

HOUSE BILL NO. 798

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Communications, Technology and Innovation

on _____)

(Patron Prior to Substitute—Delegate Hayes)

A BILL to amend and reenact §§ 55.1-2500 and 55.1-2529 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-2514.1, relating to Virginia Disposition of Unclaimed Property Act; digital assets.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-2500 and 55.1-2529 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-2514.1 as follows:

§ 55.1-2500. Definitions.

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

"Act" means the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.).

"Administrator" means the State Treasurer or his designee.

"Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

"Banking organization" means any bank, trust company, savings bank (industrial bank, land bank, safe deposit company), or private banker or any other organization defined by law as a bank or banking organization.

"Business association" means any corporation, joint-stock company, investment company, business trust, partnership, limited liability company, cooperative, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

"Credit balance" means an item of intangible property resulting from or attributable to the sale of goods or services, including an overpayment, credit memo, refund, discount, rebate, unidentified remittance, or deposit.

"Digital asset" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value and that is not legal tender, whether or not denominated in legal tender. "Digital asset" does not include (i) a transaction in which a merchant grants, as part of an affinity or reward

program, value that cannot be taken from or exchanged with the merchant for legal tender, bank or credit union credit, or a digital asset; (ii) a digital representation of value issued by , or on behalf of, a publisher and used solely within an online game, gaming platform, or family of games sold by the publisher or offered on the same platform; or (iii) a security registered with or exempt from registration with the U.S. Securities and Exchange Commission or a security qualified with or exempt from qualifications with the U.S. Securities and Exchange Commission.

"Digital asset account" means a customer account, wallet, or other repository device maintained by an owner with a holder, which may contain one or more types of digital assets.

"Domicile" means (i) the state of incorporation, in the case of a corporation incorporated under the laws of a state; (ii) the state of organization, in the case of an unincorporated business association formed under the laws of a state; (iii) the state of the principal place of business, in the case of a nonnatural person not incorporated or formed under the laws of a state; and (iv) the state of principal residency, in the case of a natural person.

"Due diligence" includes the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

"Financial organization" means any savings and loan association (cooperative bank), building and loan association, or credit union.

"Gift certificate" means a certificate, electronic card, or other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of an equal value.

"Holder" means a person, wherever organized or domiciled, that is (i) in possession of property belonging to another; (ii) a trustee, in the case of a trust; or (iii) indebted to another on an obligation.

"Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, that is engaged in providing insurance coverage, including accident, burial, casualty, contract performance, credit life, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

"Intangible property" includes (i) moneys, checks, drafts, deposits, interest, and dividend income; (ii) credits, customer overpayments, gift certificates, security deposits, refunds, unpaid wages, and unidentified remittances; (iii) stocks and other intangible ownership interests in business associations; (iv) moneys deposited to redeem stocks, bonds, coupons, and other securities or to make distributions; (v) amounts due

and payable under the terms of insurance policies; ~~and~~ (vi) amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit; *and (vii) digital assets.*

"Last known address" means ~~a description of the location of the apparent owner sufficient to identify the state of residence of the apparent owner for the purpose of the delivery of mail~~ *any description, code, or other indication of the location of the apparent owner that identifies the state, even if the description, code, or indication of location is not sufficient to direct the delivery of first-class United States mail to the apparent owner.*

"Owner" means (i) a depositor, in the case of a deposit; (ii) a beneficiary, in the case of a trust, other than a deposit in trust; (iii) a creditor, claimant, or payee, in the case of other intangible property; or (iv) a person having a legal or equitable interest in property subject to this chapter or his legal representative.

"Payable" means the earliest date upon which the owner of property could become entitled to the payments, possession, delivery, or distribution of such property from a holder.

"Person" means an individual; a business association; a government or governmental subdivision or agency, public corporation, or public authority; an estate; a trust; two or more persons having a joint or common interest; or any other legal or commercial entity.

"Private key" means a unique element of cryptographic data that is used for signing transactions on a blockchain and is known to the owner of the element.

"Promotional incentive" means a coupon, rebate, or other promotional device offered to induce a consumer to purchase goods, food, or services and for which (i) no direct consideration is given by the consumer or (ii) the consideration given is less than the value of the goods, food, or services to be received.

"State," when applied to a part of the United States, includes any state, district, commonwealth, territory, and insular possession and any other area subject to the legislative authority of the United States.

"Unclaimed property" means property for which the owner, as shown by the records of the holder of his property, has ceased, failed, or neglected, within the times provided in this chapter, to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. As used in this definition, "act" excludes any act of a holder of unclaimed property not done at the express request or authorization of the owner.

"Utility" means a person that owns or operates, for public use, any plant, equipment, property, franchise,

or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

§ 55.1-2514.1. Intangible property held within a digital asset account.

A. For purposes of this section, an "exercise of an act of ownership interest" includes any of the following actions by the owner of a digital asset account:

1. Conducting a transaction utilizing the digital asset account, including (i) buying or selling digital assets or (ii) depositing or withdrawing from the account fiat currency or other property.

