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HOUSE BILL NO. 1856

Offered January 13, 2021

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A *BILL to amend and reenact §§ 32.1-291.7, 54.1-2982, 54.1-2983, 54.1-2984, 59.1-481, 64.2-100, 64.2-403, 64.2-404, 64.2-407, 64.2-450, and 64.2-701 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-453.1 and by adding in Chapter 4 of Title 64.2 an article numbered 7, consisting of sections numbered 64.2-459 through 64.2-468, relating to electronic execution of estate planning documents; Uniform Electronic Wills Act.*

Patrons—Sullivan, Filler-Corn, Murphy and Willett

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-291.7, 54.1-2982, 54.1-2983, 54.1-2984, 59.1-481, 64.2-100, 64.2-403, 64.2-404, 64.2-407, 64.2-450, and 64.2-701 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-453.1 and by adding in Chapter 4 of Title 64.2 an article numbered 7, consisting of sections numbered 64.2-459 through 64.2-468, as follows:

§ 32.1-291.7. Refusal to make anatomical gift; effect of refusal.

A. An individual may refuse to make an anatomical gift of the individual's body or part by:

1. A record signed by:

a. The individual; or

b. Subject to subsection B, another individual acting at the direction of the individual if the individual is physically unable to sign;

2. The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

3. Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

B. A record signed pursuant to subdivision A 1 b shall:

1. Be *either (i) witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual or (ii) acknowledged before a notary public*; and

2. State that it has been signed and *either witnessed or notarized* as provided in subdivision 1.

C. An individual who has made a refusal may amend or revoke the refusal:

1. In the manner provided in subsection A for making a refusal;

2. By subsequently making an anatomical gift pursuant to § 32.1-291.5 that is inconsistent with the refusal; or

3. By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

D. Except as otherwise provided in subsection H of § 32.1-291.8, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a ~~witnessed written document~~ *writing or other record*, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

INTRODUCED

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59 "Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to
60 § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac
61 or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac
62 compression, endotracheal intubation and other advanced airway management, artificial ventilation, and
63 defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate
64 Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as
65 an advance directive.

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

68 "Health care" means the furnishing of services to any individual for the purpose of preventing,
69 alleviating, curing, or healing human illness, injury or physical disability, including but not limited to,
70 medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital,
71 nursing home, assisted living facility, or other health care facility; psychiatric or other mental health
72 treatment; and life-prolonging procedures and palliative care.

73 "Health care provider" shall have the same meaning as provided in § 8.01-581.1.

74 "Incapable of making an informed decision" means the inability of an adult patient, because of
75 mental illness, intellectual disability, or any other mental or physical disorder that precludes
76 communication or impairs judgment, to make an informed decision about providing, continuing,
77 withholding or withdrawing a specific health care treatment or course of treatment because he is unable
78 to understand the nature, extent or probable consequences of the proposed health care decision, or to
79 make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this
80 article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise
81 mentally competent and able to communicate by means other than speech, shall not be considered
82 incapable of making an informed decision.

83 "Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes
84 mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is
85 otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal
86 condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the
87 dying process. The term includes artificially administered hydration and nutrition. However, nothing in
88 this act shall prohibit the administration of medication or the performance of any medical procedure
89 deemed necessary to provide comfort care or to alleviate pain, including the administration of pain
90 relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and
91 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include
92 cardiopulmonary resuscitation.

93 *"Notary public" has the same meaning as provided in § 47.1-2 and includes an "electronic notary*
94 *public" and "electronic notary" as defined in § 47.1-2.*

95 "Patient care consulting committee" means a committee duly organized by a facility licensed to
96 provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in §
97 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant
98 to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care
99 consulting committee shall consist of five individuals, including at least one physician, one person
100 licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice
101 professional nursing, and one individual responsible for the provision of social services to patients of the
102 facility. At least one committee member shall have experience in clinical ethics and at least two
103 committee members shall have no employment or contractual relationship with the facility or any
104 involvement in the management, operations, or governance of the facility, other than serving on the
105 patient care consulting committee. A patient care consulting committee may be organized as a
106 subcommittee of a standing ethics or other committee established by the facility or may be a separate
107 and distinct committee. Four members of the patient care consulting committee shall constitute a quorum
108 of the patient care consulting committee.

109 "Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient
110 has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of
111 surroundings in a learned manner, other than reflex activity of muscles and nerves for low level
112 conditioned response, and from which, to a reasonable degree of medical probability, there can be no
113 recovery.

114 "Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the
115 jurisdiction where the health care is to be rendered or withheld.

116 "Qualified advance directive facilitator" means a person who has successfully completed a training
117 program approved by the Department of Health for providing assistance in completing and executing a
118 written advance directive, including successful demonstration of competence in assisting a person in
119 completing and executing a valid advance directive and successful passage of a written examination.

120 *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic*

121 or other medium and is retrievable in perceivable form.

122 "Sign" means, with present intent to authenticate or adopt a record, (i) to execute or adopt a
123 tangible symbol or (ii) to attach to or logically associate with the record an electronic sound, symbol,
124 or process.

125 "Terminal condition" means a condition caused by injury, disease or illness from which, to a
126 reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent
127 or (ii) the patient is in a persistent vegetative state.

