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HOUSE BILL NO. 1784

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on January 31, 2023)

(Patron Prior to Substitute—Delegate Kilgore)

A *BILL* to amend the Code of Virginia by adding a section numbered 13.1-514.3 and by adding in Title 13.1 a chapter numbered 15, containing articles numbered 1 through 5, consisting of sections numbered 13.1-1300 through 13.1-1313, relating to securities; digital token exemption; decentralized autonomous organizations.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-514.3 and by adding in Title 13.1 a chapter numbered 15, containing articles numbered 1 through 5, consisting of sections numbered 13.1-1300 through 13.1-1313, as follows:

§ 13.1-514.3. *Digital tokens exemption.*

A. As used in this section:

"Blockchain" means a digital ledger or database that is chronological, consensus based, decentralized, and mathematically verified in nature.

"Consumptive" means the circumstance whereby a token is provided in exchange for the receipt of or access to goods, services, or content.

"Digital token" means a unit that is (i) digitally native; (ii) created (a) in response to the verification or collection of a specified number of transactions related to a digital ledger or database; (b) by deploying computer code to a digital ledger or database, which may include a blockchain, that allows for the creation of digital tokens or other units; or (c) using any combination of the methods described in clauses (a) and (b); (iii) recorded to a digital ledger or database; and (iv) capable of being traded or transferred between persons without an intermediary or custodian of value.

B. An issuer or seller of a digital token shall be exempt from the securities registration requirements of this chapter if:

1. The primary purpose of the digital token is consumptive;
2. The issuer or seller of the digital token did not market the token as a financial investment; and
3. At least one of the following is satisfied: (i) the issuer or seller reasonably believed that the token was sold for a consumptive purpose; (ii) the digital token can be used for a consumptive purpose at or near the time of sale; (iii) the buyer of the digital token is prohibited by the issuer or seller from reselling the digital token until it can be used for a consumptive purpose; or (iv) the issuer or seller takes other reasonable precautions to prevent a buyer from purchasing the digital token as a financial investment.

C. An issuer or seller that is engaged in the business of effecting or attempting to effect the purchase, sale, or transfer of digital tokens shall file a notice of intent with the Commission before the issuer or seller may qualify for an exemption under this section. If the information contained in the notice of intent becomes inaccurate in any material respect at any time, the issuer or seller shall file an amendment to the notice with the Commission within 30 days of the change.

D. Nothing in this section shall be construed to suggest that the use of a digital token for a consumptive purpose requires any form of registration or any other license or certification.

E. No issuer or seller of a transaction involving a digital token that is exempted pursuant to this section shall be presumed to have violated this section solely by reason of the issuer's or seller's participation in the business of effecting or attempting to effect the purchase, sale, or transfer of any transactions involving a digital token that is exempt pursuant to this section or virtual currency, as defined in § 6.2-818.1.

F. The Commission may promulgate rules as necessary to implement the provisions of this section.

CHAPTER 15.**VIRGINIA DECENTRALIZED AUTONOMOUS ORGANIZATION ACT.****Article I.****General Purposes.**

§ 13.1-1300. *Short title.*

This chapter shall be known as the Virginia Decentralized Autonomous Organization Act.

§ 13.1-1301. *Definitions.*

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

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company that is a decentralized autonomous organization. "Articles of organization" includes the original articles of organization, the original certificate of an organization

60 issued by the Commission, and all amendments to the articles of organization. When the articles of
61 organization have been restated pursuant to any articles of restatement, amendment, domestication, or
62 merger, "articles of organization" shall include only the restated articles of organization without the
63 articles of restatement, amendment, domestication, or merger.

64 "Blockchain" has the same meaning as defined in § 13.1-514.3.

65 "Commission" means the State Corporation Commission.

66 "Decentralized autonomous organization" or "DAO" means a limited liability company organized
67 under this chapter. All domestic and foreign decentralized autonomous organizations operating in the
68 Commonwealth shall be subject to the provisions of this chapter.

69 "Digital asset" means an electronic representation of economic, proprietary, or access rights that is
70 stored in a computer readable format and is either a digital consumer asset, digital security, virtual
71 currency, or digital token as described in subsection B of § 13.1-514.3.

72 "Digital consumer asset" means a digital asset that is used or bought primarily for consumptive,
73 personal, or household purposes. "Consumptive" has the same meaning as provided in § 13.1-514.3.

74 "Governance token" means a digital unit, digital asset, or digital security signifying a membership
75 interest in a decentralized autonomous organization. Ownership of a governance token may or may not
76 signify contribution of digital assets or capital to a decentralized autonomous organization.

77 "Membership interest" means a member's ownership share in a member-managed, decentralized
78 autonomous organization, which may be defined in the DAO's articles of organization, smart contract,
79 or operating agreement. A "membership interest" may also be characterized as a digital security or
80 digital consumer asset if designated as such in the DAO's articles of organization, smart contract, or
81 operating agreement.

