STATE OF NEW YORK

7780

IN SENATE

January 11, 2022

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to providing for electronic notarization and to amend a chapter of the laws of 2021 amending the executive law relating to providing for electronic notarization, as proposed in legislative bills numbers S. 1780-c and A. 399-b, in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon expiration thereof

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 135-c to read as follows:

§ 135-c. Remote ink notarization. 1. Definitions. As used in this section, the following terms have the following meanings:

(a) "Communication technology" means being able to see, hear, and communicate with another individual in real time using electronic means.

(b) "Credential" means the data, or government issued or approved physical object upon which the data may reside, that includes the principal's photograph, signature, and multiple credential security features such as: a holographic image, raised or textured print, microprinting, laser engraving, optical variable ink, long life multi-layer PET (polyethylene terephthalate)/PVC (polyvinyl chloride) credential body construction, the issuing agency's seal, or the credential holder's physical characteristics (such as height, eye color, hair color).

(c) "Credential analysis" means a process or service which authenticates a credential through review of public and proprietary data sources, and complies with the following criteria:

(i) uses automated software processes to aid the notary public in verifying the identity of a remotely located individual;

(ii) ensures that the credential passes an authenticity test, consistent with sound commercial practices that:

(1) uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;

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

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(2) uses appropriate technologies to confirm that the identification credential is not fraudulent or inappropriately modified;

(3) uses information held or published by the issuing source or an authoritative source, as available, to confirm the validity of personal details and identification credential details; and

(iii) provides output of the credential analysis to the notary public; and

(iv) enables the notary public to visually compare the credential and the remotely located individual as viewed by the notary public in real time through communication technology.

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

(e) "Electronic record" means information evidencing any act, transaction, occurrence, event or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.

(f) "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.

(g) "Identity proofing" means a process or service through which a third party confirms the identity of a principal through review of personal information from public and proprietary data sources as may be further defined by regulation.

(h) "Notarial act" means the performance of an act authorized by section one hundred thirty-five of this article.

(i) "Principal" means an individual:

(i) whose signature is reflected on a record that is notarized;

(ii) who has taken an oath or affirmation administered by a notary public; or

(iii) whose signature is reflected on a record that is notarized after the individual has taken an oath or affirmation administered by a notary public.

(j) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(k) "Remote notarization" means the act of performing any notarial act that is authorized under section one hundred thirty-five of this article where a principal who is not in the physical presence of the notary public obtains a notarial act under subdivision two of this section.

(l) "Remote presentation" means display of a credential to the notary public through communication technology in a manner that allows the notary public to compare the principal to the credential facial image and to examine the front and back of any credential.

(m) "Wet signature" means a signature affixed in ink to a paper document.

(n) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

2. Any notary public qualified under this article is hereby authorized to perform a remote notarization by utilizing communication technology that allows the notary public to interact with a principal, provided that all conditions of this subdivision are met.

(a) The notary public must verify the identity of the principal in a manner consistent with the requirements of subdivision three of this section. A notary public may require an individual to provide addi-

tional information or identification credentials necessary to assure the notary public of the identity of the principal.

(b) The communication technology conference must allow for real-time, direct interaction between the principal and the notary public.

(c) The audio-video communication technology must provide reasonable security measures to prevent unauthorized access to the communication technology and to the methods used to verify the identity of the principal.

(d) A recording, containing both audio and video, of the remote notarization must be retained by the notary public for at least ten years.

(e) The notary public must take reasonable steps to ensure that a backup of the recording of the remote notarization exists and is secured from unauthorized use. A notary public may authorize a third party to retain such recordings on behalf of the notary, provided that all recordings retained by a third party be made available to the secretary upon request.

(f) The notary public is able reasonably to confirm that a record before the notary public is the same record in which the principal made a statement or on which the principal executed a signature.

(g) For remote notarization involving paper documents, the principal may transmit by mail, fax or electronic means a legible signed record directly to the notary public, and the principal may appear before the notary public by means of communication technology to perform the notarial act in accordance with this section. The notary public may notarize the record within a reasonable time and transmit the record back to the principal by mail, fax or secure electronic means. An electronically transmitted document notarized pursuant to this paragraph shall be considered an original document.