128 "Witness" means any person over the age of 18, including a spouse or blood relative of the
129 declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be
130 permitted to serve as witnesses for purposes of this article.

131 **§ 54.1-2983. Procedure for making advance directive; notice to physician.**

132 Any adult capable of making an informed decision may, at any time, make a ~~written~~ *an* advance
133 directive *in a writing or other record* to address any or all forms of health care in the event the
134 declarant is later determined to be incapable of making an informed decision. A ~~written~~ *Such* advance
135 directive shall be (i) a writing signed by the declarant in the presence of two subscribing witnesses ~~and~~
136 or (ii) a writing or other record signed by the declarant and acknowledged before a notary public. *Such*
137 *advance directive* may ~~(i)~~ (a) specify the health care the declarant does or does not authorize; ~~(ii)~~ (b)
138 appoint an agent to make health care decisions for the declarant; and ~~(iii)~~ (c) specify an anatomical gift,
139 after the declarant's death, of all of the declarant's body or an organ, tissue or eye donation pursuant to
140 Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1. A ~~written~~ *An* advance directive *in a writing*
141 *or other record* may be submitted to the Advance Health Care Directive Registry, pursuant to Article 9
142 (§ 54.1-2994 et seq.). *An individual may create a certified paper copy of an advance directive that the*
143 *declarant signed by attaching or logically associating an electronic sound, symbol, or process by*
144 *affirming that a paper copy of such advance directive is a complete, true, and accurate copy of such*
145 *advance directive.*

146 Further, any adult capable of making an informed decision who has been diagnosed by his attending
147 physician as being in a terminal condition may make an oral advance directive ~~(i)~~ (1) directing the
148 specific health care the declarant does or does not authorize in the event the declarant is incapable of
149 making an informed decision, and ~~(ii)~~ (2) appointing an agent to make health care decisions for the
150 declarant under the circumstances stated in the advance directive if the declarant should be determined
151 to be incapable of making an informed decision. An oral advance directive shall be made in the
152 presence of the attending physician and two witnesses.

153 An advance directive may authorize an agent to take any lawful actions necessary to carry out the
154 declarant's decisions, including, but not limited to, granting releases of liability to medical providers,
155 releasing medical records, and making decisions regarding who may visit the patient.

156 It shall be the responsibility of the declarant to provide for notification to his attending physician that
157 an advance directive has been made. If an advance directive has been submitted to the Advance Health
158 Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.), it shall be the responsibility of the
159 declarant to provide his attending physician, legal representative, or other person with the information
160 necessary to access the advance directive. In the event the declarant is comatose, incapacitated or
161 otherwise mentally or physically incapable of communication, any other person may notify the physician
162 of the existence of an advance directive and, if applicable, the fact that it has been submitted to the
163 Advance Health Care Directive Registry. An attending physician who is so notified shall promptly make
164 the advance directive or a copy of the advance directive, if ~~written~~ *in a writing or other record*, or the
165 fact of the advance directive, if oral, a part of the declarant's medical records.

166 In the event that any portion of an advance directive is invalid or illegal, such invalidity or illegality
167 shall not affect the remaining provisions of the advance directive.

168 **§ 54.1-2984. Suggested form of written advance directives.**

169 An advance directive executed pursuant to this article may, but need not, be in the following form:

170 ADVANCE MEDICAL DIRECTIVE

171 I, _____, willingly and voluntarily make known my wishes in the event that I am
172 incapable of making an informed decision, as follows:

173 I understand that my advance directive may include the selection of an agent as well as set forth my
174 choices regarding health care. The term "health care" means the furnishing of services to any individual
175 for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability,
176 including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy;
177 admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or
178 other mental health treatment; and life-prolonging procedures and palliative care.

179 The phrase "incapable of making an informed decision" means unable to understand the nature,
180 extent and probable consequences of a proposed health care decision or unable to make a rational
181 evaluation of the risks and benefits of a proposed health care decision as compared with the risks and

182 benefits of alternatives to that decision, or unable to communicate such understanding in any way.

183 The determination that I am incapable of making an informed decision shall be made by my
184 attending physician and a capacity reviewer, if certification by a capacity reviewer is required by law,
185 after a personal examination of me and shall be certified in writing. Such certification shall be required
186 before health care is provided, continued, withheld or withdrawn, before any named agent shall be
187 granted authority to make health care decisions on my behalf, and before, or as soon as reasonably
188 practicable after, health care is provided, continued, withheld or withdrawn and every 180 days
189 thereafter while the need for health care continues.

190 If, at any time, I am determined to be incapable of making an informed decision, I shall be notified,
191 to the extent I am capable of receiving such notice, that such determination has been made before health
192 care is provided, continued, withheld, or withdrawn. Such notice shall also be provided, as soon as
193 practical, to my named agent or person authorized by § 54.1-2986 to make health care decisions on my
194 behalf. If I am later determined to be capable of making an informed decision by a physician, in
195 writing, upon personal examination, any further health care decisions will require my informed consent.

196 (SELECT ANY OR ALL OF THE OPTIONS BELOW.)

197 OPTION I: APPOINTMENT OF AGENT (CROSS THROUGH OPTIONS I AND II BELOW IF
198 YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR
199 YOU.)

