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HOUSE BILL NO. 2259

Offered January 12, 2011

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A *BILL to amend and reenact §§ 6.2-1816, 6.2-2218, 59.1-501.2, 59.1-504.4, and 59.1-508.1 of the Code of Virginia, relating to the Uniform Computer Information Transactions Act; liability of providers and users of digital identity credentials; technical amendments.*

Patron—May

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1816, 6.2-2218, 59.1-501.2, 59.1-504.4, and 59.1-508.1 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-1816. (Effective October 1, 2010) Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. Part 226); (iv) evidence of receipt from the borrower of a check, dated as of the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until the date the loan is due, which date shall produce a loan term of at least two times the borrower's pay cycle and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.

2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter.

4. A licensee shall not require or accept more than one check from a borrower as security for any loan.

5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than \$500.

6. A licensee shall not (i) refinance, renew or extend any payday loan; (ii) make a loan to a person if the loan would cause the person to have more than one payday loan from any licensee outstanding at the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following the date that the person has paid or otherwise satisfied in full a payday loan through an extended payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time.

8. A check accepted by a licensee as security for any loan shall be dated as of the date the loan is due.

9. Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored. In addition to any other remedies available at law, a licensee that knowingly violates this prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of

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59 the dishonored check.

60 10. A licensee shall not take an interest in any property other than a check payable to the licensee as
61 security for a loan.

62 11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other
63 product or service sold at the licensee's office location.

64 12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be
65 charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

66 13. A check given as security for a loan shall not be negotiated to a third party.

67 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
68 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
69 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to
70 all claims and defenses of the maker."

71 15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in
72 form consistent with regulations adopted by the Commission, explaining in plain language the rights and
73 responsibilities of the borrower and providing a toll-free number at the Commission for assistance with
74 complaints.

75 16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and
76 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet
77 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash
78 needs.

79 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on
80 the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated
81 receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the
82 loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled,"
83 return it to the borrower, and retain a copy in its records.

84 18. Each licensee shall conspicuously post in each approved office a schedule of fees and interest
85 charges, with examples using a \$300 loan payable in 14 days and 30 days.

86 19. Any advertising materials used to promote payday loans that includes the amount of any
87 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall
88 also include a statement of the interest, fees and charges, expressed as an annual percentage rate,
89 payable using as an example a \$300 loan payable in 14 and 30 days.

90 20. In any print media advertisement, including any web page, used to promote payday loans, the
91 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in
92 ~~subdivision (a) (14) of~~ § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,
93 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to
94 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio
95 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure
96 statement shall last at least two seconds and the statement shall be spoken so that its contents may be
97 easily understood.

98 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of
99 the military services of the United States or the spouse or other dependent of a member of the military
100 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of
101 every prospective borrower if he is a member of the military services of the United States or the spouse
102 or other dependent of a member of the military services of the United States. The loan documents shall
103 include verification that the borrower is not a member of the military services of the United States or
104 the spouse or other dependent of a member of the military services of the United States.

105 22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions
106 and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15
107 U.S.C. § 1692 et seq.) regarding harassment or abuse, false or misleading misrepresentations, and unfair
108 practices in collections.

109 23. A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60
110 days after the date of default on a payday loan, during which period the licensee and borrower may
111 voluntarily enter into a repayment arrangement.

112 24. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in
113 connection with any payday loan.

114 25. A licensee may not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in
115 the conduct of its business.

116 26. A borrower may pay any outstanding payday loan from any licensee by means of an extended
117 payment plan as follows:

118 a. A borrower shall not be eligible to enter into more than one extended payment plan in any
119 12-month period.

120 b. To enter into an extended payment plan with respect to a payday loan, the borrower shall agree in

121 a written and signed document to repay the amount owed in at least four equal installments over an
122 aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the
123 extended payment plan. The borrower may prepay an extended payment plan in full at any time without
124 penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then
125 the licensee may immediately accelerate the unpaid loan balance.

126 c. If the borrower enters into an extended payment plan, then no licensee may make a payday loan
127 to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower
128 pays or satisfies in full the balance of the loan under the terms of the extended payment plan.

129 d. At each approved office, the licensee shall post a notice in at least 24-point bold type, in a form
130 established or approved by the Commission, informing persons that they may be eligible to enter into an
131 extended payment plan.

