

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 25,
2 consisting of sections numbered 8.01-227.11 through , relating to identity management liability.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered**
5 **25, consisting of sections numbered 8.01-227.11 through as follows:**

6 **ARTICLE 25.**

7 **IDENTITY MANAGEMENT LIABILITY**

8 **§ 8.01-227.11. Definitions.**

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

10 "Federated identity management" means a digital identity system that allows individuals,
11 previously issued an identity credential, to use the same identity data (which, by way of example and not
12 limitation, may be stored on an Identity Credential or identity token to access resources (e.g., networks,
13 databases, facilities, or other similar assets) of more than one enterprise within a Trust Framework in
14 order to aid access control, conduct transactions, and share information.

15 "Trust Framework" in digital identity systems is a certification program that enables the Relying
16 Party to trust the identity, security, and privacy policies of the party who issues the credentials.

17 "Trust Framework Provider" means the entity that may (a) define policies for its respective Trust
18 Framework, (b) evaluate participation in the Trust Framework to ensure compliance with policy,
19 including the ability to request audits of participants for verification of such compliance, and/or (c)
20 bestow one or more Trustmarks on Identity Providers within the Trust Framework.

21 "Identity attribute" means personal information associated with a licensee.

22 "Identity credential" means the identity data or the container for identity data which forms a
23 verifiable assertion of identity when presented in an authentication transaction. The identity credential

24 can be bound in some way to the licensee to whom or to what it was issued, or it can be unbound, as
25 with a bearer credential.

26 "Identity provider" means a certified entity within a Trust Framework responsible for providing
27 the Identity Credential and/or asserting an identity and/or Identity attribute for that Licensee.

28 "Identity token" means hardware the licensee possesses that contains the identity credential.

29 "Licensee" are bound to or are in possession of an Identity credential and have agreed to be
30 bound by the terms and conditions required by the Identity Provider.

31 "Relying Party" is an individual or entity that relies on the validity of an Identity Credential.

32 "Trustmark" means an official seal, image, or logo that signifies that the Trust Framework
33 Provider is asserting the identity provider is in compliance with the policies of the applicable Trust
34 Framework.

35 **§ 8.01-227.12. Trustmark does not carry implied warranty.**

36 The use of a trustmark in a transaction does not imply a warranty for accuracy of the underlying
37 informational content involved in the transaction. Nothing in this article shall prevent an identity
38 provider from providing a warranty for the assertion of identity contained on the identity credential.

39 **§ 8.01-227.13. Liability and immunity.**

40 A. A Trust Framework Provider shall be immune from suit arising from any acts or omissions
41 relating to provisioning an identity credential, or identity token, issued in accordance with the
42 specifications of Trust Frameworks the Chief Information Officer for the Commonwealth of Virginia
43 has deemed acceptable, unless the Trust Framework Provider was grossly negligent or engaged in
44 willful misconduct.

45 B. An identity provider shall be immune from suit arising from any acts or omissions relating to
46 provisioning an identity credential, or identity token, issued in accordance with the specifications of
47 Trust Frameworks the Chief Information Officer for the Commonwealth of Virginia has deemed
48 acceptable, unless the Trust Framework Provider was grossly negligent or engaged in willful
49 misconduct.

50 C. The identity provider bears liability for all third-party damages arising from a commercially
51 reasonable reliance on the licensee's identity credential by a third party under the standard defined in
52 subsections A and B if (i) the identity provider has failed to revoke the identity credential after notice of
53 loss of control from the licensee and (ii) where the identity credential lacks a means to express its
54 validity period and the identity provider has failed to terminate the identity credential after expiration of
55 the license.

56 D. The licensee bears liability for all third-party damages arising from a commercially
57 reasonable reliance on the licensee's identity credential by a third party if (i) the licensee has failed to
58 notify the identity provider about teh loss of control of the identity credential and (ii) the licensee has
59 failed to notify the identity provider of any unauthorized access to or use of the identity credential by the
60 licensee.

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