200 I hereby appoint _____ (primary agent), of _____ (address and telephone
201 number), as my agent to make health care decisions on my behalf as authorized in this document. If
202 _____ (primary agent) is not reasonably available or is unable or unwilling to act as my
203 agent, then I appoint _____ (successor agent), of _____ (address and telephone
204 number), to serve in that capacity.

205 I hereby grant to my agent, named above, full power and authority to make health care decisions on
206 my behalf as described below whenever I have been determined to be incapable of making an informed
207 decision. My agent's authority hereunder is effective as long as I am incapable of making an informed
208 decision.

209 In exercising the power to make health care decisions on my behalf, my agent shall follow my
210 desires and preferences as stated in this document or as otherwise known to my agent. My agent shall
211 be guided by my medical diagnosis and prognosis and any information provided by my physicians as to
212 the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall
213 not make any decision regarding my health care which he knows, or upon reasonable inquiry ought to
214 know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If
215 my agent cannot determine what health care choice I would have made on my own behalf, then my
216 agent shall make a choice for me based upon what he believes to be in my best interests.

217 OPTION II: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT
218 WANT AND ADD ANY LANGUAGE YOU DO WANT.)

219 The powers of my agent shall include the following:

220 A. To consent to or refuse or withdraw consent to any type of health care, treatment, surgical
221 procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect
222 any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition
223 and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to
224 consent to the administration of dosages of pain-relieving medication in excess of recommended dosages
225 in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or of
226 inadvertently hastening my death;

227 B. To request, receive, and review any information, verbal or written, regarding my physical or
228 mental health, including but not limited to, medical and hospital records, and to consent to the
229 disclosure of this information;

230 C. To employ and discharge my health care providers;

231 D. To authorize my admission to or discharge (including transfer to another facility) from any
232 hospital, hospice, nursing home, assisted living facility or other medical care facility. If I have
233 authorized admission to a health care facility for treatment of mental illness, that authority is stated
234 elsewhere in this advance directive;

235 E. To authorize my admission to a health care facility for the treatment of mental illness for no more
236 than 10 calendar days provided I do not protest the admission and a physician on the staff of or
237 designated by the proposed admitting facility examines me and states in writing that I have a mental
238 illness and I am incapable of making an informed decision about my admission, and that I need
239 treatment in the facility; and to authorize my discharge (including transfer to another facility) from the
240 facility;

241 F. To authorize my admission to a health care facility for the treatment of mental illness for no more
242 than 10 calendar days, even over my protest, if a physician on the staff of or designated by the
243 proposed admitting facility examines me and states in writing that I have a mental illness and I am

244 incapable of making an informed decision about my admission, and that I need treatment in the facility;
245 and to authorize my discharge (including transfer to another facility) from the facility. [My physician or
246 licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I
247 understand the consequences of this provision of my advance directive:
248 _____];

249 G. To authorize the specific types of health care identified in this advance directive [specify
250 cross-reference to other sections of directive] even over my protest. [My physician or licensed clinical
251 psychologist hereby attests that I am capable of making an informed decision and that I understand the
252 consequences of this provision of my advance directive: _____
253];

254 H. To continue to serve as my agent even in the event that I protest the agent's authority after I have
255 been determined to be incapable of making an informed decision;

256 I. To authorize my participation in any health care study approved by an institutional review board or
257 research review committee according to applicable federal or state law that offers the prospect of direct
258 therapeutic benefit to me;

259 J. To authorize my participation in any health care study approved by an institutional review board
260 or research review committee pursuant to applicable federal or state law that aims to increase scientific
261 understanding of any condition that I may have or otherwise to promote human well-being, even though
262 it offers no prospect of direct benefit to me;

263 K. To make decisions regarding visitation during any time that I am admitted to any health care
264 facility, consistent with the following directions: _____; and

265 L. To take any lawful actions that may be necessary to carry out these decisions, including the
266 granting of releases of liability to medical providers. Further, my agent shall not be liable for the costs
267 of health care pursuant to his authorization, based solely on that authorization.

268 OPTION III: HEALTH CARE INSTRUCTIONS
269 (CROSS THROUGH PARAGRAPHS A AND/OR B IF YOU DO NOT WANT TO GIVE
270 ADDITIONAL SPECIFIC INSTRUCTIONS ABOUT YOUR HEALTH CARE.)

271 A. I specifically direct that I receive the following health care if it is medically appropriate under the
272 circumstances as determined by my attending physician: _____.

273 B. I specifically direct that the following health care not be provided to me under the following
274 circumstances (you may specify that certain health care not be provided under any circumstances):
275 _____.

276 OPTION IV: END OF LIFE INSTRUCTIONS
277 (CROSS THROUGH THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS
278 ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)

279 If at any time my attending physician should determine that I have a terminal condition where the
280 application of life-prolonging procedures - including artificial respiration, cardiopulmonary resuscitation,
281 artificially administered nutrition, and artificially administered hydration - would serve only to artificially
282 prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be
283 permitted to die naturally with only the administration of medication or the performance of any medical
284 procedure deemed necessary to provide me with comfort care or to alleviate pain.

285 OPTION: LIFE-PROLONGING PROCEDURES DURING PREGNANCY. (If you wish to provide
286 additional instructions or modifications to instructions you have already given regarding life-prolonging
287 procedures that will apply if you are pregnant at the time your attending physician determines that you
288 have a terminal condition, you may do so here.)

