

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 8.01-379.2:1, relating to spoliation*  
3 *of evidence.*

4 [S 1619]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 8.01-379.2:1 as follows:**8 **§ 8.01-379.2:1. Spoliation of evidence.**

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

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

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

ENROLLED

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