

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 186

Introduced by Lindstrom, 18.

Read first time January 11, 2019

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to notaries public; to amend sections 64-105,
2 64-113, 64-203, and 64-205, Reissue Revised Statutes of Nebraska,
3 and section 23-1503.01, Revised Statutes Cumulative Supplement,
4 2018; to adopt the Online Notary Public Act; to change provisions
5 relating to physical appearance before a notary; to harmonize
6 provisions; to provide a duty for the Revisor of Statutes; to
7 provide an operative date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known as the
2 Online Notary Public Act.

3 Sec. 2. For purposes of the Online Notary Public Act:

4 (1) Communication technology means an electronic device or process
5 that allows an online notary public and an individual who is not in the
6 physical presence of the online notary public to communicate with each
7 other simultaneously by sight and sound;

8 (2) Credential analysis means a process or service operating
9 according to criteria approved by the Secretary of State through which a
10 third person affirms the validity of a government-issued identification
11 credential through review of public and proprietary data sources;

12 (3) Electronic means relating to technology having electrical,
13 digital, magnetic, wireless, optical, electromagnetic, or similar
14 capabilities;

15 (4) Electronic document means information that is created,
16 generated, sent, communicated, received, or stored by electronic means;

17 (5) Electronic signature means an electronic sound, symbol, or
18 process attached to or logically associated with an electronic document
19 and executed or adopted by a person with the intent to sign the
20 electronic document;

21 (6) Identity proofing means a process or service operating according
22 to criteria approved by the Secretary of State through which a third
23 person affirms the identity of an individual through review of personal
24 information from public or proprietary data sources;

25 (7) Online notarial act means the performance by an online notary
26 public of a function authorized under section 8 of this act that is
27 performed by means of communication technology that meets the standards
28 developed under section 7 of this act;

29 (8) Online notarial certificate means the portion of a notarized
30 electronic document that is completed by an online notary public and that
31 contains the following:

1 (a) The online notary public's electronic signature, online notary
2 seal, title, and commission expiration date;

3 (b) Other required information concerning the date and place of the
4 online notarial act; and

5 (c) The completed wording of one of the following notarial
6 certificates: (i) Acknowledgment, (ii) jurat, (iii) verification of
7 proof, or (iv) oath or affirmation;

8 (9) Online notary public means a notary public registered with the
9 Secretary of State who has the authority to perform online notarial acts
10 under the Online Notary Public Act;

11 (10) Online notary seal means information within a notarized
12 electronic document that confirms the online notary public's name,
13 jurisdiction, identifying number, and commission expiration date and
14 generally corresponds to the data in notary seals used on paper
15 documents;

16 (11) Online notary solution provider means a provider of any
17 credential analysis, identity proofing, online notary seals, electronic
18 signatures, or communication technology;

19 (12) Personal knowledge or personally known means familiarity with
20 an individual resulting from interactions with that individual over a
21 period of time sufficient to dispel any reasonable uncertainty that the
22 individual has the identity claimed;

23 (13) Principal means an individual:

24 (a) Whose electronic signature is notarized in an online notarial
25 act; or

26 (b) Taking an oath or affirmation from the online notary public
27 other than in the capacity of a witness for the online notarial act; and

28 (14) Remote presentation means transmission to the online notary
29 public through communication technology of an image of a government-
30 issued identification credential that is of sufficient quality to enable
31 the online notary public to:

1 (a) Identify the individual seeking the online notary public's
2 services; and

3 (b) Perform credential analysis.

4 Sec. 3. (1) To be eligible to register as an online notary public,
5 a person shall:

6 (a) Hold a valid commission as a notary public in the State of
7 Nebraska;

8 (b) Satisfy the education requirement of section 4 of this act; and

9 (c) Pay the fee required under section 5 of this act.

10 (2) The Secretary of State shall not accept the registration if the
11 requirements of subsection (1) of this section are not met.

12 Sec. 4. (1) Before registering as an online notary public, a notary
13 public shall take a course of instruction and pass an examination
14 approved by the Secretary of State. The course of instruction and
15 examination shall be approved by the Secretary of State by January 31,
16 2020.

