An Act To Provide for Remote Notarization

Received by the Clerk of the House on April 5, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Presented by Representative DOUDERA of Camden.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA c. 19-A is enacted to read:

CHAPTER 19-A

REMOTE NOTARIZATION

§971. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Appear. "Appear" or "personally appear" or "in the presence of" means being in the same physical location as another individual and close enough to see, hear, communicate with and exchange tangible identification credentials with that individual; or interacting with another individual by means of communication technology that complies with the provisions of this chapter.

2. Communication technology. "Communication technology" means an electronic device or process that allows a notary public physically located in this State and a remotely located individual to communicate with each other simultaneously by sight and sound, and which, as necessary, makes reasonable accommodations for disabilities as required by state and federal law.

3. Credential analysis. "Credential analysis" means a process or service that meets the standards established by the secretary through which a 3rd person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

4. Electronic. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

5. Electronic record. "Electronic record" means information that is created, generated, sent, communicated, received or stored by electronic means.

6. Electronic seal. "Electronic seal" means information within a notarized electronic record that confirms the remote online notary public's name, jurisdiction, identifying number and commission expiration date and generally corresponds to information in notary seals used on paper documents, as described in section 951.

7. Electronic signature. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with an electronic record and executed or adopted by an individual with the intent to sign the electronic document.

8. Identity proofing. "Identity proofing" means a process or service operating according to standards established by the secretary through which a 3rd person affirms the identity of an individual by means of dynamic knowledge-based authentication such as a review of personal information from public or proprietary data sources or analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis or fingerprint analysis.
9. Notarial act. "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument.

10. Notary public. "Notary public" means a notary public commissioned in this State in accordance with chapter 19.

11. Outside the United States. "Outside the United States" means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

12. Principal. "Principal" means an individual making an oath, affirmation or acknowledgement other than in the capacity of a witness for the remote online notarization or an individual whose electronic signature is notarized in a remote online notarization.

13. Remote online notarial certificate. "Remote online notarial certificate" means a form of an acknowledgement, jurat, verification on oath or affirmation or verification of witness or attestation that is completed by a remote online notary public and:
   A. Contains the remote online notary public's electronic signature, electronic seal, title, commission and expiration date;
   B. Contains required information concerning the date and place of the remote online notarization;
   C. Conforms to the requirements for an acknowledgement, jurat, verification on oath or affirmation or verification of witness or attestation under the laws of this State; and
   D. Indicates that the individual making the acknowledgement, oath or affirmation appeared remotely online.

14. Remote online notarization. "Remote online notarization" or "remote online notarial act" means a notarial act performed by means of communication technology that meets the standards adopted under this chapter.

15. Remote online notary public. "Remote online notary public" means a notary public who has been authorized by the secretary to perform remote online notarizations under this chapter.

16. Remote presentation. "Remote presentation" means transmission to the remote online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the remote online notary public to identify the individual seeking the remote online notary public's services and perform credential analysis.

17. Remotely located individual. "Remotely located individual" means an individual who is not in the physical presence of the notary public.

18. Secretary. "Secretary" means the Secretary of State established in Title 5, chapter 5.

§972. Standards for remote online notarization
The secretary shall, by rule, develop and maintain standards for remote online notarization, including but not limited to standards for credential analysis and identity proofing. In developing standards for remote online notarization, the secretary shall review and consider standards established by national associations and standard setting bodies for notary publics.

§973. Application; examination; fee

A notary public may become a remote online notary public by meeting the requirements of this section.

1. Application. The notary public must submit to the secretary an application in a format prescribed by the secretary, which must include:

A. The notary public's legal name and, if different, name to be used in acting as a remote online notary public;
B. A certificate that the notary public will comply with the secretary's standards and rules established pursuant to this chapter;
C. Proof of successful completion of the course and examination required under subsection 2;
D. Disclosure of any and all professional or occupational license or commission revocations or other disciplinary actions against the notary public;
E. Identification of the technology that the notary public intends to use, which must conform to any rules or regulations adopted by the secretary; and
F. All information, evidence or declaration required by the secretary.

