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SENATE BILL NO. 1093

Offered January 11, 2023

Prefiled January 9, 2023

A BILL to amend and reenact § 47.1-2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 47.1-5.2, 47.1-14.1, and 47.1-14.2, relating to notaries; course and examination; journal and electronic record of notarial acts.

 Patron—Ebbin

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 47.1-2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 47.1-5.2, 47.1-14.1, and 47.1-14.2 as follows:

§ 47.1-2. Definitions.

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

"Acknowledgment" 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.

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

"Credential analysis" means a process or service that independently affirms the veracity of a government-issued identity credential by reviewing public or proprietary data sources and meets the standards of the Secretary of the Commonwealth.

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

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

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

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

"Electronic notarial act" or "electronic notarization" means an official act by a notary under § 47.1-12 or as otherwise authorized by law that involves electronic documents.

"Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, and other required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular notarization. The "electronic notarial certificate" shall indicate whether the notarization was done in person or by remote online notarization.

"Electronic notary public" or "electronic notary" means a notary public who has been commissioned by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under § 47.1-7.

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

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59 "Electronic signature" means an electronic sound, symbol, or process attached to or logically
60 associated with an electronic document and executed or adopted by a person with the intent to sign the
61 document.

62 "Identity proofing" means a process or service that independently verifies an individual's identity in
63 accordance with § 2.2-436.

64 "*Journal of notarial acts*" or "*journal*" means a book used by a notary to create and preserve a
65 chronological record of the notarial acts the notary has performed.

66 "Notarial act" or "notarization" means any official act performed by a notary under § 47.1-12 or
67 47.1-13 or as otherwise authorized by law.

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

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

74 "Oath" shall include "affirmation."

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

77 "*Official signature*" means a handwritten signature made by a notary that uses the exact name
78 appearing in the notary's commission and is signed with the intent to perform a notarial act.

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

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

84 "Record of notarial acts" means a device for creating and preserving a chronological record of
85 notarizations performed by a notary.

86 "Remote online notarization" means an electronic notarization under this chapter where the signer is
87 not in the physical presence of the notary.

88 "Satisfactory evidence of identity" means identification of an individual based on (i) examination of
89 one or more of the following unexpired documents bearing a photographic image of the individual's face
90 and signature: a United States Passport Book, a United States Passport Card, a certificate of United
91 States citizenship, a certificate of naturalization, a foreign passport, an alien registration card with
92 photograph, a state issued driver's license or a state issued identification card or a United States military
93 card or (ii) the oath or affirmation of one credible witness unaffected by the document or transaction
94 who is personally known to the notary and who personally knows the individual or of two credible
95 witnesses unaffected by the document or transaction who each personally knows the individual and
96 shows to the notary documentary identification as described in clause (i). In the case of an individual
97 who resides in an assisted living facility, as defined in § 63.2-100, or a nursing home, licensed by the
98 State Department of Health pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or
99 exempt from licensure pursuant to § 32.1-124, an expired United States Passport Book, expired United
100 States Passport Card, expired foreign passport, or expired state issued driver's license or state issued
101 identification card may also be used for identification of such individual, provided that the expiration of
102 such document occurred within five years of the date of use for identification purposes pursuant to this
103 title. In the case of an electronic notarization, "satisfactory evidence of identity" may be based on video
104 and audio conference technology, in accordance with the standards for electronic video and audio
105 communications set out in subdivisions B 1, 2, and 3 of § 19.2-3.1, that permits the notary to
106 communicate with and identify the principal at the time of the notarial act, provided that such
107 identification is confirmed by (a) personal knowledge, (b) an oath or affirmation of a credible witness,
108 or (c) at least two of the following: (1) credential analysis of an unexpired government-issued
109 identification bearing a photograph of the principal's face and signature, (2) identity proofing by an
110 antecedent in-person identity proofing process in accordance with the specifications of the Federal
111 Bridge Certification Authority, (3) another identity proofing method authorized in guidance documents,
112 regulations, or standards adopted pursuant to § 2.2-436, or (4) a valid digital certificate accessed by
113 biometric data or by use of an interoperable Personal Identity Verification card that is designed, issued,
114 and managed in accordance with the specifications published by the National Institute of Standards and
115 Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity
116 Verification (PIV) of Federal Employees and Contractors," and supplements thereto or revisions thereof,
117 including the specifications published by the Federal Chief Information Officers Council in "Personal
118 Identity Verification Interoperability for Non-Federal Issuers."

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

"Secretary" means the Secretary of the Commonwealth.

"Signature witnessing" 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, and (iii) signs the document in the presence of the notary.

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

"Verification of fact" means a notarial act in which a notary reviews public or vital records to (i) ascertain or confirm facts regarding a person's identity, identifying attributes, or authorization to access a building, database, document, network, or physical site or (ii) validate an identity credential on which satisfactory evidence of identity may be based.

§ 47.1-5.2. Course and examination.

A. Every applicant for a notary or electronic notary commission shall take, within the 90 calendar days preceding application, a course of instruction approved by the Secretary and complete a written examination of the course to the satisfaction of the Secretary.

B. The content of the course and the basis for the written examination shall include notarial laws, procedures, and ethics.

§ 47.1-14.1. Journal of notarial acts.

A. A notary shall keep, maintain, protect, and provide for lawful inspection a chronological journal of notarial acts that is a permanently bound book with numbered pages. A notary shall maintain only one active journal at the same time.

B. For each notarial act, the notary shall record in the journal at the time of notarization at least (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 signature, printed name, and address of each principal; (v) the printed name and address of each requester of fact; (vi) 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, its issuing agency, its serial or identification number, and its date of issuance or expiration; or the handwritten signature and the name and address of each credible witness swearing or affirming to the principal's identity and, for any credible witness who is not personally known to the notary, a description of the identification document presented by such credible witness relied upon by the notary; (vii) the amount of the fee, if any, charged for the notarial act, related travel, or both; and (viii) the address and city or county where the notarization was performed.

C. A notary shall record in the journal (i) the circumstances for not performing or completing any requested notarial act; (ii) the circumstances of any permitted or refused request to inspect or copy an entry in the journal, including the requester's name, address, handwritten signature, and evidence of identity; and (iii) a notation of the nature and the date of the notary's correction of a previously completed notarial certificate, which shall be appended to the pertinent previous entry.

§ 47.1-14.2. Electronic record of notarial acts.

A. 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 electronic notarial act performed: (i) the date and time of day of the electronic notarial act; (ii) the type of electronic 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 presented, 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 any credible witness who is not personally known to the notary, a description of the identification document presented by such credible witness relied upon by the notary; and (vi) the fee, if any, charged for the electronic notarial act. If video and audio conference technology authorized under § 47.1-2 is the basis for satisfactory evidence of identity and the principal's identity has been ascertained upon presentation of such satisfactory evidence of identity, the electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used. The electronic notary shall take reasonable steps to (a) ensure the integrity, security, and authenticity of electronic notarizations; (b) maintain a backup for his electronic record of electronic notarial acts; and (c) ensure protection of such backup records from unauthorized use. The electronic record of an electronic notarial act shall be maintained for a period of at least five years from the date of the transaction.

B. 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.

C. A notary performing electronic notarial acts shall keep his record, electronic signature, and

182 *physical and electronic seals secure under his exclusive control and shall not allow them to be used by*
183 *any other notary or any other person.*

184 *D. A notary performing electronic notarial acts shall use the notary's electronic signature only for*
185 *the purpose of performing electronic notarial acts.*

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