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HOUSE BILL NO. 1013

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend the Code of Virginia by adding in Title 64.2 a chapter numbered 6.1, containing articles numbered 1 through 3, consisting of sections numbered 64.2-639 through 64.2-652, relating to Uniform Electronic Estate Planning Documents Act.

Patrons—Laufer, Clark and Keys-Gamarra

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 64.2 a chapter numbered 6.1, containing articles numbered 1 through 3, consisting of sections numbered 64.2-639 through 64.2-652, as follows:

CHAPTER 6.1.

UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT.

Article 1.

General Provisions.

§ 64.2-639. Definitions.

As used in this article, unless the context requires a different meaning:

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Information" includes data, text, images, codes, computer programs, software, and databases.

"Nontestamentary estate planning document" means a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will. "Nontestamentary estate planning document" includes a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes (i) a trust instrument; (ii) a trust power that, under the terms of the trust, requires a signed record; (iii) a certification of a trust pursuant to § 64.2-804; (iv) power of attorney that is durable pursuant to Chapter 16 (§ 64.2-1600 et seq.); (v) an agent's certification pursuant to § 64.2-1639 of the validity of a power of attorney and the agent's authority; (vi) a power of appointment; (vii) an advance directive, including a directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment; (viii) a record directing disposition of an individual's body after death; (ix) a nomination of a guardian for the signing individual; (x) a nomination of a guardian for a minor or disabled adult child; (xi) a mental health declaration; (xii) a community property survivorship agreement; (xiii) a disclaimer pursuant to § 64.2-2600; and (xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death. The term does not include a deed of real property or certificate of title for a motor vehicle, watercraft, or aircraft.

"Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, instrumentality, or other legal entity.

"Power of attorney" means a record that grants authority to an agent to act in the place of the principal, even if the term is not used in the record.

"Record" means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

"Security procedure" means a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record. "Security procedure" includes a procedure that uses an algorithm, code, identifying word or number, encryption, callback, or other acknowledgement procedure.

"Settlor" means a person, including a testator, who creates or contributes property to a trust.

"Sign" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic signature.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction of the United States.

"Terms of a trust" means, except as otherwise provided, (i) the manifestation of the settlor's intent regarding a trust's provisions as either expressed in the trust instrument or established by other evidence that would be admissible in a judicial proceeding or (ii) the trust's provisions as established, determined, or

59 amended by a trustee or other person in accordance with applicable law, a court order, or a nonjudicial
60 settlement agreement pursuant to § 64.2-709.

61 "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including
62 any amendments.

63 "Will" includes a codicil and testamentary instrument that merely appoints an executor, revokes or revises
64 another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to
65 succeed to property of the decedent passing by intestate succession.

66 **§ 64.2-640. Construction.**

67 This chapter shall be construed and applied to:

68 1. Facilitate electronic estate planning documents and signatures consistent with other law; and
69 2. Be consistent with reasonable practices concerning electronic documents and signatures and continued
70 expansion of those practices.

71 **§ 64.2-641. Scope.**

72 Except as otherwise provided in this section, this chapter shall apply to an electronic nontestamentary
73 estate planning document and an electronic signature on a nontestamentary estate planning document. This
74 chapter shall not apply to a nontestamentary estate planning document if such document precludes the use of
75 an electronic record or electronic signature. This chapter shall not affect the validity of an electronic record
76 or electronic signature valid pursuant to (i) Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 or (ii) Chapter 7
77 (§ 64.2-700 et seq.).

78 **§ 64.2-642. Principles of law and equity.**

79 The laws of the Commonwealth and principles of equity applicable to a nontestamentary estate planning
80 document shall apply to an electronic nontestamentary estate planning document except as otherwise
81 provided in this chapter.

82 **Article 2.**
83 **Electronic Nontestamentary Estate Planning Documents.**

84 **§ 64.2-643. Use of electronic record or signature not required.**

85 A. This article shall not require a nontestamentary estate planning document or signature on a
86 nontestamentary estate planning document to be created, generated, sent, communicated, received, stored, or
87 otherwise processed or used by electronic means in electronic form.

88 B. No person shall be required to have a nontestamentary estate planning document in electronic form or
89 signed electronically even if the person previously created or signed a nontestamentary estate planning
90 document by electronic means.

