

STATE OF NEW YORK

399--B

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, McDONALD, BICHOTTE HERMELYN, ABINANTI, GRIFFIN, THIELE, JONES, ASHBY -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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
15 public, physically present in the state of New York, on or involving an
16 electronic document and using means authorized by the secretary of
17 state.

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

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

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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 2. Identifying document signers. (a) The methods for identifying
5 document signers for an electronic notarization shall be the same as the
6 methods required for a paper-based notarization; provided, however, an
7 electronic notarization conducted utilizing communication technology
8 shall meet the standards which have been approved through regulation by
9 the secretary of state as acceptable. Such regulations shall include,
10 but not be limited to:

11 (i) that the signal transmission shall be secure from interception
12 through lawful means by anyone other than the persons communicating;

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

14 (iii) that the technology shall permit the notary to communicate with
15 and identify the remotely located individual at the time of the notarial
16 act.

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

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

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

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

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

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

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

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

42 4. Types of electronic notarial acts. (a) Any notarial act authorized
43 by section one hundred thirty-five of this article may be performed
44 electronically as prescribed by this section if: (i) under applicable
45 law that document may be signed with an electronic signature; and (ii)
46 the electronic notary public is located within the state of New York at
47 the time of the performance of an electronic notarial act using communi-
48 cation technology, regardless of the location of the document signer.

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

54 5. Form and manner of performing the electronic notarial act. (a) When
55 performing an electronic notarial act, a notary public shall apply an
56 electronic signature, which shall be attached to the electronic document

1 such that removal or alteration of such electronic signature is detect-
2 able and will render evidence of alteration of the document containing
3 the notary signature which may invalidate the electronic notarial act.

4 (b) The notary public's electronic signature is deemed to be reliable
5 if the standards which have been approved through regulation by the
6 secretary of state have been met. Such regulations shall include, but
7 not be limited to, the requirements that such electronic signature be:

8 (i) unique to the notary public;

9 (ii) capable of independent verification;

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

11 (iv) attached to the electronic document; and

12 (v) linked to the date in such a manner that any subsequent alter-
13 ations to the underlying document are detectable and may invalidate the
14 electronic notarial act.

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

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

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

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

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

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

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

44 8. No notary public or business employing the services of a notary
45 public operating in the state of New York shall exclusively require
46 notarial transactions to utilize electronic notarization.

47 § 2. Section 136 of the executive law is amended by adding a new
48 subdivision 3 to read as follows:

49 3. For electronic notarial services, established in section one
50 hundred thirty-seven-a of this chapter, a fee set through regulation by
51 the secretary of state.

52 § 3. This act shall take effect on the one hundred eightieth day after
53 it shall have become a law. Effective immediately, the addition, amend-
54 ment and/or repeal of any rule or regulation necessary for the implemen-
55 tation of this act on its effective date are authorized to be made on or
56 before such effective date.