

## 2001 SESSION

### HOUSE SUBSTITUTE

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#### HOUSE BILL NO. 2128

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Courts of Justice  
on February 4, 2001)

(Patron Prior to Substitute—Delegate McClure)

A *BILL* to amend the Code of Virginia by adding a section numbered 64.1-45.2, relating to incorporation by reference; letter of instruction or memorandum into a will, power of attorney or trust instrument.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by a section numbered 64.1-45.2 as follows:

§ 64.1-45.2. *Incorporation by reference; letter of instruction or memorandum into a will, power of attorney or trust instrument.*

A. *The following original documents may be incorporated by reference into a will, power of attorney or trust instrument:*

1. *A letter or memorandum to the fiduciary or agent as to the interpretation of discretionary powers of distribution where the will, power of attorney or trust instrument provides the fiduciary or agent the power to make distributions to beneficiaries in the discretion of the fiduciary or agent; and*

2. *A letter or memorandum stating the views or directions of the maker of the will, power of attorney or trust instrument as to the exercise of discretion by the fiduciary or agent in making health care decisions for the maker.*

B. *No provision in the original document sought to be incorporated by reference under this section that contradicts or is inconsistent with a provision of the incorporating will, power of attorney or trust instrument shall be enforced.*

C. *This section shall not prevent the incorporation by reference of any writing into any other writing that would otherwise be effective under § 64.1-45.1 or under any other law of incorporation by reference.*

D. *The documents referenced in subsection A shall be signed and notarized, and may be prepared before or after the execution of the will, power of attorney or trust instrument.*

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