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SENATE BILL NO. 833

Offered January 14, 2009

Prefiled December 17, 2008

A BILL to amend and reenact §§ 47.1-7 and 47.1-16 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 47.1-6.1, relating to notaries public.

Patron—Locke

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 47.1-7 and 47.1-16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 47.1-6.1 as follows:

§ 47.1-6.1. Standards for electronic notarization.

Equipment, security, and technological standards for electronic notarization shall be developed by the Virginia Information Technologies Agency in consultation with the Secretary of the Commonwealth. The process for developing and maintaining such standards shall be exempt from the Administrative Process Act (§§ 2.2-4000 et seq.).

§ 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. Certification of compliance to the Secretary of the Commonwealth with electronic notary standards developed in accordance with § 47.1-6.1; and

45. 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.

§ 47.1-16. 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 county or city and state in which it was performed.

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

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

"My commission expires the . . . day of . . . , . . ."

Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an electronic document, the notary shall attach an official electronic seal.

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

E. A notary's electronic signature and seal shall conform to ~~generally accepted~~ the standards for ~~secure~~ electronic notarization developed in accordance with § 47.1-6.1.

2. That any document notarized electronically pursuant to the provisions of § 59.1-489 of the Code of Virginia that otherwise appears on its face to be properly notarized shall be presumed to have been notarized properly in accordance with the laws and regulations of the Commonwealth.

3. That an emergency exists and this act is in force from its passage.

INTRODUCED

SB833

59 4. That the electronic notary standards developed in accordance with § 47.1-6.1 shall be effective
60 on July 1, 2009.