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**HOUSE BILL NO. 609**

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL* to amend the Code of Virginia by adding a section numbered 8.01-42.6, relating to civil action for deprivation of rights.

Patrons—Bourne, Jenkins, Rasoul and Scott, D.L.

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 8.01-42.6 as follows:****§ 8.01-42.6. Civil action for deprivation of rights.**

A. For the purposes of this section, unless the context requires otherwise:

"Employee" means any officer, employee, or agent of any public employer, or any person acting on behalf of a public employer, under the color of, or within the course and scope of the authority of, the public employer, either temporarily or permanently, whether with or without compensation.

"Public employer" means the Commonwealth of Virginia, any state agency, any political subdivision of the Commonwealth, including counties, cities, and towns, and any private entity that has contracted with the Commonwealth, its political subdivisions, or any of its agencies thereof for the operation and maintenance of a correctional facility.

B. Cause of action for civil rights violation.

1. Public employers and its employees shall not subject, or cause to be subjected, any person to the deprivation of any right, privilege, or immunity granted to persons under the constitutions and laws of the United States and the Commonwealth. A person who claims to have suffered a deprivation of any right, privilege, or immunity pursuant to the constitutions and laws of the United States and the Commonwealth due to the acts or omissions of either the public employer or its employee may maintain an action to establish liability and recover compensatory damages, punitive damages, and equitable relief against the public employer and its employee. The public employer and its employee shall be jointly and severally liable to the party injured for any damages and shall be liable for equitable relief or other proper redress.

2. This subsection creates a waiver of sovereign immunity, and the Commonwealth consents to being sued. Accordingly, public employers and its employees may not raise sovereign immunity as a defense to liability.

3. It shall not be a defense to liability or immunity to suit under this section that the rights, privileges, or immunities secured by the constitutions and laws of the United States and the Commonwealth were not clearly established at the time of their deprivation, or that the public employer or employee believed their acts or omissions to be lawful at the time when the acts or omissions occurred, or that the public employer or employee did not intend to cause a deprivation of the rights, privileges, or immunities secured by the constitutions and laws of the United States and the Commonwealth.

4. Monetary damages in suits against employees in their individual capacity are capped at \$10,000.

5. A defendant sued in his individual capacity shall not be personally liable for monetary damages and his public employer shall be solely liable to the party injured for monetary damages if the defendant establishes that at the time at which the deprivation of such rights, privileges, or immunities occurred, the particular conduct alleged to be unlawful was:

a. Authorized or required by federal or state law;

b. Authorized or required by regulation, practice, procedure, or policy established by the defendant's public employer; or

c. Ruled to be constitutional by a court of competent jurisdiction in a final decision on the merits, without reversal, vacatur, or preemption.

6. This subsection shall not be construed as an abrogation of legislative or judicial immunity to the extent such immunities are otherwise available at common law.

C. Cause of action for negligent hiring, supervision, training, or retention.

1. Public employers owe a duty of reasonable care to third parties in their hiring, supervision, training, retention, and use of their employees. A person who claims to have suffered injury or sustained damages caused, in whole or in part, by a breach of this duty may maintain an action to establish liability and recover compensatory damages, punitive damages, and equitable relief against the public employer.

59       2. *This subsection creates a waiver of sovereign immunity, and the Commonwealth consents to being*  
60 *sued. Accordingly, agencies may not raise sovereign immunity as a defense to liability.*

61       3. *This subsection shall not be construed as an abrogation of legislative or judicial immunity to the*  
62 *extent such immunities are otherwise available at common law.*

63       D. *Attorney fees.*

64       1. *If the plaintiff prevails in an action described in subsection B or C, in addition to any monetary*  
65 *or injunctive relief, the court shall award reasonable attorney fees and costs. If the defendant prevails in*  
66 *an action described in subsection B or C, the court may award reasonable attorney fees and costs if the*  
67 *court finds the claims to have been frivolous.*

68       2. *In actions for equitable relief, a court shall deem a plaintiff to have prevailed if the plaintiff's suit*  
69 *was a substantial factor in obtaining the results sought by litigation. Reasonable attorney fees include*  
70 *those incurred on an hourly or contingency basis or by an attorney providing legal services on a pro*  
71 *bono basis.*

72       E. *No action shall be commenced under this section more than three years after the most recent*  
73 *conduct prohibited by this section.*

74       F. *Nothing in this section shall prevent an aggrieved individual from pursuing any other cause of*  
75 *action available to him for the conduct giving rise to a cause of action under this section.*