289 If I am pregnant when my attending physician determines that I have a terminal condition, my
290 decision concerning life-prolonging procedures shall be modified as follows:

291 _____
292 _____
293 _____
294 _____;

295 OPTION: OTHER DIRECTIONS ABOUT LIFE-PROLONGING PROCEDURES. (If you wish to
296 provide your own directions, or if you wish to add to the directions you have given above, you may do
297 so here. If you wish to give specific instructions regarding certain life-prolonging procedures, such as
298 artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially
299 administered hydration, this is where you should write them.) I direct that:

300 _____
301 _____
302 _____
303 _____;

304 OPTION: My other instructions regarding my care if I have a terminal condition are as follows:

305 _____
 306 _____
 307 _____
 308 _____;

309 In the absence of my ability to give directions regarding the use of such life-prolonging procedures,
 310 it is my intention that this advance directive shall be honored by my family and physician as the final
 311 expression of my legal right to refuse health care and acceptance of the consequences of such refusal.

312 **OPTION V: APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN,**
 313 **TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN**
 314 **AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION**
 315 **FOR YOU.)**

316 Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye
 317 donations may be made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in
 318 accordance with my directions, if any. I hereby appoint _____ as my agent, of
 319 _____ (address and telephone number), to make any such anatomical gift or organ, tissue or
 320 eye donation following my death. I further direct that: _____ (declarant's directions
 321 concerning anatomical gift or organ, tissue or eye donation).

322 This advance directive shall not terminate in the event of my disability.

323 **AFFIRMATION AND RIGHT TO REVOKE:** By signing below, I indicate that I am emotionally
 324 and mentally capable of making this advance directive and that I understand the purpose and effect of
 325 this document. I understand I may revoke all or any part of this document at any time (i) with a signed,
 326 dated writing; (ii) by physical cancellation or destruction of this advance directive by myself or by
 327 directing someone else to destroy it in my presence; or (iii) by my oral expression of intent to revoke.

328 _____
 329 (Date) (Signature of Declarant)

330 The declarant signed the foregoing advance directive in my presence.

331 (Witness) _____

332 (Witness) _____

333 [OR]

334 **COMMONWEALTH OF VIRGINIA**

335 **AT-LARGE**

336 *The foregoing advance directive was acknowledged before me this _____ day of _____, 20__*
 337 *by _____.*

338 _____

339 *Notary Public*

340 *Notary Registration Number:* _____

341 *My commission expires:* _____

342 **§ 59.1-481. Scope.**

343 (a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and
 344 electronic signatures relating to a transaction.

345 (b) This chapter does not apply to a transaction to the extent it is governed by:

346 (1) A law governing the creation and execution of wills, codicils, or testamentary trusts, *including*
 347 *Article 7 (§ 64.2-459 et seq.) of Chapter 4 of Title 64.2;* and

348 (2) Title 8.1A except § 8.1A-306, Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.7, Title 8.8A,
 349 Title 8.9A, Title 8.10, and Title 8.11.

350 (c) This chapter applies to an electronic record or electronic signature otherwise excluded from the
 351 application of this chapter under subsection (b) to the extent it is governed by law other than those
 352 specified in subsection (b).

353 (d) A transaction subject to this chapter is also subject to other applicable substantive law.

354 **§ 64.2-100. Definitions.**

355 As used in this title, unless the context otherwise requires:

356 "Bona fide purchaser" means a purchaser of property for value who has acted in the transaction in
 357 good faith. Notice of a seller's marital status, or notice of the existence of a premarital or marital
 358 agreement, does not affect the status of a bona fide purchaser. A "purchaser" is one who acquires
 359 property by sale, lease, discount, negotiation, mortgage, pledge, or lien or who otherwise deals with
 360 property in a voluntary transaction, other than a gift. A purchaser gives "value" for property acquired in
 361 return for a binding commitment to extend credit to the transferor or another as security for or in total
 362 or partial satisfaction of a pre-existing claim, or in return for any other consideration sufficient to
 363 support a simple contract.

364 "Fiduciary" includes a guardian, committee, trustee, executor, conservator, or personal representative.

365 "Personal representative" includes the executor under a will or the administrator of the estate of a
 366 decedent, the administrator of such estate with the will annexed, the administrator of such estate

367 unadministered by a former representative, whether there is a will or not, any person who is under the
 368 order of a circuit court to take into his possession the estate of a decedent for administration, and every
 369 other curator of a decedent's estate, for or against whom suits may be brought for causes of action that
 370 accrued to or against the decedent.

371 "Trustee" means a trustee under a probated will or an inter vivos trust instrument.

372 "Will" includes any testament, codicil, exercise of a power of appointment by will or by a writing in
 373 the nature of a will, or any other testamentary disposition, *including an electronic will within the*
 374 *meaning of Article 7 (§ 64.2-459 et seq.) of Chapter 4.*

375 **§ 64.2-403. Execution of wills; requirements.**

376 A. No will shall be valid unless it is in writing and signed by the testator, or by some other person
 377 in the testator's presence and by his direction, in such a manner as to make it manifest that the name is
 378 intended as a signature.

379 B. A will wholly in the testator's handwriting is valid without further requirements, provided that the
 380 fact that a will is wholly in the testator's handwriting and signed by the testator is proved by at least
 381 two disinterested witnesses.