2. Electronically accessing the digital asset account.

3. Conducting any activity with respect to another digital asset account or any other property owned by the owner with the same holder.

4. Taking any other action that reasonably demonstrates to the holder that the owner knows that such account and property exists.

B. Any property held within a digital asset account shall be presumed abandoned after five years in accordance with section § 55.1-2501. Such five-year period shall cease immediately upon (i) the exercise of an act of ownership interest in the digital asset account or (ii) any written, oral, or electronic communication from the owner to the holder, as evidenced by a memorandum or other record on file with the holder or its agents.

C. 1. If the digital asset account that is subject to reporting to the Commonwealth pursuant to this section contains any digital asset and the holder has full control of the private keys required to transfer such digital asset, the holder shall report and deliver such digital asset in its native form to the administrator, and such placement with the administrator shall constitute delivery. Upon request, the holder shall provide the administrator with proof of delivery.

2. In the event that the holder only possesses a partial private key to the digital asset or is otherwise unable to move such digital asset to the administrator, the holder shall maintain such digital asset until the additional keys required to transfer such asset become available or the holder is otherwise able to transfer such digital asset to the administrator.

3. The administrator may direct a holder of unclaimed digital assets to liquidate digital assets contemporaneously with reporting if a custodian engaged by the administrator is unable to accept and administer the digital assets. The administrator, at his discretion, may require a holder of digital assets to report, but not transfer, any unclaimed assets to the state, and instead direct that they continue to be held. The administrator may subsequently direct such holder of unclaimed digital assets to liquidate the reported

but unremitted digital assets not less than one year following the filing of a report. Such holder may transfer digital assets to a state-owned account held by the holder before liquidation. If such holder reasonably believes it cannot liquidate digital assets and cannot otherwise cause digital assets to be liquidated, the holder shall promptly notify the administrator in writing and explain the reasons why the digital assets cannot be liquidated as otherwise required by this section. The administrator shall then direct the holder concerning an alternative disposition of such digital assets. The administrator shall establish processes to reunite an owner with his digital asset and may authorize liquidation of such digital asset after one year of receipt as provided in subsection C of § 55.1-2529.

§ 55.1-2529. Sale of abandoned property by administrator.

A. Except as provided in subsection C, all abandoned property other than money or other certificate of ownership delivered to the administrator under this chapter shall be sold by him to the highest bidder at public sale (i) in such city, within or outside the Commonwealth, as affords in his judgment the most favorable market for the property involved or (ii) through the use of electronic media in a format approved by the administrator. The administrator may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

B. Any sale held under this section within the Commonwealth shall be preceded by a single publication of notice of such sale at least three weeks in advance of the sale. Such notice shall be published in a newspaper of general circulation in the county or city where the property is to be sold. If any sale is to occur outside the Commonwealth, then the administrator may use such forms of notice or advertising as he deems necessary to constitute reasonable notice, including post, print, visual, telecommunications, electronic media, or any combination thereof. For the purposes of this section, any sale through the use of electronic media, including the ~~Internet~~ internet, shall be deemed to be a sale outside of the Commonwealth.

C. Securities and digital assets listed on an established stock exchange or digital asset exchange shall be sold at prices prevailing at the time of sale on the exchange. Other securities and digital assets may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator deems advisable.

Unless the administrator deems it to be in the best interest of the Commonwealth to do otherwise, all securities and digital assets delivered to the administrator shall be held for at least one year before the securities or digital assets may be sold. If the administrator sells any securities or digital assets before the expiration of the one-year period, any person making a claim pursuant to this chapter before the end of the

153 one-year period is entitled to either (i) the proceeds of the sale of the securities *or digital assets* or (ii) the
154 market value of the securities *or digital assets* at the time the claim is made, whichever amount is greater.
155 Any person making a claim pursuant to this chapter after the expiration of the one-year period is entitled to
156 receive either the securities *or digital assets* delivered to the administrator by the holder, if they still remain in
157 the hands of the administrator, or the proceeds of the sale, but no person has any claim under this chapter
158 against the Commonwealth, the holder, or any transfer agent, registrar, or other person acting for or on behalf
159 of the holder for any appreciation in the value of the property occurring after delivery by the holder to the
160 Commonwealth.

161 D. The purchaser of property at any sale conducted by the administrator pursuant to this chapter shall
162 receive title to property purchased pursuant to ~~subsections~~ *subsection A* or *B* and is entitled to ownership of
163 property purchased pursuant to *subsection C*, free from all claims of the owner or previous holder thereof and
164 of all persons claiming through or under such owner or previous holder. The administrator shall execute all
165 documents necessary to complete the transfer of ownership.

166 E. If the administrator determines after investigation that any property delivered to him pursuant to this
167 chapter has insubstantial commercial value, he may destroy or otherwise dispose of the property at any time.
168 No action or proceeding may be maintained against the Commonwealth or any officer or against the holder
169 for or on account of any action taken by the administrator with respect to the property pursuant to this
170 subsection.