132 e. The licensee shall provide oral notice to any borrower who is eligible to enter into an extended
133 payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability
134 to pay the payday loan by means of an extended payment plan. The information contained in the notice
135 shall be in a form provided by the Bureau.

136 27. In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to
137 any person within a period of 180 days shall be made only in compliance with, at the option of the
138 borrower, either of the following:

139 a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday
140 loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such
141 borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise
142 satisfied in full and (ii) the borrower may elect, at any time on or before its due date, to repay such fifth
143 payday loan by means of an extended payment plan as provided in subdivision 26 b; or

144 b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a
145 loan that complies with the terms and conditions otherwise applicable to payday loans under the terms
146 of this chapter except that (i) the principal amount of the loan, and any interest and fees permitted by
147 § 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the
148 date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer
149 of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150
150 days following the date the extended term loan is made.

151 § 6.2-2218. (Effective October 1, 2010) Advertising.

152 A. No person licensed or required to be licensed under this chapter shall use or cause to be
153 published any advertisement that (i) contains any false, misleading, or deceptive statement or
154 representation or (ii) identifies the person by any name other than the name set forth on the license
155 issued by the Commission.

156 B. Any advertising materials used to promote the price, cost, or interest rate of motor vehicle title
157 loans shall disclose the amount of any minimum monthly payments and a statement of finance charges,
158 expressed as an annual percentage rate, payable using as an example a \$1,000 loan that is repaid over a
159 12-month period. In any print media advertisement, including any web page, used to promote motor
160 vehicle title loans, the disclosure shall be conspicuous. "Conspicuous" shall have the meaning set forth
161 in subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or
162 faces, the disclosure requirement applies only to one page, fold, or face. In a television advertisement
163 used to promote motor vehicle title loans, the visual disclosure legend shall include 20 scan lines in size.
164 In a radio advertisement or advertisement communicated by telephone used to promote motor vehicle
165 title loans, the disclosure statement shall last at least two seconds and the statement shall be spoken so
166 that its contents may be easily understood.

167 § 59.1-501.2. Definitions.

168 (a) A. As used in this chapter, *unless the context requires a different meaning*:

169 (1) "Access contract" means a contract to obtain by electronic means access to, or information from,
170 an information processing system of another person, or the equivalent of such access.

171 (2) "Access material" means any information or material, such as a document, address, *trustmark*, or
172 access code, that is necessary to obtain authorized access to information or control or possession of a
173 copy.

174 (3) "Aggrieved party" means a party entitled to a remedy for breach of contract.

175 (4) "Agreement" means the bargain of the parties in fact as found in their language or by implication
176 from other circumstances, including course of performance, course of dealing, and usage of trade as
177 provided in this chapter.

178 (5) "Attribution procedure" means a procedure to verify that an electronic authentication, display,
179 message, record, or performance is that of a particular person or to detect changes or errors in
180 information. The term includes a procedure that requires the use of algorithms or other codes,
181 identifying words or numbers, encryption, or callback or other acknowledgment.

182 (6) "Authenticate" means (i) to sign or (ii) with the intent to sign a record, to execute or adopt an
183 electronic symbol, sound, message, or process referring to, attached to, included in, or logically
184 associated or linked with, that record.

185 (7) "Automated transaction" means a transaction in which a contract is formed in whole or part by
186 electronic actions of one or both parties that are not previously reviewed by an individual in the
187 ordinary course.

188 (8) "Cancellation" means the ending of a contract by a party because of breach of contract by
189 another party.

190 (9) "Computer" means an electronic device that accepts information in digital or similar form and
191 manipulates it for a result based on a sequence of instructions.

192 (10) "Computer information" means information in electronic form that is obtained from or through
193 the use of a computer or that is in a form capable of being processed by a computer. The term includes
194 a copy of the information and any documentation or packaging associated with the copy.

195 (11) "Computer information transaction" means an agreement or the performance of it to create,
196 modify, transfer, or license computer information or informational rights in computer information. The
197 term includes a support contract under § 59.1-506.12. The term does not include a transaction merely
198 because the parties' agreement provides that their communications about the transaction will be in the
199 form of computer information.

200 (12) "Computer program" means a set of statements or instructions to be used directly or indirectly
201 in a computer to bring about a certain result. The term does not include separately identifiable
202 informational content.