2. Instruction; examination. The notary public shall complete a course of instruction approved by the secretary and pass an examination based on the course. The content of the course shall include notarial rules, procedures and ethical obligations pertaining to electronic notarization or any other relevant law or official guideline of the State. The course may be taken in conjunction with any course required by the secretary for a notary public commission.

3. Fee. The secretary may charge the notary public an application fee in an amount necessary to administer this chapter.

§974. Approval of application; term of registration

1. Approval. Upon the notary public's fulfillment of the requirements for application set out in section 973, the secretary shall approve the application and issue a unique registration number to the applicant.

2. Failure to comply. The secretary may reject an application if the notary public fails to comply with any provision in this chapter.

3. Term. Unless terminated pursuant to section 975, the term of registration to perform electronic notarial acts begins on the registration start date set by the secretary and continues as long as the notary public's commission pursuant to chapter 19 remains valid.

§975. Disciplinary action; grounds; procedure; complaints
1. **Grounds.** The secretary may suspend, revoke or refuse to renew the commission of a remote online notary public in the State. The secretary's actions may be based on any of the following grounds:

A. The remote online notary public has performed in an improper manner any duty imposed upon the remote online notary public by law;

B. The remote online notary public has performed acts not authorized by law;

C. The remote online notary public violates the provisions of section 954-A or section 960;

D. The remote online notary public has been convicted of a crime as specified by rules adopted by the secretary. These rules must provide that a conviction for perjury, false swearing, bribery, corrupt practices or forgery or related offenses may be a basis for the secretary to suspend, revoke or refuse to renew the commission of a remote online notary public; or

E. The remote online notary public has allowed another individual to use that remote online notary public's commission.

2. **Procedure.** A remote online notary public commission may not be suspended, revoked or refused for renewal for the grounds set forth in subsection 1 without prior written notice and opportunity for hearing. A remote online notary public commission may not be suspended, revoked or refused for renewal under this section except by a decision issued by the secretary or the secretary's designee.

3. **Complaints.** Any person may file a complaint with the secretary seeking disciplinary action against a remote online notary public. Complaints must be in writing in a form prescribed by the secretary. The secretary may also bring a complaint against a remote online notary public if the secretary determines that the remote online notary public may have violated the provisions of subsection 1. If the secretary determines that a complaint alleges facts that, if true, would require revocation, suspension or nonrenewal of commission or other disciplinary action, the secretary shall conduct a hearing pursuant to the Maine Administrative Procedure Act. Whenever the secretary establishes that a complaint does not state facts that warrant a hearing, the complaint may be dismissed. Persons making complaints must be advised in writing of all formal decisions made by the secretary regarding that complaint.

4. **Reinstatement.** Any individual whose remote online notary public commission has been suspended, revoked or refused for renewal may apply to the secretary in writing for the reinstatement of the remote online notary public commission or as set by rule for convictions pursuant to subsection 1, paragraph D at a time specified in the decision of the secretary, and, in the case of revocation, any individual may apply for a new commission one year from the date of the secretary's original action.

§976. Recommission; actions following termination

1. **Recommissioned.** A former remote online notary public whose commission terminated for a reason other than revocation or a denial of renewal and who is recommissioned within 3 months of termination with the same electronic signature and electronic seal is not required to comply with subsection 2.
Required actions. Except as provided in subsection 1, if a remote online notary public's commission is terminated or revoked by the secretary, the remote online notary public shall, within 4 months of termination or revocation:

A. Destroy the coding, disk, certificate, card, software or password that enables electronic affixation of the remote online notary public's official electronic signature or electronic seal; and

B. Certify compliance with this section to the secretary in accordance with rules adopted by the secretary.

§977. Authority to perform remote online notarizations

1. Location. A remote online notary public physically located in this State may perform a remote online notarial act using communication technology in accordance with this chapter and any rules adopted by the secretary for a remotely located individual who is physically located:

   A. In the State;
   B. Outside this State but within the United States; or
   C. Outside the United States as long as:
      (1) The remote online notary public has no actual knowledge that the act by the remotely located individual of making a statement or signing a document is prohibited in the jurisdiction in which the individual is located; and
      (2) The individual placing the electronic signature on the electronic record confirms to the remote online notary public that the requested remote online notarial act and the electronic record:
         (a) Are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity or other entity in the United States;
         (b) Relates to property located in the United States; or
         (c) Relates to a transaction substantially connected to the United States.

