

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 1-13.32, 2.1-51.47, 13.1-604, 13.1-804, 13.1-1003, 17.1-258, 50-73.17, 50-73.83, and 58.1-9 of the Code of Virginia; to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 43, consisting of sections numbered 59.1-501 through 59.1-520; and to repeal § 2.1-7.4 and Chapter 39 (§§ 59.1-467, 59.1-468, and 59.1-469) of Title 59.1 of the Code of Virginia, creating the Uniform Electronic Transactions Act.

[H 499]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 1-13.32, 2.1-51.47, 13.1-604, 13.1-804, 13.1-1003, 17.1-258, 50-73.17, 50-73.83, and 58.1-9 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 43, consisting of sections numbered 59.1-501 through 59.1-520, as follows:

§ 1-13.32. Written; writing; writings; in writing.

The words "written," "writing," "writings," and "in writing" shall include any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 39 (~~§ 59.1-467 et seq.~~) 43 (§ 59.1-501 et seq.) of Title 59.1 is or is not affixed.

§ 2.1-51.47. Secretary to function as Chief Information Officer; powers and duties.

A. The Secretary of Technology shall function as the Chief Information Officer (CIO) of the Commonwealth. In addition to his powers and duties as Secretary of Technology, the CIO shall have the following general powers:

1. Employ such personnel as may be required to carry out the purposes of this chapter.

2. Make and enter into all contracts and agreements necessary or incidental to the performance of his duties and execution of his powers, including but not limited to contracts with the United States, other state agencies, institutions of higher education, and political subdivisions of the Commonwealth.

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the CIO shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable.

4. Prescribe rules and regulations necessary or incidental to the performance of his duties or execution of his powers.

5. Exercise such powers and perform such duties as are conferred or imposed upon him by law or required of him by the Governor.

B. The CIO shall have the following powers and duties concerning the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth:

1. Monitor trends and advances in information technology; direct and approve a comprehensive, statewide, four-year planning process; and plan for the acquisition, management, and use of information technology. The statewide plan shall be updated annually and submitted to the Governor, the Speaker of the House of Delegates, and the President Pro Tempore of the Senate. In developing and updating such plans, the CIO shall consider, at a minimum, the advice and recommendations of the Council on Technology Services created in § 2.1-51.48.

2. Require state agencies and institutions of higher education to prepare and submit information technology plans to the CIO. The CIO shall have the authority to approve and recommend amendments to such plans upon review and recommendation by the Department of Technology Planning (DTP). All state agencies and institutions of higher education shall maintain current information technology plans that have been approved by the CIO.

3. Direct the formulation and promulgation of policies, standards, specifications, and guidelines for information technology in the Commonwealth, including, but not limited to, those (i) required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies and (ii) concerning the development of electronic transactions including the use of electronic signatures as provided in ~~§ 59.1-469~~ 59.1-518.

4. Direct the development of policies and procedures, in consultation with the Department of Planning and Budget, which are integrated into the Commonwealth's strategic planning and performance budgeting processes, and which state agencies and institutions of higher education shall follow in

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developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of agency and institution priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies and institutions of higher education in preparing budget requests.

5. Review budget requests for information technology from state agencies and institutions of higher education and recommend budget priorities to the Department of Planning and Budget.

6. Direct the development of policies and procedures for review by the Department of Technology Planning of technology procurements, agreements, or contracts for amounts exceeding \$100,000. The Department of Technology Planning shall report monthly to the Secretary on all such reviews. The Secretary may delegate approval of such procurements to the Department of Technology Planning; however, approval of procurements in excess of one million dollars shall not be delegated by the Secretary.

7. Disapprove procurements that, on the recommendation of the Department of Technology Planning, do not conform to the statewide information technology plan or to the individual plans of state agencies or institutions of higher education.

8. Direct the development of policies and procedures for the effective management of technology investments throughout their entire life cycle, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the Secretary of the execution of agency and institution of higher education technology projects estimated to cost one million dollars or more. The Secretary shall be authorized to direct the modification, suspension, or cessation of any such project which, as the result of a periodic review, has not met the milestones and performance measures agreed to by the Secretary and the sponsoring agency or institution. This shall not supersede the responsibility of a board of visitors for the management and operation of an institution of higher education.