17 (2) The content of the course and the basis for the examination
18 shall include notarial laws, procedures, technology, and the ethics of
19 performing online notarial acts.

20 Sec. 5. The fee for registering or renewing a registration as an
21 online notary public shall be in addition to the fee required in section
22 33-102. The Secretary of State shall establish the fee by rule and
23 regulation in an amount sufficient to cover the costs of administering
24 the Online Notary Public Act, but the fee shall not exceed fifty dollars.
25 The Secretary of State shall remit fees received under this section to
26 the State Treasurer for credit to the Administration Cash Fund for use in
27 administering the Online Notary Public Act.

28 Sec. 6. (1) Before performing an online notarial act, a notary
29 public shall register with the Secretary of State in a manner prescribed
30 by the Secretary of State.

31 (2) In addition to any additional information prescribed by the

1 Secretary of State, the registration shall include:

2 (a) The technology the notary public intends to use to perform an
3 online notarial act. Such technology shall be provided by an online
4 notary solution provider approved by the Secretary of State;

5 (b) A certification by the notary that he or she will comply with
6 the standards developed under section 7 of this act; and

7 (c) An email address for the notary.

8 (3) The term of registration as an online notary public shall
9 coincide with the term of the commission of the notary public.

10 (4) An application to renew registration as an online notary public
11 shall specify any change in the technology the online notary public
12 intends to use to perform online notarial acts. Such technology shall be
13 provided by an online notary solution provider approved by the Secretary
14 of State.

15 (5) A person registered as an online notary public may renew his or
16 her online notary public registration at the same time he or she renews
17 his or her notary public commission.

18 Sec. 7. (1) The Secretary of State shall adopt and promulgate rules
19 and regulations:

20 (a) Creating standards for online notarial acts in accordance with
21 the Online Notary Public Act, including standards for credential
22 analysis, identity proofing, and communication technology used for online
23 notarial acts; and

24 (b) To ensure the integrity, security, and authenticity of online
25 notarial acts in accordance with the Online Notary Public Act. Such rules
26 and regulations shall include procedures for the approval of online
27 notary solution providers by the Secretary of State.

28 (2) The Secretary of State may adopt and promulgate rules and
29 regulations to facilitate the utilization of online notarial acts.

30 Sec. 8. The following types of online notarial acts may be
31 performed by an online notary public:

- 1 (1) Acknowledgments;
- 2 (2) Jurats;
- 3 (3) Verifications or proofs; and
- 4 (4) Oaths or affirmations.

5 Sec. 9. (1) An online notary public shall keep a secure electronic
6 record of electronic documents notarized by the online notary public. For
7 each online notarial act, the electronic record shall contain:

- 8 (a) The date and time of the online notarial act;
- 9 (b) The type of online notarial act;
- 10 (c) The type, title, or description of the electronic document or
11 proceeding;
- 12 (d) The printed name and address of each principal involved in the
13 transaction or proceeding;
- 14 (e) Evidence of identity of each principal involved in the
15 transaction or proceeding in the form of:
 - 16 (i) A statement that the principal is personally known to the online
17 notary public;
 - 18 (ii) A notation of the type of identification document provided to
19 the online notary public;
 - 20 (iii) A record of the identity verification made under section 11 of
21 this act; or
 - 22 (iv) The following:
 - 23 (A) The printed name and address of each credible witness swearing
24 to or affirming the principal's identity; and
 - 25 (B) For each credible witness not personally known to the online
26 notary public, a description of the type of identification documents
27 provided to the online notary public;
 - 28 (f) A recording of any video and audio conference of the performance
29 of the online notarial act, which shall not contain images of the
30 documents that were notarized; and
 - 31 (g) The fee, if any, charged for the online notarial act.

1 (2) The online notary public shall take reasonable steps to:

2 (a) Ensure the integrity, security, and authenticity of online
3 notarial acts;

4 (b) Maintain a backup for the secure electronic record required by
5 this section; and

6 (c) Protect the secure electronic record and backup record from
7 unauthorized use.