203 (13) "Consequential damages" resulting from breach of contract includes (i) any loss resulting from
204 general or particular requirements and needs of which the breaching party at the time of contracting had
205 reason to know and which could not reasonably be prevented, and (ii) any injury to an individual or
206 damage to property other than the subject matter of the transaction proximately resulting from breach of
207 warranty. The term does not include direct damages or incidental damages.

208 (14) "Conspicuous," with reference to a term, means so written, displayed, or presented that a
209 reasonable person against which it is to operate ought to have noticed it. A term in an electronic record
210 intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that
211 would enable a reasonably configured electronic agent to take it into account or react to it without
212 review of the record by an individual. With respect to a person, conspicuous terms include (i) a heading
213 in capitals in a size equal to or greater than, or in contrasting type, font, or color to, the surrounding
214 text, (ii) language in the body of a record or display in larger or other contrasting type, font, or color or
215 set off from the surrounding text by symbols or other marks that draw attention to the language, and
216 (iii) a term prominently referenced in an electronic record or display which is readily accessible or
217 reviewable from the record or display. With respect to a person or an electronic agent, conspicuous
218 terms include a term, or reference to a term, that is so placed in a record or display that the person or
219 electronic agent cannot proceed without taking action with respect to the particular term or reference.

220 (15) "Consumer" means an individual who is a licensee of information or informational rights that
221 the individual at the time of contracting intended to be used primarily for personal, family, or household
222 purposes. The term does not include an individual who is a licensee primarily for professional or
223 commercial purposes, including agriculture, business management, and investment management other
224 than management of the individual's personal or family investments.

225 (16) "Consumer contract" means a contract between a merchant licensor and a consumer.

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

228 (18) "Contract fee" means the price, fee, rent, or royalty payable in a contract under this chapter or
229 any part of the amount payable.

230 (19) "Contractual use term" means an enforceable term that defines or limits the use, disclosure of,
231 or access to licensed information or informational rights, including a term that defines the scope of a
232 license.

233 (20) "Copy" means the medium on which information is fixed on a temporary or permanent basis
234 and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid
235 of a machine or device.

236 (21) "Course of dealing" means a sequence of previous conduct between the parties to a particular
237 transaction which establishes a common basis of understanding for interpreting their expressions and
238 other conduct.

239 (22) "Course of performance" means repeated performances, under a contract that involves repeated
240 occasions for performance, which are accepted or acquiesced in without objection by a party having
241 knowledge of the nature of the performance and an opportunity to object to it.

242 (23) "Court" includes an arbitration or other dispute-resolution forum if the parties have agreed to
243 use of that forum or its use is required by law.

244 (24) "Delivery," with respect to a copy, means the voluntary physical or electronic transfer of
245 possession or control.

246 (25) "Direct damages" means compensation for losses measured by § 59.1-508.8 (b) (1) or
247 § 59.1-508.9 (a) (1). The term does not include consequential damages or incidental damages.

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

250 (27) "Electronic agent" means a computer program, or electronic or other automated means, used
251 independently to initiate an action, or to respond to electronic messages or performances, on the person's
252 behalf without review or action by an individual at the time of the action or response to the message or
253 performance.

254 (28) "Electronic message" means a record or display that is stored, generated, or transmitted by
255 electronic means for the purpose of communication to another person or electronic agent.

256 "Federated identity management" means a system that allows individuals to use the same identity
257 credential, identity token, or other identifier to access networks or databases of more than one
258 enterprise in order to conduct transactions and share information.

259 "Federation" means a group of two or more trusted partners that allow a user from one federation
260 partner to access networks or databases from another federation partner in a secure and trustworthy
261 manner.

262 "Federation operator" means an individual or group that defines standards for its respective
263 federation and evaluates participation in the federation or network to ensure compliance with policy,
264 including the ability to request audits of participants for verification.

265 (29) "Financial accommodation contract" means an agreement under which a person extends a
266 financial accommodation to a licensee and which does not create a security interest governed by Title
267 8.9A. The agreement may be in any form, including a license or lease.

