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HOUSE BILL NO. 2058

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 12, 2007)

(Patron Prior to Substitute—Delegate McQuigg)

A BILL to amend and reenact §§ 2.2-409, 47.1-2, 47.1-3, 47.1-4, 47.1-5, 47.1-8, 47.1-9, 47.1-10, 47.1-11, 47.1-12, 47.1-13, 47.1-14, 47.1-16, 47.1-17, 47.1-18, 47.1-19, 47.1-20, 47.1-21, 47.1-22, 47.1-23, 47.1-25, and 47.1-30 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 47.1-7, by adding in Chapter 2 of Title 47.1 a section numbered 47.1-11.1, and by adding sections numbered 47.1-15 and 47.1-29.1; and to repeal §§ 47.1-31, 47.1-32, and 47.1-33 of the Code of Virginia, relating to public notaries; electronic public notaries; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-409, 47.1-2, 47.1-3, 47.1-4, 47.1-5, 47.1-8, 47.1-9, 47.1-10, 47.1-11, 47.1-12, 47.1-13, 47.1-14, 47.1-16, 47.1-17, 47.1-18, 47.1-19, 47.1-20, 47.1-21, 47.1-22, 47.1-23, 47.1-25, and 47.1-30 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 47.1-7, by adding in Chapter 2 of Title 47.1 a section numbered 47.1-11.1, and by adding sections numbered 47.1-15 and 47.1-29.1 as follows:

§ 2.2-409. Secretary of the Commonwealth.

A. The Secretary of the Commonwealth shall charge the following fees for services rendered in his office to be paid by the person for whom the service is rendered at the time it is done:

For a testimonial, including seal tax	\$10.00
For a copy of any paper, if on one sheet	1.00
And for each sheet after the first75
For issuing a commission to a commissioner in another state ..	7.00
For power of attorney for nonresident insurers, contractors ..	3.00
For service of process on parties, each defendant	19.00
For service of process on reciprocal insurers	7.00
For registration of name, badge and insignia	7.50
For affixing the Seal of the Commonwealth	2.00
For issuing a commission to a notary for the Commonwealth at large, including seal tax	25.00 35.00
For issuing a commission to an electronic notary public.....	35.00

And for filing in his office any paper required by law to be filed, the same fee as is allowed by law for recording similar papers.

B. Notwithstanding any other provision of law, the Secretary shall charge a technology fee of \$10 in addition to the fees set out in subsection A for commissioning of a notary public or electronic notary public, which funds shall be deposited into the Secretary of the Commonwealth's Technology Trust Fund established by the comptroller and used only to obtain and update office automation and information technology equipment including software and conversion services; to preserve, maintain, and enhance records, including but not limited to the costs of repairs, maintenance, service contracts, and system upgrades; and to improve public access to records. There shall be no transfers out of the fund, including transfers to the general fund.

§ 47.1-2. Definitions.

As used in this title, unless the context demands a different meaning:

"Acknowledgement" means a notarial act in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) indicates to the notary that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

"Affirmation" means a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) makes a vow of truthfulness or fidelity on penalty of perjury.

"Commissioned notary public" means that the applicant has completed and submitted the registration forms along with the appropriate fee to the Secretary of the Commonwealth and the Secretary of the Commonwealth has determined that the applicant meets the qualifications to be a notary public and issues a notary commission and forwards same to the clerk of the circuit court, pursuant to this chapter.