8 (3) The electronic record and backup record required by this section
9 shall be maintained for at least seven years after the date of the
10 transaction or proceeding. The online notary public shall not surrender
11 or destroy the record except as required by a court order or as allowed
12 under rules and regulations adopted and promulgated by the Secretary of
13 State.

14 Sec. 10. (1) An online notary public's electronic signature in
15 combination with the online notary seal shall be used only for the
16 purpose of performing online notarial acts.

17 (2) An online notary public shall take reasonable steps to ensure
18 that any registered device used to create an electronic signature is
19 current and has not been revoked or terminated by the device's issuing or
20 registering authority.

21 (3) An online notary public shall keep secure and under his or her
22 exclusive control: The online notary public's electronic signature,
23 online notary seal, and the electronic record and backup record required
24 under section 9 of this act. The online notary public shall not allow
25 another person to use the online notary public's electronic signature,
26 online notary seal, or electronic record or backup record.

27 (4) An online notary public shall immediately notify an appropriate
28 law enforcement agency and the Secretary of State of the theft or
29 vandalism of the online notary public's electronic signature, online
30 notary seal, or the electronic record or backup record required under
31 section 9 of this act. An online notary public shall immediately notify

1 the Secretary of State of the loss or use by another person of the online
2 notary public's electronic signature, online notary seal, or the
3 electronic record or backup record required under section 9 of this act.

4 Sec. 11. (1) An online notary public may perform an online notarial
5 act authorized under section 8 of this act that meets the requirements of
6 the Online Notary Public Act and the rules and regulations adopted and
7 promulgated thereunder regardless of whether the principal is physically
8 located in this state at the time of the online notarial act.

9 (2) In performing an online notarial act, an online notary public
10 shall verify the identity of an individual creating an electronic
11 signature. Identity shall be verified by:

12 (a) The online notary public's personal knowledge of the individual
13 creating the electronic signature;

14 (b) All of the following:

15 (i) Remote presentation by the individual creating the electronic
16 signature of a government-issued identification credential that is
17 current and that bears the photographic image of the individual's face
18 and signature and a physical description of the individual, except that a
19 properly stamped passport without a physical description is satisfactory
20 evidence;

21 (ii) Credential analysis of such credential; and

22 (iii) Identity proofing of the individual creating the electronic
23 signature; or

24 (c) Oath or affirmation of a credible witness who is in the physical
25 presence of either the online notary public or the individual and who has
26 personal knowledge of the individual if:

27 (i) The credible witness is personally known to the online notary
28 public; or

29 (ii) The online notary public has verified the identity of the
30 credible witness under subdivision (2)(b) of this section.

31 (3) The online notary public shall take reasonable steps to ensure

1 that the communication technology used in an online notarial act is
2 secure from unauthorized interception.

3 (4) An online notary public shall attach the online notary public's
4 electronic signature and online notary seal to the online notarial
5 certificate of an electronic document in a manner that is capable of
6 independent verification and that renders evident any subsequent change
7 or modification to the electronic document.

8 (5) The online notarial certificate for an online notarial act must
9 include a notation that the notarial act is an online notarial act.

10 Sec. 12. In addition to any fee authorized under section 33-133, an
11 online notary public or his or her employer may charge a fee in an amount
12 not to exceed twenty-five dollars for each online notarial act.

13 Sec. 13. (1) Except as provided in subsection (2) of this section,
14 when the registration of an online notary public expires or is resigned,
15 canceled, or revoked or when an online notary public dies, he or she or
16 his or her duly authorized representative shall erase, delete, or destroy
17 the coding, disk, certificate, card, software, file, password, or program
18 that enables the electronic affixation of the online notary public's
19 official electronic signature and online notary seal. The online notary
20 public or his or her duly authorized representative shall certify
21 compliance with this subsection to the Secretary of State.

22 (2) A former online notary public whose previous registration was
23 not revoked, canceled, or denied by the Secretary of State need not
24 comply with subsection (1) of this section if he or she is reregistered
25 as an online notary public using the same electronic signature within
26 three months after the former registration expired.

27 Sec. 14. A person who, without authorization, knowingly obtains,
28 conceals, damages, or destroys the coding, disk, certificate, card,
29 software, file, password, program, or hardware enabling an online notary
30 public to affix an official electronic signature or online notary seal
31 shall be guilty of a Class I misdemeanor.

