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HOUSE BILL NO. 346

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 6.1-125.10, 6.1-125.11, 6.1-225.50, 51.1-511, and 64.1-132.1 through 64.1-132.4 of the Code of Virginia, and to amend the Code of Virginia by adding in Article 2.1 of Chapter 6 of Title 64.1 sections numbered 64.1-132.5 and 64.1-132.6, and to repeal §§ 6.1-71, 6.1-194.58, 6.1-225.49, 51.1-164, 64.1-123, 64.1-123.1, 64.1-123.3, 64.1-124, 64.1-124.1, and 64.1-125 of the Code of Virginia, relating to the Small Estate Act; revision.*

Patrons—Watts and Lewis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-125.10, 6.1-125.11, 6.1-225.50, 51.1-511, and 64.1-132.1 through 64.1-132.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 6 of Title 64.1 sections numbered 64.1-132.5 and 64.1-132.6 as follows:

§ 6.1-125.10. Financial institution protection; payment of joint account.

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party *under the Virginia Small Estate Act* (§ 64.1-132.1 *et seq.*) unless proof of death is presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under § 6.1-125.5.

§ 6.1-125.11. Financial institution protection; payment of P.O.D. account.

Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee *under the Virginia Small Estate Act* (§ 64.1-132.1 *et seq.*) upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee *under the Virginia Small Estate Act* (§ 64.1-132.1 *et seq.*) if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

§ 6.1-225.50. Application of §§ 6.1-225.48 and 64.1-132.3 to federal credit unions.

The provisions of §§ 6.1-225.48 and ~~6.1-225.49~~ 64.1-132.3 shall apply to federal credit unions operating in this Commonwealth to the extent that the same are not inconsistent with any federal law applicable to such credit unions.

§ 51.1-511. Persons entitled to payment of insurance on employee's death.

Any amount of group life, accidental death, and dismemberment insurance in force on any employee at the date of his death shall be paid, upon the establishment of a valid claim therefor, to the beneficiary designated by the employee under the provisions of the Virginia Retirement System or other retirement system administered by the Board, unless the employee has designated and filed with the Board on a form prepared by the Board, a different beneficiary of his group life, accidental death, and dismemberment insurance. If no beneficiary has been designated by the employee, or if the death of the designated person occurs prior to the death of the member and another designation has not been made, the proceeds shall be paid to the persons surviving at the date of his death, in the same order of precedence as set forth in subsection A of § 51.1-162.

Payment which otherwise would be made to the estate of an employee may be made in accordance with the provisions of § ~~51.1-164~~ 64.1-132.2 or 64.1-132.3.

§ 64.1-132.1. Definitions.

For the purposes of this article, the term "successor" means a person, other than a creditor, who is entitled to property, other than real property, of a decedent under the will of the decedent or by intestate succession; following definitions apply:

"Designated successor" means one or more successors who are designated pursuant to subdivision A 7 of § 64.1-132.2.

"Person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Small asset" means any indebtedness owed to or any asset belonging or presently distributable to the decedent, other than real property, having a value, on the date of the decedent's death, of no more

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59 *than \$50,000. A small asset includes any bank account, savings institution account, credit union*
60 *account, brokerage account, security, deposit, tax refund, overpayment, item of tangible personal*
61 *property, or an instrument evidencing a debt, obligation, stock, or chose in action.*

62 *"Successor" means any person, other than a creditor, who is entitled under the decedent's will or the*
63 *laws of intestacy to part or all of a small asset.*

64 § 64.1-132.2. Payment or delivery of small asset by affidavit.

65 A. ~~Sixty days after the death of a decedent, any~~ Any person indebted to the decedent or having
66 possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose
67 in action belonging to the decedent may make payment of the indebtedness or deliver the tangible
68 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person
69 claiming to be a small asset shall pay or deliver the small asset to the designated successor of the
70 decedent upon being presented an affidavit made by or on behalf all of the successor known successors
71 stating that:

72 1. ~~The~~ That the value of the decedent's entire personal probate estate as of the date of the decedent's
73 death, wherever located, does not exceed \$50,000;

74 2. ~~At~~ That at least 60 days have elapsed since the decedent's death of the decedent;

75 3. ~~No~~ That no application for the appointment of a personal representative is pending or has been
76 granted in any jurisdiction;

77 4. ~~The~~ That the decedent's will, if any, was duly probated and the list of heirs required by § 64.1-134
78 was duly filed; and;

79 5. ~~The~~ That the claiming successor is entitled to payment or delivery of the ~~property~~ small asset, and
80 the basis upon which such entitlement is claimed-;

81 6. The names and addresses of all successors, to the extent known;

82 7. The name of each successor designated to receive payment or delivery of the small asset on behalf
83 of all successors; and

84 8. That the designated successor shall have a fiduciary duty to safeguard and promptly pay or
85 deliver the small asset as required by the laws of the Commonwealth.

