

AMENDED IN ASSEMBLY MARCH 30, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 28

Introduced by Assembly Member Chau

December 7, 2020

An act to amend ~~Section 13650 of the Business and Professions Code, and to amend Section 25144 of the Health and Safety Code, relating to service stations. Sections 422.55, 422.56, 422.6, and 422.87 of, and to add Sections 422.58 and 422.72 to, the Penal Code, relating to hate crimes.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 28, as amended, Chau. ~~Service stations: definition: alternative fuels: Hate crimes.~~

Existing law defines "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation. Existing law provides punishments for hate crimes that range from misdemeanors with specified penalties to felonies with additional terms of one to 3 years in the state prison, depending on the underlying criminal act and other circumstances.

This bill would make a criminal act committed, in whole or in part, because of actual or perceived characteristics of a person other than the victim a hate crime. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would deem a person to have acted in whole or in part because of the perceived characteristic of the victim or other person when the person has taken specified actions, including using a slur based on the actual or perceived characteristic, vandalizing property

using words or symbols commonly associated with a hate group or that show bias motivation based on the actual or perceived characteristic, selectively targeting victims or others based on the actual or perceived characteristic, or posting on social media or other media blaming the group with the actual or perceived characteristic for a societal problem.

This bill would impose additional fines for a person who is convicted of a hate crime, as specified. The bill would require those funds to be used, upon appropriation, to fund classes or programs on racial or ethnic sensitivity, or other similar training in the area of civil rights, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law defines a “service station” as any establishment that offers for sale or sells gasoline or other motor vehicle fuel to the public and prescribes certain business operating requirements for a service station:~~

~~This bill would exclude from the definition of a “service station” subject to these business operating requirements an establishment that sells only one or more alternative fuels, as defined. The bill would also make a conforming change.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 422.55 of the Penal Code is amended to
- 2 read:
- 3 422.55. For purposes of this title, and for purposes of all other
- 4 state law unless an explicit provision of law or the context clearly
- 5 requires a different meaning, the following shall apply:
- 6 (a) “Hate crime” means a criminal act committed, in whole or
- 7 in part, because of one or more of the following actual or perceived
- 8 characteristics of the ~~victim~~: *victim or other person*:
- 9 (1) Disability.
- 10 (2) Gender.
- 11 (3) Nationality.

- 1 (4) Race or ethnicity.
- 2 (5) Religion.
- 3 (6) Sexual orientation.
- 4 (7) Association with a person or group with one or more of these
- 5 actual or perceived characteristics.

6 (b) “Hate crime” includes, but is not limited to, a violation of
7 Section 422.6.

8 *SEC. 2. Section 422.56 of the Penal Code is amended to read:*
9 422.56. For purposes of this title, the following definitions
10 shall apply:

11 (a) “Association with a person or group with these actual or
12 perceived characteristics” ~~includes~~ *includes, but is not limited to,*
13 *advocacy for, identification with, observing an event concerning,*
14 *or being on the ground owned or rented by, or adjacent to, any of*
15 *the following: a community center, educational facility, family,*
16 *individual, office, meeting hall, place of worship, private*
17 *institution, public agency, library, or other entity, group, or person*
18 *that has, or is identified with people who have, one or more of*
19 *those characteristics listed in the definition of “hate crime” under*
20 *paragraphs (1) to (6), inclusive, of subdivision (a) of Section*
21 *422.55.*

22 (b) *“Bias motivation” means a preexisting negative attitude*
23 *toward actual or perceived characteristics referenced in Section*
24 *422.55 and includes discriminatory selection. Depending on the*
25 *circumstances of each case, bias motivation may include, but is*
26 *not limited to, hatred, animosity, resentment, revulsion, contempt,*
27 *unreasonable fear, paranoia, callousness, thrill-seeking, desire*
28 *for social dominance, desire for social bonding with those of one’s*
29 *“own kind,” perception that the person is responsible for a social*
30 *ill because of the protected characteristic, or a perception of the*
31 *vulnerability of the victim due to the victim being perceived as*
32 *being weak, worthless, or fair game because of a protected*
33 *characteristic, including, but not limited to, disability or gender.*

34 ~~(b)~~

35 (c) “Disability” includes mental disability and physical disability
36 as defined in Section 12926 of the ~~Government Code~~ *Code*,
37 regardless of whether those disabilities are temporary, permanent,
38 congenital, or acquired by heredity, accident, injury, advanced
39 age, or illness. This definition is declaratory of existing law.

