STATE OF NEW YORK

6063

2021-2022 Regular Sessions

IN ASSEMBLY

March 8, 2021

Introduced by M. of A. DINOWITZ, SEAWRIGHT -- read once and referred to the Committee on Governmental Operations

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:

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

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

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

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

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

§ 137-a. Notary services provided utilizing communication technology. 1. For purposes of this section, the following terms shall have the following meanings:

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

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

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

(c) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

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

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

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

(a) the notary public:

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

(2) has obtained satisfactory evidence of the identity of a remotely located individual using at least two different types of identity proofing;

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

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

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

(1) the record:

(i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

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

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

(e) the notarial certificate includes a statement substantially as follows: "This notarial act involved the use of communication technology."

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

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

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

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

(d) establish standards and a period for the retention of an audio-visual recording created pursuant to paragraph (c) of subdivision three of this section; and

(e) prescribe the fees a notary public shall be entitled to for performing a notarial act involving a remotely located individual using communication technology.

5. Before adopting, amending, or repealing any rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

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

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

(c) the views of governmental officials and entities and other interested persons.

6.(a) A notary public or other individual authorized to perform a notarial act may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

(b) A county clerk or city registrar where applicable shall accept for recording a tangible copy of an electronic record and that is otherwise eligible to be recorded under the laws of this state if the record has been certified by a notary public or other individual authorized to perform a notarial act under paragraph (a) of this subdivision.

(c) A certification in substantially the following form is sufficient for the purposes of paragraphs (a) and (b) of this subdivision:

CERTIFICATE OF AUTHENTICITY
State of New York (
) ss.:
County of .....)

On this ..... day of ..... in the year ..., I certify that the attached document (entitled .....) (dated .....) containing ... pages is a true and correct copy of an electronic document printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after its creation or execution.

(Signature and title of notary public)

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

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

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

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

(C) The attesting witness shall receive a legible copy of the signature page, or pages, which shall be transmitted via fax or electronic

means, within twenty-four hours of such pages being signed by the testator during the audio-video conference.

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

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

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

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

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

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

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

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

(2) A witness may repeat the witnessing of the original signature page, or pages, as of the date of execution provided that the witness receives such original signature page, or pages, together with the electronically witnessed copy, witnessed pursuant to the provisions of subparagraph one of this paragraph, within thirty days after the date of execution.

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

3-a. (a) Notwithstanding any provision of this section to the contrary, witnessing pursuant to this section may be made utilizing audio-video technology if the following conditions are met:

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

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

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

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

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

receives such original signature page, or pages, together with the electronically witnessed copy, witnessed pursuant to the provisions of paragraph (a) of this subdivision, within thirty days after the date of execution.

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

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

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

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

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

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

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

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

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

§ 9. This act shall take effect on the thirtieth day after it shall have become a law; provided that the amendments to section 5-1514 of the general obligations law made by section eight of this act shall not affect the repeal of such section and shall be deemed repealed therewith.