91 C. No person shall waive the provisions of this section.

92 **§ 64.2-644. Recognition of electronic nontestamentary estate planning document; electronic signature.**

93 A. No nontestamentary estate planning document or signature on a nontestamentary estate planning
94 document shall be denied legal effect or enforceability solely because it is in electronic form.

95 B. An electronic record of a nontestamentary estate planning document shall satisfy a requirement that
96 such document be in writing as provided by any other provision of law.

97 C. An electronic signature on a nontestamentary estate planning document shall satisfy a requirement
98 that such document include a signature as provided by any other provision of law.

99 **§ 64.2-645. Electronic record; electronic signature; attribution; effect.**

100 A. An electronic nontestamentary estate planning document or electronic signature on an electronic
101 nontestamentary estate planning document shall be attributable to a person if it was the act of such person.
102 Such act of such person may be shown in any manner, including a showing of the efficacy of a security
103 procedure applied to determine the person to which the electronic record or electronic signature was
104 attributable.

105 B. The effect of attribution to a person pursuant to this section of a document or signature shall be
106 determined from the context and surrounding circumstances at the time of such document or signature's
107 creation, execution, or adoption and as otherwise provided by law.

108 **§ 64.2-646. Notarization and acknowledgement.**

109 If any other provision of law requires a signature or record to be notarized, acknowledged, verified, or
110 made under oath, such requirement shall be satisfied with respect to an electronic nontestamentary estate
111 planning document if an individual authorized to perform the notarization, acknowledgement, verification, or
112 oath attaches or logically associates such individual's electronic signature on the document together with any
113 other information required to be included pursuant to law.

114 **§ 64.2-647. Witnessing; attestation.**

115 A. Where any provision of law requires that a nontestamentary estate planning document be signed,
116 witnessed, or attested by another person, an electronic signature on, or the witnessing or attestation of, a
117 nontestamentary estate planning document shall satisfy such requirement.

118 B. Where any provision of law requires that a nontestamentary estate planning document be signed,
119 witnessed, or attested by another person in the presence of the person signing the document, the electronic

120 presence of such persons shall satisfy such requirement.

121 For the purposes of this section, "electronic presence" means that two or more persons in different
122 locations are able to communicate in real time to the same extent as if such persons were physically present
123 in the same location.

124 **§ 64.2-648. Electronic record; retention; original.**

125 A. Except as provided by subsection B, if any other provision of law requires an electronic
126 nontestamentary estate planning document to be retained, transmitted, copied, or filed, such requirement
127 shall be satisfied by retaining, transmitting, copying, or filing an electronic record that (i) accurately reflects
128 the information in the document after it was first generated in final form as an electronic record or in
129 accordance with the provisions of § 64.2-649 and (ii) remains accessible to the extent otherwise required by
130 law.

131 B. The requirement in subsection A to retain a record shall not apply to information the sole purpose of
132 which is to enable such record to be sent, communicated, or received.

133 C. The provisions of subsection A may be satisfied by using the services of another person.

134 D. If any other provision of law requires a nontestamentary estate planning document to be presented or
135 retained in its original form, or provides penalties if a nontestamentary estate planning document is not
136 presented or retained in its original form, an electronic record retained in accordance with the provisions of
137 subsection A shall satisfy such other provision of law.

138 E. This section shall not preclude a governmental agency from specifying requirements for the retention
139 of a record subject to such agency's jurisdiction in addition to the requirements of this section. For the
140 purposes of this subsection, "governmental agency" means an executive, legislative, or judicial agency,
141 department, board, commission, authority, institution, or instrumentality of the federal government or a state
142 or local government or other political subdivision.

143 **§ 64.2-649. Certification of paper copy.**

144 A person may create a certified paper copy of an electronic nontestamentary estate planning document by
145 affirming under penalty of perjury that such paper copy is a complete and accurate copy of such document.

146 **§ 64.2-650. Admissibility.**

147 Evidence relating to an electronic nontestamentary estate planning document or an electronic signature
148 on such document shall not be excluded in a proceeding solely because such document or signature is in
149 electronic form.

150 Article 3.

151 Miscellaneous Provisions.

152 **§ 64.2-651. Uniformity of application and construction.**

153 In applying and construing this uniform act, consideration shall be given to the need to promote
154 uniformity of the law with respect to its subject matter among the states that enact it.

155 **§ 64.2-652. Relation to Electronic Signatures in Global and National Commerce Act.**

156 This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce
157 Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. §
158 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. §
159 7003(b)).