

# STATE OF NEW YORK

558

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, the tax law, the executive law, the estates, powers and trusts law, the public health law, the real property law and the general obligations law, in relation to providing for the remote conduct of certain practices and procedures

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

1 Section 1. Section 11 of the banking law is amended by adding a new  
2 subdivision 5 to read as follows:

3 5. Notwithstanding any provision of law to the contrary, any instru-  
4 ment which is signed and delivered to the superintendent pursuant to any  
5 provision of this chapter, and is required to be verified or acknowl-  
6 edged pursuant to the provisions of this chapter, may be verified or  
7 acknowledged by including the standard verification or acknowledgment  
8 language in such instrument and transmitting a legible copy of the  
9 signed instrument by fax or electronic means. The superintendent shall  
10 promulgate all rules and regulations necessary for the implementation of  
11 the provisions of this subdivision.

12 § 2. Section 171 of the tax law is amended by adding a new subdivision  
13 twenty-ninth to read as follows:

14 Twenty-ninth. Have the authority to accept electronic signatures in  
15 lieu of handwritten signatures on documents related to the determination  
16 or collection of tax liability. The commissioner may promulgate rules  
17 and regulations regarding which documents shall be accepted with elec-  
18 tronic signatures and the requirements for such electronic signatures.

19 § 3. The executive law is amended by adding a new section 137-a to  
20 read as follows:

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

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1 § 137-a. Notary services provided utilizing communication technology.

2 1. For purposes of this section, the following terms shall have the

3 following meanings:

4 (a) "Communication technology" means an electronic device or process  
5 that: (1) allows a notary public and a remotely located individual to  
6 communicate with each other simultaneously by sight and sound; and (2)  
7 when necessary and consistent with other applicable law, facilitates  
8 communication with a remotely located individual who has a vision, hear-  
9 ing, or speech impairment.

10 (b) "Identity proofing" means a process or service by which a third  
11 person provides a notary public with a means to verify the identity of a  
12 remotely located individual by a review of personal information from  
13 public and private data sources.

14 (c) "Outside the United States" means a location outside the geograph-  
15 ic boundaries of the United States, Puerto Rico, the United States  
16 Virgin Islands, and any territory, insular possession, or other location  
17 subject to the jurisdiction of the United States.

18 (d) "Remotely located individual" means an individual who is not in  
19 the physical presence of the notary public who performs a notarial act.

20 2. A remotely located individual may use communication technology to  
21 appear before a notary public.

22 3. A notary public located in this state may perform a notarial act  
23 using communication technology for a remotely located individual if:

24 (a) the notary public:

25 (1) has personal knowledge of the identity of the remotely located  
26 individual; or

27 (2) has obtained satisfactory evidence of the identity of a remotely  
28 located individual using at least two different types of identity proof-  
29 ing;

30 (b) the notary public is able to clearly and conspicuously confirm  
31 that a record before the notary public is the same record in which the  
32 remotely located individual made a statement or on which such individual  
33 executed a signature;

34 (c) the notary public, or person acting on behalf of the notary  
35 public, creates an audio-visual recording of the performance of the  
36 notarial act, and such audio-visual recording shall be recorded and  
37 electronically stored securely for seven years;

38 (d) for a remotely located individual located outside the United  
39 States:

40 (1) the record:

41 (i) is to be filed with or relates to a matter before a public offi-  
42 cial or court, governmental entity, or other entity subject to the  
43 jurisdiction of the United States; or

44 (ii) involves property located in the territorial jurisdiction of the  
45 United States or involves a transaction substantially connected with the  
46 United States; and

47 (2) the act of making the statement or signing the record is not  
48 prohibited by the foreign state in which the remotely located individual  
49 is located; and

50 (e) the notarial certificate includes a statement substantially as  
51 follows: "This notarial act involved the use of communication technolo-  
52 gy."

53 4. The secretary of state may adopt rules under this section regarding  
54 performance of a notarial act. The rules may:

55 (a) prescribe the means of performing a notarial act involving a  
56 remotely located individual using communication technology;

1 (b) establish standards for communication technology and identity  
2 proofing;

3 (c) establish requirements or procedures to approve providers of  
4 communication technology and the process of identity proofing; and

5 (d) establish standards and a period for the retention of an audio-vi-  
6 sual recording created pursuant to paragraph (c) of subdivision three of  
7 this section.