9. Direct the establishment of statewide standards for the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth.

10. Oversee and administer the Virginia Technology Infrastructure Fund created in § 9-145.52.

11. Undertake or cause to be undertaken a periodic benchmarking analysis of data center and telecommunications resources and services performed at or provided by agencies and institutions.

12. Evaluate the feasibility of outsourcing information technology resources and services and outsource those resources and services which would be beneficial to the Commonwealth.

13. Report annually to the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by state agencies and institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government and to assist the Commission in its effort to stimulate, encourage, and promote the development of technology in the Commonwealth and sound public policies related thereto.

C. As used in this chapter, "information technology" includes telecommunications, automated data processing, word processing, the global information system known as the Internet, management information systems, and related information, equipment, goods, and services. It is in the interest of the Commonwealth that its institutions of higher education be in the forefront of developments in technology. Therefore the provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

§ 13.1-604. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its

officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that

G. Any annual report required to be filed by § 13.1-775 shall be executed in the name of the corporation by an officer or director listed in the report.

H. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The document may but need not contain the corporate seal; an attestation by the secretary or an assistant secretary; and an acknowledgment, verification, or proof.

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any franchise tax, charter or entrance fee or registration fee required by this chapter or by § 13.1-775.1.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information *pursuant to § 59.1-518*.

§ 13.1-804. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the corporation:

1. By the chairman or any vice-chairman of the board of directors, or the president, or any other of its officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that

G. Any annual report required to be filed by § 13.1-936 shall be executed in the name of the corporation by an officer or director listed in the report.

H. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The document may but need not contain:

1. The corporate seal;

2. An attestation by the secretary or an assistant secretary;

3. An acknowledgment, verification, or proof.

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any charter or entrance fee or registration fee required by this chapter or by § 13.1-936.1.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information *pursuant to § 59.1-518*.

§ 13.1-1003. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the limited liability company:

1. By any manager, or if no managers have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, by the person forming the limited liability company; or

3. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information *pursuant to § 59.1-518*.

§ 17.1-258. (Effective until July 1, 2004) Signature; when effective as originals.

If the sender of an electronically filed document files an affidavit of authenticity along with the electronic filing and the electronic transmission bears a facsimile or printing of the required signature, electronic signature pursuant to § ~~59.1-469~~ 59.1-518 or unique electronic identification, any statutory requirement for an original signature shall be deemed to be satisfied. Any reproduction of the electronically filed document must bear a copy of the signature. The electronically reproduced document shall be accepted as the signature document for all court-related purposes unless the original with the original signature affixed is requested by motion of one or more parties to a pending action or is otherwise required by law. If the court grants the motion of a party, the order shall provide that the original be filed with the court.

§ 50-73.17. Filing; fees.

A. One signed copy of the certificate of limited partnership, of any certificate of amendment or cancellation, of any restated certificate of limited partnership or of any articles of merger shall be delivered to the Commission for filing and shall be accompanied by the required filing fee. One signed copy of any amended and restated certificate referred to in § 50-73.77 plus one photocopy for each circuit court where the certificate of limited partnership was originally filed shall be delivered to the Commission for filing and shall be accompanied by the required filing fee. The certificate shall be in the English language and shall be typewritten or printed in black ink. Photocopies or other reproduced copies of typewritten or printed certificates may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. If the Commission finds that the certificate complies with the provisions of this chapter, that it has been signed as required by this chapter, and that the required filing fee has been paid, it shall endorse on the certificate the word "Filed" and the day, month and year of the filing thereof and admit the certificate to record in its office. A signature on any document filed under this chapter may be a facsimile.

The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information *pursuant to § 59.1-518*.

B. Upon the filing with the Commission of a certificate of amendment, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation the certificate of limited partnership is canceled.