1 Sec. 15. (1) Electronic evidence of the authenticity of the
 2 electronic signature and online notary seal of an online notary public of
 3 this state, if required, shall be attached to, or logically associated
 4 with, a document with an online notary public's electronic signature
 5 transmitted to another state or nation and shall be in the form of an
 6 electronic certificate of authority signed by the Secretary of State in
 7 conformance with any current and pertinent international treaties,
 8 agreements, and conventions subscribed to by the United States
 9 Government.

10 (2) An electronic certificate of authority evidencing the
 11 authenticity of the electronic signature and online notary seal of an
 12 online notary public of this state shall contain substantially the
 13 following words:

14 Certificate of Authority for an Online Notarial Act
 15 I (name, title, jurisdiction of commissioning
 16 official) certify that (name of online notary
 17 public), the person named as an online notary public in the attached or
 18 associated document, was indeed registered as an online notary public for
 19 the State of Nebraska and authorized to act as such at the time of the
 20 document's electronic notarization. To verify this Certificate of
 21 Authority for an Online Notarial Act, I have included herewith my
 22 electronic signature this day
 23 of, 20.....

24 (Electronic signature (and seal) of commissioning official)

25 (3) The Secretary of State may charge a fee of twenty dollars for
 26 issuing an electronic certificate of authority. The Secretary of State
 27 shall remit the fees to the State Treasurer for credit to the
 28 Administration Cash Fund for use in administering the Online Notary
 29 Public Act.

30 Sec. 16. A person violating the Online Notary Public Act is subject
 31 to having his or her registration removed under the removal procedures

1 provided in section 64-113.

2 Sec. 17. Nothing in the Online Notary Public Act requires a notary
3 public to register as an online notary public if he or she does not
4 perform online notarial acts.

5 Sec. 18. (1) Sections 64-101 to 64-119 and 64-211 to 64-215 and the
6 Uniform Recognition of Acknowledgments Act govern an online notary public
7 unless the provisions of such sections and act are in conflict with the
8 Online Notary Public Act, in which case the Online Notary Public Act
9 controls.

10 (2) An online notarial act performed under the Online Notary Public
11 Act satisfies any requirement of law of this state that a principal
12 appear before, appear personally before, or be in the physical presence
13 of a notary public at the time of the online notarial act except for
14 requirements under:

15 (a) A law governing the creation and execution of wills, codicils,
16 or testamentary trusts; or

17 (b) The Uniform Commercial Code other than article 2 and article 2A.

18 (3) The Electronic Notary Public Act does not apply to online
19 notarial acts or online public notaries acting under the Online Notary
20 Public Act.

21 Sec. 19. Section 23-1503.01, Revised Statutes Cumulative Supplement,
22 2018, is amended to read:

23 23-1503.01 (1) Any instrument submitted for recording in the office
24 of the register of deeds shall contain a blank space at the top of the
25 first page which is at least three inches by eight and one-half inches in
26 size for recording information required by section 23-1510 by the
27 register of deeds. If this space or the information required by such
28 section is not provided, the register of deeds may add a page or use the
29 back side of an existing page and charge for the page a fee established
30 by section 33-109 for the recording of an instrument. No attachment or
31 affirmation shall be used in any way to cover any information or printed

1 material on the instrument.

2 (2) Printed forms primarily intended to be used for recordation
3 purposes shall have a one-inch margin on the two vertical sides and a
4 one-inch margin on the bottom of the page. Nonessential information such
5 as page numbers or customer notations may be placed within the side and
6 bottom margins.

