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SENATE BILL NO. 1012

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 8.01-379.2:1 and 46.2-373 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-417.02, relating to motor vehicle collisions; collection of certain mobile telephone data; collision reports.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-379.2:1 and 46.2-373 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-417.02 as follows:

§ 8.01-379.2:1. Spoliation of evidence.

A. A party or potential litigant has a duty to preserve evidence that may be relevant to reasonably foreseeable litigation. In determining whether and at what point such a duty to preserve arose, the court shall include in its consideration the totality of the circumstances, including the extent to which the party or potential litigant was on notice that specific and identifiable litigation was likely and that the evidence would be relevant.

B. If evidence that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, or is otherwise disposed of, altered, concealed, destroyed, or not preserved, and it cannot be restored or replaced through additional discovery, the court (i) upon finding prejudice to another party from such loss, disposal, alteration, concealment, or destruction of the evidence, may order measures no greater than necessary to cure the prejudice, or (ii) only upon finding that the party acted recklessly or with the intent to deprive another party of the evidence's use in the litigation, may (a) presume that the evidence was unfavorable to the party, (b) instruct the jury that it may or shall presume that the evidence was unfavorable to the party, or (c) dismiss the action or enter a default judgment.

C. Nothing in this section shall be interpreted as creating an independent cause of action for negligent or intentional spoliation of evidence.

D. If an attorney representing an injured person who experiences an injury as the result of a motor vehicle collision requests in writing within 30 days of such collision that the individual alleged to have caused the injured person's injury preserve for a period of three years following such collision the individual's mobile telephone history or history from within the individual's vehicle for the two hours immediately preceding and the two hours immediately following such collision of (i) calls; (ii) messaging communications, including text messages, emails, and messages from other messaging applications; (iii) pictures or videos taken at the site of such collision; and (iv) if applicable, any relevant vehicle data and such individual alleged to have caused the injured person's injury refuses to preserve such data, it shall create a rebuttable presumption of spoliation of evidence.

§ 8.01-417.02. Motor vehicle collisions; requests for certain mobile telephone information to be preserved.

A. After an attorney certifies that he represents an injured person pursuant to subsection C, such attorney may, prior to the filing of a civil action for personal injuries sustained as a result of a collision, request in writing that the mobile telephone provider of the individual alleged to have caused the injured person's injuries preserve the following records or information for a period of four years from the date of the collision : (i) subscriber information; (ii) incoming and outgoing call history; (iii) text message history, (iv) any Internet Protocol (IP) addresses; (v) the Media Access Control (MAC) address or other unique identifier of the mobile telephone; (vi) the history of any websites or servers accessed by the phone, including the date and time accessed; (vii) real time location data; and (viii) real time communications. Such records may be preserved in a manner consistent with the policies of the mobile telephone provider and shall be preserved for production within four years upon receipt of a subpoena duces tecum issued in any pending action or with the written consent of the subscriber.

B. Upon request from the attorney representing an injured person, the insurance carrier of the individual alleged to have caused the injured person's injuries shall advise such attorney whether the individual was utilizing an application through the insurance carrier to monitor the individual's driving. If such application was utilized, the insurance carrier shall, upon request from the injured person's attorney, preserve for three years from the date of the collision the application data from two hours prior to the collision through two hours after the collision.

C. For the purposes of this section, an attorney representing an injured person shall certify in accordance

59 *with the provisions of § 8.01-4.3 that such attorney has been retained to represent the injured person in*
 60 *relation to a specific collision. Such certification shall include the date, time, and place of the collision and*
 61 *shall include the name of the injured person the attorney has been retained to represent. The attorney shall*
 62 *notify the mobile telephone provider within 15 days of a termination of his representation or decision not to*
 63 *file an action.*

64 **§ 46.2-373. Report by law-enforcement officer investigating collision.**

65 A. Every law-enforcement officer who in the course of duty investigates a ~~motor vehicle accident~~
 66 *collision* resulting in injury to or death of any person or total property damage to an apparent extent of \$1,500
 67 or more, either at the time of and at the scene of the ~~accident~~ *collision* or thereafter and elsewhere, by
 68 interviewing participants or witnesses shall, within ~~twenty-four~~ 24 hours after completing the investigation,
 69 forward a written report of the ~~accident~~ *collision* to the Department. *The investigating law-enforcement*
 70 *officer shall ask any driver involved in the collision about such driver's mobile phone usage leading up to and*
 71 *at the time of the collision and whether such driver uses an insurance or other telematics application to*
 72 *monitor driving.* The report shall include the name or names of the insurance carrier or of the insurance agent
 73 of the automobile liability policy on each vehicle involved in the ~~accident~~ *collision* and *if the driver of any*
 74 *vehicle involved in the collision uses an application to monitor driving through such insurance carrier.* A
 75 law-enforcement agency may utilize a contracted service provider to forward reports electronically to the
 76 Department in compliance with this section and to manage or disseminate copies of such reports to persons
 77 identified in, and in a manner consistent with, § 46.2-380, provided such contracted service provider complies
 78 with the requirements applicable to an agency in Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2.

79 B. Any *collision* report filed pursuant to subsection A of this section shall include information as to (i) the
 80 speed of each vehicle involved in the ~~accident~~ *and collision*, (ii) the type of vehicles involved in all ~~accidents~~
 81 *collisions* between passenger vehicles and vehicles or combinations of vehicles used to transport property,
 82 and (iii) whether any trucks involved in such ~~accidents~~ *collisions* were covered or uncovered.

83 C. The Department shall supply copies of ~~accident~~ *collision* reports received under this section to the
 84 Commissioner of Highways who shall exercise the authority granted to him under §§ 46.2-870 through 46.2-
 85 878 to reduce speed limits where ~~accident~~ *collision* frequency or severity or other factors may indicate the
 86 course of action to be warranted.

87 D. *Any collision report filed pursuant to subsection A shall include the mobile telephone number and*
 88 *name of the mobile telephone provider of any driver of a vehicle involved in the collision, and the*
 89 *International Mobile Equipment Identity (IMEI) number. The report shall include whether such driver*
 90 *refused to provide the mobile telephone number, provider, or IMEI number. The failure of any person*
 91 *involved in a collision to provide such information to a law-enforcement officer shall create a rebuttable*
 92 *presumption of spoliation of evidence in accordance with § 8.01-379.2:1. The IMEI number shall be redacted*
 93 *on any copy of a collision report unless such copy is given to a driver identified in such report or an attorney*
 94 *representing a driver identified in such report.*

95 **2. That the Department of Motor Vehicles shall amend its collision report form in accordance with §**
 96 **46.2-373 of the Code of Virginia, as amended by this act.**

97 **3. That the Office of the Executive Secretary of the Supreme Court of Virginia shall promulgate a form**
 98 **in accordance with § 8.01-417.02 of the Code of Virginia, as created by this act.**

99 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**
 100 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
 101 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
 102 **therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal**
 103 **Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**
 104 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**
 105 **periods of commitment to the custody of the Department of Juvenile Justice.**