40 ~~(e)~~

- 1 (d) “Gender” means sex, and includes a person’s gender identity
 2 and gender expression. “Gender expression” means a person’s
 3 gender-related appearance and behavior whether or not
 4 stereotypically associated with the person’s assigned sex at birth.
 5 ~~(d)~~
- 6 (e) “In whole or in part because of” means that the bias
 7 motivation must be a cause in fact of the offense, whether or not
 8 other causes also exist. When multiple concurrent motives exist,
 9 ~~the prohibited~~ bias *motivation* must be a substantial factor in
 10 bringing about the particular result. There is no requirement that
 11 the bias *motivation* be a main factor, or that the crime would not
 12 have been committed but for the actual or perceived characteristic.
 13 This subdivision does not constitute a change in, but is declaratory
 14 of, existing law under *In re M.S.* (1995) 10 Cal.4th 698 and *People*
 15 *v. Superior Court (Aishman)* (1995) 10 Cal.4th 735.
 16 ~~(e)~~
- 17 (f) “Nationality” includes citizenship, country of origin, and
 18 national origin.
 19 ~~(f)~~
- 20 (g) “Race or ethnicity” includes ancestry, color, and ethnic
 21 background.
 22 ~~(g)~~
- 23 (h) “Religion” includes all aspects of religious belief,
 24 observance, and practice and includes agnosticism and atheism.
 25 ~~(h)~~
- 26 (i) “Sexual orientation” means heterosexuality, homosexuality,
 27 or bisexuality.
 28 ~~(i)~~
- 29 (j) “Victim” includes, but is not limited to, a community center,
 30 educational facility, entity, family, group, individual, office,
 31 meeting hall, person, place of worship, private institution, public
 32 agency, library, or other victim or intended victim of the offense.
 33 *SEC. 3. Section 422.58 is added to the Penal Code, to read:*
 34 *422.58. A person may be deemed to have acted in whole or in*
 35 *part because of the perceived characteristic of the victim or other*
 36 *person for purposes of this title when the person has done one or*
 37 *more of the following:*
 38 (a) *Used a slur based on the actual or perceived characteristic.*

1 (b) *Vandalized property using words or symbols commonly*
2 *associated with a hate group or that show bias motivation based*
3 *on the actual or perceived characteristic.*

4 (c) *Selectively targeting victims or others based on the actual*
5 *or perceived characteristic.*

6 (d) *Posting on social media or other media blaming the group*
7 *with the actual or perceived characteristic for a societal problem,*
8 *including, but not limited to, causing illness, crime, or economic*
9 *harm.*

10 SEC. 4. *Section 422.6 of the Penal Code is amended to read:*

11 422.6. (a) ~~No~~A person, whether or not acting under color of
12 law, shall *not*, by force or threat of force, willfully injure,
13 intimidate, interfere with, oppress, or threaten any other person in
14 the free exercise or enjoyment of any right or privilege secured to
15 ~~him or her~~ by the Constitution or laws of this state or by the
16 Constitution or laws of the United States in whole or in part
17 because of one or more of the actual or perceived characteristics
18 of the victim *or another person* listed in subdivision (a) of Section
19 422.55.

20 (b) ~~No~~A person, whether or not acting under color of law, shall
21 *not* knowingly deface, damage, or destroy the real or personal
22 property of any other person for the purpose of intimidating or
23 interfering with the free exercise or enjoyment of any right or
24 privilege secured to the other person by the Constitution or laws
25 of this state or by the Constitution or laws of the United States, in
26 whole or in part because of one or more of the actual or perceived
27 characteristics of the victim *or another person* listed in subdivision
28 (a) of Section 422.55.

29 (c) ~~Any~~A person convicted of violating subdivision (a) or (b)
30 shall be punished by imprisonment in a county jail not to exceed
31 one year, or by a fine not to exceed five thousand dollars (\$5,000),
32 or by both the above imprisonment and fine, and the court shall
33 order the defendant to perform a minimum of community service,
34 not to exceed 400 hours, to be performed over a period not to
35 exceed 350 days, during a time other than ~~his or her~~ *the person's*
36 hours of employment or school attendance. However, ~~no~~ a person
37 ~~may~~ shall *not* be convicted of violating subdivision (a) based upon
38 speech alone, except upon a showing that the speech itself
39 threatened violence against a specific person or group of persons

1 and that the defendant had the apparent ability to carry out the
2 threat.