382 C. A will not wholly in the testator's handwriting is not valid unless the signature of the testator is
 383 made, or the will is acknowledged by the testator, in the presence of at least two competent witnesses
 384 who are present at the same time and who subscribe the will in the presence of the testator. No form of
 385 attestation of the witnesses shall be necessary.

386 D. *No will executed electronically shall be valid unless it is an electronic will within the meaning of*
 387 *Article 7 (§ 64.2-459 et seq.). For the purposes of this subsection, "electronic" means the same as that*
 388 *term is defined in § 64.2-459.*

389 **§ 64.2-404. Writings intended as wills.**

390 A. Although a document, ~~or~~ a writing added upon a document, *or a record* was not executed in
 391 compliance with § 64.2-403 *or 64.2-462, as applicable*, the document ~~or~~ writing, *or record* shall be
 392 treated as if it had been executed in compliance with § 64.2-403 *or 64.2-462, as applicable*, if the
 393 proponent of the document ~~or~~ writing, *or record* establishes by clear and convincing evidence that the
 394 decedent intended the document ~~or~~ writing, *or record* to constitute (i) the decedent's will, (ii) a partial
 395 or complete revocation of the will, (iii) an addition to or an alteration of the will, or (iv) a partial or
 396 complete revival of ~~his~~ *the decedent's* formerly revoked will or of a formerly revoked portion of the
 397 will. *For the purposes of this subsection, "record" means the same as that term is defined in §*
 398 *64.2-459.*

399 B. The remedy granted by this section (i) may not be used to excuse compliance with any
 400 requirement for a testator's signature, except in circumstances where two persons mistakenly sign each
 401 other's will, or a person signs the self-proving certificate to a will instead of signing the will itself and
 402 (ii) is available only in proceedings brought in a circuit court under the appropriate provisions of this
 403 title, filed within one year from the decedent's date of death and in which all interested persons are
 404 made parties.

405 **§ 64.2-407. Validity of other wills.**

406 Notwithstanding the provisions of § 64.2-403, ~~the~~ *a will of a person domiciled out of the*
 407 ~~Commonwealth at the time of his death~~ *shall be valid as to personal property and real property in the*
 408 ~~Commonwealth if the will is executed according to the law of the state or country in which the person~~
 409 ~~was so domiciled in compliance with the law of the jurisdiction where the testator is~~ *(i) physically*
 410 *located when the will is executed or (ii) domiciled or resides when the will is executed or when the*
 411 *testator dies. This section shall not apply to a will executed electronically, which shall be governed by*
 412 *§ 64.2-461. For purposes of this section, "electronic" means the same as that term is defined in*
 413 *§ 64.2-459.*

414 **§ 64.2-450. Probate of copy of will proved outside the Commonwealth; authenticated copy.**

415 When a will relative to an estate within the Commonwealth has been proved in another jurisdiction,
 416 an authenticated copy of the will and the certificate of probate of the will may be offered for probate in
 417 the Commonwealth, and there shall be a rebuttable presumption that the will was duly executed and
 418 admitted to probate as a ~~will of personal estate~~ in the jurisdiction of the testator's domicile and the
 419 circuit court, or the clerk of such court, where it is offered shall admit such copy to probate as a will of
 420 personal estate *and real estate* in the Commonwealth. ~~If such copy indicates that the will was admitted~~
 421 ~~to probate in a court of another jurisdiction and was so executed as to be a valid will of real estate in~~
 422 ~~the Commonwealth by the law of the Commonwealth, such copy may be admitted to probate as a will~~
 423 ~~of real estate.~~ An authenticated copy of any will ~~which~~ *that* has been self-proved under the laws of
 424 another state shall, when offered with its authenticated certificate of probate, be admitted to probate as a
 425 will of personal estate and real estate.

426 **§ 64.2-453.1. How other wills may be self-proved.**

427 *Any will recognized as valid under § 64.2-407 or 64.2-461 and shown by the proponent to have been*

428 *made self-proved under the law of the jurisdiction in which the testator is (i) physically located when*
 429 *the will is executed or (ii) domiciled or resides when the will is executed or when the testator dies, shall*
 430 *be considered as self-proved. Any codicil that is self-proved under the provisions of this section that, by*
 431 *its terms, expressly confirms, ratifies, and republishes a will except as altered by the codicil shall have*
 432 *the effect of self-proving the will whether or not the will was so executed originally.*

433 *Article 7.*

434 *Uniform Electronic Wills Act.*

435 **§ 64.2-459. Definitions.**

436 *For the purposes of this article, unless the context requires a different meaning:*

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

439 *"Electronic presence" means the relationship of two or more individuals in different locations*
 440 *communicating in real time to the same extent as if the individuals were physically present in the same*
 441 *location.*

442 *"Electronic will" means a will executed electronically in compliance with § 64.2-462.*

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

445 *"Sign" means, with present intent to authenticate or adopt a record, to (i) execute or adopt a*
 446 *tangible symbol or (ii) attach to or logically associate with the record an electronic symbol or process.*

447 *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States*
 448 *Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*
 449 *"State" includes a federally recognized Indian tribe.*

450 **§ 64.2-460. Law applicable to electronic will; principles of equity.**

451 *An electronic will is a will for all purposes of the laws of the Commonwealth. The laws of the*
 452 *Commonwealth applicable to wills and principles of equity apply to an electronic will, except as*
 453 *modified by this article.*