(h) The notary public must be physically situated in New York state at the time of the remote notarization. The principal may be situated in New York, outside of New York but inside the United States, or outside the United States, provided:

(1) the record is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(2) the record involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States.

(i) The notary public must maintain a journal of each remote notarization performed pursuant to this section, which upon demand, shall be subject to inspection by the secretary of state. The journal required by this subdivision shall be maintained by each notary public for as long as such notary public remains in office and then for an additional five years thereafter. Each journal entry shall:

(1) Be made contemporaneously with the performance of the notarial act;

(2) Indicate the date and approximate time of the notarial act;

(3) Indicate the name of the principal;

(4) Indicate the technology used to perform the remote notarization;

(5) Indicate the number and type of notarial services provided; and

(6) Indicate the type of credential used to identify the principal.

3. The notary public must be able to verify the identity of the principal at the time the notarial act is provided by one of the following methods:

(a) The notary public's personal knowledge of the principal; or

(b) Identification of the principal who appears remotely before the notary by means of communication technology by each of the following:

(i) Remote presentation by the principal of a credential;

(ii) Credential analysis; and

(iii) Identity proofing of the principal; or

(c) Oath or affirmation of a credible witness who personally knows the principal and who is either personally known to the notary public or who is identified by the notary public under paragraph (b) of this subdivision.

4. Notwithstanding article nine of the real property law or any other law to the contrary, any act performed in conformity with this section shall satisfy any requirements at law that a principal personally appear before, be in the presence of, or be in a single time and place with a notary public at the time of the performance of the notarial act, unless a law expressly excludes the authorization provided for in this section.

5. Any person who suffers actual damages as a result of a principal who violates any of the provisions of this section, shall have a civil cause of action against any such principal in a court of competent jurisdiction.

6. The secretary of state may promulgate regulations establishing minimum standards that relate to reasonable security measures to prevent unauthorized access to communication technology and to the methods used to verify the identity of the principal, requirements related to the use and verification of an electronic signature, and any other matters necessary to administer the provisions of this section.

7. Pursuant to section one hundred thirty of this article, the secretary of state may suspend or remove from office any notary public that violates this section.

8. (a) Nothing in this section shall be construed as requiring a notary public to use an electronic signature to perform a remote notarization. A remote notarization may be completed by wet signature or electronic signature.

(b) When performing a remote notarization relating to an electronic record, a notary public shall apply an electronic signature that is: (i) unique to the notary public; (ii) capable of independent verification; (iii) retained under the notary public's sole control; (iv) attached or logically associated with the electronic record; and (v) linked to the data in such a manner that any subsequent alterations to the underlying electronic record are detectable and may invalidate the notarial act.

(c) A county clerk may certify pursuant to section one hundred thirty-three of this article the autograph signature of a notary public on any record that has been remotely notarized in compliance with this section.

9. A notarial act performed according to this section shall contain a statement on the notarial certificate substantially as follows: "This remote notarial act involved the use of communication technology."

10. Notwithstanding section one hundred thirty-six of this article, a notary public that performs a remote notarization pursuant to this section shall be entitled to the following fees:

(a) For administering an oath or affirmation, and certifying the same when required, except where another fee is specifically prescribed by statute, five dollars.

(b) For taking and certifying the acknowledgment or proof of execution of a written instrument, by one person, five dollars, and by each additional person, five dollars, for swearing each witness thereto, five dollars.

11. Nothing in this section shall be construed as requiring any notary public to perform a remote notarization. A notary public may refuse to perform a notarial act if the notary public is not satisfied that (i) the principal is competent or has the capacity to execute a record, or (ii) the principal's signature is knowingly and voluntarily made.

12. (a) A notary public may certify that a tangible copy of the signature page and document type of an electronic record remotely notarized by such notary public is an accurate copy of such electronic record. Such certification must (i) be dated and signed by the notary public in the same manner as the official signature of the notary public provided to the secretary of state pursuant to section one hundred thirty-one of this article, and (ii) comply with section one hundred thirty-seven of this article.

(b) A county clerk, city registrar, or other recording officer 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.