3 (d) Conduct that violates this and any other ~~provision of~~ law,
4 including, but not limited to, an offense described in Article 4.5
5 (commencing with Section 11410) of Chapter 3 of Title 1 of Part
6 4, may be charged under all applicable provisions. However, an
7 act or omission punishable in different ways by this section and
8 other provisions of law shall not be punished under more than one
9 provision, and the penalty to be imposed shall be determined as
10 set forth in Section 654.

11 *SEC. 5. Section 422.72 is added to the Penal Code, to read:*

12 *422.72. (a) In addition to all other fines and penalties, the*
13 *court shall impose an additional fine on a person who is convicted*
14 *of a violation of Section 422.6 or 422.7, or who has a sentence*
15 *enhancement imposed pursuant to Section 422.75, in the following*
16 *amount:*

17 *(1) For a violation of Section 422.6, a fine in the amount of five*
18 *thousand dollars (\$5,000).*

19 *(2) For a violation of Section 422.7, a fine in the amount of ten*
20 *thousand dollars (\$10,000).*

21 *(3) For a sentence enhancement imposed pursuant to Section*
22 *422.75, a fine in the amount of ten thousand dollars (\$10,000).*

23 *(b) Fines received pursuant to this section shall be placed in*
24 *the Trial Court Trust Fund and may be used, upon appropriation*
25 *of the Legislature, to fund classes or programs on racial or ethnic*
26 *sensitivity, or other similar training in the area of civil rights, as*
27 *provided in paragraph (1) of subdivision (a) of Section 422.85.*

28 *SEC. 6. Section 422.87 of the Penal Code is amended to read:*

29 *422.87. (a) Each local law enforcement agency may adopt a*
30 *hate crimes policy. ~~Any~~ A local law enforcement agency that*
31 *updates an existing hate crimes policy or adopts a new hate crimes*
32 *policy shall include, but not be limited to, all of the following:*

33 *(1) The definitions in Sections 422.55 and 422.56.*

34 *(2) The content of the model policy framework that the*
35 *Commission on Peace Officer Standards and Training developed*
36 *pursuant to Section 13519.6, and any content that the commission*
37 *may revise or add in the future, including any policy, definitions,*
38 *response and reporting responsibilities, training resources, and*
39 *planning and prevention methods.*

40 *(3) (A) Information regarding bias motivation.*

1 ~~(B) For the purposes of this paragraph, “bias motivation” is a~~
2 ~~preexisting negative attitude toward actual or perceived~~
3 ~~characteristics referenced in Section 422.55. Depending on the~~
4 ~~circumstances of each case, bias motivation may include, but is~~
5 ~~not limited to, hatred, animosity, resentment, revulsion, contempt,~~
6 ~~unreasonable fear, paranoia, callousness, thrill-seeking, desire for~~
7 ~~social dominance, desire for social bonding with those of one’s~~
8 ~~“own kind,” or a perception of the vulnerability of the victim due~~
9 ~~to the victim being perceived as being weak, worthless, or fair~~
10 ~~game because of a protected characteristic, including, but not~~
11 ~~limited to, disability or gender.~~

12 ~~(C)~~

13 (B) (i) In recognizing suspected disability-bias hate crimes, the
14 policy shall advise officers to consider whether there is any
15 indication that the perpetrator was motivated by hostility or other
16 bias, occasioned by factors such as, but not limited to, dislike of
17 persons who arouse fear or guilt, a perception that persons with
18 disabilities are inferior and therefore “deserving victims,” a fear
19 of persons whose visible traits are perceived as being disturbing
20 to others, or resentment of those who need, demand, or receive
21 alternative educational, physical, or social accommodations.

22 (ii) In recognizing suspected disability-bias hate crimes, the
23 policy also shall advise officers to consider whether there is any
24 indication that the perpetrator perceived the victim to be vulnerable
25 and, if so, if this perception is grounded, in whole or in part, in
26 antidisability bias. This includes, but is not limited to, if a
27 perpetrator targets a person with a particular perceived disability
28 while avoiding other vulnerable-appearing persons such as
29 inebriated persons or persons with perceived disabilities different
30 than those of the victim, those circumstances could be evidence
31 that the perpetrator’s motivations included bias against persons
32 with the perceived disability of the victim and that the crime must
33 be reported as a suspected hate crime and not a mere crime of
34 opportunity.