268 (30) "Financial services transaction" means an agreement that provides for, or a transaction that is, or
269 entails access to, use, transfer, clearance, settlement, or processing of:

270 (A) 1. a deposit, loan, funds, or monetary value represented in electronic form and stored or capable
271 of storage by electronic means and retrievable and transferable by electronic means, or other right to
272 payment to or from a person;

273 (B) 2. an instrument or other item;

274 (C) 3. a payment order, credit card transaction, debit card transaction, funds transfer, automated
275 clearing house transfer, or similar wholesale or retail transfer of funds;

276 (D) 4. a letter of credit, document of title, financial asset, investment property, or similar asset held
277 in a fiduciary or agency capacity; or

278 (E) 5. related identifying, verifying, access-enabling, authorizing, or monitoring information.

279 (31) "Financier" means a person that provides a financial accommodation to a licensee under a
280 financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or
281 sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a
282 contractual right under the financial accommodation contract to preclude the licensee's use of the
283 information or informational rights under a license in the event of breach of the financial
284 accommodation contract. The term does not include a person that selects, creates, or supplies the
285 information that is the subject of the license, owns the informational rights in the information, or
286 provides support for, modifications to, or maintenance of the information.

287 (32) "Good faith" means honesty in fact and the observance of reasonable commercial standards of
288 fair dealing.

289 (33) "Goods" means all things that are movable at the time relevant to the computer information
290 transaction. The term includes the unborn young of animals, growing crops, and other identified things
291 to be severed from realty which are covered by § 8.2-107. The term does not include computer
292 information, money, the subject matter of foreign exchange transactions, documents, letters of credit,
293 letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or
294 general intangibles.

295 "Identifying attribute" or "identifier" means a property or personal information associated with a
296 licensee.

297 "Identity credential" means an object to be verified when presented in an authentication transaction.
298 The identity credential can be bound in some way to the licensee to whom it was issued, or it can be a
299 bearer credential. Electronic credentials are digital documents that bind an identity or an identifying
300 attribute to a licensee's identity token.

301 "Identity provider" means the authoritative entity responsible for authenticating a licensee and
302 asserting an identity for that licensee through the issuance of an identity credential or identity token.

303 "Identity token" means hardware or software the licensee possesses and access controls used to
304 authenticate the licensee's identity or identifying attributes contained in the identity credential.

305 (34) "Incidental damages" resulting from breach of contract:
 306 (A) 1. means compensation for any commercially reasonable charges, expenses, or commissions
 307 reasonably incurred by an aggrieved party with respect to (i) inspection, receipt, transmission,
 308 transportation, care, or custody of identified copies or information that is the subject of the breach; (ii)
 309 stopping delivery, shipment, or transmission; (iii) effecting cover or retransfer of copies or information
 310 after the breach; (iv) other efforts after the breach to minimize or avoid loss resulting from the breach;
 311 and (v) matters otherwise incident to the breach; and
 312 (B) 2. does not include consequential damages or direct damages.
 313 (35) "Information" means data, text, images, sounds, mask works, *identifying attributes used in*
 314 *identity credentials and tokens, trustmarks, or computer programs, including collections and compilations*
 315 *of them.*
 316 (36) "Information processing system" means an electronic system for ~~creating, generating, sending,~~
 317 ~~receiving, storing, displaying, or processing information.~~
 318 (37) "Informational content" means information that is intended to be communicated to or perceived
 319 by an individual in the ordinary use of the information, or the equivalent of that information.
 320 (38) "Informational rights" include all rights in information created under laws governing patents,
 321 copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person,
 322 independently of contract, a right to control or preclude another person's use of or access to the
 323 information on the basis of the rights holder's interest in the information.
 324 "Information processing system" means an electric system for *creating, generating, sending,*
 325 *receiving, storing, displaying, or processing information.*
 326 (39) "Insurance services transaction" means an agreement between an insurer and an insured that
 327 provides for, or a transaction that is or entails access to, use, transfer, clearance, settlement, or
 328 processing of:
 329 (A) ~~a~~1. An insurance policy, contract, or certificate; or
 330 (B) a2. A right to payment under an insurance policy, contract or certificate.
 331 (40) "Knowledge," with respect to a fact, means actual knowledge of the fact.
 332 (41) "License" means a contract that authorizes access to, or use, distribution, performance,
 333 modification, or reproduction of, information or informational rights, but expressly limits the access or
 334 uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee
 335 has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a
 336 consignment of a copy. The term does not include a reservation or creation of a security interest to the
 337 extent the interest is governed by Title 8.9A.
 338 (42) "Licensee" means a person entitled by agreement to acquire or exercise rights in, or to have
 339 access to or use of, computer information under an agreement to which this chapter applies. A licensor
 340 is not a licensee with respect to rights reserved to it under the agreement.
 341 (43) "Licensor" means a person obligated by agreement to transfer or create rights in, or to give
 342 access to or use of, computer information or informational rights in it under an agreement to which this
 343 chapter applies. Between the provider of access and a provider of the informational content to be
 344 accessed, the provider of content is the licensor. In an exchange of information or informational rights,
 345 each party is a licensor with respect to the information, informational rights, or access it gives.
 346 (44) "Mass-market license" means a standard form used in a mass-market transaction.
 347 (45) "Mass-market transaction" means a transaction that is:
 348 (A) a1. A consumer contract; or
 349 (B) ~~any~~2. Any other transaction with an end-user licensee if:
 350 (i) ~~the~~a. The transaction is for information or informational rights directed to the general public as a
 351 whole, including consumers, under substantially the same terms for the same information;
 352 (ii) ~~the~~b. The licensee acquires the information or informational rights in a retail transaction under
 353 terms consistent with an ordinary transaction in a retail market; and
 354 (iii) ~~the~~c. The transaction is not (a) a contract for redistribution or for public performance or public
 355 display of a copyrighted work; (b) a transaction in which the information is customized or otherwise
 356 specially prepared by the licensor for the licensee, other than minor customization using a capability of
 357 the information intended for that purpose; (c) a site license; or (d) an access contract.
 358 (46) "Merchant" means a person:
 359 (A) ~~who~~1. Who deals in information or informational rights of the kind involved in the transaction;
 360 (B) ~~who~~2. Who by the person's occupation holds himself out as having knowledge or skill peculiar to
 361 the relevant aspect of the business practices or information involved in the transaction; or
 362 (C) ~~to~~3. To whom the knowledge or skill peculiar to the practices or information involved in the
 363 transaction may be attributed by the person's employment of an agent or broker or other intermediary
 364 who by his occupation holds himself out as having the knowledge or skill.
 365 (47) "Nonexclusive license" means a license that does not preclude the licensor from transferring to
 366 other licensees the same information, informational rights, or contractual rights within the same scope.

