STATE OF NEW YORK

6738

2021-2022 Regular Sessions

IN ASSEMBLY

March 29, 2021

Introduced by M. of A. SIMON -- read once and referred to the Committee on Judiciary

AN ACT to amend the executive law and the civil practice law and rules, in relation to authorizing oaths to be remotely administered by notaries public to witnesses in legal proceedings

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

Section 1. Section 135 of the executive law is amended to read as follows:

§ 135. Powers and duties; in general; of notaries public who are attorneys at law. **1.** Every notary public duly qualified is hereby authorized and empowered within and throughout the state to administer oaths and affirmations, to take affidavits and depositions, to receive and certify acknowledgments or proof of deeds, mortgages and powers of attorney and other instruments in writing; to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require, and, for use in another jurisdiction, to exercise such other powers and duties as by the laws of nations and according to commercial usage, or by the laws of any other government or country may be exercised and performed by notaries public, provided that when exercising such powers he shall set forth the name of such other jurisdiction.

2. (a) Every notary public may remotely administer an oath to a witness in a legal proceeding in this state, provided that: (i) for a legal proceeding occurring electronically, via telephone, or via video conference, all parties to such proceeding stipulate that such oath may be administered remotely; or

(ii) for a legal proceeding occurring via a live video conference, such witness presents a valid, government issued form of identification containing a photograph of such witness, and such witness affirmatively

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

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represents that he or she is physically in the state at the time of such video conference.

(b) Unless exempted by any other provision of law, for any legal proceeding occurring electronically, via telephone, or via video conference, the notary public shall be live and present while administering an oath to a witness in such legal proceeding. The use of a pre-recorded message of any kind shall be prohibited.

3. A notary public who is an attorney at law regularly admitted to practice in this state may, in his discretion, administer an oath or affirmation to or take the affidavit or acknowledgment of his client in respect of any matter, claim, action or proceeding.

4. For any misconduct by a notary public in the performance of any of his powers such notary public shall be liable to the parties injured for all damages sustained by them. A notary public shall not, directly or indirectly, demand or receive for the protest for the non-payment of any note, or for the non-acceptance or non-payment of any bill of exchange, check or draft and giving the requisite notices and certificates of such protest, including his notarial seal, if affixed thereto, any greater fee or reward than seventy-five cents for such protest, and ten cents for each notice, not exceeding five, on any bill or note. Every notary public having a seal shall, except as otherwise provided, and when requested, affix his seal to such protest free of expense.

§ 2. Subdivision (d) of rule 3113 of the civil practice law and rules, as added by chapter 66 of the laws of 2004, is amended to read as follows:

(d) The parties may stipulate that a deposition be taken by telephone or other remote electronic means and that a party may participate electronically. The stipulation shall designate reasonable provisions to ensure that an accurate record of the deposition is generated, shall specify, if appropriate, reasonable provisions for the use of exhibits at the deposition; shall specify who must and who may physically be present at the deposition; and shall provide for any other provisions appropriate under the circumstances. Unless otherwise stipulated to by the parties[~~,~~]: (a) the officer administering the oath shall be physically present at the place of the deposition, provided however notaries public administering an oath pursuant to subdivision two of section one hundred thirty-five of the executive law may administer such oath remotely; and [~~the~~] (b) any additional costs of conducting the deposition by telephonic or other remote electronic means, such as telephone charges, shall be borne by the party requesting that the deposition be conducted by such means.

§ 3. This act shall take effect immediately.