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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

122 facts attested to or certified by the notary public in a particular notarization.

123 "Electronic notary public" or "electronic notary" means a notary public who has been commissioned
124 by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under
125 § 47.1-7 and has been sworn in by the clerk of the circuit court under § 47.1-9.

126 "Electronic notary seal" or "electronic seal" means information within a notarized electronic
127 document that confirms the notary's name, jurisdiction, and commission expiration date and generally
128 corresponds to data in notary seals used on paper documents.

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

132 "Notarial act" or "notarization" means any official act performed by a notary under § 47.1-12 or
133 47.1-13 or as otherwise authorized by law.

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

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

140 "Oath" shall include "affirmation."

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

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

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

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

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

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

173 "Secretary" means the Secretary of the Commonwealth.

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

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

179 § 47.1-9. Oath of notary; duties of clerks.

180 Before receiving his commission, each person appointed a notary or ~~electronic notary~~ shall appear
181 before the clerk of the circuit court to which his commission has been sent, present sufficient
182 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.