SENATE SUBSTITUTE

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59 *"Copy certification" means a notarial act in which a notary (i) is presented with a document that is*
60 *not a public record; (ii) copies or supervises the copying of the document using a photographic or*
61 *electronic copying process; (iii) compares the document to the copy; and (iv) determines that the copy is*
62 *accurate and complete.*

63 *"Credible witness" means an honest, reliable, and impartial person who personally knows an*
64 *individual appearing before a notary and takes an oath or affirmation from the notary to confirm that*
65 *individual's identity.*

66 *"Document" means information that is inscribed on a tangible medium or that is stored in an*
67 *electronic or other medium and is retrievable in perceivable form, including a record as defined in the*
68 *Uniform Electronic Transactions Act (§ 59.1-479, et seq).*

69 *"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,*
70 *electromagnetic, or similar capabilities.*

71 *"Electronic document" means information that is created, generated, sent, communicated, received,*
72 *or stored by electronic means.*

73 *"Electronic notarial act" and "electronic notarization" mean an official act by a notary under*
74 *§ 47.1-12 of this title or as otherwise authorized by law that involves electronic documents.*

75 *"Electronic notarial certificate" means the portion of a notarized electronic document that is*
76 *completed by the notary public, bears the notary public's signature, title, commission expiration date,*
77 *and other required information concerning the date and place of the electronic notarization, and states*
78 *the facts attested to or certified by the notary public in a particular notarization.*

79 *"Electronic notary public" or "electronic notary" means a notary public who has been commissioned*
80 *by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under*
81 *§ 47.1-7 and has been sworn in by the clerk of the circuit court under § 47.1-9.*

82 *"Electronic notary seal" or "electronic seal" means information within a notarized electronic*
83 *document that confirms the notary's name, jurisdiction, and commission expiration date and generally*
84 *corresponds to data in notary seals used on paper documents.*

85 *"Electronic signature" means an electronic sound, symbol, or process attached to or logically*
86 *associated with an electronic document and executed or adopted by a person with the intent to sign the*
87 *document.*

88 *"Notarial act" shall or "notarization" means any official act performed by a notary under § 47.1-12*
89 *or § 47.1-13 or as otherwise authorized by law.*

90 *"Notarial certificate" or "certificate" means the part of, or attachment to, a notarized document that*
91 *is completed by the notary public, bears the notary public's signature, title, commission expiration date,*
92 *notary registration number, and other required information concerning the date and place of the*
93 *notarization and states the facts attested to or certified by the notary public in a particular notarization.*

94 *"Notary public" or "notary" means any person commissioned to perform official acts under the title,*
95 *and includes an electronic notary except where expressly provided otherwise.*

96 *"Oath" shall include "affirmation."*

97 *"Official misconduct" means any violation of this title by a notary, whether committed knowingly,*
98 *willfully, recklessly or negligently.*

99 *"Personal knowledge of identity" or "personally knows" means familiarity with an individual*
100 *resulting from interactions with that individual over a period of time sufficient to dispel any reasonable*
101 *uncertainty that the individual has the identity claimed.*

102 *"Principal" means (i) a person whose signature is notarized or (ii) a person, other than a credible*
103 *witness, taking an oath or affirmation from the notary.*

104 *"Record of notarial acts" means a device for creating and preserving a chronological record of*
105 *notarizations performed by a notary.*

106 *"Satisfactory evidence of identity" means identification of an individual based on (i) examination of*
107 *one or more of the following documents bearing a photographic image of the individual's face and*
108 *signature: a United States Passport, a certificate of United States citizenship, a certificate of*
109 *naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued*
110 *driver's license or a state issued identification card or a United States military card or (ii) the oath or*
111 *affirmation of one credible witness unaffected by the document or transaction who is personally known*
112 *to the notary and who personally knows the individual or of two credible witnesses unaffected by the*
113 *document or transaction who each personally knows the individual and shows to the notary*
114 *documentary identification as described in subdivision (i).*

115 *"Secretary" means the Secretary of the Commonwealth.*

116 *"Seal" means a device for affixing on a paper document an image containing the notary's name and*
117 *other information related to the notary's commission.*

118 *"State" includes any state, territory, or possession of the United States.*

119 *§ 47.1-3. Power of appointment.*

120 *The Governor may appoint in and for the Commonwealth as many notaries as to him shall seem*

proper. Any person who acts as a notary in the Commonwealth shall register with and be commissioned by the Secretary of the Commonwealth and otherwise be in compliance with the provisions of this title.

§ 47.1-4. Qualification for appointment.

