STATE OF NEW YORK

1780--C

Cal. No. 458

2021-2022 Regular Sessions

IN SENATE

January 15, 2021

Introduced by Sens. SKOUFIS, GOUNARDES, MAY, REICHLIN-MELNICK -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading -- reported favorably from said committee to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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) "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" 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

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

LBD03271-11-1

electronic document 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.

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, an electronic notarization 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 live, in real time; and

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

(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 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. (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) under applicable law that document may be signed with an electronic 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.

(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 pres-

ence 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, a notary public shall apply an electronic signature, which shall be attached to 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 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; and

(v) linked to the date 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 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.

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.

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.

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

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

§ 3. This act shall take effect on the one hundred eightieth 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.