

FIRST REGULAR SESSION

HOUSE BILL NO. 1013

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (97).

2088H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 486, RSMo, by adding thereto fourteen new sections relating to electronic certification of documents, with a penalty provision and a delayed effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 486, RSMo, is amended by adding thereto fourteen new sections, to be known as sections 486.410, 486.415, 486.420, 486.425, 486.430, 486.435, 486.440, 486.445, 486.450, 486.455, 486.460, 486.465, 486.470, and 486.475, to read as follows:

486.410. As used in sections 486.410 to 486.475, the following terms mean:

(1) "Appear", "personally appear", or "in the presence of":

(a) Being in the same physical location as another person and close enough to see, hear, communicate with, and exchange tangible identification credentials with that person; or

(b) Interacting with another person by means of communication technology that complies with the provisions of sections 486.410 to 486.475;

(2) "Communication technology", 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 that, as necessary, makes reasonable accommodations for persons with vision, hearing, or speech impairments;

(3) "Credential analysis", a process or service that meets the standards established by the secretary of state through which a third party affirms the validity of government-issued identification credentials through review of public and proprietary data sources;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 16 (4) "Electronic", relating to technology having electrical, digital, magnetic, wireless,
17 optical, electromagnetic, or similar capabilities;
- 18 (5) "Electronic notarial certificate", the form of an acknowledgment, jurat,
19 verification of oath or affirmation, or verification of witness or attestation that is completed
20 by a remote notary public and that:
- 21 (a) Contains the remote notary public's electronic signature, electronic seal, title,
22 and commission expiration date;
- 23 (b) Contains other required information concerning the date and place of the
24 remote online notarization;
- 25 (c) Otherwise conforms to the requirements for an acknowledgment, jurat,
26 verification of oath or affirmation, or verification of witness or attestation under the laws
27 of this state; and
- 28 (d) Indicates that the person taking the oath or making the acknowledgment or
29 affirmation appeared remotely online;
- 30 (6) "Electronic record", information that is created, generated, sent,
31 communicated, received, or stored by electronic means;
- 32 (7) "Electronic seal", information within a notarized electronic record that
33 confirms the remote notary public's name, jurisdiction, identifying number, and
34 commission expiration date and that generally corresponds to information in notary seals
35 used on paper documents;
- 36 (8) "Electronic signature", an electronic sound, symbol, or process attached to or
37 logically associated with an electronic record and executed or adopted by a person with the
38 intent to sign the electronic document;
- 39 (9) "Identity proofing", a process or service operating according to standards
40 established by the secretary of state through which a third party affirms the identity of a
41 person through review of personal information from public and proprietary data sources
42 and may include dynamic knowledge-based authentication or such other means or methods
43 that conform to standards established by the secretary of state;
- 44 (10) "Notarial act", an act, whether performed with respect to a tangible or
45 electronic record, by a notary public and involving a function authorized under section
46 486.250. The term includes taking an acknowledgment, administering an oath or
47 affirmation, taking a verification of oath or affirmation, certifying that a copy of a
48 document is a true copy of another document, and performing any other act permitted by
49 law;
- 50 (11) "Outside the United States", outside the geographic boundaries of a state or
51 commonwealth of the United States, the District of Columbia, Puerto Rico, the United

52 States Virgin Islands, and any territory or insular possession subject to the jurisdiction of
53 the United States;

54 (12) "Principal", a person:

55 (a) Whose electronic signature is notarized in a remote online notarization; or

56 (b) Who is taking an oath or making an affirmation or acknowledgment other than
57 in the capacity of a witness for the remote online notarization;

58 (13) "Remote online notarization" or "remote online notarial act", a notarial act
59 performed by means of communication technology that meets the standards as provided
60 under sections 486.410 to 486.475;

61 (14) "Remote notary public", a notary public who has registered with the secretary
62 of state to perform remote online notarizations under sections 486.410 to 486.475;

63 (15) "Remote presentation", transmission to the remote notary public through
64 communication technology of an image of a government-issued identification credential
65 that is of sufficient quality to enable the remote notary public to:

66 (a) Identify the person seeking the remote notary public's services; and

67 (b) Perform credential analysis;

68 (16) "Remotely located individual", a person who is not in the physical presence
69 of the notary public.

486.415. The secretary of state is authorized to adopt rules necessary to implement
2 sections 486.410 to 486.475, including rules to facilitate remote online notarizations.

486.420. 1. The secretary of state by rule shall develop and maintain standards for
2 remote online notarization in accordance with sections 486.410 to 486.475 including, but
3 not limited to, standards for credential analysis and identity proofing.

4 2. In developing standards for remote online notarization, the secretary of state
5 shall review and consider standards established by the National Association of Secretaries
6 of State (NASS), or its successor agency, and national standard-setting bodies such as the
7 Mortgage Industry Standards and Maintenance Organization (MISMO).

8 3. The rules shall be adopted no later than twelve months from the date of the
9 enactment of sections 486.410 to 486.475.

