

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 1033 - L.D. 1399

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

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,

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

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

§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;

(4) The notary and any witness attest to being physically located in the State during the 2-way audio-visual communication;

(5) For wills and powers of attorney, the notary or at least one witness is an attorney licensed to practice law in the State;

(6) Before any documents are signed, the notary is able to view by 2-way audio-visual communication technology the entire space in which the signatory and any

witness is located, and any person who is present in those spaces states the person's name while in clear view of the notary;

(7) The signatory affirmatively states on the 2-way audio-visual communication which document the signatory is signing, and the notary is provided with a copy of the document prior to the signing;

(8) Each page of the document being witnessed is shown to the notary and any witness on the 2-way audio-visual communication in a means clearly legible to the notary and initialed by the signatory in the presence of the notary and any witness;

(9) The act of signing and of initialing pursuant to subparagraph (8) is captured sufficiently close to the 2-way audio-visual communication technology for the notary to observe;

(10) The signatory transmits by fax or other electronic means, which may include transmitting a photograph of every page by cellular telephone, a legible copy of the entire signed document directly to the notary and any witness immediately after signing the document or, if that is not possible, no later than 24 hours after the signatory's signing of the document;

(11) The signatory sends the original signed document directly to the witness within 96 hours after the signatory's execution of the document or to the notary if no witness is involved;

(12) Within 96 hours after receiving the original signed document from the signatory, the witness signs it and sends it to the 2nd witness, if any, or to the notary if no other witness is involved. Within 96 hours after receiving the original signed document signed by the first witness, the 2nd witness signs it and sends it to the notary. The official date and time of each witness's signature is the date and time when the witness witnesses the signatory's signature using the 2-way audio-visual communication technology; and

(13) Upon review of the original signed document and satisfactory comparison with the faxed or other electronic document provided on the date of signing, the notary notarizes the original document within 96 hours after receiving the original signed document; the official date and time of the notarization is the date and time when the notary witnessed the signature using the 2-way audio-visual communication technology. The notary shall add the following language below the notary and witness signature lines on the original signed document: "Notarized (and/or witnessed) remotely, in accordance with the Maine Revised Statutes, Title 4, section 961."

Any witness required or permitted to properly execute any original document according to law may similarly witness the signing of the document by the signatory using 2-way audio-visual communication technology and may sign as a witness to the document upon receipt of the original document; and

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

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

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

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

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

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

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

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

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

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.