35 (4) Information regarding the general underreporting of hate
36 ~~crimes and crimes~~, the more extreme underreporting of
37 antidisability and antigender hate ~~crimes crimes~~, and a plan for
38 the agency to remedy this underreporting.

39 (5) A protocol for reporting suspected hate crimes to the
40 Department of Justice pursuant to Section 13023.

1 (6) A checklist of first responder responsibilities, including, but
 2 not limited to, being sensitive to effects of the crime on the victim,
 3 determining whether ~~any~~ additional resources are needed on the
 4 scene to assist the victim or whether to refer the victim to
 5 appropriate community and legal services, and giving the victims
 6 and any interested persons the agency's hate crimes brochure, as
 7 required by Section 422.92.

8 (7) A specific procedure for transmitting and periodically
 9 retransmitting the policy and any related orders to all officers,
 10 including a simple and immediate way for officers to access the
 11 policy in the field when needed.

12 (8) The title or titles of the officer or officers responsible for
 13 ~~assuring~~ *ensuring* that the department has a hate crime ~~brochure~~
 14 *brochure*, as required by Section ~~422.92~~ 422.92, and ensuring that
 15 all officers are trained to distribute the brochure to all suspected
 16 hate crime victims and all other interested persons.

17 (9) A requirement that all officers be familiar with the policy
 18 and carry out the policy at all times unless directed by the chief,
 19 sheriff, director, or other chief executive of the law enforcement
 20 agency or other command-level officer to whom the chief executive
 21 officer formally delegates this responsibility.

22 (b) ~~Any~~ A local law enforcement agency that updates an existing
 23 hate crimes policy or adopts a new hate crimes policy may include
 24 any of the provisions of a model hate crime policy and other
 25 relevant documents developed by the International Association of
 26 Chiefs of Police that are relevant to California and consistent with
 27 this chapter.

28 *SEC. 7. No reimbursement is required by this act pursuant to*
 29 *Section 6 of Article XIII B of the California Constitution because*
 30 *the only costs that may be incurred by a local agency or school*
 31 *district will be incurred because this act creates a new crime or*
 32 *infraction, eliminates a crime or infraction, or changes the penalty*
 33 *for a crime or infraction, within the meaning of Section 17556 of*
 34 *the Government Code, or changes the definition of a crime within*
 35 *the meaning of Section 6 of Article XIII B of the California*
 36 *Constitution.*

37 ~~SECTION 1. Section 13650 of the Business and Professions~~
 38 ~~Code is amended to read:~~

39 13650. "Service station," as used in this chapter, means any
 40 establishment that offers for sale or sells gasoline or other motor

1 vehicle fuel to the public. For purposes of this chapter, service
2 station does not include an establishment that sells only one or
3 more alternative fuels, as that term is defined in Section 13400.

4 SEC. 2. Section 25144 of the Health and Safety Code is
5 amended to read:

6 25144. (a) For purposes of this section, the following terms
7 have the following meaning:

8 (1) "Oil" means crude oil, or any fraction thereof, that is liquid
9 at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute
10 pressure. "Oil" does not include any of the following, unless it is
11 exempt from regulation under paragraph (1) of subdivision (g) of
12 Section 279.10 of, or paragraph (5) of subdivision (g) of Section
13 279.10 of, Part 279 of Title 40 of the Code of Federal Regulations:

14 (A) Spent lubricating fluids that have been removed from an
15 engine crankcase, transmission, gearbox, or differential of an
16 automobile, bus, truck, vessel, heavy equipment, or machinery
17 powered by an internal combustion engine.

18 (B) Spent industrial oils, including compressor, turbine, and
19 bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and
20 railroad drainings.

21 (2) "Oil-bearing materials" means any liquid or semisolid
22 material containing oil, partially refined petroleum products, or
23 petroleum products. "Oil-bearing materials" do not include either
24 of the following:

25 (A) Soil from remediation projects.

26 (B) Contaminated groundwater that is generated at, or
27 originating from the operation, maintenance, or cleanup of, service
28 stations, as that term was defined in Section 13650 of the Business
29 and Professions Code as it read on December 31, 2021.