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

CERTIFICATE OF AUTHENTICITY
State of New York)
) ss.:
County of .....)
On this ..... day of ..... in the year ....., I certify that the signature page of the attached record (entitled .....) (dated .....) is a true and correct copy of the signatures affixed to an electronic record printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature in the electronic record after its creation or execution.
(Signature and title of notary public)
(official stamp or registration number, with the expiration date of the notary public's commission)

§ 2. Section 137-a of the executive law, as added by a chapter of the laws of 2021, amending the executive law relating to providing for electronic notarization, as proposed in legislative bills numbers S. 1780-c and A. 399-b, is amended to read as follows:

§ [~~137-a~~] 135-c. Electronic notarization. 1. Definitions. (a) "Communication technology" means an electronic device or process that: (i) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and (ii) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

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

(c) "Electronic [~~document~~] record" means information that is created, generated, sent, communicated, received or stored by electronic means.

(d) "Electronic notarial act" means an official act by a notary public, physically present in the state of New York, on or involving an electronic [~~document~~] record and using means authorized by the secretary of state.

(e) "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.

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

(g) "Principal" means an individual:

(i) whose signature is reflected on a record that is notarized;

(ii) who has taken an oath or affirmation administered by a notary public; or

(iii) whose signature is reflected on a record that is notarized after the individual has taken an oath or affirmation administered by a notary public.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

2. [~~**Identifying document signers.**~~] **Any notary public qualified under this article is hereby authorized to perform an electronic notarial act by utilizing audio-video communication technology that allows the notary public to interact with a principal, provided that all conditions of this section are met.**

(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, an electronic [~~**notarization**~~] **notarial act** conducted utilizing communication technology shall meet the standards which have been approved through regulation by the secretary of state as acceptable. Such regulations shall include, but not be limited to:

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

(ii) that the [~~**signal transmission shall be**~~] **communication technology shall permit the notary public to communicate with the principal** live, in real time; [~~**and**~~]

(iii) that the **communication** technology shall permit the notary to communicate with and identify the remotely located individual at the time of the notarial act**; and**

(iv) a standard that requires two or more different processes for authenticating the identity of a remotely located individual utilizing technology to detect and deter fraud, but which may allow a notary public's personal knowledge of a document signer to satisfy such requirement.

(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.

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 [~~**in**~~] **on** a form prescribed by the secretary of state **and upon payment of a fee which shall be set by regulation**.

(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~~] record; 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. (a) Any notarial act authorized by section one hundred thirty-five of this article may be performed electronically as prescribed by this section if: (i) for execution of any instrument in writing, under applicable law that document may be signed with an electronic signature and the notary public is reasonably able to confirm that such instrument is the same instrument in which the principal made a statement or on which the principal executed a signature; and (ii) the electronic notary public is located within the state of New York at the time of the performance of an electronic notarial act using communication technology, regardless of the location of the document signer. If the principal is outside the United States, the record or subject of the notarial act:

(1) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(2) shall involve property located in the territorial jurisdiction of the United States or shall involve a transaction substantially connected with the United States.

(b) An electronic notarial act performed using communication technology pursuant to this section satisfies any requirement of law of this state that a document signer personally appear before, be in the presence of, or be in a single time and place with a notary public at the time of the performance of the notarial act.

5. Form and manner of performing the electronic notarial act. (a) When performing an electronic notarial act relating to execution of instruments in writing, a notary public shall apply an electronic signature, which shall be attached to the electronic [~~document~~] record 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 standards which have been approved through regulation by the secretary of state have been met. Such regulations shall include, but not be limited to, the requirements that such electronic signature be:
(i) unique to the notary public;
(ii) capable of independent verification;
(iii) retained under the notary public's sole control;
(iv) attached to the electronic [~~document~~] record; and
(v) linked to the [~~date~~] 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~~] through use of communication technology.

(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 may be 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.

(d) (i) A notary public may certify that a tangible copy of the signature page and document type of an electronic record remotely notarized by such notary public is an accurate copy of such electronic record. Such certification must (1) be dated and signed by the notary public in the same manner as the official signature of the notary public provided to the secretary of state pursuant to section one hundred thirty-one of this article, and (2) comply with section one hundred thirty-seven of this article.

(ii) A county clerk, city registrar, or other recording officer 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.

