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SENATE BILL NO. 493

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 9, 2022)

(Patron Prior to Substitute—Senator McClellan)

A *BILL to amend the Code of Virginia by adding a section numbered 8.01-46.2, relating to civil action for the dissemination of sexually explicit visual material to another; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-46.2 as follows:

§ 8.01-46.2. Civil action for dissemination of intimate images to another; penalty.

A. As used in this section:

"Electronic communication device" means the same as that term is defined in § 18.2-190.1.

"Intimate image" means a photograph, film, video, recording, digital picture, or other visual reproduction of a person 18 years of age or older who is in a state of undress so as to expose the human male or female genitals.

B. Any person 18 years of age or older who knowingly transmits an intimate image by computer or other electronic means to the computer or electronic communication device of another person 18 years of age or older when such other person has not consented to the use of his computer or electronic communication device for the receipt of such material or has expressly forbidden the receipt of such material shall be considered a trespass and shall be liable to the recipient of the intimate image for actual damages or \$500, whichever is greater, in addition to reasonable attorney fees and costs. The court may also award punitive damages and enjoin and restrain the defendant from committing such further acts.

The remedies provided by this section are cumulative and shall not be construed as restricting a remedy that is available under any other law.

C. The provisions of this section shall not apply to (i) any Internet service provider, mobile data provider, or operator of an online or mobile application, to the extent that such entity is transmitting, routing, or providing connections for electronic communications initiated by or at the direction of another; (ii) any service that transmits an intimate image, including an on-demand, subscription, or advertising-supported service; (iii) a health care provider as defined in § 8.01-581.1 that transmits an intimate image for a legitimate medical purpose; or (iv) any transmission of commercial electronic mail as defined in § 18.2-152.2.

D. Venue for an action under this section may lie in the jurisdiction where the intimate image is transmitted from or where the intimate image is received or possessed by the plaintiff.