C. The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be ten dollars:

- 240 a. An application to reserve or to renew the reservation of a name for use by a domestic or a foreign
 241 limited partnership;
- 242 b. A notice of the transfer of a name reserved for the use by a domestic or a foreign limited
 243 partnership;
- 244 c. A certificate of cancellation with respect to either a domestic or a foreign limited partnership;
- 245 d. A certificate declaring withdrawal referred to in § 50-73.25;
- 246 e. A certificate of correction referred to in § 50-73.57;
- 247 f. An instrument of merger referred to in § 50-73.57:2.
- 248 2. For filing any one of the following, the fee shall be \$100:
- 249 a. A certificate of limited partnership referred to in § 50-73.11 or § 50-73.11:1;
- 250 b. An application for registration as a foreign limited partnership;
- 251 c. An amended and restated certificate of limited partnership referred to in § 50-73.77.
- 252 3. For filing any one of the following, the fee shall be fifty dollars:
- 253 a. A certificate of amendment or a short form of such certificate;
- 254 b. A restated certificate of limited partnership.
- 255 4. For filing articles of merger referred to in § 50-73.48:3, the fee shall be twenty-five dollars.
- 256 5. For issuing a certificate pursuant to § 50-37.3, the fee shall be six dollars.
- 257 § 50-73.83. Execution, filing, and recording of statements.
- 258 A. A statement may be filed with the Commission. A duly authenticated copy of a statement that is
 259 filed in an office in another state may be filed with the Commission. Either filing has the effect
 260 provided in this chapter with respect to partnership property located in or transactions that occur in this
 261 Commonwealth.
- 262 B. A duly authenticated copy of a statement that has been filed with the Commission and recorded in
 263 the office for recording transfers of real property has the effect provided for recorded statements in this
 264 chapter. A recorded statement that is not a duly authenticated copy of a statement filed with the
 265 Commission does not have the effect provided for recorded statements in this chapter.
- 266 C. A statement filed by a partnership shall be executed by at least two partners. Other statements
 267 shall be executed by a partner or other person authorized by this chapter. An individual who executes a
 268 statement as, or on behalf of, a partner or other person named as a partner in a statement shall
 269 personally declare under penalty of perjury that the contents of the statement are accurate. Any person
 270 may execute a statement by an attorney-in-fact.
- 271 D. A person authorized by this chapter to file a statement may amend or cancel the statement by
 272 filing an amendment or cancellation that names the partnership, identifies the statement, and states the
 273 substance of the amendment or cancellation.
- 274 E. A person who files a statement pursuant to this section shall promptly send a copy of the
 275 statement to every nonfiling partner and to any other person named as a partner in the statement. Failure
 276 to send a copy of a statement to a partner or other person does not limit the effectiveness of the
 277 statement as to a person not a partner.
- 278 F. The Commission shall charge and collect the following fees:
- 279 1. The fee shall be \$100 for any one of the following:
- 280 a. For filing a statement of registration as a registered limited liability partnership;
- 281 b. For filing a statement of registration as a foreign registered limited liability partnership; or
- 282 c. A reinstatement fee for restoration of status pursuant to subdivision F 1 of § 50-73.134.
- 283 2. The fee shall be fifty dollars for filing any one of the following:
- 284 a. An amendment to a statement of registration as a registered limited liability partnership;
- 285 b. An amendment to a statement of registration as a foreign registered limited liability partnership; or
- 286 c. An annual report pursuant to § 50-73.134.
- 287 3. For filing any other statement or amendment thereto or cancellation thereof, the fee shall be
 288 twenty-five dollars.
- 289 The fees paid into the state treasury under this section shall be set aside and paid into the special
 290 fund created under § 13.1-775.1, subject to that section.
- 291 The court responsible for recording transfers of real property may collect a fee for recording a
 292 statement.
- 293 G. The Commission may provide forms for statements.
- 294 H. Any statement filed with the Commission under this chapter shall be typewritten or printed. The
 295 typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten
 296 or printed statements may be filed. In every case, information in the statement shall be legible and the
 297 document shall be capable of being reformatted and reproduced in copies of archival quality. The
 298 statement shall be in the English language. A partnership name need not be in English if written in
 299 English letters or Arabic or Roman numerals. Any signature on a statement may be a facsimile.
- 300 I. The Commission may accept the electronic filing of any information required or permitted to be

filed under this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-518.

J. A statement shall be effective at the time of the filing of the statement with the Commission as set forth in this section unless the statement states that it shall become effective at a later time and date specified in the statement. In that event, the statement shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the statement is filed with the Commission.

§ 58.1-9. Filing of tax returns or payment of taxes by mail or otherwise.

A. When remittance of a tax return or a tax payment is made by mail, receipt of such return or payment by the person with whom such return is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such return is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such return had been filed or such payment made before the close of business on the last day on which such return may be filed or such tax may be paid without penalty or interest.

