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HOUSE BILL NO. 2318

Offered January 12, 2011

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A BILL to amend and reenact §§ 47.1-2, 47.1-7, 47.1-8, 47.1-12, 47.1-14, and 47.1-15 of the Code of Virginia, relating to electronic notaries.

Patron—Byron

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 47.1-2, 47.1-7, 47.1-8, 47.1-12, 47.1-14, and 47.1-15 of the Code of Virginia are amended and reenacted as follows:

§ 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.

"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.

"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" and "electronic notarization" mean an official act by a notary under § 47.1-12 of this title 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.

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

"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.

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

"Notarial act" or "notarization" means any official act performed by a notary under § 47.1-12 or

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59 § 47.1-13 or as otherwise authorized by law.

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

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

66 "Oath" shall include "affirmation."

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

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

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

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

76 "Satisfactory evidence of identity" means identification of an individual based on (i) examination of
77 one or more of the following documents bearing a photographic image of the individual's face and
78 signature: a United States Passport, a certificate of United States citizenship, a certificate of
79 naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued
80 driver's license or a state issued identification card or a United States military card or (ii) the oath or
81 affirmation of one credible witness unaffected by the document or transaction who is personally known
82 to the notary and who personally knows the individual or of two credible witnesses unaffected by the
83 document or transaction who each personally knows the individual and shows to the notary documentary
84 identification as described in subdivision clause (i). *In the case of an electronic notarization,*
85 *"satisfactory evidence of identity" may be based on video and audio conference technology that permits*
86 *the notary to communicate with and identify the principal at the time of the notarial act, provided that*
87 *such identification is confirmed by (a) personal knowledge, (b) an antecedent in-person identity proofing*
88 *process in accordance with the specifications of the Federal Bridge Certification Authority, or (c) a*
89 *valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity*
90 *Verification card that is designed, issued, and managed in accordance with the specifications published*
91 *by the National Institute of Standards and Technology in Federal Information Processing Standards*
92 *Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors," and*
93 *supplements thereto or revisions thereof.*

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

96 "Secretary" means the Secretary of the Commonwealth.

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

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

102 § 47.1-7. Additional requirements for performing electronic notarial acts.

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

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

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

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

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

115 5. The electronic mail address of the registrant.

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

119 C. Nothing herein shall be construed to prevent an electronic notary from using updated technology
120 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 and the correct fee, the Secretary, if satisfied the applicant is qualified to be 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 for a notary public or electronic notary public 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. *A person applying to be commissioned as an electronic notary public is not required to have been commissioned first as a notary public.*

§ 47.1-12. Powers.

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

§ 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 *or electronic notarial* act.

B. Unless such person is personally known by the notary, identity shall be ascertained 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. *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 ~~(i)~~ (a) ensure the integrity, security, and authenticity of electronic notarizations, ~~(ii)~~ (b) maintain a backup for his electronic record of notarial acts, and ~~(iii)~~ (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.

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, *(i) in the case of an electronic notarization, satisfactory evidence of the identity of the signer is established in accordance with § 47.1-2, or (ii) otherwise authorized by law to do so.*

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

182 contest, candidate, or other offering.

183 3. Notarize a signature on a document without notarial certificate wording on the same page as the
184 signature unless the notarial certificate includes the name of each person whose signature is being
185 notarized.

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

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

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

194 A notary may decline to notarize a document.

195 Any document notarized prior to July 1, 2008, which does not have the notarial certificate wording
196 on the same page as the signature, but otherwise appears on its face to be properly notarized, shall be
197 deemed validly notarized.

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