486.425. 1. A remote notary public:

2 (1) Is a notary public appointed and commissioned to perform notarial acts under
3 this chapter;

4 (2) May perform notarial acts as provided by this chapter in addition to performing
5 remote online notarizations; and

6 (3) May perform remote online notarizations authorized under this chapter.

7 2. A notary public commissioned in this state may become a remote notary public
8 in accordance with sections 486.410 to 486.475. Before a notary performs a remote online
9 notarization, he or she shall register with the secretary of state in accordance with rules for
10 registration as a remote notary public and identify the technology that the remote notary
11 public will use, which shall conform to any rules or regulations adopted by the secretary
12 of state.

13 3. Unless terminated under sections 486.410 to 486.475, the term of registration to
14 perform remote online notarial acts shall begin on the registration starting date set by the
15 secretary of state and shall continue as long as the notary public's current commission
16 remains valid.

17 4. A person registering to perform remote online notarial acts shall submit to the
18 secretary of state an application in a format prescribed by the secretary of state, which
19 shall include:

20 (1) Disclosure of any and all license or commission revocations or other disciplinary
21 actions against the applicant; and

22 (2) Any other information, evidence, or declaration required by the secretary of
23 state.

24 5. Upon the applicant's fulfillment of the requirements for registration under this
25 section, the secretary of state shall approve the registration. The applicant's notary public
26 commission number shall act as his or her registration number. Upon successful
27 registration, the notary public shall also be a remote notary public throughout the period
28 of his or her registration.

29 6. The secretary of state may reject a registration application if the applicant fails
30 to comply with this section.

486.430. 1. A remote notary public may perform a remote online notarial act using
2 communication technology in accordance with sections 486.410 to 486.475 and any rules
3 or regulations adopted by the secretary of state for a remotely located individual who is
4 physically located:

5 (1) In this state;

6 (2) Outside this state but not outside the United States; or

7 (3) Outside the United States if:

8 (a) The remote notary public has no actual knowledge of the remote online notarial
9 act being prohibited in the jurisdiction in which the person is physically located; and

10 (b) The principal confirms to the remote notary public that the requested remote
11 online notarial act and electronic document:

- 12 a. Are part of or pertain to a matter that is to be filed with or is currently before
13 a court, governmental entity, or other entity in the United States;
14 b. Relate to property located in the United States; or
15 c. Relate to a transaction substantially connected to the United States.
16 2. The validity of a remote online notarization performed by a remote notary public
17 registered under sections 486.410 to 486.475 shall be governed by the laws of this state.

 486.435. 1. A remote notary public shall keep a secure electronic journal of
2 notarial acts performed by the remote notary public. The electronic journal shall contain
3 for each remote online notarization:

- 4 (1) The date and time of the notarization;
5 (2) The type of notarial act;
6 (3) The type, the title, or a description of the electronic document or proceeding;
7 (4) The printed name and address of each principal involved in the transaction or
8 proceeding;
9 (5) Evidence of identity of each principal involved in the transaction or proceeding
10 in the form of:
11 (a) A statement that the person is personally known to the remote notary public;
12 (b) A notation of the type of identification document provided to the remote notary
13 public;
14 (c) A record of the identity verification made under sections 486.410 to 486.475, if
15 applicable; or
16 (d) The following:
17 a. The printed name and address of each credible witness swearing to or affirming
18 the person's identity; and
19 b. For each credible witness not personally known to the remote notary public, a
20 description of the type of identification documents provided to the remote notary public;
21 and

22 (6) The fee, if any, charged for the notarization.

23 2. A remote notary public shall create an audio and video recording of each remote
24 online notarial act.

25 3. A remote notary public shall take reasonable steps to:

- 26 (1) Ensure the integrity, security, and authenticity of remote online notarizations;
27 (2) Maintain a backup of the electronic journal required by subsection 1 of this
28 section and of the recordings required by subsection 2 of this section; and
29 (3) Protect the electronic journal, recordings, and backups from unauthorized use.

30 **4. The electronic journal required by subsection 1 of this section and the recordings**
31 **required by subsection 2 of this section shall be maintained for at least ten years after the**
32 **date of the transaction or proceeding.**

33 **5. A remote notary public may designate as custodian of the electronic journal and**
34 **recordings:**

35 **(1) The employer of the remote notary public if evidenced by a record signed by the**
36 **remote notary public and the employer; or**

37 **(2) A repository that meets standards established by the secretary of state.**

38 **6. The secretary of state shall establish:**

39 **(1) Standards for the retention of audio and video recordings of remote online**
40 **notarial acts;**

41 **(2) Procedures to preserve the electronic journals and recordings of remote online**
42 **notarial acts of remote notaries public in case a remote notary public dies or is adjudicated**
43 **incompetent or if a remote notary public's commission or authority to perform notarial**
44 **acts is otherwise terminated; and**

45 **(3) Standards for third-party repositories that retain recordings of the notarial acts.**