82 "Operating agreement" means an agreement of the members as to the affairs of a decentralized
83 autonomous organization and the conduct of its business, or a writing or agreement of a decentralized
84 autonomous organization with one member that satisfies the requirements of subdivision A 2 of
85 § 13.1-1023.

86 "Smart contract" means an automated transaction, as defined in § 59.1-501.2, or any substantially
87 similar analogue, that is comprised of code, script, or programming language that executes the terms of
88 an agreement and that may include taking custody of and transferring an asset, administering
89 membership interest votes with respect to a decentralized autonomous organization, or issuing
90 executable instructions for these actions, based on the occurrence or nonoccurrence of specified
91 conditions.

92 **§ 13.1-1302. Application of Virginia Limited Liability Company Act.**

93 A. The Virginia Limited Liability Company Act (§ 13.1-1000 et seq.) shall apply to decentralized
94 autonomous organizations to the extent that such application is not inconsistent with the provisions of
95 this chapter.

96 B. Nothing in this chapter shall be construed as repealing or modifying any statute or rule that
97 applies to a limited liability company that is organized under the Virginia Limited Liability Company
98 Act (§ 13.1-1000 et seq.) that does not elect to become a decentralized autonomous organization.

99 **§ 13.1-1303. Election of status as decentralized autonomous organization.**

100 A. A decentralized autonomous organization is a limited liability company with articles of
101 organization that contain a statement that the company is operating as a decentralized autonomous
102 organization.

103 B. A limited liability company formed under the Virginia Limited Liability Company Act (§ 13.1-1000
104 et seq.) may elect to become a decentralized autonomous organization by amending its articles of
105 organization to include a statement consistent with this section.

106 C. Either within its articles of organization or operating agreement, if applicable, a limited liability
107 company electing to become a decentralized autonomous organization shall include the following notice:

108 THE RIGHTS OF MEMBERS OF A DECENTRALIZED AUTONOMOUS ORGANIZATION MAY
109 DIFFER MATERIALLY FROM THE RIGHTS OF MEMBERS OF OTHER LIMITED LIABILITY
110 COMPANIES. THE VIRGINIA DECENTRALIZED AUTONOMOUS ORGANIZATION ACT, THE
111 ARTICLES OF ORGANIZATION, THE OPERATING AGREEMENT, OR ANY UNDERLYING SMART
112 CONTRACTS OF A DECENTRALIZED AUTONOMOUS ORGANIZATION MAY DEFINE, REDUCE,
113 OR ELIMINATE FIDUCIARY DUTIES AND MAY RESTRICT THE TRANSFER OF OWNERSHIP
114 INTERESTS, WITHDRAWAL OR RESIGNATION FROM THE DECENTRALIZED AUTONOMOUS
115 ORGANIZATION, RETURN OF CAPITAL CONTRIBUTIONS, AND DISSOLUTION OF THE
116 DECENTRALIZED AUTONOMOUS ORGANIZATION.

117 Article 2.

118 Formation.

119 **§ 13.1-1304. Articles of organization.**

120 A. The articles of organization shall set forth:

121 1. A name for the decentralized autonomous organization that satisfies the requirements of

§ 13.1-1305;

2. A statement that the organization is a decentralized autonomous organization pursuant to § 13.1-1303;

3. A statement of the intent to utilize smart contracts or to manage, facilitate, or operate the decentralized autonomous organization, if applicable, and the process by which members select, design, or otherwise decide on the operations or provisions of any smart contract used in the operation of the decentralized autonomous organization; and

4. The post office address, including the street and number, if any, of the decentralized autonomous organization's registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and whether the agent is (i) an individual who is a resident of Virginia and one of the following: a member or manager of the DAO, a member or manager of a limited liability company that is a member or manager of the DAO, an officer or director of a corporation that is a member or manager of the DAO, a general partner of a general or limited partnership that is a member or manager of the DAO, a trustee of a trust that is a member or manager of the DAO, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth.

B. The articles of organization and any smart contracts for a decentralized autonomous organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement of a decentralized autonomous organization, including:

1. Relations among the members of a DAO and relations between members and the DAO;

2. Rights and duties under this chapter of a member of a DAO;

3. Activities of the DAO and the conduct of those activities;

4. The means and conditions for amending an operating agreement;

5. Rights and voting rights of members;

6. Transferability of membership interests;

7. Withdrawal of membership;

8. Distributions to members prior to dissolution;

9. Amendments to the articles of organization; and

10. Procedures for removing or replacing any smart contracts.

C. If the Commission finds that the articles of organization comply with the requirements of this chapter and that all required fees have been paid, it shall issue a certificate of organization to the DAO.

§ 13.1-1305. Name.

A decentralized autonomous organization name shall contain the words "decentralized autonomous organization" or its abbreviation, "DAO" or "DAO LLC," to denote its status as a decentralized autonomous organization.

§ 13.1-1306. Amendment of articles of organization.

A. A decentralized autonomous organization may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles.

B. An amendment to the articles of organization is required when (i) there is a change in the name of the decentralized autonomous organization, (ii) any significant identifying or operating information has changed, or (iii) the decentralized autonomous organization's smart contracts have been removed or replaced.