8 5. Before adopting, amending, or repealing any rule governing perform-  
9 ance of a notarial act with respect to a remotely located individual,  
10 the secretary of state shall consider:

11 (a) the most recent standards regarding the performance of a notarial  
12 act with respect to a remotely located individual promulgated by  
13 national standard-setting organizations and the recommendations of the  
14 National Association of Secretaries of State;

15 (b) standards, practices, and customs of other jurisdictions that have  
16 laws substantially similar to this section; and

17 (c) the views of governmental officials and entities and other inter-  
18 ested persons.

19 § 4. Section 3-2.1 of the estates, powers and trusts law is amended by  
20 adding a new paragraph (c) to read as follows:

21 (c) (1) Notwithstanding any provision of this section to the contrary,  
22 the attestation of wills may be made utilizing audio-video technology if  
23 the following conditions are met:

24 (A) The testator, if not personally known to the attesting witness,  
25 shall present valid photo identification to the attesting witness during  
26 the audio-video conference.

27 (B) The audio-video conference shall allow for direct interaction  
28 between the testator and the attesting witness.

29 (C) The attesting witness shall receive a legible copy of the signa-  
30 ture page, or pages, which shall be transmitted via fax or electronic  
31 means, within twenty-four hours of such pages being signed by the testa-  
32 tor during the audio-video conference.

33 (D) The attesting witness shall sign the transmitted copy of the  
34 signature page, or pages, and transmit the same back to the testator.

35 (2) An attesting witness may repeat the attestation of the original  
36 signature page, or pages, as of the date of execution provided that the  
37 attesting witness receives such original signature page, or pages,  
38 together with the electronically attested copy, attested to pursuant to  
39 the provisions of subparagraph one of this paragraph, within thirty days  
40 after the date of execution.

41 § 5. Section 7-1.17 of the estates, powers and trusts law is amended  
42 by adding a new paragraph (c) to read as follows:

43 (c) (1) Notwithstanding any provision of this section to the contrary,  
44 witnessing pursuant to this section may be made utilizing audio-video  
45 technology if the following conditions are met:

46 (A) The person requesting that his or her signature be witnessed, if  
47 not personally known to the witnesses, shall present valid photo iden-  
48 tification to the witnesses during the audio-video conference.

49 (B) The audio-video conference shall allow for direct interaction  
50 between the person requesting that his or her signature be witnessed and  
51 the witnesses.

52 (C) The witnesses shall receive a legible copy of the signature page,  
53 or pages, which shall be transmitted via fax or electronic means, within  
54 twenty-four hours of such pages being signed by the person requesting  
55 that his or her signature be witnessed during the audio-video confer-  
56 ence.

1 (D) The witnesses shall sign the transmitted copy of the signature  
2 page, or pages, and transmit the same back to the person requesting that  
3 his or her signature be witnessed.

4 (2) A witness may repeat the witnessing of the original signature  
5 page, or pages, as of the date of execution provided that the witness  
6 receives such original signature page, or pages, together with the elec-  
7 tronically witnessed copy, witnessed pursuant to the provisions of  
8 subparagraph one of this paragraph, within thirty days after the date of  
9 execution.

10 § 6. Section 2981 of the public health law is amended by adding a new  
11 subdivision 2-a to read as follows:

12 2-a. Alternate procedure for witnessing of health care proxies. (a)  
13 Notwithstanding any provision of this section to the contrary, witness-  
14 ing pursuant to this section may be made utilizing audio-video technolo-  
15 gy if the following conditions are met:

16 (i) The person requesting that his or her signature be witnessed, if  
17 not personally known to the witnesses, shall present valid photo iden-  
18 tification to the witnesses during the audio-video conference.

19 (ii) The audio-video conference shall allow for direct interaction  
20 between the person requesting that his or her signature be witnessed and  
21 the witnesses.

22 (iii) The witnesses shall receive a legible copy of the signature  
23 page, or pages, which shall be transmitted via fax or electronic means,  
24 within twenty-four hours of such pages being signed by the person  
25 requesting that his or her signature be witnessed during the audio-video  
26 conference.