- 367 The term includes a consignment of a copy.
- 368 (48) "Notice" of a fact means knowledge of the fact, receipt of notification of the fact, or reason to
369 know the fact exists.
- 370 (49) "Notify" or "give notice" means to take such steps as may be reasonably required to inform the
371 other person in the ordinary course, whether or not the other person actually comes to know of it.
- 372 (50) "Party" means a person that engages in a transaction or makes an agreement under this chapter.
- 373 (51) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited
374 liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public
375 corporation, or any other legal or commercial entity.
- 376 (52) "Published informational content" means informational content prepared for or made available to
377 recipients generally, or to a class of recipients, in substantially the same form. The term does not
378 include informational content that is (i) customized for a particular recipient by one or more individuals
379 acting as or on behalf of the licensor, using judgment or expertise or (ii) provided in a special
380 relationship of reliance between the provider and the recipient.
- 381 (53) "Receipt" means:
- 382 (A) ~~with1.~~ *With* respect to a copy, taking delivery; or
- 383 (B) ~~with2.~~ *With* respect to a notice:
- 384 (i) ~~cominga.~~ *Coming* to a person's attention; or
- 385 (ii) ~~beingb.~~ *Being* delivered to and available at a location or system designated by agreement for that
386 purpose or, in the absence of an agreed location or system: (a*i*) being delivered at the person's residence,
387 or the person's place of business through which the contract was made, or at any other place held out by
388 the person as a place for receipt of communications of the kind; or (b*ii*) in the case of an electronic
389 notice, coming into existence in an information processing system or at an address in that system in a
390 form capable of being processed by or perceived from a system of that type by a recipient, if the
391 recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the
392 kind to be given and the sender does not know that the notice cannot be accessed from that place.
- 393 (54) "Receive" means to take receipt.
- 394 (55) "Record" means information that is inscribed on a tangible medium or that is stored in an
395 electronic or other medium and is retrievable in perceivable form.
- 396 (56) "Release" means an agreement by a party not to object to, or exercise any rights or pursue any
397 remedies to limit, the use of information or informational rights which agreement does not require an
398 affirmative act by the party to enable or support the other party's use of the information or informational
399 rights. The term includes a waiver of informational rights.
- 400 (57) "Return," with respect to a record containing contractual terms that were rejected, refers only to
401 the computer information and means:
- 402 (A) ~~in1.~~ *In* the case of a licensee that rejects a record regarding a single information product
403 transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to
404 which it was paid or from another person that offers to reimburse that fee, on (i) submission of proof of
405 purchase and (ii) proper redelivery of the computer information and all copies within a reasonable time
406 after initial delivery of the information to the licensee;
- 407 (B) ~~in2.~~ *In* the case of a licensee that rejects a record regarding an information product provided as
408 part of multiple information products integrated into and transferred as a bundled whole but retaining
409 their separate identity:
- 410 1. *aa.* A right to reimbursement of any portion of the aggregate contract fee identified by the licensor
411 in the initial transaction as charged to the licensee for all bundled information products which was
412 actually paid, on (i) rejection of the record before or during the initial use of the bundled product; (ii)
413 proper redelivery of all computer information products in the bundled whole and all copies of them
414 within a reasonable time after initial delivery of the information to the licensee; and (iii) submission of
415 proof of purchase; or
- 416 2. *ab.* A right to reimbursement of any separate contract fee identified by the licensor in the initial
417 transaction as charged to the licensee for the separate information product to which the rejected record
418 applies, on (i) submission of proof of purchase and (ii) proper redelivery of that computer information
419 product and all copies within a reasonable time after initial delivery of the information to the licensee;
420 or
- 421 (C) ~~in3.~~ *In* the case of a licensor that rejects a record proposed by the licensee, a right to proper
422 redelivery of the computer information and all copies from the licensee, to stop delivery or access to the
423 information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor
424 with respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with
425 respect to the rejected record, subject to recoupment and setoff.
- 426 (58) "Scope," with respect to terms of a license, means:
- 427 (A) ~~the1.~~ *The* licensed copies, information, or informational rights involved;

