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HOUSE BILL NO. 1889

Offered January 13, 2025

Prefiled January 6, 2025

A *BILL to amend and reenact §§ 47.1-2 and 47.1-7 of the Code of Virginia, relating to electronic notarial acts.*

Patron—Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 47.1-2 and 47.1-7 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:

"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 *or another state* 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.

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

61 "Knowledge-based authentication assessment" means an identity assessment formulated from public or
62 private data sources for which the principal has not provided a prior answer that meets the following
63 requirements:

64 1. The principal shall answer a quiz composed of at least five questions related to the principal's personal
65 history or identity;

66 2. At least five possible answer choices shall be available for each question;

67 3. The principal shall pass the quiz if he achieves a score of 80 percent or higher;

68 4. The principal shall have two minutes to answer the questions on the quiz;

69 5. If the principal fails to achieve a score of at least 80 percent, the principal may attempt up to two
70 additional quizzes within 48 hours following the first failed quiz; and

71 6. No more than 60 percent of the questions from the initial quiz can be reused on additional quizzes.

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

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

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

80 "Oath" shall include "affirmation."

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

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

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

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

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

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

120 "Personal Identity Verification (PIV) of Federal Employees and Contractors," and supplements thereto or
121 revisions thereof, including the specifications published by the Federal Chief Information Officers Council in
122 "Personal Identity Verification Interoperability for Non-Federal Issuers"; or (5) a knowledge-based
123 authentication assessment.

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

126 "Secretary" means the Secretary of the Commonwealth.

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

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

132 **§ 47.1-7. Additional requirements for performing electronic notarial acts.**

133 A. An applicant *domiciled in the Commonwealth* shall submit a registration form established by the
134 Secretary for registering and being commissioned as an electronic notary public, which shall include:

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

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

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

140 4. The electronic mail address of the registrant.

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

144 C. Nothing herein shall be construed to prevent an electronic notary from using updated technology or
145 technologies during the term of the commission; however, the electronic notary shall notify the Secretary
146 electronically within 90 days of installation or use of such updated technology or technologies and provide a
147 brief description thereof.