Each person appointed and A. To be qualified to be commissioned as a notary in the Commonwealth, each such person shall be (i) at least eighteen years of age, (ii) a citizen of the United States, and (iii) able to read and write the English language. No person who has ever; (iv) shall never have been convicted of a felony under the laws of the United States or, this Commonwealth, or the laws of any other state, shall qualify to be appointed and commissioned as a notary public unless such person has been pardoned for such felony, has had his conviction vacated by the granting of a writ of actual innocence, or has had his rights restored; and (v) shall otherwise be in compliance with the provisions of this title. A nonresident of Virginia may be appointed register and be commissioned as a notary only if he is regularly employed in this Commonwealth and if such appointment will be necessary or useful to him in such employment meets all of the requirements of this section. A member of the armed services of the United States shall be eligible for appointment and commission to register and be commissioned as a notary notwithstanding the provisions of § 2.2-2800.

§ 47.1-5. Application; references.

No person shall be appointed commissioned as a notary public pursuant to this chapter title until he submits an application fee as set forth in § 2.2-409 and a complete and correct application to the Secretary of the Commonwealth, in a form prescribed by the appointing authority Secretary, which shall include the following:

1. The oath of the applicant, signed and sworn before some officer authorized by law to administer oaths, that the answers to all questions on the application are true and complete to the best of his knowledge and that he is qualified to be appointed and commissioned as a notary public.

2. Endorsements from two registered voters of this Commonwealth, stating that, to the best of the endorser's knowledge, the applicant is a person of sound moral character and is possessed of all the qualifications for appointment set forth in this chapter.

3. A statement signed by any judge, clerk or deputy clerk of any court of this Commonwealth, or by any attorney for the Commonwealth or assistant attorney for the Commonwealth, or by the Attorney General or any of his assistants, or by any member of the General Assembly, that such official has examined the application and recommends the applicant for appointment.

4. An application fee as set forth in § 2.2-409; however, such Any application fee shall be waived for an application filed by a clerk or deputy clerk of a circuit or general district court.

§ 47.1-7. Additional requirements for performing electronic notarial acts.

A. An applicant shall submit a registration form established by the Secretary for registering and being commissioned as an electronic notary public, which shall include:

1. The applicant's full legal and official notary names;

2. A description of the technology or technologies the registrant will use to create an electronic signature in performing official acts;

3. If the device used to create the registrant's electronic signature is issued or registered through a licensed authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that were due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail; and

4. The electronic mail address of the registrant.

B. The registration form shall (i) be signed by the applicant using the electronic signature described in the form; (ii) include any decrypting instructions, codes, keys, or software that allow the registration to be read; and (iii) be transmitted electronically to the Secretary.

C. Nothing herein shall be construed to prevent an electronic notary from using updated technology or technologies during the term of the commission; however, the electronic notary shall notify the Secretary electronically within 90 days of installation or use of such updated technology or technologies and provide a brief description thereof.

§ 47.1-8. Commission to be issued, etc.

Upon receipt of a completed application, proper endorsements and the correct fee, the Secretary, if satisfied the applicant is qualified to be appointed registered and commissioned as a notary public or electronic notary public, shall prepare a notary commission for the applicant which shall include a registration number and forward the commission to the clerk of the circuit court in which the applicant shall elect to qualify. The Secretary shall thereupon notify the applicant that the commission has been granted and where and how it may be secured. An electronic notary public may act as a notary public in all respects upon being commissioned as an electronic notary public.

§ 47.1-9. Oath of notary; duties of clerks.

Before receiving his commission, each person appointed a notary or electronic notary shall appear

182 before the clerk of the circuit court to which his commission has been sent, *present sufficient*
183 *satisfaction of evidence of identity as defined in § 47.1-2*, and make oath as follows:

184 "I,, solemnly swear (or affirm) under penalty of perjury, that I have carefully
185 read the notary laws of this Commonwealth, and am familiar with their provisions; that I will uphold the
186 Constitution of the United States and the Constitution and laws of the Commonwealth of Virginia; and
187 that I will faithfully perform, to the best of my ability, the duties of the office of notary public."

