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SENATE BILL NO. 153

Offered January 14, 1998

A BILL to amend and reenact §§ 2.1-563.31, 59.1-467, 59.1-468, and 59.1-469 of the Code of Virginia and to repeal the second enactment of Chapter 917 of the 1997 Acts of Assembly, relating to trade and commerce; digital signatures.

Patrons—Ticer, Howell, Newman and Schrock; Delegates: Almand, Bennett, Diamonstein, May, Plum and Scott

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-563.31, 59.1-467, 59.1-468, and 59.1-469 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-563.31. General powers of Council; powers and duties of Council.

A. The Council shall have the following general powers:

1. To make and enter into all contracts and agreements necessary or incidental to the performance of duties and the execution of its powers, including but not limited to contracts with the United States, other state agencies and governmental subdivisions of the Commonwealth.

2. To accept grants from the United States government and agencies and instrumentalities thereof and any source, other than any person, firm, or corporation, or director, officer, or agent thereof which manufactures or sells information technology equipment, goods or services. To these ends, the Council shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

3. To prescribe regulations necessary or incidental to the performance of its duties or execution of its powers; ~~including such regulations as the Council deems appropriate concerning the use of digital signatures as provided in § 59.1-469~~; however, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall not apply to such regulations.

B. The Council shall have the following powers and duties concerning the planning, budgeting, management and use of information technology resources. All agencies and institutions of higher education shall cooperate with the Council in the performance of its powers and duties:

1. To monitor trends and advances in information technology, to develop a comprehensive, statewide, four-year planning process, and plan for the acquisition, management, and use of information technology resources. The statewide plan shall be updated annually and submitted to the Governor. In developing and updating such plans, the Council shall consider the advice of the Department, and of agencies and institutions of higher education through the Advisory Committees to the Council provided for herein.

2. To provide agencies and institutions of higher education with information and guidelines in the development of information management plans and the preparation of budget requests for information technology resources.

3. To require agencies and institutions of higher education to submit information management plans to the Council and a copy to the Department. The Council shall have the authority to approve such plans and amendments thereto, including the Department's. All agencies and institutions of higher education shall maintain current information management plans which have been approved by the Council.

4. To monitor implementation of information management plans.

5. To direct the development and promulgation of policies, standards, and guidelines for managing information technology resources in the Commonwealth.

6. To review agency and institution budget requests for information technology resources and to recommend budget request priorities to the Department of Planning and Budget.

7. To direct the compilation and maintenance of an inventory of all information technology resources, including but not limited to personnel, facilities, equipment, goods and contracts for services.

8. To develop an approval process to ensure that all information technology procurements conform to the statewide information management plan and the information management plans of agencies and institutions of higher education. The Council shall be authorized to disapprove the procurements that do not conform to the statewide information management plan and the agency plans.

9. To establish statewide standards for the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth. In cooperation with the Division of Legislative Automated Systems, the Council shall also establish standards for public access to the Legislative Information System which standards shall include

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SB153

provisions for protecting the security and integrity of the system and the cost of public access.

10. To oversee and administer the Virginia Technology Infrastructure Fund created in Chapter 22.13 (§ 9-145.52 et seq.) of Title 9.

CHAPTER 39.

~~DIGITAL ELECTRONIC SIGNATURES.~~

§ 59.1-467. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

"~~Digital~~ *Electronic signature*" means ~~an~~ any electronic identifier, ~~created by a computer,~~ intended by the party using person making, executing, or adopting it to have the same force and effect as the use of a manual signature authenticate and validate a record.

"*Record*" means information that is (i) inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form.

"~~Signed~~ or "~~signature~~" "*Sign*" or "*signed*" means any symbol or method executed or adopted by a party to affix an electronic signature to a record with the present intention to be bound by or to authenticate a record, including digital methods such signature.

"*Use*" or "*used*" means to send, receive, exchange, or otherwise rely upon an electronic signature.

§ 59.1-468. Authenticity and validity of electronic signatures.

A. Where law requires a signature, or provides for certain consequences in the absence of a signature, that law is satisfied by a ~~digital~~ an electronic signature.

B. In assessing whether a ~~digital signature was executed or adopted with respect to a record by a particular person determining the evidentiary weight to be given a particular electronic signature,~~ the trier of fact may shall consider any relevant information or circumstances, including whether the ~~digital~~ electronic signature is: (i) unique to the signer, is (ii) capable of verification, is (iii) under the signer's sole control, or is (iv) linked to the record in such a manner that it can be determined if the any data contained in the record is was changed subsequent to the electronic signature is invalidated being affixed to the record, and whether the method used to create the signature was and (v) created by a method appropriately reliable for the purpose for which the ~~digital~~ 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.

§ 59.1-469. Commonwealth's use of electronic signatures.

~~Every~~ Consistent with other applicable law, every agency, department, board, commission, authority, political subdivision or other instrumentality of the Commonwealth may ~~receive digital~~ use electronic signatures in lieu of manual signatures, provided such digital signatures meet the standards established by the Council on Information Management shall be: (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. Agencies, departments, boards, commissions, authorities, political subdivisions or other instrumentalities of the Commonwealth may establish other criteria to ensure the authenticity and validity of electronic signatures. The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this chapter shall require a public entity to use or permit the use of a digital signature.

2. That the amendments to subsection B of § 59.1-468 shall only apply to any electronic signature made, executed, or adopted after July 1, 1998.

3. That the second enactment of Chapter 917 of the 1997 Acts of Assembly is repealed.