B. When remittance of a tax payment is made by electronic funds transfer, receipt of funds available for withdrawal, in a bank account designated to receive such payments by the person to whom such payment is required to be made, on or before midnight of the day such payment is required to be made without penalty or interest, shall constitute payment as if such payment had been made before the close of business on the last day on which such tax may be paid without penalty or interest.

C. Notwithstanding any provision of law, the Tax Commissioner may allow the electronic filing of any state tax return, statement or document. For purposes of this subsection, the Tax Commissioner may determine alternative methods for the signing, subscribing or verifying of a state tax return, statement or document that shall have the same validity and consequences as the actual signing by the taxpayer. *The Tax Commissioner may prescribe methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-518.*

§§ 59.1-479 through 59.1-500: Reserved.

CHAPTER 43.

UNIFORM ELECTRONIC TRANSACTIONS ACT.

§ 59.1-501. Title.

This chapter may be cited as the "Uniform Electronic Transactions Act."

§ 59.1-502. Definitions.

As used in this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

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

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(10) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, public corporation, or any other legal or commercial entity.

(12) "Public body" shall have the same meaning as defined in § 2.1-341.

(13) "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.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "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, or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

§ 59.1-503. 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;

(2) Title 8.1 except §§ 8.1-107 and 8.1-206, Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.6A, Title 8.7, Title 8.8A, Title 8.9, Title 8.10, and Title 8.11; and

(3) Article 4 (§ 17.1-255 et seq.) of Chapter 2 of Title 17.1.

(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.

§ 59.1-504. Prospective application.

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this chapter.

§ 59.1-505. Use of electronic records and electronic signatures; variation by agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction electronically may not be contained in a standard form contract unless that term is conspicuously displayed and separately consented to. An agreement to conduct a transaction electronically may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase warranty. This subsection may not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of the provisions of this chapter may be varied by agreement. The presence in this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

§ 59.1-506. Construction and application.

This chapter shall be construed and applied to:

(1) Facilitate electronic transactions consistent with other applicable law;

(2) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) Effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ 59.1-507. Legal recognition of electronic records, electronic signatures, and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.

§ 59.1-508. Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in subsection (d)(2), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, except:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by United States mail, may be varied by agreement to the extent permitted by the other law.

(e) Notwithstanding subsections (b) and (d), a governmental agency may by regulation alter requirements governing (i) the method of posting or display, (ii) the manner of communication or transmittal, including First Class or other United States mail requirements, or (iii) formatting requirements, with respect to the matters over which that agency has jurisdiction and with respect to transactions that the parties have agreed to conduct by electronic means.

§ 59.1-509. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

§ 59.1-510. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

§ 59.1-511. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath,

the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

§ 59.1-512. Retention of electronic record.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record at the time and after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection A satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a public body of the Commonwealth from specifying additional requirements for the retention of a record subject to such public body's jurisdiction.

§ 59.1-513. Admissibility of evidence.

(a) In any proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

(b) In determining the evidentiary weight to be given a particular electronic signature, the trier of fact shall consider whether the electronic signature is: (i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and (v) created by a method appropriately reliable for the purpose for which the electronic signature was used. The trier of fact may consider any other relevant and probative evidence affecting the authenticity and/or validity of the electronic signature.

§ 59.1-514. Automated transactions.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to the contract.

§ 59.1-515. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different

545 from the place the electronic record is deemed to be received under subsection (d).

546 (d) Unless otherwise expressly provided in the electronic record or agreed between the sender and
 547 the recipient, an electronic record is deemed to be sent from the sender's place of business and to be
 548 received at the recipient's place of business. For purposes of this subsection, the following rules apply:

549 (1) If the sender or recipient has more than one place of business, the place of business of that
 550 person is the place having the closest relationship to the underlying transaction.

551 (2) If the sender or the recipient does not have a place of business, the place of business is the
 552 sender's or recipient's residence, as the case may be.

553 (e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

554 (f) Receipt of an electronic acknowledgment from an information processing system described in
 555 subsection (b) establishes that a record was received but, by itself, does not establish that the content
 556 sent corresponds to the content received.

557 (g) If a person is aware that an electronic record purportedly sent under subsection (a), or
 558 purportedly received under subsection (b), was not actually sent or received, the legal effect of the
 559 sending or receipt is determined by other applicable law. Except to the extent permitted by the other
 560 law, the requirements of this subsection may not be varied by agreement.