C. To amend its articles of organization, a decentralized autonomous organization shall file with the Commission articles of amendment setting forth:

1. The name of the decentralized autonomous organization;

2. The text of each amendment adopted;

3. The date of each amendment's adoption; and

4. A statement that the amendment was adopted by a vote of the members or at the behest of the managing algorithm, as the case may be.

If the Commission finds that the articles of amendment comply with the requirements of this chapter and that all required fees have been paid, it shall issue a certificate of amendment.

D. No amendment to the articles of organization shall effect a cause of action existing against or in favor of the decentralized autonomous organization, a proceeding to which the decentralized autonomous organization is a party, or the existing rights of persons other than the members of the decentralized autonomous organization. No amendment changing the name of a decentralized autonomous organization shall abate a proceeding brought by or against the decentralized autonomous organization in its former name.

E. No member of a decentralized autonomous organization shall have a vested property right

resulting from any provision of the articles of organization.

Article 3.

Relationships and Rights of Members.

§ 13.1-1307. Operating agreement.

To the extent that the articles of organization or the smart contract do not otherwise provide for a matter described in § 13.1-1304, the operation of a decentralized autonomous organization may be supplemented by an operating agreement.

§ 13.1-1308. Management of decentralized autonomous organization.

A. Management of a decentralized autonomous organization shall be vested in its members or smart contracts, as provided in the articles of organization or operating agreement.

B. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, the members of a decentralized autonomous organization shall vote in proportion to their contribution of digital assets to the decentralized autonomous organization or ownership of governance tokens offered by the decentralized autonomous organization, as adjusted from time to time, and a majority vote of the members of a decentralized autonomous organization shall consist of the vote or other approval of members having a majority share of the voting power of all members.

C. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, any action required or permitted to be taken by the members of a decentralized autonomous organization may be taken upon a majority vote of the members.

D. Unless otherwise provided in the articles of organization or an operating agreement, the members of a decentralized autonomous organization may take action permitted or required to be taken by the members without a meeting, without prior notice, and without a vote provided that a consent in writing setting forth the action has been signed by members that have at least the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a member by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

E. The articles of organization or an operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide and may make provision for the future creation, in the manner provided in the articles of organization or an operating agreement, of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members.

F. The articles of organization, the operating agreement, the smart contract, or the plan of merger may provide that dissenters' rights with respect to a membership interest shall be available for any class or group of members in connection with any amendment of an operating agreement, any merger in which the decentralized autonomous organization is a party, any conversion of the decentralized autonomous organization to another business form, any transfer to or domestication in any other jurisdiction by the decentralized autonomous organization, or the sale of all or substantially all of the decentralized autonomous organization's assets.

§ 13.1-1309. Standards of conduct for members.

Unless otherwise provided for in the articles of organization or operating agreement, no member of a decentralized autonomous organization shall have a fiduciary duty to the organization or any member except that the members shall be subject to the implied contractual covenant of good faith and fair dealing.

§ 13.1-1310. Information and records.

No member shall have the right to separately inspect or copy records of a decentralized autonomous organization, and no organization shall have an obligation to furnish any information concerning the organization's activities, financial condition, or other circumstances to the extent that the information is available on an open blockchain.

§ 13.1-1311. Withdrawal of members.

A. A member may only withdraw from a decentralized autonomous organization in accordance with the terms set forth in the articles of organization, the smart contract, or, if applicable, the operating agreement.

B. No member of a decentralized autonomous organization may have the organization dissolved for a failure to return the member's contribution to capital.

C. Unless the organization's articles of organization, smart contract, or operating agreement provide otherwise, a withdrawn member forfeits all membership interests in the decentralized autonomous organization, including any governance or economic rights.

Article 4.

Dissolution.

§ 13.1-1312. Dissolution.

A decentralized autonomous organization organized under this chapter shall be dissolved upon the occurrence of any of the following:

1. The expiration of the fixed period for the duration of the organization expires;
2. The vote of the majority of members of a member-managed decentralized autonomous organization; or
3. At the time, or upon the occurrence of events, specified in the underlying smart contract or as specified in the articles of organization or operating agreement.

Article 5.

Miscellaneous.

§ 13.1-1313. Precedence of statements of authority.

The articles of organization and the operating agreement of a decentralized autonomous organization are effective statements of authority. Where the underlying articles of organization and operating agreement are in conflict, the articles of organization shall preempt any conflicting provisions. Where the underlying articles of organization and smart contract are in conflict, the smart contract shall preempt any conflicting provisions, except as relates to § 13.1-1303 and subsection A of § 13.1-1304.

2. That the State Corporation Commission (the Commission) shall develop a form and submission process for an issuer or seller that is engaged in the business of effecting or attempting to effect the purchase, sale, or transfer of digital tokens to file a notice of intent with the Commission pursuant to subsection C of § 13.1-514.3 of the Code of Virginia, as created by this act, and the Commission shall make such form easily available on its website.

3. That the provisions of this act shall become effective on January 1, 2025.

HOUSE SUBSTITUTE

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