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HOUSE BILL NO. 1856

Offered January 13, 2021

Prefiled January 7, 2021

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.

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

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

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

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

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

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

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

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

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

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

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

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

or other medium and is retrievable in perceivable form.

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

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

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

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

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

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

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

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

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

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

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

ADVANCE MEDICAL DIRECTIVE

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

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

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

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

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

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

(SELECT ANY OR ALL OF THE OPTIONS BELOW.)

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

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

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

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

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

The powers of my agent shall include the following:

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

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

C. To employ and discharge my health care providers;

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

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

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

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

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

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

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

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

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

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

OPTION III: HEALTH CARE INSTRUCTIONS

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

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

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

OPTION IV: END OF LIFE INSTRUCTIONS

(CROSS THROUGH THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)

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

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

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

_____

_____

_____

_____:

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

_____

_____

_____

_____;

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

_____
_____
_____
_____;

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

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

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

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

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

_____ _____
(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

(Witness) _____

(Witness) _____

[OR]

COMMONWEALTH OF VIRGINIA

AT-LARGE

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

_____

Notary Public

Notary Registration Number: _____

My commission expires: _____

§ 59.1-481. Scope.

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

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

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

(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, Title 8.9A, Title 8.10, and Title 8.11.

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

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

§ 64.2-100. Definitions.

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

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

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

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

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

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

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

§ 64.2-403. Execution of wills; requirements.

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

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

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

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

§ 64.2-404. Writings intended as wills.

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

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

§ 64.2-407. Validity of other wills.

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

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

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

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

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

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

Article 7.

Uniform Electronic Wills Act.

§ 64.2-459. Definitions.

For the purposes of 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 presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.

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

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

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

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

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

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

§ 64.2-461. Choice of law regarding execution.

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

§ 64.2-462. Execution of electronic will.

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

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

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

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

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

B. An electronic will shall contain the following statement:

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

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

§ 64.2-463. Harmless error.

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

§ 64.2-464. Revocation.

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

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

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

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

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

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

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

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

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

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

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

_____

Testator

_____

Witness

_____

Witness

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

SIGNED _____

Electronic Notary Public

Or

[Official Capacity of Other Individual

Authorized by Law to Notarize Records Electronically]

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

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

SIGNED _____

Electronic Notary Public

Or

[Official Capacity of Other Individual

Authorized by Law to Notarize Records Electronically]

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

INTRODUCED

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

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

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

1. An electronic will; or

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

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

§ 64.2-467. Uniformity of application and construction.

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

§ 64.2-468. Transitional provision.

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

§ 64.2-701. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Terms of a trust" means:

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

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

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

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

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