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## SENATE BILL NO. 270

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 23, 2012)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend and reenact §§ 47.1-2, as it is currently effective and as it shall become effective, 47.1-9, and 47.1-30 of the Code of Virginia, relating to notaries.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 47.1-2, as it is currently effective and as it shall become effective, 47.1-9, and 47.1-30 of the Code of Virginia are amended and reenacted as follows:**

§ 47.1-2. (Effective until July 1, 2012) 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 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 § 47.1-13 or as otherwise authorized by law.

"Notarial certificate" or "certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature, title, commission expiration date,

60 notary registration number, and other required information concerning the date and place of the  
61 notarization and states the facts attested to or certified by the notary public in a particular notarization.

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

64 "Oath" shall include "affirmation."

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

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

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

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

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

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

85 "Secretary" means the Secretary of the Commonwealth.

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

87 § 47.1-2. (Effective July 1, 2012) Definitions.

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

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

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

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

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

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

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

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

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

117 "Electronic notarial act" and "electronic notarization" mean an official act by a notary under  
118 § 47.1-12 or as otherwise authorized by law that involves electronic documents.

119 "Electronic notarial certificate" means the portion of a notarized electronic document that is  
120 completed by the notary public, bears the notary public's signature, title, commission expiration date, and  
121 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 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 47.1-13 or as otherwise authorized by law.

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

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

"Oath" shall include "affirmation."

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

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

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

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

"Satisfactory evidence of identity" means identification of an individual based on (i) examination of one or more of the following documents bearing a photographic image of the individual's face and signature: 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 a state issued identification card or a United States military card or (ii) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual or of two credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in clause (i). In the case of an electronic notarization, "satisfactory evidence of identity" may be based on video and audio conference technology, in accordance with the standards for electronic video and audio communications set out in subdivisions B 1, B 2, and B 3 of § 19.2-3.1, that permits the notary to communicate with and identify the principal at the time of the notarial act, provided that such identification is confirmed by (a) personal knowledge, (b) an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority, or (c) a valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card that is designed, issued, and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors," and supplements thereto or revisions thereof, including the specifications published by the Federal Chief Information Officers Council in "Personal Identity Verification Interoperability for Non-Federal Issuers."

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

"Secretary" means the Secretary of the Commonwealth.

"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.

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

Before receiving his commission, each person appointed a notary or ~~electronic notary~~ shall appear before the clerk of the circuit court to which his commission has been sent, present sufficient satisfaction of evidence of identity as defined in § 47.1-2, and make oath as follows:

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

187 Such oath shall be signed by the applicant and attested by the clerk. The clerk shall thereupon issue  
188 to the applicant his commission as notary public or electronic notary public. Within ~~fourteen~~ 14 days of  
189 such qualification, the clerk shall certify the fact of such qualification to the Secretary of the  
190 Commonwealth.

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

195 § 47.1-30. Conflict of interests.

196 No notary shall perform any notarial act with respect to any document, writing, or electronic  
197 document to which the notary or his spouse is a party, or in which either of them has a direct beneficial  
198 interest, or where the notary is a signatory or is named in the document to be notarized, *except that a*  
199 *notary named in a document for the purpose of receiving notices, or named in a document as executor,*  
200 *trustee, or other fiduciary, shall not, for that reason alone, be precluded from performing notarial acts*  
201 *with respect to such document. Nothing herein shall be construed to exclude documents submitted or*  
202 *filed under Chapter 1 (§ 24.2-100 et seq.) of Title 24.2 from the requirements of this section. A notary*  
203 *nominated as a fiduciary in a will shall not, for that reason alone, be deemed a party to the will or to*  
204 *have a direct beneficial interest therein.*

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

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