

# STATE OF NEW YORK

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558--A

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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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.

LBD04966-05-1

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;

(b) establish standards for communication technology and identity proofing;

(c) establish requirements or procedures to approve providers of communication technology and the process of identity proofing;

(d) establish standards and a period for the retention of an audio-visual recording created pursuant to paragraph (c) of subdivision three of this section; and

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

5. Before adopting, amending, or repealing any rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

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

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

(c) the views of governmental officials and entities and other interested persons.

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

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

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

CERTIFICATE OF AUTHENTICITY

State of New York (

) \_\_\_\_\_ ss.:

County of ..... )

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

(Signature and title of notary public)

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

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

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

(B) The audio-video conference shall allow for direct interaction 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.