- 428 ~~(B) the~~2. The use or access authorized, prohibited, or controlled;
- 429 ~~(C) the~~3. The geographic area, market, or location; or
- 430 ~~(D) the~~4. The duration of the license.
- 431 ~~(59)~~ "Seasonable," with respect to an act, means taken within the time agreed or, if no time is
- 432 agreed, within a reasonable time.
- 433 ~~(60)~~ "Send" means, with any costs provided for and properly addressed or directed as reasonable
- 434 under the circumstances or as otherwise agreed, to deposit a record in the mail or with a commercially
- 435 reasonable carrier, to deliver a record for transmission to or re-creation in another location or
- 436 information processing system, or to take the steps necessary to initiate transmission to or re-creation of
- 437 a record in another location or information processing system. In addition, with respect to an electronic
- 438 message, the message must be in a form capable of being processed by or perceived from a system of
- 439 the type the recipient uses or otherwise has designated or held out as a place for the receipt of
- 440 communications of the kind sent. Receipt within the time in which it would have arrived if properly
- 441 sent, has the effect of a proper sending.
- 442 ~~(61)~~ "Standard form" means a record or a group of related records containing terms prepared for
- 443 repeated use in transactions and so used in a transaction in which there was no negotiated change of
- 444 terms by individuals except to set the price, quantity, method of payment, selection among standard
- 445 options, or time or method of delivery.
- 446 ~~(62)~~ "State" means a State of the United States, the District of Columbia, Puerto Rico, the United
- 447 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United
- 448 States.
- 449 ~~(63)~~ "Term," with respect to an agreement, means that portion of the agreement that relates to a
- 450 particular matter.
- 451 ~~(64)~~ "Termination" means the ending of a contract by a party pursuant to a power created by
- 452 agreement or law otherwise than because of breach of contract.
- 453 ~~(65)~~ "Transfer":
- 454 ~~(A) with~~1. With respect to a contractual interest, includes an assignment of the contract, but does not
- 455 include an agreement merely to perform a contractual obligation or to exercise contractual rights through
- 456 a delegate or sublicensee; and
- 457 ~~(B) with~~2. With respect to computer information, includes a sale, license, or lease of a copy of the
- 458 computer information and a license or assignment of informational rights in computer information.
- 459 "Trustmark" means a tamper resistant official seal, image, or logo that signifies that the licensor and
- 460 licensee have met defined legal and industry data control and rights requirements for (i) informational
- 461 content integrity and assurance, (ii) informational content user assurance, or (iii) informational content
- 462 use assurance.
- 463 ~~(66)~~ "Usage of trade" means any practice or method of dealing that has such regularity of observance
- 464 in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the
- 465 transaction in question.
- 466 ~~(b) B.~~ The following definitions in other titles apply to this chapter:
- 467 ~~(1)~~ "Burden of establishing" § 8.1A-201.
- 468 ~~(2)~~ "Document of title" § 8.1A-201.
- 469 ~~(3)~~ "Financial asset" § 8.8A-102.
- 470 ~~(4)~~ "Funds transfer" § 8.4A-104.
- 471 ~~(5)~~ "Identification" to the contract § 8.2-501.
- 472 ~~(6)~~ "Instrument" § 8.9A-102.
- 473 ~~(7)~~ "Investment property" § 8.9A-102.
- 474 ~~(8)~~ "Item" § 8.4-104.
- 475 ~~(9)~~ "Letter of credit" § 8.5A-102.
- 476 ~~(10)~~ "Payment order" § 8.4A-103.
- 477 ~~(11)~~ "Sale" § 8.2-106.
- 478 § 59.1-504.4. Implied warranty; informational content.
- 479 (a) Unless the warranty is disclaimed or modified, a merchant that, in a special relationship of
- 480 reliance with a licensee, collects, compiles, processes, provides, or transmits informational content
- 481 warrants to that licensee that there is no inaccuracy in the informational content caused by the
- 482 merchant's failure to perform with reasonable care.
- 483 (b) A warranty does not arise under subsection (a) with respect to:
- 484 (1) subjective characteristics of the informational content, such as the aesthetics, appeal, and
- 485 suitability to taste;
- 486 (2) published informational content; ~~or~~
- 487 (3) a trustmark; or
- 488 ~~(3)~~ (4) a person that acts as a conduit or provides no more than editorial services in collecting,
- 489 compiling, distributing, processing, providing, or transmitting informational content that under the

