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SENATE BILL NO. 1341

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact § 8.01-390 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 38.2, consisting of sections numbered 2.2-3817, 2.2-3818, and 2.2-3819, relating to the digital certification of government records.

Patron—Surovell

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-390 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 38.2, consisting of sections numbered 2.2-3817, 2.2-3818, and 2.2-3819, as follows:

CHAPTER 38.2.

DIGITAL CERTIFICATION OF GOVERNMENT RECORDS.

§ 2.2-3817. Definitions.

As used in this section:

"Digital signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document. A digital signature shall provide a means to authenticate an electronic record by confirming the state agency as the disseminator of the document and shall provide both digital and visible assurance that the electronic document has not been altered since it was signed by the custodian of the record at the state agency.

"Digitally certified copy" means a copy of an electronic record created by a state agency to which the agency has attached a digital signature.

"State agency" means any agency, institution, board, bureau, commission, council, public institution of higher education, or instrumentality of state government in the executive department listed in the appropriation act.

§ 2.2-3818. Standards for authentication of electronic government records.

The Secretary of the Commonwealth, in cooperation with the Virginia Information Technologies Agency, shall develop standards for the use of digital signatures by state agencies on electronic records generated by such agencies. The process for developing and maintaining such standards shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 2.2-3819. Digitally certified government records.

A. Any state agency shall make available digitally certified copies of electronic records, created in accordance with the standards developed pursuant to § 2.2-3818, available to the public via the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or in response to a subpoena or judicial order. Such digitally certified records may be made available on the state agency's website or upon request. A request to a state agency for a digitally certified copy of a record available via the Virginia Freedom of Information Act that is not available on the agency's website shall be provided to the requester within five working days of receipt of the request by the agency.

B. A state agency may charge a fee not to exceed \$5 for a digitally certified copy of a record provided pursuant to this chapter.

§ 8.01-390. Nonjudicial records as evidence (Subdivision (10)(a) of Supreme Court Rule 2:803 derived from subsection C of this section).

A. Copies of records of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, other than those located in a clerk's office of a court, shall be received as prima facie evidence, provided that such copies are authenticated to be true copies either by the custodian thereof or by the person to whom the custodian reports, if they are different. A digitally certified copy of a record provided pursuant to the provisions of Chapter 38.2 (§ 2.2-3817 et seq.) of Title 2.2, whether in electronic form or in print form with visible assurance of the electronic signature, shall be deemed to be authenticated by the custodian of the record unless evidence is presented to the contrary.

B. Records and recordings of 911 emergency service calls shall be deemed authentic transcriptions or recordings of the original statements if they are accompanied by a certificate that meets the provisions of subsection A and the certificate contains the date and time of the incoming call and the incoming phone number, if available, associated with the call.

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**59** C. An affidavit signed by an officer deemed to have custody of such an official record, or by his  
**60** deputy, stating that after a diligent search, no record or entry of such record is found to exist among the  
**61** records in his office is admissible as evidence that his office has no such record or entry.