

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:

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

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

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

22 (ii) for a legal proceeding occurring via a live video conference,
23 such witness presents a valid, government issued form of identification
24 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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1 represents that he or she is physically in the state at the time of such
2 video conference.

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

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

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

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

26 (d) The parties may stipulate that a deposition be taken by telephone
27 or other remote electronic means and that a party may participate elec-
28 tronically. The stipulation shall designate reasonable provisions to
29 ensure that an accurate record of the deposition is generated, shall
30 specify, if appropriate, reasonable provisions for the use of exhibits
31 at the deposition; shall specify who must and who may physically be
32 present at the deposition; and shall provide for any other provisions
33 appropriate under the circumstances. Unless otherwise stipulated to by
34 the parties[~~r~~]: (a) the officer administering the oath shall be phys-
35 ically present at the place of the deposition, provided however notaries
36 public administering an oath pursuant to subdivision two of section one
37 hundred thirty-five of the executive law may administer such oath
38 remotely; and [~~the~~] (b) any additional costs of conducting the deposi-
39 tion by telephonic or other remote electronic means, such as telephone
40 charges, shall be borne by the party requesting that the deposition be
41 conducted by such means.

42 § 3. This act shall take effect immediately.