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HOUSE BILL NO. 1222

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 47.1-2 of the Code of Virginia, relating to notaries; satisfactory evidence of identity; persons residing in nursing homes or assisted living facilities.

Patrons—Tran, Coyner and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 47.1-2 of the Code of Virginia is amended and reenacted 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.

"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 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.

"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

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

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

103 "Secretary" means the Secretary of the Commonwealth.

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

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