VIRGINIA ACTS OF ASSEMBLY -- 2024 RECONVENED SESSION

CHAPTER 832

An Act to amend and reenact §§ 47.1-2, 47.1-16, and 47.1-20.1 of the Code of Virginia, relating to notaries; definitions; knowledge-based authentication assessment.

[H 1372]

Approved April 17, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 47.1-2, 47.1-16, and 47.1-20.1 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 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.

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

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

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

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

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

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

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

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

"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.

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

"Satisfactory evidence of identity" means identification of an individual based on (i) examination of one or more of the following unexpired documents bearing a photographic image of the individual's face and signature: a United States Passport Book, a United States Passport Card, a certificate of United States citizenship, a certificate of naturalization, a 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 individual who resides in an assisted living facility, as defined in § 63.2-100, or a nursing home, licensed by the State Department of Health pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or exempt from licensure pursuant to § 32.1-124, an expired United States Passport Book, expired United States Passport Card, expired foreign passport, or expired state issued driver's license or state issued identification card may also be used for identification of such individual, provided that the expiration of such document occurred within five years of the date of use for identification purposes pursuant to this title. 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, 2, and 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 oath or affirmation of a credible witness *who personally knows the principal and is either personally known to the notary or is identified pursuant to clause (c)*, or (c) *is identified by* at least two of the following: (1) credential analysis of an unexpired government-issued identification bearing a photograph of the principal's face and signature~~,~~*;* (2) identity proofing by an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority, *including any supplements thereto or revisions thereof;* (3) another identity proofing method authorized in guidance documents, regulations, or standards adopted pursuant to § 2.2-436~~, or~~*;* (4) 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."*; or (5) a knowledge-based authentication assessment.*

"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.

§ 47.1-16. Notarizations to show date of act, official signature and seal, etc.

A. Every notarization shall include the date upon which the notarial act was performed and the county or city and state in which it was performed. Every electronic notarial certificate *completed by an electronic notary public commissioned in the Commonwealth* shall include the county or city within the Commonwealth where the electronic notary public was physically located at the time of the notarial act. The electronic notarial certificate shall indicate whether the notarization was done in person or by remote online notarization.

B. A notarial act shall be evidenced by a notarial certificate or electronic notarial certificate signed by a notary in a manner that attributes such signature to the notary public identified on the commission.

C. Upon every writing that is the subject of a notarial act, the notary shall, after his certificate, state the date of the expiration of his commission in substantially the following form:

"My commission expires the ____ day of _____, ____ "

Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an electronic document, the notary shall attach an official electronic seal.

D. The notary shall attach the official electronic signature and electronic seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident.

E. An electronic notary's electronic signature and electronic seal shall conform to the standards for electronic notarization developed in accordance with § 47.1-6.1.

§ 47.1-20.1. Validation of certain acts.

A. Oaths of office administered by a notary public on or before July 1, 1982, are hereby deemed to be valid and actions of any public officer taking such oaths are hereby deemed valid.

B. No notarial act performed by a notary public shall be invalidated solely because of the failure of such notary public to perform a duty or meet a requirement specified in this title. However, the validity of a notarial act shall not prohibit an aggrieved person from seeking to invalidate the record or transaction that is the subject of such notarial act or from seeking other remedies authorized by the laws of the Commonwealth or laws of the United States. Nothing in this subsection shall be construed to validate a purported notarial act performed by an individual who is not authorized to perform such notarial acts.

2. That the provisions of subsection B of § 47.1-20.1 of the Code of Virginia, as amended by this act, shall apply retroactively to any notarial act that was performed before July 1, 2024.