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HOUSE BILL NO. 326**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 7, 2014)

(Patrons Prior to Substitute—Delegates Bell, Robert B. and Simon [HB 49])

A BILL to amend and reenact § 18.2-386.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-386.2, relating to unlawful dissemination or sale of images of another; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-386.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-386.2 as follows:

§ 18.2-386.1. Unlawful creation of image of another; penalty.

A. It shall be unlawful for any person to knowingly and intentionally ~~videotape, photograph, or film any nonconsenting person or~~ create any videographic or still image ~~record~~ by any means whatsoever of the any nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the ~~videotape, photograph, film or~~ videographic or still image ~~record~~ is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being ~~videotaped, photographed, filmed or otherwise~~ recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to ~~filming, videotaping or photographing or other any videographic or still image or videographic recording created by any means whatsoever~~ by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony.

E. Where it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, and when such offenses were not part of a common act, transaction, or scheme, and such person has been at liberty as defined in § 53.1-151 between each conviction, he shall be guilty of a Class 6 felony.

§ 18.2-386.2. Unlawful dissemination or sale of images of another; penalty.

A. Any person who, with the intent to coerce, harass, or intimidate, maliciously disseminates or sells any videographic or still image created by any means whatsoever that depicts another person who is totally nude, in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast, or engaged in sexual conduct, as defined in § 18.2-390, where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image is guilty of a Class 1 misdemeanor.

B. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any videographic or still image created by any means whatsoever is produced, reproduced, found, stored, received, or possessed in violation of this section.

C. The provisions of this section shall not preclude prosecution under any other statute.