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Introduced by Sens. SKOUFIS, GOUNARDES, REICHLIN-MELNICK -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the executive law, in relation to providing for electronic notarization

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 137-a
2 to read as follows:

3 § 137-a. Electronic notarization. 1. Definitions. (a) "Communication
4 technology" means an electronic device or process that: (i) allows a
5 notary public and a remotely located individual to communicate with each
6 other simultaneously by sight and sound; and (ii) when necessary and
7 consistent with other applicable law, facilitates communication with a
8 remotely located individual who has a vision, hearing, or speech impair-
9 ment.

10 (b) "Electronic" shall have the same meaning as set forth in subdivi-
11 sion one of section three hundred two of the state technology law.

12 (c) "Electronic document" means information that is created, gener-
13 ated, sent, communicated, received or stored by electronic means.

14 (d) "Electronic notarial act" means an official act by a notary public
15 on or involving an electronic document and using means authorized by the
16 secretary of state.

17 (e) "Electronic notary public" or "electronic notary" means a notary
18 public who has registered with the secretary of state the capability of
19 performing electronic notarial acts.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (f) "Electronic signature" shall have the same meaning as set forth in
2 subdivision three of section three hundred two of the state technology
3 law.

4 (g) "Electronic notarial statement of authority" means the portion of
5 a notarized electronic document that is completed by a notary public and
6 contains the notary public's electronic signature and all information
7 required by section one hundred thirty-seven of this article.

8 (h) "Notary electronic signature" means those forms of electronic
9 signature, which have been approved by the secretary of state as an
10 acceptable means for an electronic notary to affix the notary public's
11 official signature to an electronic record that is being notarized.

12 (i) "Remotely located individual" means an individual who is not in
13 the physical presence of the notary public at the time of the notarial
14 act.

15 2. Identifying document signers. (a) The methods for identifying
16 document signers for an electronic notarization shall be the same as the
17 methods required for a paper-based notarization; provided, however, an
18 electronic notarization conducted utilizing communication technology
19 shall meet the following standards:

20 (i) the signal transmission shall be secure from interception through
21 lawful means by anyone other than the persons communicating; and

22 (ii) the technology shall permit the notary to communicate with and
23 identify the remotely located individual at the time of the notarial
24 act, provided that such identification is confirmed by:

25 (A) personal knowledge; or

26 (B) each of the following: (1) remote presentation by the person
27 creating the electronic signature of a government issued identification
28 credential, including such person's passport or driver's license, that
29 contains the signature and a photograph of such person; (2) credential
30 analysis; and (3) identity proofing.

31 (b) If video and audio conference technology has been used to ascer-
32 tain a document signer's identity, the electronic notary shall keep a
33 copy of the recording of the video and audio conference and a notation
34 of the type of any other identification used. The recording shall be
35 maintained for a period of at least ten years from the date of trans-
36 action.

37 (c) For purposes of this subdivision: (i) "credential analysis" means
38 a process or service that meets the standards established by the secre-
39 tary of state through which a third person affirms the validity of a
40 government-issued identification credential through review of public and
41 proprietary data sources; and

42 (ii) "identity proofing" means a process or service operating accord-
43 ing to standards established by the secretary of state through which a
44 third person affirms the identity of an individual: (A) by means of
45 dynamic knowledge based authentication such as a review of personal
46 information from public or proprietary data sources; or (B) by means of
47 analysis of biometric data such as, but not limited to, facial recogni-
48 tion, voiceprint analysis, or fingerprint analysis.

49 3. Registration requirements. (a) Before performing any electronic
50 notarial act or acts, a notary public shall register the capability to
51 notarize electronically with the secretary of state on a form prescribed
52 by the secretary of state.

53 (b) In registering the capability to perform electronic notarial acts,
54 the notary public shall provide the following information to the secre-
55 tary of state, notary processing unit:

1 (i) the applicant's name as currently commissioned and complete mail-
2 ing address;

3 (ii) the expiration date of the notary public's commission and signa-
4 ture of the commissioned notary public;

5 (iii) the applicant's e-mail address;

6 (iv) the description of the electronic technology or technologies to
7 be used in attaching the notary public's electronic signature to the
8 electronic document; and

9 (v) an exemplar of the notary public's electronic signature, which
10 shall contain the notary public's name and any necessary instructions or
11 techniques that allow the notary public's electronic signature to be
12 read.

