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HOUSE BILL NO. 1336**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee for Courts of Justice
on February 26, 2018)

(Patron Prior to Substitute—Delegate Habeeb)

A *BILL to amend the Code of Virginia by adding a section numbered 8.01-379.2:1, relating to spoliation of evidence.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-379.2:1 as follows:

§ 8.01-379.2:1. Spoliation of evidence; jury instruction.

A. *For the purposes of this section:*

"Evidence" includes any information, records, papers, documents, physical items, or any other materials that any party to pending or probable litigation may have desired to introduce at trial.

"Probable litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

B. *If a party, or such party's agents, employees, or servants, has possession, custody, or control of evidence that such party, or such party's agents, employees, or servants, has been put on notice that such evidence is material to pending or probable litigation, and such evidence is disposed of, altered, concealed, destroyed, or not preserved by such party, or such party's agents, employees, or servants, or by another person or entity at the direction or with the consent or knowledge of such party, or such party's agents, employees, or servants, a court may instruct that a jury may infer, subject to any explanation that may be made by such party, that, if such evidence had been introduced, such evidence would be detrimental to the case of such party.*

The party seeking such instruction need not show that the disposal of, alteration of, concealing of, or failure to preserve such evidence was undertaken intentionally or in bad faith in order for such instruction to be given.