

1 HOUSE BILL NO. 1784
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the Senate Committee on Commerce and Labor
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Kilgore)

6 A BILL to amend the Code of Virginia by adding a section numbered 13.1-514.3 and by adding in Title
 7 13.1 a chapter numbered 15, containing articles numbered 1 through 5, consisting of sections
 8 numbered 13.1-1300 through 13.1-1314, relating to securities; digital token exemption;
 9 decentralized autonomous organizations.

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

11 **1. That the Code of Virginia is amended by adding a section numbered 13.1-514.3 and by adding in**
 12 **Title 13.1 a chapter numbered 15, containing articles numbered 1 through 5, consisting of sections**
 13 **numbered 13.1-1300 through 13.1-1314, as follows:**

14 **§ 13.1-514.3. Digital tokens exemption.**

15 A. As used in this section:

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

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

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

26 B. An issuer or seller of a digital token shall be exempt from the securities registration
27 requirements of this chapter if the digital token is a non-fungible token purchased because of its visual
28 artistic characteristics or if the following subdivisions apply:

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

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

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

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

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

49 CHAPTER 15.
50 VIRGINIA DECENTRALIZED AUTONOMOUS ORGANIZATION ACT.
51 Article 1.
52 General Purposes.

53 **§ 13.1-1300. Short title.**

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

55 **§ 13.1-1301. Definitions.**

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

57 "Articles of organization" means all documents constituting, at any particular time, the articles of
58 organization of a limited liability company that is a decentralized autonomous organization. "Articles of
59 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
70 is 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, or
79 operating agreement. A "membership interest" may also be characterized as a digital security or digital

80 consumer asset if designated as such in the DAO's articles of organization, smart contract, or operating
81 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 § 13.1-
85 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 membership
89 interest votes with respect to a decentralized autonomous organization, or issuing executable instructions
90 for these actions, based on the occurrence or nonoccurrence of specified conditions.

91 **§ 13.1-1302. Application of Virginia Limited Liability Company Act.**

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

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

98 **§ 13.1-1303. Election of status as decentralized autonomous organization.**

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

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

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

107 THE RIGHTS OF MEMBERS OF A DECENTRALIZED AUTONOMOUS ORGANIZATION
 108 MAY DIFFER MATERIALLY FROM THE RIGHTS OF MEMBERS OF OTHER LIMITED
 109 LIABILITY COMPANIES. THE VIRGINIA DECENTRALIZED AUTONOMOUS ORGANIZATION
 110 ACT, THE ARTICLES OF ORGANIZATION, THE OPERATING AGREEMENT, OR ANY
 111 UNDERLYING SMART CONTRACTS OF A DECENTRALIZED AUTONOMOUS
 112 ORGANIZATION MAY DEFINE, REDUCE, OR ELIMINATE FIDUCIARY DUTIES AND MAY
 113 RESTRICT THE TRANSFER OF OWNERSHIP INTERESTS, WITHDRAWAL OR RESIGNATION
 114 FROM THE DECENTRALIZED AUTONOMOUS ORGANIZATION, RETURN OF CAPITAL
 115 CONTRIBUTIONS, AND DISSOLUTION OF THE DECENTRALIZED AUTONOMOUS
 116 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-
 122 1305;

123 2. A statement that the organization is a decentralized autonomous organization pursuant to § 13.1-
 124 1303;

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

129 4. The post office address, including the street and number, if any, of the decentralized autonomous
 130 organization's registered office, the name of the city or county in which it is located, the name of its initial
 131 registered agent at that office, and whether the agent is (i) an individual who is a resident of Virginia and
 132 one of the following: a member or manager of the DAO, a member or manager of a limited liability
 133 company that is a member or manager of the DAO, an officer or director of a corporation that is a member

134 or manager of the DAO, a general partner of a general or limited partnership that is a member or manager
135 of the DAO, a trustee of a trust that is a member or manager of the DAO, or a member of the Virginia
136 State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or
137 registered limited liability partnership authorized to transact business in the Commonwealth.

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

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

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

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

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

145 5. Rights and voting rights of members;

146 6. Transferability of membership interests;

147 7. Withdrawal of membership;

148 8. Distributions to members prior to dissolution;

149 9. Amendments to the articles of organization; and

150 10. Procedures for removing or replacing any smart contracts.

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

153 **§ 13.1-1305. Name.**

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

157 **§ 13.1-1306. Amendment of articles of organization.**

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

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

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

- 167 1. The name of the decentralized autonomous organization;
- 168 2. The text of each amendment adopted;
- 169 3. The date of each amendment's adoption; and
- 170 4. A statement that the amendment was adopted by a vote of the members or at the behest of the
171 managing algorithm, as the case may be.

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

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

180 E. No member of a decentralized autonomous organization shall have a vested property right
181 resulting from any provision of the articles of organization.

182 Article 3.

183 Relationships and Rights of Members.

184 **§ 13.1-1307. Operating agreement.**

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

188 **§ 13.1-1308. Management of decentralized autonomous organization.**

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

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

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

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

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

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

221 **§ 13.1-1309. Standards of conduct for members.**

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

225 **§ 13.1-1310. Information and records.**

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

230 **§ 13.1-1311. Withdrawal of members.**

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

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

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

239 Article 4.

240 Dissolution.

241 **§ 13.1-1312. Dissolution.**

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

244 1. The expiration of the fixed period for the duration of the organization;

245 2. The vote of the majority of members of a member-managed decentralized autonomous
246 organization; or

247 3. At the time, or upon the occurrence of events, specified in the underlying smart contract or as
248 specified in the articles of organization or operating agreement.

249 Article 5.

250 Miscellaneous.

251 **§ 13.1-1313. Precedence of statements of authority.**

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

257 **§ 13.1-1314. Internal audit required.**

258 A decentralized autonomous organization shall perform and submit to the Commission an internal
259 audit of its books, records, methods of operations, and transactions (i) every two years if the DAO has a
260 market capitalization value of \$100 million or more or (ii) every three years if the DAO has a market
261 capitalization value under \$100 million.

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

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

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