§978. Electronic record of remote online notarizations

A remote online notary public:

1. Electronic journal. Shall keep a secure electronic journal of each remote online notarial act performed by the remote online notary public that contains:

   A. The date and time of the notarization;
   B. The type of notarial act;
   C. The type, the title or a description of the electronic record or proceeding;
   D. The printed name and address of each principal involved in the transaction or proceeding;
   E. The fee, if any, charged for the notarization; and
   F. Evidence of the identity of each principal involved in the transaction or proceeding in the form of:
(1) A statement that the individual is personally known to the remote online notary public;

(2) A notation of the type of identification document provided to the remote online notary public;

(3) A record of the identity verification made under this chapter, if applicable; or

(4) All of the following:

(a) The printed name and address of each credible witness swearing to or affirming the individual's identity; and

(b) For each credible witness not personally known to the remote online notary public, a description of the type of identification documents provided to the remote online notary public;

2. **Audio and video copy.** Shall create an audio and video copy of the performance of the remote online notarial act;

3. **Integrity.** Shall take reasonable steps to:

   A. Ensure the integrity, security and authenticity of remote online notarizations;

   B. Maintain a backup record for the electronic journal required by subsection 1 and the recording required by subsection 2; and

   C. Protect the backup record from unauthorized use;

4. **Record retention.** Shall maintain the electronic journal required by subsection 1 and the recordings required by subsection 2 for at least 10 years after the date of the transaction or proceeding; and

5. **Custodian.** May designate a custodian of the recording and the electronic journal required in this section, as long as:

   A. If the custodian is the employer of the remote online notary public, the custodial relationship is evidenced by a written document signed by the remote online notary public and the employer; and

   B. The repository meets standards established by the secretary in rule.

§979. **Standards and procedures for record retention**

The secretary shall enact rules establishing standards for the retention of a video and audio copy of the performance of a remote online notarial act, including standards for 3rd-party repositories and procedures for the preservation of the audio and video copy and the electronic journal if the remote online notary public dies or is adjudicated incompetent or if the remote online notary public's commission or authority to perform notarial acts is otherwise terminated or revoked.

§980. **Use of electronic journal, signature and seal**

A remote online notary public:

1. **Keep seal secure.** Shall keep the remote online notary public's electronic journal, electronic signature and electronic seal secure;

2. **Prohibit use.** May not allow another individual to use the remote online notary public's electronic signature or electronic seal;
3. **Attach seal.** Shall attach the remote online notary public's electronic signature and electronic seal to the remote online notarial certificate of an electronic record in a manner that renders any subsequent change or modification to the electronic record to be evident;

4. **Notify of theft.** Shall immediately notify an appropriate law enforcement agency and the secretary of the theft or vandalism of the remote online notary public's electronic journal under section 978, electronic signature or electronic seal; and

5. **Notify of loss.** Shall immediately notify the secretary of the loss or use by another individual of the remote online notary public's electronic journal, electronic signature or electronic seal.

§981. **Procedures for remote online notarization**

1. **Verification of identity.** In performing a remote online notarization, a remote online notary public shall verify the identity of an individual creating an electronic signature at the time that the signature is taken by using communication technology that meets the requirements of this chapter and rules adopted by the secretary pursuant to this chapter by:

   A. The remote online notary public's personal knowledge of the individual creating the electronic signature; or

   B. Evidence of the following:

      (1) Remote presentation by the individual creating the electronic signature of a government-issued identification credential, such as a passport or driver's license, that contains the signature and a photograph of the individual;

      (2) Credential analysis; and

      (3) Identity proofing.

