

STATE OF NEW YORK

1780--B

Cal. No. 458

2021-2022 Regular Sessions

IN SENATE

January 15, 2021

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 -- reported favorably from said committee to third reading, amended and ordered reprinted, 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.

LBD03271-06-1

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;

22 (ii) the signal transmission shall be live, in real time; and

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

26 (A) personal knowledge;

27 (B) an antecedent in-person identity verification process in accord-
28 ance with the specifications of the federal bridge certification author-
29 ity; or

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

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

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

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

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

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

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

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

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

9 (iv) the description of the electronic technology or technologies to
10 be used in attaching the notary public's electronic signature to the
11 electronic document; and

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

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

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

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

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

38 (ii) it is capable of independent verification;

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

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

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

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

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

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

54 6. Recording of an electronic record. (a) If otherwise required by
55 law as a condition for recording that a document be an original docu-
56 ment, printed on paper or another tangible medium, or be in writing, the

1 requirement is satisfied by paper copy of an electronic record that
2 complies with the requirements of this section.

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

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

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

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

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

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

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

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