7 (3) All instruments submitted for recording shall be on paper
8 measuring at least eight and one-half inches by eleven inches and not
9 larger than eight and one-half inches by fourteen inches. The instrument
10 shall be printed, typewritten, or computer-generated in black ink on
11 white paper of not less than twenty-pound weight without watermarks or
12 other visible inclusions. The instrument shall be sufficiently legible to
13 allow for a readable copy to be reproduced using the method of
14 reproduction used by the register of deeds. A font size of at least eight
15 points shall be presumed to be sufficiently legible. Each signature on an
16 instrument shall be in black or dark blue ink and of sufficient color and
17 clarity to ensure that the signature is readable when the instrument is
18 reproduced. The signature may be a digital signature or an electronic
19 signature. The name of each party to the instrument shall be typed,
20 printed, or stamped beneath the original signature. An embossed or inked
21 stamp shall not cover or otherwise materially interfere with any part of
22 the instrument.

23 (4) This section does not apply to:

24 (a) Instruments signed before August 27, 2011;

25 (b) Instruments executed outside of the United States;

26 (c) Certified copies of instruments issued by governmental agencies,
27 including vital records;

28 (d) Instruments signed by an original party who is incapacitated or
29 deceased at the time the instruments are presented for recording;

30 (e) Instruments formatted to meet court requirements;

31 (f) Federal and state tax liens;

- 1 (g) Forms prescribed by the Uniform Commercial Code;~~and~~
- 2 (h) Plats, surveys, or drawings related to plats or surveys; and ~~-~~
- 3 (i) Instruments submitted for recording by electronic means.

4 (5) The changes made to this section by Laws 2011, LB254, do not
5 affect the duty of a register of deeds to file an instrument presented
6 for recordation as set forth in sections 23-1506 and 76-237.

7 Sec. 20. Section 64-105, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 64-105 (1) A notary public shall not perform any notarial act as
10 authorized by Chapter 64, articles 1, ~~and~~ 2, and 3 if the principal:

11 (a) Is not in the presence of the notary public at the time of the
12 notarial act; and

13 (b) Is not personally known to the notary public or identified by
14 the notary public through satisfactory evidence.

15 (2) For purposes of this section:

16 (a) Identified by the notary public through satisfactory evidence
17 means identification of an individual based on:

18 (i) At least one document issued by a government agency that is
19 current and that bears the photographic image of the individual's face
20 and signature and a physical description of the individual, except that a
21 properly stamped passport without a physical description is satisfactory
22 evidence; or

23 (ii) The oath or affirmation of one credible witness unaffected by
24 the document or transaction to be notarized who is personally known to
25 the notary public and who personally knows the individual, or the oaths
26 or affirmations of two credible witnesses unaffected by the document or
27 transaction to be notarized who each personally knows the individual and
28 shows to the notary public documentary identification as described in
29 subdivision (a)(i) of this subsection; and

30 (b) Personal knowledge of identity or personally known means
31 familiarity with an individual resulting from interactions with that

1 individual over a period of time sufficient to dispel any reasonable
2 uncertainty that the individual has the identity claimed.

3 (3) This section does not apply to online notarial acts under the
4 Online Notary Public Act.

5 Sec. 21. Section 64-113, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 64-113 (1) Whenever charges of malfeasance in office are preferred
8 to the Secretary of State against any notary public in this state, or
9 whenever the Secretary of State has reasonable cause to believe any
10 notary public in this state is guilty of acts of malfeasance in office,
11 the Secretary of State may appoint any disinterested person, not related
12 by consanguinity to either the notary public or person preferring the
13 charges, and authorized by law to take testimony of witnesses by
14 deposition, to notify such notary public to appear before him or her on a
15 day and at an hour certain, after at least ten days from the day of
16 service of such notice. At such appearance, the notary public may show
17 cause as to why his or her commission should not be canceled or
18 temporarily revoked. The appointee may issue subpoenas to require the
19 attendance and testimony of witnesses and the production of any pertinent
20 records, papers, or documents, may administer oaths, and may accept any
21 evidence he or she deems pertinent to a proper determination of the
22 charge. The notary public may appear, at such time and place, and cross-
23 examine witnesses and produce witnesses in his or her behalf. Upon the
24 receipt of such examination, duly certified in the manner prescribed for
25 taking depositions to be used in suits in the district courts of this
26 state, the Secretary of State shall examine the same, and if therefrom he
27 or she finds that the notary public is guilty of acts of malfeasance in
28 office, he or she may remove the person charged from the office of notary
29 public or temporarily revoke such person's commission. Within fifteen
30 days after such removal or revocation and notice thereof, such notary
31 public shall deposit, with the Secretary of State, the commission as