561 § 59.1-516. Transferable records.

562 (a) In this section, "transferable record" means an electronic record that:

563 (1) Would be a note under Title 8.3A or a document under Title 8.7 if the electronic record were in
 564 writing; and

565 (2) The issuer of the electronic record expressly has agreed is a transferable record.

566 (b) A person has control of a transferable record if a system employed for evidencing the transfer of
 567 interests in the transferable record reliably establishes that person as the person to which the
 568 transferable record was issued or transferred.

569 (c) A system satisfies subsection (b), and a person is deemed to have control of a transferable
 570 record, if the transferable record is created, stored, and assigned in such a manner that:

571 (1) A single authoritative copy of the transferable record exists which is unique, identifiable, and,
 572 except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

573 (2) The authoritative copy identifies the person asserting control as:

574 (A) The person to which the transferable record was issued; or

575 (B) If the authoritative copy indicates that the transferable record has been transferred, the person to
 576 which the transferable record was most recently transferred;

577 (3) The authoritative copy is communicated to and maintained by the person asserting control or its
 578 designated custodian;

579 (4) Copies or revisions that add or change an identified assignee of the authoritative copy can be
 580 made only with the consent of the person asserting control;

581 (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that
 582 is not the authoritative copy; and

583 (6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

584 (d) Except as otherwise agreed, a person having control of a transferable record is the holder, as
 585 defined in § 8.1-201 (20), of the transferable record and has the same rights and defenses as a holder
 586 of an equivalent record or writing under Titles 8.1 through 8.11, including, if the applicable statutory
 587 requirements under §§ 8.3A-302 (a), 8.7-501, or § 8.9-308 are satisfied, the rights and defenses of a
 588 holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a
 589 purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any
 590 of the rights under this subsection.

591 (e) Except as otherwise agreed, an obligor under a transferable record has the same rights and
 592 defenses as an equivalent obligor under equivalent records or writings under Titles 8.1 through 8.11.

593 (f) If requested by a person against which enforcement is sought, the person seeking to enforce the
 594 transferable record shall provide reasonable proof that the person is in control of the transferable
 595 record. Proof may include access to the authoritative copy of the transferable record and related
 596 business records sufficient to review the terms of the transferable record and to establish the identity of
 597 the person having control of the transferable record.

598 § 59.1-517. Creation and retention of electronic records and conversion of written records by public
 599 bodies of the Commonwealth.

600 Upon providing protection to preserve security and confidentiality, every public body of the
 601 Commonwealth may create and retain electronic records and convert written records to electronic
 602 records.

603 § 59.1-518. Acceptance and distribution of electronic records by public bodies; electronic filing of
 604 information permitted.

605 (a) Except as otherwise provided § 59.1-512 (f), and upon providing protection to preserve security

and confidentiality, public bodies of the Commonwealth may (i) accept the electronic filing or any information required or permitted to be filed with such public body and (ii) prescribe the methods of executing, recording, reproducing, and certifying electronically filed information pursuant to subsection (b). Unless otherwise provided for in the Code of Virginia, electronic filing in the courts of this Commonwealth shall be governed by the Rules adopted by the Supreme Court of Virginia.

(b) To the extent that public bodies of the Commonwealth use electronic records and electronic signatures and accept electronic filings under subsection (a), the following rules apply:

(1) Public bodies of the Commonwealth may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) Public bodies of the Commonwealth may specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Public bodies of the Commonwealth may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Public bodies of the Commonwealth may establish other criteria to ensure the authenticity and validity of electronic signatures.

(c) Except as otherwise provided in § 59.1-512 (f), this chapter does not require public bodies of the Commonwealth to use or permit the use of electronic records or signatures.

§ 59.1-519. Interoperability.

A public body of the Commonwealth which adopts standards pursuant to § 59.1-518 and the Secretary of Technology may encourage and promote consistency and interoperability with similar requirements adopted by other public bodies of the Commonwealth, other states and the federal government and nongovernmental persons interacting with public bodies of the Commonwealth. If appropriate, those standards may specify differing levels of standards from which public bodies of the Commonwealth may choose in implementing the most appropriate standard for a particular application.

§ 59.1-520. Reserved.

2. That § 2.1-7.4 and Chapter 39 (§§ 59.1-467, 59.1-468, and 59.1-469) of Title 59.1 of the Code of Virginia are repealed.