30 (3) "Oil recovery operations" means the physical separation of
31 oil from oil-bearing materials by means of gravity separation,
32 centrifugation, filter pressing, or other dewatering processes, with
33 or without the addition of heat, chemical flocculants, air, or natural
34 gas to enhance separation.

35 (4) "Petroleum refinery" means an establishment that has the
36 Standard Industrial Classification Code 2911 and that is not subject
37 to the permit requirements for the recycling of used oil imposed
38 pursuant to Article 9 (commencing with Section 25200).

1 ~~(5) “Subsidiary” means a corporate entity engaged in the~~
2 ~~exploration, production, transportation, refining, marketing, or~~
3 ~~distribution of crude oil or petroleum products.~~

4 ~~(b) (1) Except as provided in paragraph (2), a biological process~~
5 ~~on the property of the producer treating oil, its products, and water,~~
6 ~~that meets the definition of a non-RCRA waste, and that produces~~
7 ~~an effluent that is continuously discharged to navigable waters in~~
8 ~~compliance with a permit issued pursuant to Section 402 of the~~
9 ~~Federal Water Pollution Control Act (33 U.S.C. Sec. 1342), is~~
10 ~~exempt from this chapter.~~

11 ~~(2) Residues produced in the treatment process and subsequently~~
12 ~~removed that conform to any criterion for the identification of a~~
13 ~~hazardous waste adopted pursuant to Section 25141 are not exempt~~
14 ~~from this chapter.~~

15 ~~(c) To the extent consistent with the applicable provisions of~~
16 ~~the federal act, units, including associated piping, that are part of~~
17 ~~a system used for the recovery of oil from oil-bearing materials,~~
18 ~~and the associated storage of oil-bearing materials and the~~
19 ~~recovered oil, are exempt from this chapter, if all of the following~~
20 ~~conditions are met:~~

21 ~~(1) The oil recovery operations are conducted at a petroleum~~
22 ~~refinery, or at another facility owned or operated by the corporate~~
23 ~~entity that owns or operates the refinery, or a corporate parent or~~
24 ~~subsidiary of the corporate entity.~~

25 ~~(2) The oil-bearing materials are generated at the refinery or at~~
26 ~~another facility owned or operated by the corporate entity that~~
27 ~~owns or operates the refinery, or a corporate parent or subsidiary,~~
28 ~~including a sister subsidiary, of the corporate entity, or are~~
29 ~~generated in the course of oil or gas exploration or production~~
30 ~~operations conducted by an unrelated entity and placed in a~~
31 ~~common pipeline.~~

32 ~~(3) The recovered oil is inserted into petroleum refinery process~~
33 ~~units to produce fuel or other refined petroleum products. This~~
34 ~~paragraph does not allow the direct blending, into final petroleum~~
35 ~~products, of oil-bearing materials or recovered oil that contain~~
36 ~~constituents that render these materials hazardous under the~~
37 ~~regulations adopted pursuant to Sections 25140 and 25141, other~~
38 ~~than those for which the material is being recycled.~~

39 ~~(4) The recovered oil is not stored in a surface impoundment~~
40 ~~or accumulated speculatively at the refinery or at an offsite facility.~~

- 1 ~~(5) Any residual materials removed from a unit that is exempt~~
2 ~~under this subdivision are managed in accordance with all other~~
3 ~~applicable laws.~~
- 4 ~~(6) The oil-bearing materials would be excluded from~~
5 ~~classification as a waste pursuant to, or would otherwise meet the~~
6 ~~requirements for an exemption under, Section 25143.2, except that~~
7 ~~the following provisions do not apply to those oil-bearing materials:~~
- 8 ~~(A) The prohibitions against prior reclamation in paragraphs~~
9 ~~(1), (2), and (3) of subdivision (b) of Section 25143.2.~~
- 10 ~~(B) Subparagraph (C) of paragraph (2) of subdivision (c) of~~
11 ~~Section 25143.2.~~
- 12 ~~(C) Paragraph (3) of subdivision (c) of Section 25143.2.~~
- 13 ~~(D) Sections 25143.9 and 25143.10.~~
- 14 ~~(E) The exceptions for wastewater containing more than 75~~
15 ~~parts per million of total petroleum hydrocarbons, as provided by~~
16 ~~subparagraph (A) of paragraph (5) of, and subparagraph (A) of~~
17 ~~paragraph (6) of, subdivision (d) of Section 25143.2.~~