

MAINE STATE LEGISLATURE

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L.D. 1399

Date: 6/16/21

(Filing No. H-709)

Majority
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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1033, L.D. 1399, "An Act To Provide for Remote Notarization"

Amend the bill by striking out the title and substituting the following:

'An Act To Continue Temporary Modification of Certain In-person Notarization and Acknowledgement Requirements and Developing Permanent Implementation of Remote and Online Notarization'

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Executive Order 37 FY 19/20 as amended by Executive Order 37-A FY 19/20 has provided authorization for remote notarization with appropriate safeguards during the state of emergency declared by the Governor; and

Whereas, the need for providing for remote notarization beyond the state of emergency is universally recognized; and

Whereas, a thorough review of the notarization laws is necessary to update the State's laws and to incorporate long-term remote authorization procedures; and

Whereas, the review and enactment might not be completed by the time the state of emergency terminates; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 4 MRSA §961 is enacted to read:

COMMITTEE AMENDMENT

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§961. Continuation of temporary modification of certain in-person notarization and acknowledgement requirements

This section is intended to continue the effect of Executive Order 37 FY 19/20 as amended by Executive Order 37-A FY 19/20 beyond the end of the state of emergency declared by the Governor pursuant to Title 37-B, section 742 until January 1, 2023.

1. Remote notarization. This section applies to all laws of the State that require a signature to be acknowledged, witnessed or notarized in person, with the exceptions of solemnizing marriages, administering oaths to circulators of state or local direct initiatives of legislation or referendum petitions and nomination petitions of candidates for electoral office and absentee ballots in state and local elections. This section authorizes remote, not electronic, notarization. This section does not affect any requirements under laws of this State pertaining to the taking of sworn statements and acknowledgments by notaries and those authorized to perform notarial acts other than the requirement to appear in person.

2. Requirements. Until January 1, 2023, with the exceptions noted in subsection 1, the enforcement of the laws of this State pertaining to notarization that require the physical presence of the person whose oath is being taken and who is signing a document, referred to in this section as "the signatory," at the same location as the notary public or other person authorized to perform a notarial act, referred to in this section as "the notary," and any witness to the signing are suspended as long as the following conditions are met:

A. The notary is physically within the State while performing the notarial act and follows any additional guidance for remote notarization issued by the Secretary of State;

B. The act of notarization or witnessing required by law is completed remotely using 2-way audio-visual communication technology and:

(1) The 2-way audio-visual communication technology allows direct contemporaneous interaction between the signatory, the notary and any witness by sight and sound in real time. Prerecording is not permitted;

(2) The signatory is reasonably identified by the notary in one of the following ways:

(a) The signatory is personally known to the notary;

(b) The signatory presents a valid photo identification to the notary during the 2-way audio-visual communication; or

(c) The oath or affirmation is provided by a witness who:

(i) Is in the physical presence of either the notary or the signatory; or

(ii) Is able to communicate with the notary and the signatory simultaneously by sight and sound through 2-way audio-visual communication technology at the time of the notarization, if the witness has personal knowledge of the signatory and has been reasonably identified by the notary under division (a) or (b);

(3) The signatory attests to being physically located in the State and affirmatively states the name of the county in which the signatory is located at the time of execution during the 2-way audio-visual communication;