490 circumstances can be identified as that of a third person.

491 (c) The warranty under this section is not subject to the preclusion in § 59.1-501.15 (b) (1) on
492 disclaiming obligations of diligence, reasonableness, or care.

493 § 59.1-508.1. Remedies in general.

494 (a) The remedies provided in this chapter are cumulative, but a party may not recover more than
495 once for the same loss.

496 (b) Except as otherwise provided in §§ 59.1-508.3 and 59.1-508.4, if a party is in breach of contract,
497 whether or not the breach is material, the aggrieved party has the remedies provided in the agreement or
498 this chapter, but the aggrieved party shall continue to comply with any contractual use terms with
499 respect to information or copies received from the other party, but the contractual use terms do not
500 apply to information or copies properly received or obtained from another source.

501 (c) Rescission or a claim for rescission of the contract, or refusal of the information, does not
502 preclude and is not inconsistent with a claim for damages or other remedy.

503 (d) *A federation operator shall be immune from suit arising from any acts or omissions relating to*
504 *provisioning a digital certificate, identity credential, or identity token issued in accordance with the*
505 *specifications of the U.S. Federal Bridge Certification Authority unless the provisioning federation*
506 *operator was grossly negligent or engaged in willful misconduct.*

507 (e) *An identity provider shall be immune from suit arising from any acts or omissions relating to*
508 *providing a digital certificate, identity credential, or identity token issued in accordance with the*
509 *specifications of the U.S. Federal Bridge Certification Authority unless the issuing identity provider was*
510 *grossly negligent or engaged in willful misconduct.*

511 (f) *The identity provider bears liability for all third-party damages arising from a commercially*
512 *reasonable reliance on the licensee's identity credential by a third party if (i) the identity provider has*
513 *failed to revoke the identity credential after notice of loss of control from the licensee and (ii) the*
514 *identity provider has failed to terminate the identity credential after expiration of the license.*

515 (g) *The licensee bears liability for all third-party damages arising from a commercially reasonable*
516 *reliance on the licensee's identity credential by a third party if (i) the licensee has failed to notify the*
517 *identity provider about the loss of control of the identity credential and (ii) the licensee has failed to*
518 *notify the identity provider of any unauthorized access to or use of the identity credential known or*
519 *suspected by the licensee.*