1 notary public and notarial seal. The commission shall be canceled or
2 temporarily revoked by the Secretary of State. A person so removed from
3 office shall be forever disqualified from holding the office of notary
4 public. A person whose commission is temporarily revoked shall be
5 returned his or her commission and seal upon completion of the revocation
6 period and passing the examination described in section 64-101.01. The
7 fees for taking such testimony shall be paid by the state at the same
8 rate as fees for taking depositions by notaries public. The failure of
9 the notary public to deposit his or her commission and seal with the
10 Secretary of State as required by this section shall subject him or her
11 to a penalty of one thousand dollars, to be recovered in the name of the
12 state.

13 (2) For purposes of this section, malfeasance in office means, while
14 serving as a notary public, (a) failure to follow the requirements and
15 procedures for notarial acts provided for in Chapter 64, ~~articles 1 and~~
16 ~~2,~~ (b) violating the confidentiality provisions of section 71-6911, or
17 (c) being convicted of a felony or other crime involving fraud or
18 dishonesty.

19 Sec. 22. Section 64-203, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 64-203 (1) The person taking an acknowledgment shall certify that:

22 (a) ~~(1)~~ The person acknowledging appeared before him or her and
23 acknowledged he or she executed the instrument; and

24 (b) ~~(2)~~ The person acknowledging was known to the person taking the
25 acknowledgment or that the person taking the acknowledgment had
26 satisfactory evidence that the person acknowledging was the person
27 described in and who executed the instrument.

28 (2) For purposes of this section, appearance before the person
29 taking an acknowledgement includes an appearance outside the presence of
30 a notary public if such acknowledgement was completed in accordance with
31 the Online Notary Public Act.

1 Sec. 23. Section 64-205, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 64-205 (1) The words acknowledged before me means:

4 (a) ~~(1)~~ That the person acknowledging appeared before the person
5 taking the acknowledgment;

6 (b) ~~(2)~~ That he or she acknowledged he or she executed the
7 instrument;

8 (c) ~~(3)~~ That, in the case of:

9 (i) A natural person, he or she executed the instrument for the
10 purposes therein stated;

11 (ii) A corporation, the officer or agent acknowledged he or she held
12 the position or title set forth in the instrument and certificate, he or
13 she signed the instrument on behalf of the corporation by proper
14 authority and the instrument was the act of the corporation for the
15 purpose therein stated;

16 (iii) A partnership, the partner or agent acknowledged he or she
17 signed the instrument on behalf of the partnership by proper authority
18 and he or she executed the instrument as the act of the partnership for
19 the purposes therein stated;

20 (iv) A limited liability company, the member or agent acknowledged
21 he or she signed the instrument on behalf of the limited liability
22 company by proper authority and he or she executed the instrument as the
23 act of the limited liability company for the purposes therein stated;

24 (v) A person acknowledging as principal by an attorney in fact, he
25 or she executed the instrument by proper authority as the act of the
26 principal for the purposes therein stated; or

27 (vi) A person acknowledging as a public officer, trustee,
28 administrator, guardian, or other representative, he or she signed the
29 instrument by proper authority and he or she executed the instrument in
30 the capacity and for the purposes therein stated; and

31 (d) ~~(4)~~ That the person taking the acknowledgment either knew or had

1 satisfactory evidence that the person acknowledging was the person named
2 in the instrument or certificate.

3 (2) For purposes of this section, appearance before the person
4 taking an acknowledgement includes an appearance outside the presence of
5 a notary public if such acknowledgement was completed in accordance with
6 the Online Notary Public Act.

7 Sec. 24. The Revisor of Statutes shall assign sections 1 to 18 of
8 this act to a new article in Chapter 64.

9 Sec. 25. This act becomes operative on January 1, 2020.

10 Sec. 26. Original sections 64-105, 64-113, 64-203, and 64-205,
11 Reissue Revised Statutes of Nebraska, and section 23-1503.01, Revised
12 Statutes Cumulative Supplement, 2018, are repealed.