486.440. 1. A remote notary public shall keep the remote notary public's electronic
2 **record, electronic signature, and electronic seal secure and under the remote notary**
3 **public's exclusive control, which requirement may be satisfied by password-controlled**
4 **access. The remote notary public shall not allow another person to use the remote notary**
5 **public's electronic record, electronic signature, or electronic seal.**

6 **2. A remote notary public shall attach the remote notary public's electronic**
7 **signature and seal to the electronic notarial certificate of an electronic document in a**
8 **manner that is capable of independent verification and renders any subsequent change or**
9 **modification to the electronic document evident.**

10 **3. A remote notary public shall immediately notify an appropriate law enforcement**
11 **agency and the secretary of state of the theft or vandalism of the remote notary public's**
12 **electronic record, electronic signature, or electronic seal. A remote notary public shall**
13 **immediately notify the secretary of state of the loss or use by another person of the remote**
14 **notary public's electronic record, electronic signature, or electronic seal.**

486.445. 1. A remote notary public may perform a remote online notarization
2 **under sections 486.410 to 486.475 that meets the requirements of such sections and rules**
3 **adopted thereunder, regardless of whether the principal is physically located in this state**
4 **at the time of the remote online notarization. A remote notary public shall perform a**
5 **remote online notarization authorized under sections 486.410 to 486.475 only while the**
6 **remote notary public is physically located within this state.**

7 **2. In performing a remote online notarization, a remote notary public shall verify**
8 **the identity of a principal at the time that the signature is taken by using communication**
9 **technology that meets the requirements of sections 486.410 to 486.475 and rules adopted**
10 **thereunder. Identity shall be verified by:**

11 **(1) The remote notary public's personal knowledge of the principal; or**

12 **(2) Each of the following:**

13 **(a) Remote presentation by the principal of a government-issued identification**
14 **credential, including a passport or driver's license, that contains the signature and a**
15 **photograph of the principal;**

16 **(b) Credential analysis of the credential described in paragraph (a) of this**
17 **subdivision; and**

18 **(c) Identity proofing of the principal.**

19 **3. The remote notary public shall take reasonable steps to ensure that the two-way**
20 **audio and video communication used in a remote online notarization is secure from**
21 **unauthorized interception.**

22 **4. The electronic notarial certificate for a remote online notarization shall include**
23 **a notation that the notarization is a remote online notarization.**

24 **5. A remote online notarial act meeting the requirements of sections 486.410 to**
25 **486.475 satisfies the requirement of any law of this state relating to a notarial act that**
26 **requires a principal to appear or personally appear before a notary or that the notarial act**
27 **be performed in the presence of a notary.**

486.450. In addition to any fee authorized by section 486.350, a remote notary
2 **public or the employer of the remote notary public may charge a fee for providing a remote**
3 **online notarization service, provided that the fee is disclosed to the principal prior to the**
4 **service.**

486.455. 1. Except as provided under subsection 2 of this section, a remote notary
2 **public whose registration terminates shall destroy the certificate, disk, coding, card,**
3 **program, software, or password that enables electronic affixation of the remote notary**
4 **public's official electronic signature or seal. The remote notary public shall certify**
5 **compliance with this subsection to the secretary of state.**

6 **2. A former remote notary public whose registration terminated for a reason other**
7 **than revocation or a denial of renewal is not required to destroy the items described under**
8 **subsection 1 of this section if the former remote notary public is reregistered as a remote**
9 **notary public with the same electronic signature and seal within three months after the**
10 **former remote notary public's former registration terminated.**

2 **486.460.** A person who, without authorization, knowingly obtains, conceals,
3 damages, or destroys the certificate, disk, coding, card, program, software, or hardware
4 enabling an notary public to affix an official electronic signature or seal shall be guilty of
a class D misdemeanor.

2 **486.465.** In the event of a conflict between the provisions of sections 486.410 to
3 486.475 and any other law in this state, the provisions of sections 486.410 to 486.475 shall
control.

2 **486.470.** If the online notarial act is an acknowledgment or jurat, then the
3 acknowledgment form shall indicate that the person signing the document or taking the
4 oath or making the affirmation appeared using communication technology. The secretary
of state by rule shall promulgate forms for an acknowledgment or jurat performed online.

2 **486.475.** The secretary of state shall promulgate rules necessary to administer the
3 provisions of sections 486.410 to 486.475. Any rule or portion of a rule, as that term is
4 defined in section 536.010, that is created under the authority delegated in this section shall
5 become effective only if it complies with and is subject to all of the provisions of chapter
6 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and
7 if any of the powers vested with the general assembly pursuant to chapter 536 to review,
8 to delay the effective date, or to disapprove and annul a rule are subsequently held
9 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
after August 28, 2021, shall be invalid and void.

2 Section B. The enactment of sections 486.410, 486.415, 486.420, 486.425, 486.430,
3 486.435, 486.440, 486.445, 486.450, 486.455, 486.460, 486.465, 486.470, and 486.475 of
Section A of this act shall become effective July 1, 2022.

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