(iii) A certification in substantially the following form is sufficient for the purposes of this subdivision:

CERTIFICATE OF AUTHENTICITY
State of New York)
) ss.:
County of .....)
On this ..... day of ..... in the year ....., I certify that the signature page of the attached record (entitled .....) (dated .....) is a true and correct copy of the signatures affixed to an electronic record printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature in the electronic record after its creation or execution.
(Signature and title of notary public)
(official stamp or registration number, with the expiration date of the notary public's commission)

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 elec-

tronically transmit to the secretary of state a notice of the change, signed with the notary public's official electronic signature.

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

9. Nothing in this section shall be construed as requiring any notary public to perform a notarial act using electronic communication technology. A notary public may refuse to perform such a notarial act if the notary public is not satisfied that (a) the principal is competent or has the capacity to execute a record, or (b) the principal's signature is knowingly and voluntarily made.

10. Notwithstanding article nine of the real property law or any other law to the contrary, any act performed in conformity with this section shall satisfy any requirements at law that a principal personally appear before, be in the presence of, or be in a single time and place with a notary public at the time of the performance of the notarial act, unless a law expressly excludes the authorization provided for in this section.

§ 3. Subdivision 3 of section 136 of the executive law, as added by a chapter of the laws of 2021, amending the executive law relating to providing for electronic notarization, as proposed in legislative bills numbers S. 1780-c and A. 399-b, is amended to read as follows:

3. For electronic notarial services, established in section [~~one hundred thirty-seven-a~~] **one hundred thirty-five-c** of this chapter, a fee set through regulation by the secretary of state.

§ 4. Section 137 of the executive law is amended to read as follows:

§ 137. Statement as to authority of notaries public. In exercising [~~his~~] powers pursuant to this article, a notary public, in addition to the venue of [~~his~~] **the** act and [~~his~~] signature **of such notary public**, shall print, typewrite, [~~or~~] stamp**, or affix by electronic means where performing an electronic notarial act in conformity with section one hundred thirty-five-c of the executive law,** beneath [~~his~~] **their** signature in black ink, [~~his~~] **the notary public's** name, the words "Notary Public State of New York," the name of the county in which [~~he~~] **such notary public** originally qualified, and the **expiration** date [~~upon which his~~] **of such notary public's** commission [~~expires~~] and, in addition, wherever required, a notary public shall also include the name of any county in which [~~his~~] **such notary public's** certificate of official character is filed, using the words "Certificate filed ..... County." A notary public who is duly licensed as an attorney and counsellor at law in this state may [~~in his discretion,~~] substitute the words "Attorney and Counsellor at Law" for the words "Notary Public." A notary public who has qualified or who has filed a certificate of official character in the office of the clerk in a county or counties within the city of New York must also affix to each instrument [~~his~~] **such notary public's** official number or numbers in black ink, as [~~given to him~~] **assigned** by the clerk or clerks of such county or counties at the time such notary qualified in such county or counties and, if the instrument is to be recorded in an office of the register of the city of New York in any county within such city and the notary has been given a number or numbers by such register or his predecessors in any county or counties, when [~~his~~] **the notary public's** autographed signature and certificate are filed in such office or offices pursuant to this chapter, [~~he~~] **the notary public** shall also affix such number or numbers. No official act of such notary public shall be held invalid on account of the failure to comply with these provisions. If any notary public shall [~~wilfully~~] **willfully** fail to comply with any of the provisions of this section,

[~~he~~] **the notary public** shall be subject to disciplinary action by the secretary of state. In all the courts within this state the certificate of a notary public, over [~~his~~] **the** signature **of the notary public**, shall be received as presumptive evidence of the facts contained in such certificate; provided, that any person interested as a party to a suit may contradict, by other evidence, the certificate of a notary public.

§ 5. Any recording, backup of such recording, and journal of a remote notarization made pursuant to section one of this act must be retained by the notary public for at least ten years.

§ 6. Section 3 of a chapter of the laws of 2021 amending the executive law relating to providing for electronic notarization, as proposed in legislative bills numbers S. 1780-c and A. 399-b, is amended to read as follows:

§ 3. This act shall take effect [~~on the one hundred eightieth day after it shall have become a law~~] **January 31, 2023**. 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.

§ 7. This act shall take effect immediately; provided, however, that sections two, three, and five of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the executive law relating to providing for electronic notarization, as proposed in legislative bills numbers S.1780-c and A.399-b, takes effect; and provided further that section one of this act shall expire and be deemed repealed on the same date that section two of this act takes effect.