454 **§ 64.2-461. Choice of law regarding execution.**

455 *Notwithstanding the provisions of § 64.2-403, a will executed electronically but not in compliance*
 456 *with § 64.2-462 is an electronic will under this chapter as to personal property and real property in*
 457 *the Commonwealth if executed in compliance with the law of the jurisdiction where the testator is (i)*
 458 *physically located when the testator signs the will or (ii) domiciled or resides when the testator signs*
 459 *the will or when the testator dies.*

460 **§ 64.2-462. Execution of electronic will.**

461 *A. Except as provided in § 64.2-463, an electronic will shall be:*

462 *1. A record that is readable as text at the time of signing;*

463 *2. Signed by the testator or by some other person in the testator's physical presence and by the*
 464 *testator's direction;*

465 *3. Signed in the physical or electronic presence of the testator by at least two competent witnesses,*
 466 *each of whom is a resident of a state and physically located in a state at the time of signing, after*
 467 *witnessing the testator's signature under subdivision 2 or the testator's acknowledgement of the signing*
 468 *of the will under subdivision 2 or the acknowledgement of the will, and each of whom is in the physical*
 469 *or electronic presence of each other; and*

470 *4. Acknowledged by the testator and the attesting witnesses before and in the physical or electronic*
 471 *presence of an electronic notary public, as defined in § 47.1-2, or other individual authorized by law to*
 472 *notarize records electronically, in the manner set forth in § 64.2-465.*

473 *B. An electronic will shall contain the following statement:*

474 *"Virginia law (§ 64.2-459 et seq.) does not permit an electronic will to be revoked by a revocatory*
 475 *act taken against or on the original or a copy of the electronic will. An electronic will may be revoked*
 476 *only by a subsequent will or codicil or other writing as provided in § 64.2-464 of the Code of Virginia."*

477 *Failure to include the foregoing statement shall not affect the validity of an electronic will.*

478 **§ 64.2-463. Harmless error.**

479 *The provisions of § 64.2-404 apply to an electronic will.*

480 **§ 64.2-464. Revocation.**

481 *A. An electronic will may revoke all or part of a previous will.*

482 *B. All or part of an electronic will is revoked by:*

483 *1. A subsequent will or codicil executed in the manner required by law or other writing executed in*
 484 *the manner in which a will is required to be executed that expressly revokes all or part of the electronic*
 485 *will; or*

486 *2. A subsequent will or codicil executed in the manner required by law that contains provisions*
 487 *inconsistent with the electronic will, to the extent of such inconsistency, if the later will or codicil is*
 488 *effective upon the death of the testator.*

489 *C. An electronic will may be revoked only as provided in subsection B and may not be revoked by a*

490 revocatory act taken against or on the original or a copy of the electronic will.

491 § 64.2-465. **Electronic will attested and made self-proving at time of execution.**

492 An electronic will shall be made self-proved at the time of its execution by either the
493 acknowledgment thereof by the testator and the affidavits of the attesting witnesses or the
494 acknowledgment thereof by the testator and the attesting witnesses, each made before an electronic
495 notary public, as defined in § 47.1-2, or other individual authorized by law to notarize records
496 electronically, and evidenced by the electronic notary public's electronic notarial certificate, as defined
497 in § 47.1-2, or such other individual's electronic notarial certificate, attached, annexed to, or logically
498 associated with the electronic will and bearing the electronic notary public's electronic notary seal, as
499 defined in § 47.1-2, or such other individual's electronic notary seal. The electronic notarial certificate
500 shall be substantially as follows in form and content:

501 COMMONWEALTH OF VIRGINIA

502 CITY/COUNTY OF _____

503 Before me, the undersigned electronic notary public, or other individual authorized by law to
504 notarize records electronically, on this day appeared _____, _____, and
505 _____, known to me to be the testator and the witnesses, respectively, whose names are signed
506 to the attached or foregoing instrument and, all of these persons being by me first duly sworn,
507 _____, the testator, declared to me and to the witnesses in my physical or electronic presence
508 that said instrument is his last will and testament and that he had willingly signed or directed another
509 to sign the same for him in his physical presence, and executed it in the physical or electronic presence
510 of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses
511 stated before me that the foregoing will was executed and acknowledged by the testator as his last will
512 and testament in the physical or electronic presence of said witnesses who, in his physical or electronic
513 presence and at his request, and in the physical or electronic presence of each other, did sign their
514 names thereto as attesting witnesses on the day of the date of said will, that the testator, at the time of
515 the execution of said will, was over the age of 18 years and of sound and disposing mind and memory,
516 and that each of said witnesses is a resident of a state and was physically located in a state at the time
517 they signed their names to said will.

518 In the case of an electronic will made self-proved by the acknowledgment of the testator and the
519 affidavits of the attesting witnesses, the signatures of the testator and the attesting witnesses and the
520 jurat of the electronic notary public, or other individual authorized by law to notarize records
521 electronically, shall be substantially as follows in form and content:

522 _____
523 Testator

524 _____
525 Witness

526 _____
527 Witness

528 Signed, sworn and acknowledged before me by _____, the testator, and signed
529 and sworn before me by _____ and _____, witnesses, this
530 _____ day of _____, A.D., _____.

