body and all boards, departments, agencies, officials and employees of his county or city; of drafting or preparing county or city ordinances; of defending or bringing actions in which the county or city, or any of its boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other manner of advising or representing the county or city, its boards, departments, agencies, officials and employees, except in matters involving the enforcement of the criminal law within the county or city.

B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part of the department of law enforcement of the county or city in which he is elected or appointed, and shall have the duties and powers imposed upon him by general law, including the duty of prosecuting all warrants, indictments or informations charging a felony, and he may, in his discretion, prosecute Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of \$500 or more, or both such confinement and fine. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126. He may enforce the provisions of § 18.2-56.01, 18.2-268.3, 29.1-738.2, 46.2-341.20:7, or 46.2-341.26:3. He may, in his discretion, file a notice of appeal with the circuit court for the appeal of a criminal case for which he was the prosecuting attorney, and he may appear and represent the Commonwealth in any criminal case on appeal before the Court of Appeals or the Supreme Court for which he was the prosecuting attorney, provided that the Attorney General consented to such appearance pursuant to § 2.2-511.

He shall also represent the Commonwealth in an appeal of a civil matter related to the enforcement of a criminal law or a criminal case for which he was the prosecuting attorney, including a petition for expungement of a defendant's criminal record, an action of forfeiture filed in accordance with the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, or any matter which he may enforce pursuant to this section.

§ 18.2-56. Hazing unlawful; civil and criminal liability; duty of school, etc., officials; penalty.

A. ~~It shall be~~ *is* unlawful to haze so as to cause ~~bodily injury~~, any student at any school or institution of higher education.

Any person found guilty thereof ~~shall be~~ *when the offense did not result in death or serious bodily injury to any person is* guilty of a Class 1 misdemeanor. Any person found guilty thereof ~~when the offense did result in death or serious bodily injury to any person is~~ *guilty of a Class 5 felony.*

The provisions of this subsection shall not preclude prosecution under any other statute.

B. Any person receiving ~~bodily~~ *an* injury by hazing shall have a right to sue, civilly, the person or persons guilty thereof, whether adults or infants.

C. No person shall be subject to arrest or prosecution for violating this section if:

1. Such person (i) in good faith, seeks or obtains emergency medical attention for a person who has received a bodily injury by hazing by contemporaneously reporting such hazing to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system or (ii) in good faith, renders emergency care or assistance, including cardiopulmonary resuscitation (CPR), to a person who has received a bodily injury by hazing while another person seeks or obtains emergency medical attention in accordance with this subdivision;

2. Such person remains at the scene of the hazing or at any alternative location to which he or she person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report for emergency medical attention. If no law-enforcement officer is present at the scene of the hazing or at the alternative location, then such person shall cooperate with law

INTRODUCED

SB440

59 enforcement as otherwise set forth herein;

60 3. Such person identifies himself to the law-enforcement officer who responds to the report of the
61 hazing; and

62 4. The evidence for the prosecution of an offense enumerated in this section was obtained as a result
63 of the person seeking or obtaining emergency medical attention or rendering emergency care or
64 assistance.

65 D. The president or other presiding official of any school or institution of higher education receiving
66 appropriations from the state treasury shall, upon satisfactory proof of the guilt of any student hazing
67 another student, sanction and discipline such student in accordance with the institution's policies and
68 procedures. The institution's policies and procedures shall provide for expulsions or other appropriate
69 discipline based on the facts and circumstances of each case and shall be consistent with the model
70 policies established by the Department of Education or the State Council of Higher Education for
71 Virginia, as applicable. The president or other presiding official of any school or institution of higher
72 education receiving appropriations from the state treasury shall report *all acts of hazing which causes*
73 *bodily injury* to the attorney for the Commonwealth of the county or city in which such school or
74 institution of higher education is, who shall take such action as he deems appropriate.

75 E. Any person, including the attorney for the Commonwealth acting in his official or individual
76 capacity, may file a petition for mandamus or injunction, supported by an affidavit showing good cause,
77 against the president or other presiding official of any school or institution of higher education
78 receiving appropriations from the state treasury seeking to enforce the provisions of subsection D if
79 such president or other presiding official fails to perform his duties as required by subsection D. Venue
80 for such petition shall be in the general district or circuit court of the county or city where the school
81 or institution of higher education is located.

82 If the court finds that the president or other presiding official willfully or knowingly failed to
83 perform his duties, the court shall impose upon such president or other presiding official in his
84 individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty
85 of not less than \$500 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a
86 second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

87 F. For the purposes of this section, "hazing" means (i) to recklessly or intentionally endanger the
88 health or safety of a student or students ~~or~~ so as to cause bodily injury, (ii) to inflict bodily injury on a
89 student or students in connection with or for the purpose of initiation, admission into or affiliation with
90 or as a condition for continued membership in a club, organization, association, fraternity, sorority, or
91 student body regardless of whether the student or students so endangered or injured participated
92 voluntarily in the relevant activity, or (iii) to recklessly or intentionally cause another person to suffer
93 severe emotional distress through outrageous or intolerable conduct and the severe emotional distress
94 was caused by the outrageous or intolerable conduct.

95 **§ 18.2-56.01. Organizational failure to prevent unlawful hazing; civil penalty.**

96 A. For purposes of this section:

97 "Hazing" means the same as that term is defined in § 18.2-56.

98 "Local affiliate organization" means an organization that is chartered or recognized by a national
99 organization and may include students or nonstudents.

100 "Local organization" means an organization that is not chartered nor recognized by a national
101 organization.

102 "National organization" means an organization that is separate from a local affiliate organization
103 and that may charter or recognize local affiliate organizations at multiple institutions of higher
104 education.

105 "Organization" means a club, association, corporation, order, society, corps, private club, fraternity,
106 sorority, varsity or club athletic team, or service, social, or similar group, whose members are primarily
107 students or alumni of one or more institutions of higher education.

108 "Student" means a full-time or part-time student attending an institution of higher education and
109 enrolled in a degree program.

110 B. 1. A local organization or local affiliate organization fails to prevent unlawful hazing if the
111 elected leadership of the local organization or local affiliate organization had specific credible
112 knowledge that its student members were participating, aiding, or assisting in any act of hazing and did
113 not attempt to intervene to stop the hazing or report it to the appropriate local authorities.

114 2. A national organization fails to prevent unlawful hazing if an agent of the national organization
115 or member of the national organization's governing board of directors had specific credible knowledge
116 that its student members were participating, aiding, or assisting in any act of hazing and did not
117 attempt to intervene to stop the hazing or report it to the appropriate local authorities.

118 3. An institution of higher education fails to prevent unlawful hazing if an agent of the institution of
119 higher education or member of the institution of higher education's governing board had specific
120 credible knowledge that its students were participating, aiding, or assisting in any act of hazing and did

121 *not attempt to intervene to stop the hazing or report it to the appropriate local authorities.*
122 *C. Failure to prevent unlawful hazing pursuant to this section is punishable by a civil penalty of no*
123 *more than \$50,000.*
124 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
125 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
126 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
127 **correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I,**
128 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
129 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
130 **appropriation cannot be determined for periods of commitment to the custody of the Department**
131 **of Juvenile Justice.**

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SB440