27 (iv) The witnesses shall sign the transmitted copy of the signature  
28 page, or pages, and transmit the same back to the person requesting that  
29 his or her signature be witnessed.

30 (b) A witness may repeat the witnessing of the original signature  
31 page, or pages, as of the date of execution provided that the witness  
32 receives such original signature page, or pages, together with the elec-  
33 tronically witnessed copy, witnessed pursuant to the provisions of para-  
34 graph (a) of this subdivision, within thirty days after the date of  
35 execution.

36 § 7. Section 4201 of the public health law is amended by adding a new  
37 subdivision 3-a to read as follows:

38 3-a. (a) Notwithstanding any provision of this section to the contra-  
39 ry, witnessing pursuant to this section may be made utilizing audio-vi-  
40 deo technology if the following conditions are met:

41 (i) The person requesting that his or her signature be witnessed, if  
42 not personally known to the witnesses, shall present valid photo iden-  
43 tification to the witnesses during the audio-video conference.

44 (ii) The audio-video conference shall allow for direct interaction  
45 between the person requesting that his or her signature be witnessed and  
46 the witnesses.

47 (iii) The witnesses shall receive a legible copy of the signature  
48 page, or pages, which shall be transmitted via fax or electronic means,  
49 within twenty-four hours of such pages being signed by the person  
50 requesting that his or her signature be witnessed during the audio-video  
51 conference.

52 (iv) The witnesses shall sign the transmitted copy of the signature  
53 page, or pages, and transmit the same back to the person requesting that  
54 his or her signature be witnessed.

55 (b) A witness may repeat the witnessing of the original signature  
56 page, or pages, as of the date of execution provided that the witness

1 receives such original signature page, or pages, together with the elec-  
2 tronically witnessed copy, witnessed pursuant to the provisions of para-  
3 graph (a) of this subdivision, within thirty days after the date of  
4 execution.

5 § 8. The real property law is amended by adding a new section 304-a to  
6 read as follows:

7 § 304-a. Witnessing utilizing audio-video technology. 1. Notwith-  
8 standing any provision of this article to the contrary, witnessing  
9 pursuant to this section may be made utilizing audio-video technology if  
10 the following conditions are met:

11 (a) The person requesting that his or her signature be witnessed, if  
12 not personally known to the witness, shall present valid photo identifi-  
13 cation to the witness during the audio-video conference.

14 (b) The audio-video conference shall allow for direct interaction  
15 between the person requesting that his or her signature be witnessed and  
16 the witness.

17 (c) The witnesses shall receive a legible copy of the signature page,  
18 or pages, which shall be transmitted via fax or electronic means, within  
19 twenty-four hours of such pages being signed by the person requesting  
20 that his or her signature be witnessed during the audio-video confer-  
21 ence.

22 (d) The witness shall sign the transmitted copy of the signature page,  
23 or pages, and transmit the same back to the person requesting that his  
24 or her signature be witnessed.

25 2. A witness may repeat the witnessing of the original signature page,  
26 or pages, as of the date of execution provided that the witness receives  
27 such original signature page, or pages, together with the electronically  
28 witnessed copy, witnessed pursuant to the provisions of subdivision one  
29 of this section, within thirty days after the date of execution.

30 § 9. Paragraph (b) of subdivision 9 of section 5-1514 of the general  
31 obligations law, as amended by chapter 340 of the laws of 2010, is  
32 amended to read as follows:

33 (b) Be signed and dated by a principal with capacity, with the signa-  
34 ture of the principal duly acknowledged in the manner prescribed for the  
35 acknowledgment of a conveyance of real property, and witnessed by two  
36 persons who are not named in the instrument as permissible recipients of  
37 gifts, in the manner described in subparagraph two of paragraph (a) or  
38 paragraph (c) of section 3-2.1 of the estates, powers and trusts law.  
39 The person who takes the acknowledgment, under this paragraph, may also  
40 serve as one of the witnesses.

41 § 10. This act shall take effect on the thirtieth day after it shall  
42 have become a law; provided that the amendments to section 5-1514 of the  
43 general obligations law made by section nine of this act shall not  
44 affect the repeal of such section and shall be deemed repealed there-  
45 with.