- 1 (4) The notary and any witness attest to being physically located in the State during
2 the 2-way audio-visual communication;
- 3 (5) For wills and powers of attorney, the notary or at least one witness is an
4 attorney licensed to practice law in the State;
- 5 (6) Before any documents are signed, the notary is able to view by 2-way audio-
6 visual communication technology the entire space in which the signatory and any
7 witness is located, and any person who is present in those spaces states the person's
8 name while in clear view of the notary;
- 9 (7) The signatory affirmatively states on the 2-way audio-visual communication
10 which document the signatory is signing, and the notary is provided with a copy of
11 the document prior to the signing;
- 12 (8) Each page of the document being witnessed is shown to the notary and any
13 witness on the 2-way audio-visual communication in a means clearly legible to the
14 notary and initialed by the signatory in the presence of the notary and any witness;
- 15 (9) The act of signing and of initialing pursuant to subparagraph (8) is captured
16 sufficiently close to the 2-way audio-visual communication technology for the
17 notary to observe;
- 18 (10) The signatory transmits by fax or other electronic means, which may include
19 transmitting a photograph of every page by cellular telephone, a legible copy of
20 the entire signed document directly to the notary and any witness immediately after
21 signing the document or, if that is not possible, no later than 24 hours after the
22 signatory's signing of the document;
- 23 (11) The signatory sends the original signed document directly to the witness
24 within 96 hours after the signatory's execution of the document or to the notary if
25 no witness is involved;
- 26 (12) Within 96 hours after receiving the original signed document from the
27 signatory, the witness signs it and sends it to the 2nd witness, if any, or to the notary
28 if no other witness is involved. Within 96 hours after receiving the original signed
29 document signed by the first witness, the 2nd witness signs it and sends it to the
30 notary. The official date and time of each witness's signature is the date and time
31 when the witness witnesses the signatory's signature using the 2-way audio-visual
32 communication technology; and
- 33 (13) Upon review of the original signed document and satisfactory comparison
34 with the faxed or other electronic document provided on the date of signing, the
35 notary notarizes the original document within 96 hours after receiving the original
36 signed document; the official date and time of the notarization is the date and time
37 when the notary witnessed the signature using the 2-way audio-visual
38 communication technology. The notary shall add the following language below
39 the notary and witness signature lines on the original signed document: "Notarized
40 (and/or witnessed) remotely, in accordance with the Maine Revised Statutes, Title
41 4, section 961."
- 42 Any witness required or permitted to properly execute any original document
43 according to law may similarly witness the signing of the document by the signatory

1 using 2-way audio-visual communication technology and may sign as a witness to the
 2 document upon receipt of the original document; and

3 C. A recording of the 2-way audio-visual communication is made and preserved by
 4 the notary for a period of at least 5 years from the date of the notarial act. The notary
 5 shall provide a copy of the recording to the signatory and the Secretary of State upon
 6 request.

7 **3. Validity.** Any document that is required under law to be notarized in the presence
 8 and hearing or in a similar manner of a signatory, and that is signed, notarized or witnessed
 9 in accordance with the terms of this section is deemed to have been signed, notarized or
 10 both in the presence and hearing of the signatory.

11 The validity and recognition of a notarization or witnessing under this section may not
 12 prevent an aggrieved person from seeking to invalidate a record or transaction that is the
 13 subject of a notarization or from seeking other remedies based on state or federal law other
 14 than this section for any reason not addressed in this section, such as incapacity, absence
 15 of authority or undue influence.

16 The failure of a notary or a witness to meet a requirement specified in this section may not
 17 invalidate or impair the recognition of a notarization performed by the notary if it was
 18 performed in substantial compliance with this section.

19 **4. Remote notarization not required.** This section does not require a notary to
 20 perform remote notarization.

21 **5. Judicial notice.** It is the intent of the Legislature that the acts, records and
 22 proceedings under this section receive full faith and credit in the courts of the United States
 23 and other states.

24 **Sec. 2. Secretary of State guidance.** The Secretary of State shall, using existing
 25 budgeted resources or available grants or other funding sources, provide guidance
 26 consistent with this Act and protect the integrity of the remote notarization process.

27 **Sec. 3. Secretary of State remote and online notarization study.** The
 28 Secretary of State shall conduct a study on remote and online notarization and develop
 29 recommendations for permanently implementing remote and online notarization in this
 30 State. In conducting the study under this section, the Secretary of State shall seek input
 31 from a Maine association of real estate agents and the Maine State Bar Association, Maine
 32 Bankers Association, Maine Credit Union League, Legal Services for the Elderly, Maine
 33 Registers of Deeds Association, Maine Real Estate and Development Association, Uniform
 34 Law Commission, Maine Probate and Trust Law Advisory Commission and others.

35 **Sec. 4. Report; legislation.** By February 1, 2022, the Secretary of State shall submit
 36 a report, including recommended legislation, based on the study in section 3, as well as any
 37 other recommendations related to the Revised Uniform Law on Notarial Acts to the Joint
 38 Standing Committee on Judiciary. The report must include a plan to implement the
 39 recommendations including a deadline for implementation. The Joint Standing Committee
 40 on Judiciary may submit legislation related to the report to the Second Regular Session of
 41 the 130th Legislature.'

42 Amend the bill by adding before the summary the following:



Approved: 06/01/21 *MAC*

130th MAINE LEGISLATURE

LD 1399

LR 1710(02)

An Act To Provide for Remote Notarization

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Judiciary

Fiscal Note Required: Yes

A(H-709)

Fiscal Note

Fiscal Detail and Notes

Additional costs to the Department of Secretary of State associated with performing the study and reporting the results can be absorbed within existing budgeted resources.