188 Such oath shall be signed by the applicant and attested by the clerk. *The clerk shall review and*
189 *confirm that the notary has presented a statement signed by any clerk or deputy clerk of any general*
190 *district court of this Commonwealth, or by any attorney for the Commonwealth or assistant attorney for*
191 *the Commonwealth, or by the Attorney General or any of his assistants, or by any member of the*
192 *General Assembly, that such official has examined the application and recommends the applicant for*
193 *appointment.* The clerk shall thereupon issue to the applicant his commission as notary public or
194 *electronic notary public.* Within fourteen days of such qualification, the clerk shall certify the fact of
195 such qualification to the Secretary of the Commonwealth.

196 No person shall be permitted to qualify who does not appear before the clerk within ~~sixty~~ 60 days of
197 his appointment. The clerk of each circuit court shall, at least once each month, return to the Secretary
198 all commissions which have not been claimed within such ~~sixty~~60-day period, and the Secretary shall
199 forthwith cancel the same.

200 § 47.1-10. Records of the Secretary.

201 The Secretary of the Commonwealth shall keep a ~~book stating~~*record* of the names of all notaries
202 public *and electronic notaries public*, and the dates of their ~~appointment~~ *registration* and qualification.
203 The Secretary shall also retain a specimen of the signature of each notary commissioned pursuant to this
204 chapter. The specimen may be retained in photographic form.

205 The Secretary shall also be required to retain the completed applications of persons seeking
206 appointment as notary public for a period of three months after their receipt; provided, however, that he
207 shall retain the applications of persons refused appointment for not less than four years.

208 *The Secretary may maintain these records in digital format.*

209 § 47.1-11. Reference materials.

210 The Secretary shall prepare, from time to time, a ~~handbook~~*reference materials* for notaries public *and*
211 *electronic notaries public* which shall contain the provisions of this title and such other information as
212 the Secretary shall deem useful. Copies of the ~~handbook~~ *reference materials* shall be made available to
213 persons seeking appointment as notaries public ~~and~~ *and electronic notaries public as well as to other*
214 interested persons. *The Secretary may make the materials available in digital format but shall provide*
215 *written copies of the materials upon request.*

216 § 47.1-11.1. Evidence of authenticity of electronic notarial act.

217 A. *Form of evidence of authority of electronic notarial act. On a notarized electronic document*
218 *transmitted to another state or country outside of the United States, electronic evidence of the*
219 *authenticity of the official signature and seal of an electronic notary of the Commonwealth of Virginia,*
220 *if required, shall be attached to or logically associated with the document and shall be in the form of*
221 *an electronic certificate of authority signed by the Secretary that is independently verifiable, will be*
222 *invalidated if the underlying document is improperly modified, and is in conformance with any current*
223 *and pertinent international treaties, agreements, and conventions subscribed to by the government of the*
224 *United States.*

225 B. *Certificate of authority for electronic notarial act. An electronic certificate of authority evidencing*
226 *the authenticity of the official signature and seal of an electronic notary of the Commonwealth of*
227 *Virginia shall contain substantially the following words:*

228 *Certificate of Authority for an Electronic Notarial Act*

229 I, _____(name and title), certify that _____(name of electronic notary), the person
230 named as Electronic Notary Public in the attached or associated electronic document, was
231 commissioned as an Electronic Notary Public for the Commonwealth of Virginia and authorized to act
232 as such at the time of the document's electronic notarization.

233 *To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my*
234 *electronic signature this*____*day of* _____, 20__.

235 *(Electronic signature and seal of commissioning official)*

236 C. *For issuing an electronic certificate of authority, the Secretary may charge a fee in an amount set*
237 *by the Secretary.*

238 § 47.1-12. Powers.

