



Extending Liability Protection under the Electronic Identity Management Act: Staff Analysis and Recommendations

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LIMITATION OF LIABILITY



Provisions of the Act

§ 59.1-550. Definitions

§ 59.1-551. Trustmark; warranty

§ 59.1-552. Establishment of liability;
limitation of liability

§ 59.1-553. Commercially reasonable security
procedures for electronic fund transfers

§ 59.1-554. Applicability of chapter

§ 59.1-555. Sovereign immunity

Source: <http://law.lis.virginia.gov/vacode/title59.1/chapter50/>



Eligible Entities (§ 59.1-550)

- Identity trust framework operator
 - Defines rules and policies for member parties to an identity trust framework
 - Certifies identity providers to be members of and issue identity credentials pursuant to the identity trust framework
 - Evaluates participation in the identity trust framework to ensure compliance by members of the identity trust framework with its rules and policies, including the ability to request audits of participants for verification of compliance



Eligible Entities (§ 59.1-550)

- Identity proofer - A person or entity authorized to act as a representative of an identity provider in the confirmation of a potential identity credential holder's identification and identity attributes prior to issuing an identity credential to a person
- Identity provider – An entity, or a supplier, employee, or agent thereof, certified by an identity trust framework operator to provide identity credentials that may be used by an identity credential holder to assert his identity, or any related attributes, in a digital or online transaction.

For purposes of this chapter, identity provider includes an attribute provider, an identity proofer, and any suppliers, employees, or agents thereof



Limitation of Liability (§ 59.1-552)

- Designates covered entities eligible to seek liability protection
 - Trust framework operators (TFOs)
 - Identity providers (IdPs)
- Sets parameters on liability protection to the issuance of specific instruments by TFO or IdP
 - Identity credentials
 - Identity attributes
 - Trustmarks



Limitation of Liability (§ 59.1-552)

- Sets conditions on liability protection for instruments issued by TFOs and IdPs
 - Commonwealth minimum specifications and standards
 - Terms of contractual agreements
 - Rules and policies of governing trust framework
- Defines constraints under which liability protection will and will not attach
 - *Liability protection will attach:* Misuse of identity credential by credential holder or other parties
 - *Liability protection will not attach:* Gross negligence or willful misconduct by TFO or IdP (act or commission)



CERTIFICATION



Certification – Business Need

- Qualification for liability protection under the Act requires TFOs and IdPs to demonstrate compliance with the Commonwealth's minimum specifications and standards
- Determination of compliance will remain subjective and open to dispute without an authorized certification and maintenance process
- Absence of an authorized certification and maintenance process will burden the court to make determinations on TFO/IdP compliance at the time of each petition for liability claim



Certification – Value Proposition

- Establishes objective, consistent criteria for evaluating TFO and IdP compliance with adopted Commonwealth minimum specifications and standards
- Enables setting of requirements for TFOs/IdPs to maintain an audit of compliance as part of the certification and maintenance process
- Provides the courts with objective data to evaluate liability claims and to determine whether liability should attach based on TFO and IdP evidence of compliance



Certification Authority – Options

- Option 1: Central certification authority established and operated by the Commonwealth
- Option 2: Independent, third-party certification authority acting on behalf of the Commonwealth (private, nongovernmental or governmental options)
- Option 3: Self-certification executed independently by TFOs and IdPs



RECOMMENDATIONS



Staff Recommendations

- IMSAC Guidance Document clarifying eligibility criteria for entities seeking liability protection:
 - Designation of eligible entities
 - Conditions for compliance
 - Constraints on liability protection
- IMSAC Guidance Document addressing certification and a certification methodology for the Commonwealth
- IMSAC Guidance Document(s) providing guidelines for other provisions of the Act
 - Trustmarks (§ 59.1-551)
 - Security procedures for electronic fund transfers (§ 59.1-553)
 - Legal standing of relying parties (§ 59.1-553)



For More Information

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