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SENATE BILL NO. 293

Offered January 8, 2020

Prefiled January 3, 2020

A BILL to amend and reenact §§ 6.2-604, 6.2-605, 6.2-612, and 6.2-616 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-615.1, relating to financial institutions; multiple-fiduciary accounts.

Patron—Chafin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-604, 6.2-605, 6.2-612, and 6.2-616 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-615.1 as follows:

§ 6.2-604. Definitions.

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

"Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other similar arrangements.

"Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

"Fiduciary" shall include any one or more of the following: (i) a fiduciary as defined in § 8.01-2, (ii) an agent under a power of attorney, or (iii) an attorney acting under an attorney-client relationship.

"Fiduciary account" means (i) an estate account for a decedent, (ii) an account established by one or more agents under a power of attorney or an existing account of a principal to which one or more agents under a power of attorney are added, (iii) an account established by one or more conservators, (iv) an account established by one or more committees, (v) a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, or (vi) an account arising from a fiduciary relationship such as an attorney-client relationship. "Fiduciary account" does not include a trust account.

"Financial institution" means any entity authorized to do business under state or federal laws relating to financial institutions that is authorized to establish accounts, including, without limitation, banks, trust companies, savings institutions, and credit unions.

"Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

"Multiple-fiduciary account" means a fiduciary account where more than one fiduciary is authorized to act.

"Multiple-party account" means any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. The term does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization; ~~or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.~~

"Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or any dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

"Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account, *including a fiduciary account*. The term includes a P.O.D. payee or beneficiary of a trust account only after the account becomes payable to him by reason of his surviving the original payee or trustee. The term includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal.

"Payment," with respect to sums on deposit, includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff, or reduction or other disposition of all or part of an account pursuant to a pledge.

"P.O.D. account" means an account payable on request to one person during his lifetime and on his

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59 death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death
60 of all of them to one or more P.O.D. payees.

61 "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is
62 payable on request after the death of one or more persons.

63 "Proof of death" includes a death certificate; a certificate of qualification upon a decedent's estate; or
64 an authenticated copy of any record or report of a governmental agency, domestic or foreign, that a
65 person is dead.

66 "Request" means a proper request for withdrawal, or a check or order for payment, that complies
67 with all conditions of the account, including special requirements concerning necessary signatures and
68 regulations of the financial institution. If the financial institution conditions withdrawal or payment on
69 advance notice, for purposes of this article the request for withdrawal or payment is treated as
70 immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

71 "Sums on deposit" means the balance payable on a multiple-party account, *including a fiduciary*
72 *account*, including interest, dividends, and in addition any deposit life insurance proceeds added to the
73 account by reason of the death of a party.

74 "Trust account" means an account in the name of one or more parties as trustee for one or more
75 beneficiaries where the relationship is established by the form of the account and the deposit agreement
76 with the financial institution and there is no subject of the trust other than the sums on deposit in the
77 account, without regard to whether payment to the beneficiary is mentioned in the deposit agreement.
78 The term does not include (i) a ~~regular trust account under a testamentary trust or a trust agreement that~~
79 ~~has significance apart from the account or~~ (ii) a fiduciary account arising from a fiduciary relationship
80 such as an attorney-client relationship *a fiduciary account*.

81 "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

82 **§ 6.2-605. Applicability.**

83 A. The provisions of §§ 6.2-606, 6.2-607, and 6.2-608 concerning beneficial ownership as between
84 parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant
85 only to controversies between these persons and their creditors and other successors, and have no
86 bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

87 B. The provisions of §§ 6.2-612 through 6.2-617 govern the liability of financial institutions that
88 make payments pursuant thereto, and their set-off rights, *but shall have no effect on the beneficial*
89 *ownership of or the power of withdrawal from the accounts between the parties or P.O.D. payees or*
90 *beneficiaries of multiple-party accounts and shall have no effect on the fiduciary duties or obligations of*
91 *fiduciaries under the governing instrument of multiple-fiduciary accounts.*

92 **§ 6.2-612. Financial institution duties; multiple-party accounts; multiple-fiduciary accounts.**

93 A. Financial institutions may enter into multiple-party accounts to the same extent that they may
94 enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or
95 more of the parties. A financial institution shall not be required to inquire as to the source of funds
96 received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum
97 withdrawn from an account, for purposes of establishing net contributions.

98 B. *Financial institutions may enter into multiple-fiduciary accounts with more than one fiduciary to*
99 *the same extent that they may enter into fiduciary accounts with one fiduciary. Any multiple-fiduciary*
100 *account may be paid, on request, to any one or more of the fiduciaries.*

101 **§ 6.2-615.1. Payment of multiple-fiduciary account.**

102 *Any multiple-fiduciary account may be paid, on request, (i) to any one or more fiduciaries, including*
103 *any successor fiduciary upon proof showing that the successor fiduciary is duly authorized to act, or (ii)*
104 *at the direction of any one or more of the fiduciaries. In determining the trustees duly authorized to act,*
105 *the financial institution may rely on a certification of trust provided pursuant to § 64.2-804.*

106 **§ 6.2-616. Discharge of financial institution upon payment.**

107 A. Payment made pursuant to §§ 6.2-612 through 6.2-615 discharges the financial institution from all
108 claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of
109 the account as between parties, P.O.D. payees, ~~or~~ beneficiaries, *or fiduciaries*, or their successors.

110 B. The discharge provided by subsection A does not extend to payments made after a financial
111 institution has received written notice from any party able to request present payment to the effect that
112 withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is
113 withdrawn by the person giving it, or the successor of any deceased party has concurred in any demand
114 for withdrawal, a discharge provided by subsection A shall not apply to withdrawals permitted by the
115 financial institution.

116 C. No other notice or any other information shown to have been available to a financial institution
117 shall affect its right to the discharge provided by subsection A. The discharge provided by subsection A
118 shall have no bearing on the rights of parties in disputes between themselves or their successors
119 concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts *or*
120 *multiple-fiduciary accounts.*

121 D. If any party, or the personal representative of any party, notifies the financial institution in writing
122 not to permit withdrawals by any party, the financial institution may refuse, without liability, to allow
123 any withdrawal pending the determination of the rights of the parties.