239 Each notary shall be empowered to *perform the following notarial acts:* (i) take acknowledgments,
240 (ii) administer oaths *and affirmations*, (iii) certify that a copy of any document, other than a document
241 in the custody of a court, is a true copy thereof, (iv) certify affidavits or depositions of witnesses, and
242 (v) perform such other acts as may be specifically permitted by law.

243 § 47.1-13. Jurisdiction; powers outside the Commonwealth.

The powers of any notary commissioned pursuant to this chapter of this title may be exercised anywhere within the Commonwealth of Virginia.

Any notary commissioned pursuant to Chapter 2 (§ 47.1-3 et seq.) of this title may likewise perform notarial acts outside the Commonwealth, where such notarial acts are performed in connection with a deed or other any writing to be admitted to record in the Commonwealth of Virginia. *An employee of the federal government authorized to perform notarial acts may perform notarial acts in the Commonwealth of Virginia in accordance with this chapter.*

§ 47.1-14. Duty of care.

A. A notary shall exercise reasonable care in the performance of his duties generally. He shall exercise a high degree of care in ascertaining the identity of any person whose identity is the subject of a notarial act.

B. Unless such person is personally known by the notary, identity shall be ascertained by examination of one or more of the following documents: a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license or state-issued identification card or a United States military card, upon presentation of satisfactory evidence of identity as defined in this title.

C. A notary performing electronic notarial acts shall keep, maintain, protect, and provide for lawful inspection an electronic record of notarial acts that contains at least the following for each notarial act performed: (i) the date and time of day of the notarial act; (ii) the type of notarial act; (iii) the type, title, or a description of the document or proceeding; (iv) the printed name and address of each principal; (v) the evidence of identity of each principal in the form of either a statement that the person is personally known to the notary, a notation of the type of identification document, which may be a copy of the driver's license or other photographic image of the individual's face, or the printed name and address of each credible witness swearing or affirming to the person's identity, and, for credible witnesses who are not personally known to the notary or electronic notary, a description of the type of identification documents relied on by the notary; and (vi) the fee, if any, charged for the notarial act. The electronic notary shall take reasonable steps to (i) ensure the integrity, security, and authenticity of electronic notarizations, (ii) maintain a backup for his electronic record of notarial acts, and (iii) ensure protection of such backup records from unauthorized use.

D. A notary performing electronic notarial acts shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

E. A notary performing electronic notarial acts shall keep his record, electronic signature, and physical and electronic seals secure under his exclusive control and shall not allow them to be used by any other notary or any other person.

F. A notary performing electronic notarial acts shall use the notary's electronic signature only for the purpose of performing electronic notarial acts.

G. A notary performing electronic notarial acts, immediately upon discovering that the notary's record, electronic signature, or physical or electronic seal has been lost, stolen, or may be otherwise used by a person other than the notary, shall (i) inform the appropriate law-enforcement agency in the case of theft or vandalism and (ii) notify the Secretary in writing and signed in the official name in which he was commissioned.

§47.1-15. Prohibitions.

A notary shall not:

1. Notarize a document if the signer is not in the presence of the notary at the time of notarization, unless otherwise authorized by law to do so.

2. Use the official notary title or seal to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering.

3. Notarize a signature on a document without notarial certificate wording on the same page as the signature.

4. Affix an official signature or seal on a notarial certificate that is incomplete.

A notary shall not perform any official act with the intent to deceive or defraud.

A nonattorney notary shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act. This section does not preclude a notary who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field or prevent a notary from adding a notarial certificate or electronic notarial certificate to a paper or electronic document at the direction of a principal or lawful authority.

A notary may decline to notarize a document.

§ 47.1-16. Notarizations to show date of act, official signature and seal, etc.

A. Every notarization shall include the date upon which the notarial act was performed, and the

305 county or city and state in which it was performed.