531 SIGNED _____
532 Electronic Notary Public

533 Or
534 [Official Capacity of Other Individual
535 Authorized by Law to Notarize Records Electronically]

536 In the case of an electronic will made self-proved by the acknowledgment of the testator and the
537 attesting witnesses, the jurat of the electronic notary public, or other individual authorized by law to
538 notarize records electronically, shall be substantially as follows in form and content:

539 Sworn and acknowledged before me by _____, the testator, and _____ and
540 _____, witnesses, this _____ day of _____ A.D., _____.

541 SIGNED _____
542 Electronic Notary Public

543 Or
544 [Official Capacity of Other Individual
545 Authorized by Law to Notarize Records Electronically]

546 The affidavits of any such witnesses taken as provided by this section shall be accepted by the court
547 as if it had been taken ore tenus before such court, notwithstanding that the officer did not attach or
548 affix his official seal thereto. Any codicil that is self-proved under the provisions of this section that, by
549 its terms, expressly confirms, ratifies, and republishes a will except as altered by the codicil shall have
550 the effect of self-proving the will whether or not the will was so executed originally.

551 **§ 64.2-466. Certification of paper copy; probate.**

552 A. The testator may create a certified paper copy of an electronic will at any time, and any other
 553 individual may create a certified paper copy of an electronic will after the death of the testator, in
 554 either case by affirming under oath that, so far as such person knows, such paper copy of the electronic
 555 will is a complete, true, and accurate copy of the electronic will. A certified paper copy of an electronic
 556 will shall be in writing, signed and dated by the person making the certification, with such signature
 557 made by executing or adopting a tangible symbol, as opposed to an electronic symbol or process, and
 558 shall include a paper copy of any electronic notarial certificate and any self-proving affidavit made with
 559 respect to the electronic will.

560 B. The following may be offered for probate in the circuit court having jurisdiction under §
 561 64.2-443 and the circuit court and the clerk of such court, or any duly qualified deputy of such clerk,
 562 may admit to probate the following in the same manner and with like effect as other wills:

563 1. An electronic will; or

564 2. A certified paper copy of an electronic will made in accordance with subsection A, provided a
 565 certified paper copy of an electronic will created after the death of the testator shall be offered for
 566 probate within 60 days of its creation.

567 C. A certified paper copy of an electronic will that has been admitted to probate shall constitute the
 568 will for all purposes of this title.

569 **§ 64.2-467. Uniformity of application and construction.**

570 In applying and construing this article, consideration must be given to the need to promote
 571 uniformity of the law with respect to its subject matter among states that enact it.

572 **§ 64.2-468. Transitional provision.**

573 This article applies to an electronic will of a decedent who dies on or after July 1, 2021.

574 **§ 64.2-701. Definitions.**

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

576 "Action," with respect to an act of a trustee, includes a failure to act.

577 "Appointive property" means the property or property interest subject to a power of appointment.

578 "Ascertainable standard" means a standard relating to an individual's health, education, support, or
 579 maintenance within the meaning of § 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986
 580 and any applicable regulations.

581 "Authorized fiduciary" means (i) a trustee or other fiduciary, other than a settlor, that has discretion
 582 to distribute or direct a trustee to distribute part or all of the income or principal of the first trust to one
 583 or more current beneficiaries and that is not (a) a current beneficiary of the first trust or a beneficiary to
 584 which the net income or principal of the first trust would be distributed if the first trust were terminated,
 585 (b) a trustee of the first trust that may be removed and replaced by a current beneficiary who has the
 586 power to remove the existing trustee of the first trust and designate as successor trustee a person that
 587 may be a related or subordinate party, as defined in 26 U.S.C. § 672(c), with respect to such current
 588 beneficiary, or (c) an individual trustee whose legal obligation to support a beneficiary may be satisfied
 589 by distributions of income and principal of the first trust; (ii) a special fiduciary appointed under
 590 § 64.2-779.6; or (iii) a special-needs fiduciary under § 64.2-779.10.

591 "Beneficiary" means a person that (i) has a present or future, vested or contingent, beneficial interest
 592 in a trust; (ii) holds a power of appointment over trust property; or (iii) is an identified charitable
 593 organization that will or may receive distributions under the terms of the trust.

594 "Charitable interest" means an interest in a trust that (i) is held by an identified charitable
 595 organization and makes the organization a qualified beneficiary; (ii) benefits only charitable
 596 organizations and, if the interest were held by an identified charitable organization, would make the
 597 organization a qualified beneficiary; or (iii) is held solely for charitable purposes and, if the interest
 598 were held by an identified charitable organization, would make the organization a qualified beneficiary.

599 "Charitable organization" means (i) a person, other than an individual, organized and operated
 600 exclusively for charitable purposes or (ii) a government or governmental subdivision, agency, or
 601 instrumentality, to the extent that it holds funds exclusively for a charitable purpose.

602 "Charitable purpose" means the relief of poverty, the advancement of education or religion, the
 603 promotion of health, a municipal or other governmental purpose, or another purpose the achievement of
 604 which is beneficial to the community.

605 "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in
 606 § 64.2-723.

607 "Conservator" means a person appointed by the court to administer the estate of an adult individual.

608 "Court" means the court of the Commonwealth having jurisdiction in matters related to trusts.

