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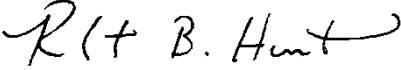
No. 1399

H.P. 1033

House of Representatives, April 7, 2021

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.


ROBERT B. HUNT
Clerk

Presented by Representative DOUDERA of Camden.

1 **Be it enacted by the People of the State of Maine as follows:**

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

3 **CHAPTER 19-A**

4 **REMOTE NOTARIZATION**

5 **§971. Definitions**

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

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

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

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

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

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

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

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

33 **8. Identity proofing.** "Identity proofing" means a process or service operating
34 according to standards established by the secretary through which a 3rd person affirms the
35 identity of an individual by means of dynamic knowledge-based authentication such as a
36 review of personal information from public or proprietary data sources or analysis of
37 biometric data such as, but not limited to, facial recognition, voiceprint analysis or
38 fingerprint analysis.

1 **9. Notarial act.** "Notarial act" means an act, whether performed with respect to a
2 tangible or electronic record, that a notarial officer may perform under the law of this State.
3 The term includes taking an acknowledgment, administering an oath or affirmation, taking
4 a verification on oath or affirmation, witnessing or attesting a signature, certifying or
5 attesting a copy and noting a protest of a negotiable instrument.

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

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

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

15 **13. Remote online notarial certificate.** "Remote online notarial certificate" means a
16 form of an acknowledgement, jurat, verification on oath or affirmation or verification of
17 witness or attestation that is completed by a remote online notary public and:

18 A. Contains the remote online notary public's electronic signature, electronic seal, title,
19 commission and expiration date;

20 B. Contains required information concerning the date and place of the remote online
21 notarization;

22 C. Conforms to the requirements for an acknowledgement, jurat, verification on oath
23 or affirmation or verification of witness or attestation under the laws of this State; and

24 D. Indicates that the individual making the acknowledgement, oath or affirmation
25 appeared remotely online.

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

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

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

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

39 **18. Secretary.** "Secretary" means the Secretary of State established in Title 5, chapter
40 5.

41 **§972. Standards for remote online notarization**

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

6 **§973. Application; examination; fee**

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

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

11 A. The notary public's legal name and, if different, name to be used in acting as a
12 remote online notary public;

13 B. A certificate that the notary public will comply with the secretary's standards and
14 rules established pursuant to this chapter;

15 C. Proof of successful completion of the course and examination required under
16 subsection 2;

17 D. Disclosure of any and all professional or occupational license or commission
18 revocations or other disciplinary actions against the notary public;

19 E. Identification of the technology that the notary public intends to use, which must
20 conform to any rules or regulations adopted by the secretary; and

21 F. All information, evidence or declaration required by the secretary.

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

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

30 **§974. Approval of application; term of registration**

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

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

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

39 **§975. Disciplinary action; grounds; procedure; complaints**

1 **1. Grounds.** The secretary may suspend, revoke or refuse to renew the commission
2 of a remote online notary public in the State. The secretary's actions may be based on any
3 of the following grounds:

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

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

7 C. The remote online notary public violates the provisions of section 954-A or section
8 960;

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

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

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

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

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

38 **§976. Recommission; actions following termination**

39 **1. Recommissioned.** A former remote online notary public whose commission
40 terminated for a reason other than revocation or a denial of renewal and who is
41 recommissioned within 3 months of termination with the same electronic signature and
42 electronic seal is not required to comply with subsection 2.

1 **2. Required actions.** Except as provided in subsection 1, if a remote online notary
2 public's commission is terminated or revoked by the secretary, the remote online notary
3 public shall, within 4 months of termination or revocation:

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

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

9 **§977. Authority to perform remote online notarizations**

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

14 A. In the State;

15 B. Outside this State but within the United States; or

16 C. Outside the United States as long as:

17 (1) The remote online notary public has no actual knowledge that the act by the
18 remotely located individual of making a statement or signing a document is
19 prohibited in the jurisdiction in which the individual is located; and

20 (2) The individual placing the electronic signature on the electronic record
21 confirms to the remote online notary public that the requested remote online
22 notarial act and the electronic record:

23 (a) Are part of or pertain to a matter that is to be filed with or is currently
24 before a court, governmental entity or other entity in the United States;

25 (b) Relates to property located in the United States; or

26 (c) Relates to a transaction substantially connected to the United States.

27 **§978. Electronic record of remote online notarizations**

28 A remote online notary public:

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

31 A. The date and time of the notarization;

32 B. The type of notarial act;

33 C. The type, the title or a description of the electronic record or proceeding;

34 D. The printed name and address of each principal involved in the transaction or
35 proceeding;

36 E. The fee, if any, charged for the notarization; and

37 F. Evidence of the identity of each principal involved in the transaction or proceeding
38 in the form of:

- 1 (1) A statement that the individual is personally known to the remote online notary
- 2 public;
- 3 (2) A notation of the type of identification document provided to the remote online
- 4 notary public;
- 5 (3) A record of the identity verification made under this chapter, if applicable; or
- 6 (4) All of the following:
- 7 (a) The printed name and address of each credible witness swearing to or
- 8 affirming the individual's identity; and
- 9 (b) For each credible witness not personally known to the remote online notary
- 10 public, a description of the type of identification documents provided to the
- 11 remote online notary public;

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

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

- 15 A. Ensure the integrity, security and authenticity of remote online notarizations;
- 16 B. Maintain a backup record for the electronic journal required by subsection 1 and
- 17 the recording required by subsection 2; and
- 18 C. Protect the backup record from unauthorized use;

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

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

- 24 A. If the custodian is the employer of the remote online notary public, the custodial
- 25 relationship is evidenced by a written document signed by the remote online notary
- 26 public and the employer; and
- 27 B. The repository meets standards established by the secretary in rule.

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

29 The secretary shall enact rules establishing standards for the retention of a video and
30 audio copy of the performance of a remote online notarial act, including standards for
31 3rd-party repositories and procedures for the preservation of the audio and video copy and
32 the electronic journal if the remote online notary public dies or is adjudicated incompetent
33 or if the remote online notary public's commission or authority to perform notarial acts is
34 otherwise terminated or revoked.

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

36 A remote online notary public:

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

39 **2. Prohibit use.** May not allow another individual to use the remote online notary
40 public's electronic signature or electronic seal;

1 **3. Attach seal.** Shall attach the remote online notary public's electronic signature and
2 electronic seal to the remote online notarial certificate of an electronic record in a manner
3 that renders any subsequent change or modification to the electronic record to be evident;

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

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

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

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

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

18 B. Evidence of the following:

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

22 (2) Credential analysis; and

23 (3) Identity proofing.

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

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

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

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

33 **§983. Recording of electronic record**

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

38 **2. Signatures.** If a law requires, as a condition for recording, that a document be
39 signed, the requirement is satisfied by an electronic signature. A requirement that a
40 document or a signature associated with a document be notarized, acknowledged, verified,
41 witnessed or made under oath is satisfied if the electronic signature of the individual

1 authorized to perform that act, and all other information required to be included, is attached
2 to or logically associated with the document or signature. A physical or electronic image
3 of a stamp, impression or seal need not accompany an electronic signature if the remote
4 online notary public has attached an electronic notarial certificate that meets the
5 requirements of this chapter.

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

10 **§984. Recording electronic records in tangible form**

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

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

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

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

36 State of Maine

37 County of

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

41

42 Signature of notary public