2. **Secure technology.** The remote online notary public shall take reasonable steps to ensure that the communication technology used in a remote online notarization is secure from unauthorized interception.

3. **Certificate.** The remote online notarial certificate for a remote online notarization must state that the individual making the acknowledgement or making the oath appeared remotely online.

§982. **Fees for remote online notarization**

A remote online notary public or the remote online notary public's employer may charge a fee for performance of remote online notarization.

§983. **Recording of electronic record**

1. **Originals.** If a law requires as a condition for recording that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by a paper copy of an electronic record that complies with the requirements of this chapter.

2. **Signatures.** If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature. 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 individual
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 remote online notary public has attached an electronic notarial certificate that meets the requirements of this chapter.

3. Acknowledgments. If the remote online notarial act is an acknowledgment, then the acknowledgement form must indicate that the individual signing the document appeared using communication technology. The secretary by rule shall develop forms of acknowledgement for an acknowledgement performed online.

§984. Recording electronic records in tangible form

1. Originals. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, be in writing or be signed, the requirement is satisfied by a paper copy of an electronic document bearing an electronic signature that a remote online notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature pursuant to this section.

2. Signatures. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied by a paper copy of an electronic document bearing an electronic signature of the individual authorized to perform that act that a remote online notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature of the individual pursuant to this section. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

3. Paper copies. A paper copy of a document that was originally in electronic form and that is otherwise entitled to be recorded under the laws of this State must be considered satisfactory if the paper copy has been certified to be a true and correct copy of the electronic original by a remote online notary public as evidenced by a certificate attached to or made a part of the paper copy. The certificate must be signed and dated by the remote online notary public and be signed in the same manner as on file with the secretary, identify the jurisdiction in which the certification is performed, contain the title of the remote online notary public, indicate the date of expiration, if any, of the remote online notary public's commission and include an official stamp of the remote online notary public affixed to or embossed on the certificate.

4. Certification. The following form of certificate is sufficient for the purposes of subsection 3, if completed with the information required in subsection 3:

State of Maine
County of ..............

I certify that the foregoing and annexed document entitled ...................., dated ........ and containing ...... pages is a true and correct copy of an electronic document bearing one or more electronic signatures this ........ day of ..................

........................................

Signature of notary public
5. Verification of certification. A remote online notary public making the certification provided in this section shall confirm that the electronic record contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic record evident; shall personally print or supervise the printing of the electronic record onto paper; and may not make any changes or modifications to the electronic record other than the certification described in this section.

6. Conclusive evidence. If a certificate is completed with the information required by this section and is attached to or made a part of a paper document, the certificate must be conclusive evidence that the requirements of this section have been satisfied with respect to the document.

7. Property conveyances; encumbrances. A document purporting to convey or encumber real property or any interest in real property that has, by inadvertence or excusable neglect, been recorded by an individual recording a document for the jurisdiction in which the real property is located, although the document may not have been certified in accordance with the provisions of this section, imparts the same notice to 3rd persons and is effective from the time of recording as if the document had been certified in accordance with the provisions of this section.

This section does not apply to a plat, map or survey of real property if under another law of this State or under a rule, regulation or ordinance applicable to an individual recording a document there are requirements of format or medium for the execution, creation or recording of such plat, map or survey beyond the requirements applicable to a deed to real property, or requirements that such plat, map or survey must be recorded in a different location than a deed to real property.

§985. Wrongful possession of software or hardware; criminal offense

An individual who, without authorization, knowingly obtains, conceals, damages or destroys the certificate, disk, coding, card, program, software or hardware enabling a remote online notary public to affix an official electronic signature or electronic seal commits a criminal offense.

§986. Rulemaking

The secretary shall adopt rules to implement this chapter, including rules to facilitate remote online notarizations. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Rulemaking. Within 12 months of the effective date of this Act, the Secretary of State shall adopt rules to implement the Maine Revised Statutes, Title 4, chapter 19-A.

SUMMARY

This bill provides for remote online notarization by notary publics located in the State. The bill is based on the model legislation of the Mortgage Bankers Association and the American Land Title Association.