13 4. Types of electronic notarial acts. (a) Any notarial act authorized
14 by section one hundred thirty-five of this article may be performed
15 electronically as prescribed by this section if: (i) under applicable
16 law that document may be signed with an electronic signature; and (ii)
17 the electronic notary public is located within the state at the time of
18 the performance of an electronic notarial act using communication tech-
19 nology, regardless of the location of the document signer.

20 (b) An electronic notarial act performed using communication technolo-
21 gy pursuant to this section satisfies any requirement of law of this
22 state that a document signer personally appear before, be in the pres-
23 ence of, or be in a single time and place with a notary public at the
24 time of the performance of the notarial act.

25 5. Form and manner of performing the electronic notarial act. (a) When
26 performing an electronic notarial act, a notary public shall apply an
27 electronic signature, which shall be attached to or logically associated
28 with the electronic document such that removal or alteration of such
29 electronic signature is detectable and will render evidence of alter-
30 ation of the document containing the notary signature which may invali-
31 date the electronic notarial act.

32 (b) The notary public's electronic signature is deemed to be reliable
33 if the following requirements are met: (i) it is unique to the notary
34 public;

35 (ii) it is capable of independent verification;

36 (iii) it is retained under the notary public's sole control;

37 (iv) it is attached to or logically associated with the electronic
38 document; and

39 (v) it is linked to the data in such a manner that any subsequent
40 alterations to the underlying document are detectable and may invalidate
41 the electronic notarial act.

42 (c) The notary public's electronic signature shall be used only for
43 the purpose of performing electronic notarial acts.

44 (d) The remote online notarial certificate for an electronic notarial
45 act shall state that the person making the acknowledgement or making the
46 oath appeared remotely online.

47 (e) The secretary shall adopt rules necessary to establish standards,
48 procedures, practices, forms, and records relating to a notary public's
49 electronic signature. The notary public's electronic signature shall
50 conform to any standards adopted by the secretary.

51 6. Recording of an electronic record. (a) If otherwise required by
52 law as a condition for recording that a document be an original docu-
53 ment, printed on paper or another tangible medium, or be in writing, the
54 requirement is satisfied by paper copy of an electronic record that
55 complies with the requirements of this section.

1 (b) If otherwise required by law as a condition for recording, that a
2 document be signed, the requirement is satisfied by an electronic signa-
3 ture.

4 (c) A requirement that a document or a signature associated with a
5 document be notarized, acknowledged, verified, witnessed, or made under
6 oath is satisfied if the electronic signature of the person authorized
7 to perform that act, and all other information required to be included,
8 is attached to or logically associated with the document or signature. A
9 physical or electronic image of a stamp, impression, or seal need not
10 accompany an electronic signature if the notary has attached an elec-
11 tronic notarial certificate that meets the requirements of this section.

12 7. Change of e-mail address. Within five days after the change of an
13 electronic notary public's e-mail address, the notary public shall elec-
14 tronically transmit to the secretary of state a notice of the change,
15 signed with the notary public's official electronic signature.

16 § 2. Section 136 of the executive law, as amended by chapter 143 of
17 the laws of 1991, is amended to read as follows:

18 § 136. Notarial fees. A notary public shall be entitled to [~~the~~
19 ~~following~~] fees[+]

20 ~~1. For administering an oath or affirmation, and certifying the same~~
21 ~~when required, except where another fee is specifically prescribed by~~
22 ~~statute, two dollars.~~

23 ~~2. For taking and certifying the acknowledgment or proof of execution~~
24 ~~of a written instrument, by one person, two dollars, and by each addi-~~
25 ~~tional person, two dollars, for swearing each witness thereto, two~~
26 ~~dollars] as authorized by the secretary of state.~~

27 § 3. This act shall take effect on the ninetieth day after it shall
28 have become a law. Effective immediately, the addition, amendment and/or
29 repeal of any rule or regulation necessary for the implementation of
30 this act on its effective date are authorized to be made on or before
31 such effective date.