

STATE OF NEW YORK

558--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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;

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; and

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

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

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

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

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

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

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

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

32 CERTIFICATE OF AUTHENTICITY

33 State of New York (

34) _____ ss.:

35 County of)

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

43 (Signature and title of notary public)

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (2) A witness may repeat the witnessing of the original signature
33 page, or pages, as of the date of execution provided that the witness
34 receives such original signature page, or pages, together with the elec-
35 tronically witnessed copy, witnessed pursuant to the provisions of
36 subparagraph one of this paragraph, within thirty days after the date of
37 execution.

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

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

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

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

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

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

1 (b) A witness may repeat the witnessing of the original signature
2 page, or pages, as of the date of execution provided that the witness
3 receives such original signature page, or pages, together with the elec-
4 tronically witnessed copy, witnessed pursuant to the provisions of para-
5 graph (a) of this subdivision, within thirty days after the date of
6 execution.

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

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

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

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

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

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

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

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

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

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