306 B. *A notarial act shall be evidenced by a notarial certificate or electronic notarial certificate signed*
307 *by a notary in a manner that attributes such signature to the notary public identified on the commission.*

308 C. Upon every writing which is the subject of a notarial act, the notary shall, after his certificate,
309 state the date of the expiration of his commission in substantially the following form:

310 "My commission expires the day of ,"

311 *Near the notary's official signature on the notarial certificate of a paper document, the notary shall*
312 *affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an*
313 *electronic document, the notary shall attach an official electronic seal. However, in the case of a*
314 *nonelectronic seal, failure to affix an official seal shall not in any way impact the legality or efficacy of*
315 *the paper document.*

316 D. *The notary shall attach the official electronic signature and seal to the electronic notarial*
317 *certificate of an electronic document in a manner that is capable of independent verification and*
318 *renders any subsequent changes or modifications to the electronic document evident.*

319 E. *A notary's electronic signature and seal shall conform to generally accepted standards for secure*
320 *electronic notarization.*

321 § 47.1-17. Change of name.

322 Any notary duly ~~appointed~~ *registered and commissioned* in this Commonwealth, who shall legally
323 change his name during his term of office as a notary shall, after such change of name, when
324 performing any notarial act, have written or printed in or annexed to ~~his~~ *each* certificate the words: "I
325 was commissioned notary as," or the equivalent. *However, any electronic notary public who*
326 *shall legally change his name shall make application with the Secretary for a new electronic notary*
327 *commission within 90 days of such legal name change.*

328 § 47.1-18. Notice of change of address; etc.

329 A. Any notary public who changes the address of his residence shall forthwith notify the Secretary of
330 ~~the Commonwealth~~ of the fact by mailing or delivering a written notice which shall contain ~~his~~ *the* new
331 address, *or in electronic format as the Secretary may prescribe.*

332 B. Any notary who is commissioned as a nonresident shall notify the Secretary of the
333 Commonwealth of any change in his place of employment.

334 § 47.1-19. Fees.

335 A. A notary may, for taking and certifying the acknowledgment of any writing, or administering and
336 certifying an oath, or certifying affidavits and depositions of witnesses, or certifying that a copy of a
337 document is a true copy thereof, charge a fee of \$5.

338 B. ~~For other services a notary shall have the same fees as the clerk of a circuit court for like~~
339 ~~services. A notary may, for taking and certifying the acknowledgement of any electronic document, or~~
340 ~~administering and certifying an oath or affirmation, or certifying electronic affidavits and depositions of~~
341 ~~witnesses, or certifying that a copy of an electronic document is a true copy thereof, charge a fee not to~~
342 ~~exceed \$25.~~

343 C. Any person appointed as a member of an electoral board or a general registrar shall be prohibited
344 from collecting any fee as a notary during the time of such appointment. Any person appointed as an
345 assistant registrar or officer of election shall be prohibited from collecting any fee as a notary for
346 services relating to the administration of elections or the election laws.

347 D. It shall be unlawful for any notary to charge more than the fee established herein for any notarial
348 act; however, a notary may recover, with the agreement of the person to be charged, any actual and
349 reasonable expense of traveling to a place where a notarial act is to be performed if it is not the usual
350 place in which the notary performs his office.

351 § 47.1-20. Fee agreements with employer.

352 A. ~~It shall be lawful for any~~ *Any employer to require, as a condition of employment of a person who*
353 *is a notary in his employment, may require the employee to perform notarial acts in the course of or in*
354 *connection with such employment without charging the fee allowed by law for the performance of such*
355 *acts.*

356 B. It shall not be lawful for any employer to require a notary in his employment to surrender to such
357 employer a fee, if charged, or any part thereof.

358 § 47.1-21. Commission as notary.

359 The ~~term of office~~ *commission* of a notary public shall be four years, except as shall be otherwise
360 provided in this ~~chapter~~ *title*. The ~~term~~ *commission* of a notary public shall expire in the fourth calendar
361 year after issuance of his commission on the last day of the month in which the notary was born.

362 § 47.1-22. Resignation; removal from Commonwealth; etc.

363 A. A notary may resign his ~~office~~ *commission* by mailing or delivering to the Secretary a letter of
364 resignation.