609 "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is
 610 determined is a distributee or permissible distributee of trust income or principal. "Current beneficiary"
 611 includes the holder of a presently exercisable general power of appointment but does not include a
 612 person that is a beneficiary only because the person holds any other power of appointment.

613 "Decanting power" means the power of an authorized fiduciary under the Uniform Trust Decanting
614 Act (§ 64.2-779.1 et seq.) to distribute property of a first trust to one or more second trusts or to modify
615 the terms of the first trust.

616 "Directed trustee" means a trustee that is subject to a trust director's power of direction.

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

619 "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to
620 protection of the environment.

621 "Expanded distributive discretion" means a discretionary power of distribution that is not limited to
622 an ascertainable standard or a reasonably definite standard.

623 "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

624 "First-trust instrument" means the trust instrument for a first trust.

625 "General power of appointment" means a power of appointment exercisable in favor of a
626 powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's
627 estate.

628 "Guardian" means a person appointed by the court to make decisions regarding the support, care,
629 education, health, and welfare of a minor or adult individual. The term does not include a guardian ad
630 litem.

631 "Guardian of the estate" means a person appointed by the court to administer the estate of a minor.

632 "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

633 "Jurisdiction," with respect to a geographic area, includes a state or country.

634 "Person" means an individual; estate; business or nonprofit entity; government; governmental
635 subdivision, agency, or instrumentality; public corporation; or other legal entity.

636 "Powerholder" means a person in which a donor creates a power of appointment.

637 "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity
638 to designate a recipient of an ownership interest in or another power of appointment over the appointive
639 property. "Power of appointment" does not include a power of attorney.

640 "Power of direction" means a power over a trust granted to a person by the terms of the trust to the
641 extent the power is exercisable while the person is not serving as a trustee. The term includes a power
642 over the investment, management, or distribution of trust property or other matters of trust
643 administration. The term excludes the powers described in subsection A of § 64.2-779.28.

644 "Power of withdrawal" means a presently exercisable general power of appointment other than a
645 power exercisable by a trustee that is limited by an ascertainable standard, or that is exercisable by
646 another person only upon consent of the trustee or a person holding an adverse interest.

647 "Presently exercisable power of appointment" means a power of appointment exercisable by the
648 powerholder at the relevant time. "Presently exercisable power of appointment" includes a power of
649 appointment exercisable only after the occurrence of a specified event, the satisfaction of an
650 ascertainable standard, or the passage of a specified time, only after (i) the occurrence of the specified
651 event, (ii) the satisfaction of the ascertainable standard, or (iii) the passage of the specified time.
652 "Presently exercisable power of appointment" does not include a power exercisable only at the
653 powerholder's death.

654 "Property" means anything that may be the subject of ownership, whether real or personal, legal or
655 equitable, or any interest therein.

656 "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is
657 determined, (i) is a distributee or permissible distributee of trust income or principal; (ii) would be a
658 distributee or permissible distributee of trust income or principal if the interests of the distributees
659 described in clause (i) terminated on that date without causing the trust to terminate; or (iii) would be a
660 distributee or permissible distributee of trust income or principal if the trust terminated on that date.

661 "Reasonably definite standard" means a clearly measurable standard under which a holder of a power
662 of distribution is legally accountable within the meaning of § 674(b)(5)(A) of the Internal Revenue Code
663 of 1986 and any applicable regulations.

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

666 "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee
667 or a person holding an adverse interest.

668 "Second trust" means (i) a first trust after modification, including a restatement of the first trust,
669 under the Uniform Trust Decanting Act (§ 64.2-779.1 et seq.) or (ii) a trust to which a distribution of
670 property from a first trust is or may be made under the Uniform Trust Decanting Act (§ 64.2-779.1 et
671 seq.).

672 "Second-trust instrument" means the trust instrument for a second trust.

673 "Settlor," except as otherwise provided in § 64.2-779.22, means a person, including a testator, who

674 creates or contributes property to a trust. If more than one person creates or contributes property to a
675 trust, each person is a settlor of the portion of the trust property attributable to that person's contribution
676 except to the extent another person has the power to revoke or withdraw that portion.

677 "Sign" means, with present intent to authenticate or adopt a record, (i) to execute or adopt a tangible
678 symbol or (ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

679 "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer
680 of a beneficiary's interest.

681 "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
682 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The
683 term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

684 "Terms of a trust" means:

685 1. Except as otherwise provided in subdivision 2, the manifestation of the settlor's intent regarding a
686 trust's provisions as (i) expressed in the trust instrument or (ii) established by other evidence that would
687 be admissible in a judicial proceeding; or

688 2. The trust's provisions as established, determined, or amended by (i) a trustee or trust director in
689 accordance with applicable law, (ii) court order, or (iii) a nonjudicial settlement agreement under
690 § 64.2-709.

691 "Trust director" means a person that is granted a power of direction by the terms of a trust to the
692 extent the power is exercisable while the person is not serving as a trustee. The person is a trust director
693 whether or not the terms of the trust refer to the person as a trust director and whether or not the person
694 is a beneficiary or settlor of the trust.

695 "Trust instrument" means a record ~~executed~~ *signed* by the settlor to create a trust or by any person to
696 create a second trust that contains some or all of the terms of the trust, including any amendments.

697 "Trustee" includes an original, additional, and successor trustee and a cotrustee.