86 B. The designated successor may discharge his fiduciary duty to promptly pay or deliver the small
87 asset to a successor who is, or is reasonably believed to be, incapacitated or under a legal disability, by
88 paying or delivering the asset directly to the incapacitated or disabled successor or applying it for such
89 successor's benefit, or by:

90 1. Paying it to such successor's conservator or, if no conservator exists, guardian;

91 2. Paying it to such successor's custodian under the Virginia Uniform Transfers to Minors Act
92 (§ 31-37 et seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 55-34.1 et seq.), and, for
93 that purpose, creating a custodianship or custodial trust;

94 3. If the designated successor does not know of a conservator, guardian, custodian, or custodial
95 trustee, paying it to an adult relative or other person having legal or physical care or custody of such
96 successor to be expended on such successor's behalf; or

97 4. Managing it as a separate fund on such successor's behalf, subject to such successor's continuing
98 right to withdraw the asset.

99 C. Any successor may be represented and bound under virtual representation provisions of
100 §§ 55-543.01, 55-543.03, and 55-543.04 with respect to affidavits required and designations of persons
101 to receive payment or delivery of a small asset under this article.

102 BD. A transfer agent of any security, upon the surrender of the certificates, if any, evidencing the
103 security, shall change the registered ownership on the books of a corporation from the decedent to the
104 designated successor upon the presentation of an affidavit as provided in subsection A.

105 § 64.1-132.3. Payment or delivery of small asset valued at \$15,000 or less without affidavit.

106 The person paying, delivering, transferring, or issuing personal property or the evidence thereof
107 pursuant to the affidavit is discharged and released to the same extent as if he dealt with a personal
108 representative of the decedent. He is not required to see to the application of the personal property or
109 evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an
110 affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof,
111 it may be recovered, or its payment, delivery, transfer, or issuance compelled upon proof of rightful
112 claim in a proceeding brought for the purpose by or on behalf of the person entitled thereto. Any person
113 to whom payment, delivery, transfer or issuance has been made is answerable and accountable therefor
114 to any personal representative of the estate or to any other person having a superior right.

115 A. Notwithstanding the provisions of § 64.1-132.2, any person having possession of a small asset
116 valued at \$15,000 or less may pay or deliver the small asset to any successor provided that:

117 1. At least 60 days have elapsed since the decedent's death; and

118 2. No application for the appointment of a personal representative is pending or has been granted in
119 any jurisdiction.

120 B. The designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the

small asset as required by the laws of the Commonwealth to the other successors, if any.

§ 64.1-132.4. Discharge and release of payor.

The remedies provided by this article shall be in addition to, and not in exclusion of, any other remedies provided by law. Any person paying or delivering a small asset pursuant to § 64.1-132.2 or 64.1-132.3 is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. Such person is not required to see the application of the small asset or to inquire into the truth of any statement in any affidavit presented pursuant to subsection A of § 64.1-132.2. If any person to whom such an affidavit is presented refuses to pay or deliver any small asset, it may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled thereto. Any person to whom payment or delivery of a small asset has been made is answerable and accountable therefor to any personal representative of the decedent's estate or to any other successor having an equal or superior right.

§ 64.1-132.5. Payment or delivery of small asset; funeral expenses.

Thirty days after the death of a decedent upon whose estate there shall have been no application for the appointment of a personal representative pending or granted in any jurisdiction, any person holding a small asset belonging to the decedent may, at the request of a successor, pay or deliver so much of the small asset as does not exceed the amount given priority by § 64.1-157 to the undertaker or mortuary handling the funeral of the decedent, and a receipt of the payee shall be a full and final release of the payor as to such sum.

§ 64.1-132.6. Construction of article.

The remedies provided by this article shall be in addition to, and not in exclusion of, any other remedies provided by law.

2. That §§ 6.1-71, 6.1-194.58, 6.1-225.49, 51.1-164, 64.1-123, 64.1-123.1, 64.1-123.3, 64.1-124, and 64.1-125 of the Code of Virginia are repealed.