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SENATE BILL NO. 923

Offered January 15, 1997

A BILL to amend and reenact §§ 2.1-66 and 2.1-68 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 39, consisting of sections numbered 59.1-467 through 59.1-471, relating to trade and commerce; digital signatures.

Patrons—Ticer, Barry, Couric, Edwards, Howell, Miller, K.G., Newman, Quayle, Saslaw, Stosch and Waddell; Delegates: Bennett, Diamonstein, Plum, Scott and Van Landingham

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-66 and 2.1-68 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 39, consisting of sections numbered 59.1-467 through 59.1-471, as follows:

§ 2.1-66. Ex officio Secretary to Governor; in charge of division of records; information systems.

The Secretary of the Commonwealth, who shall be ex officio Secretary to the Governor, shall be in direct charge of the division of records, *and shall set standards and oversee policies and practices designed to ensure the reliability, accuracy, durability, and security of information systems within the executive department.*

§ 2.1-68. Keeper of seals of Commonwealth; duties generally.

~~He~~ *The Secretary of the Commonwealth* shall be keeper of the seals of the Commonwealth; keep a record of all executive acts, arrange and preserve all records and papers belonging to the executive ~~department~~ *branch*; be charged with the clerical duties of that department, and render to the Governor, in the dispatch of executive business, such services as he requires. ~~He shall~~ *record or register all papers or documents required by law to be registered or recorded in his office, and when required furnish a copy of any record in his office under the seal of the Commonwealth; and make such rules and regulations as he deems appropriate to ensure the authenticity, integrity, confidentiality, and durability of electronic records created, sent or received from an agency.*

He is authorized to authenticate records of any court of the Commonwealth and of any department of the government. He shall keep a register of all city, incorporated town, county, and district officers, and when required give a certificate of the election and qualification of any such officer.

He shall make an annual report to the Governor, embracing (a) the boards of visitors of all public institutions, and other boards appointed by the Governor; (b) all commissions issued under appointments made by the Governor, except commissions to notaries public; (c) and such matters as the Governor requires. The reports shall be transmitted by the Governor to the General Assembly, printed as other such annual reports are printed, bound in a separate volume, and disposed of according to law.

**CHAPTER 39.
DIGITAL SIGNATURES.**

§ 59.1-467. Definitions.

As used in this chapter, the following words shall have the following meaning unless the context clearly indicates otherwise:

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form. The term "record" includes both electronic records and written records.

"Signed" or "signature" means any symbol or method executed or adopted by a party with present intention to be bound by or to authenticate a record, including electronic or digital methods.

§ 59.1-468. Admissibility of electronic record.

A. Where a law requires a writing or provides for certain consequences in the absence of a writing, that law is satisfied by an electronic record.

B. In any legal proceeding, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of an electronic record into evidence on the sole ground that it is an electronic record or that the record has been retrieved in perceivable form. An electronic duplicate of a record, or any printout or other output in perceivable form, that accurately reproduces the original is admissible to the extent as the original record unless a genuine question is raised as to the authenticity of the original or in the circumstances it would be unfair to admit the duplicate in lieu of the original. In assessing the evidentiary weight of an electronic record, the trier of fact shall consider any relevant information or circumstances, including the manner in which the record was created, stored, and communicated and

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60 *the reliability of the processes.*

61 *C. The recipient of a record may establish reasonable requirements with respect to the choice of*
62 *medium, absent agreement to the contrary.*

63 *§ 59.1-469 Authentication of electronic signature.*

64 *A. Where law requires a signature, or provides for certain consequences in the absence of a*
65 *signature, that law is satisfied by an electronic record.*

66 *B. In assessing whether an electronic signature was executed or adopted with respect to a record by*
67 *a particular person, the trier of fact shall consider any relevant information or circumstances, including*
68 *whether the electronic signature is unique to the signer, is capable of verification, is under the signer's*
69 *sole control, is linked to the record in such a manner that if the data is changed the signature is*
70 *invalidated, and whether the method used to create the signature was appropriately reliable for the*
71 *purpose for which the electronic signature was used.*

72 *C. Where any law requires a signature to be notarized or acknowledged for filing with an agency,*
73 *department, board, commission, authority, political subdivision, or other instrumentality of the*
74 *Commonwealth, that law is satisfied by an electronic signature that meets standards established by the*
75 *Secretary of the Commonwealth.*

76 *D. The recipient of a record may establish reasonable requirements with respect to the method used*
77 *to sign the record.*

78 *§ 59.1-470. State agencies' use of digital signatures.*

79 *Every agency, department, board commission, authority, political subdivision or other instrumentality*
80 *of the Commonwealth may create and receive electronic records in lieu of written records, and may also*
81 *convert written records to electronic records and dispose of the written records as provided by the*
82 *Secretary of the Commonwealth.*

83 *§ 59.1-471. Exceptions.*

84 *This chapter shall not apply when:*

85 *1. Its application would be inconsistent with the manifest intent of the parties; or*

86 *2. Its application would involve a construction of a law that is clearly inconsistent with the manifest*
87 *intent of the law-making body or repugnant to the context of the same law, provided that the mere*
88 *requirement of a "signature" or that a record be "signed" shall not by itself be sufficient to establish*
89 *such intent.*

90 **2. That, on or before September 1, 1998, the Secretary of the Commonwealth shall adopt final**
91 **regulations, pursuant to the Virginia Administrative Process Act (§ 9-6:14:1 et seq.), on the filing**
92 **of records electronically as allowed by this act.**