365 B. Any notary who ceases to be a resident of the Commonwealth of Virginia shall, from that time,
366 cease to be a notary; provided, however, that such notary may ~~retain~~ *maintain* his commission with the

written consent of the Secretary if he meets the qualifications for nonresident appointment under § 47.1-4.

C. Any nonresident notary who ceases to be employed in this Commonwealth shall forthwith cease to be a notary.

D. Every notary who wishes to resign from office, or who ceases to be a notary pursuant to subsections B or C of this section, shall forthwith mail or deliver his commission to the Secretary, who shall cancel the same. *The notary shall be responsible for the destruction of the official physical seal.*

E. Every electronic notary who wishes to resign his commission or who ceases to be a notary pursuant to this section shall forthwith erase, delete, or destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the notary's official electronic signature or seal and so certify to the Secretary.

F. A former electronic notary, whose previous commission or application was not revoked or denied, need not erase, delete, or destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the notary's official electronic signature or seal if he is recommissioned and reregistered as an electronic notary using the same electronic signature and seal within three months after commission expiration.

§ 47.1-23. Grounds for removal from office.

The Secretary of the Commonwealth may ~~remove from office~~ *revoke the commission of* any notary who:

1. Submits or has submitted an application for commission and appointment as a notary public which contains a substantial and material misstatement of fact;

2. Is convicted or has been convicted of any felony under the laws of the United States or this Commonwealth, or the laws of any other state, unless the notary has been pardoned for such offense, *has had his conviction vacated by a granting of a writ of actual innocence*, or has had his rights restored;

3. Is found to have committed official misconduct by a proceeding as provided in Chapter 5 (§ 47.1-24 et seq.) of this title;

4. Fails to exercise the powers or perform the duties of a notary public in accordance with this title; provided that if a notary is adjudged liable in any court of this Commonwealth in any action grounded in fraud, misrepresentation, impersonation, or violation of the notary laws of the Commonwealth, such notary shall be presumed removable under this section;

5. ~~Uses false or misleading advertising wherein he represents or implies by virtue of his title to notary public, that he has qualifications, powers, duties, rights, or privileges that he does not possess by law~~ *Performs a prohibited act pursuant to § 47.1-15 of this title;*

6. Is convicted of the unauthorized practice of law pursuant to § 54.1-3904, *or is a licensed attorney at law whose license is suspended or revoked;*

7. Ceases to be a citizen of the United States; ~~or~~

8. Becomes incapable of reading or writing the English language;

9. *Is adjudicated mentally incompetent; or*

10. *Fails to keep the official physical seal, journal, or device, coding, disk, certificate, card, software, or passwords used to affix the notary's official electronic signature or seal under the exclusive control of the notary when not in use.*

§ 47.1-25. Disqualification from office.

Any notary removed from office under the provisions of § 47.1-24 shall be disqualified from ~~holding the office~~ *maintaining the commission* of notary public in this Commonwealth for a period of twenty years, unless such disqualification is sooner removed by the Governor.

§ 47.1-29.1. *Wrongful possession of software or hardware.*

Any person who knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an electronic notary to affix an official electronic signature or seal, without authority, shall be guilty of a Class 1 misdemeanor.

§ 47.1-30. Conflict of interests.

No notary shall perform any notarial act with respect to any document~~or~~, writing, or electronic document to which the notary or his spouse ~~shall be~~ *is* a party, or in which either of them ~~shall have~~ *has* a direct beneficial interest. A notary nominated as a fiduciary in a will shall not, for that reason alone, be deemed a party to the will or to have a direct beneficial interest therein.

Any notary who violates the provisions of this section shall be guilty of official misconduct.

A notarial act performed in violation of this section shall not automatically be void for such reason, but shall be voidable in the discretion of any court of competent jurisdiction upon the motion of any person injured thereby.

2. That §§ 47.1-31, 47.1-32, and 47.1-33 of the Code of Virginia are repealed.

3. That the provisions of this Act relating to electronic notaries public and electronic notarization

428 shall become effective July 1, 2008.