STATE OF NEW YORK

399

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. ROZIC, DE LA ROSA, FAHY, SEAWRIGHT, OTIS, SIMON, HUNTER, BUTTENSCHON, STECK, MONTESANO -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Governmental Operations

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:

Section 1. The executive law is amended by adding a new section 137-a to read as follows:

§ 137-a. Electronic notarization. 1. Definitions. (a) "Electronic" shall have the same meaning as set forth in subdivision one of section three hundred two of the state technology law.

(b) "Electronic document" means information that is created, generated, sent, communicated, received or stored by electronic means.

(c) "Electronic notarial act" means an official act by a notary public on or involving an electronic document and using means authorized by the secretary of state.

(d) "Electronic notary public" or "electronic notary" means a notary public who has registered with the secretary of state the capability of performing electronic notarial acts.

(e) "Electronic signature" shall have the same meaning as set forth in subdivision three of section three hundred two of the state technology law.

(f) "Electronic notarial statement of authority" means the portion of a notarized electronic document that is completed by a notary public and contains the notary public's electronic signature and all information required by section one hundred thirty-seven of this article.

(g) "Notary electronic signature" means those forms of electronic signature, which have been approved by the secretary of state as an

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

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acceptable means for an electronic notary to affix the notary public's official signature to an electronic record that is being notarized.

2. Identifying document signers. (a) The methods for identifying document signers for an electronic notarization shall be the same as the methods required for a paper-based notarization; provided, however, in the case of an electronic notarization, such methods may be based on video and audio conference technology that meet the following standards:

(i) the persons communicating shall simultaneously see and speak to one another;

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

(iii) the signal transmission shall be secure from interception through lawful means by anyone other than the persons communicating; and

(iv) the technology shall permit the notary to communicate with and identify the document signer at the time of the notarial act, provided that such identification is confirmed by:

(A) personal knowledge;

(B) an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority; or

(C) a valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card that is designed, issued, and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors", and supplements thereto or revisions thereof, including the specifications published by the Federal Chief Information Officers Council in "Personal Identity Verification Interoperability for Non-Federal Issuers".

(b) If video and audio conference technology has been used to ascertain a document signer's identity, the electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used. The recording shall be maintained for a period of at least ten years from the date of transaction.

(c) In addition to the methods described in paragraphs (a) and (b) of this subdivision, identity may be verified by: (i) the remote online notary public's personal knowledge of the person creating the electronic signature; or

(ii) each of the following: (A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person; (B) credential analysis; and (C) identity proofing.

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

(ii) "identity proofing" means a process or service operating according to standards established by the secretary of state through which a third person affirms the identity of an individual: (A) by means of dynamic knowledge based authentication such as a review of personal information from public or proprietary data sources; or (B) by means of analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis.

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

(b) In registering the capability to perform electronic notarial acts, the notary public shall provide the following information to the secretary of state, notary processing unit:

(i) the applicant's name as currently commissioned and complete mailing address;

(ii) the expiration date of the notary public's commission and signature of the commissioned notary public;

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

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

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

4. Types of electronic notarial acts. Any notarial act authorized by section one hundred thirty-five of this article may be performed electronically as prescribed by this section if under applicable law that document may be signed with an electronic signature.

5. Form and manner of performing the electronic notarial act. (a) When performing an electronic notarial act, a notary public shall apply an electronic signature, which shall be attached to or logically associated with the electronic document such that removal or alteration of such electronic signature is detectable and will render evidence of alteration of the document containing the notary signature which may invalidate the electronic notarial act.

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

(ii) it is capable of independent verification;

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

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

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

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

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

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

6. Recording of an electronic record. (a) If otherwise required by law as a condition for recording that a document be an original document, printed on paper or another tangible medium, or be in writing, the requirement is satisfied by paper copy of an electronic record that complies with the requirements of this section.

(b) If otherwise required by law as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

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

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

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

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

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

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

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