

HB 287 - AS INTRODUCED

2021 SESSION

21-0417

05/10

HOUSE BILL **287**

AN ACT relative to remote notarization.

SPONSORS: Rep. Danielson, Hills. 7

COMMITTEE: Judiciary

ANALYSIS

This bill establishes procedures and requirements for remote notarization.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to remote notarization.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Remote Notarization. Amend RSA by inserting after chapter 456-B the following new chapter:

REMOTE NOTARIZATION

456-C:1 Definitions. In this chapter:

- I. “Commissioned” includes those appointed and licensed.
- II. “Electronic” has the meaning given that term in RSA 294-E:2, V.
- III. “Electronic record” has the meaning given that term in RSA 294-E:2, VII.
- IV. “Electronic signature” has the meaning given that term in RSA 294-E:2, VIII.
- V. “Information” has the meaning given that term in RSA 294-E:2, X.
- VI. “Law” includes any statute, regulation, or rule of law.
- VII. “Notarization” includes:

(a) Any act, whether performed with respect to a tangible or electronic record and whether performed in an individual, official, or representative capacity, that a notarial officer may perform under New Hampshire law or the law of the state in which the individual giving the acknowledgment is located, or under the laws of the state under which the notarial officer is commissioned; and

(b) Any such act in which an individual making a statement or executing a record is not in the physical presence of the notarial officer but is able to communicate with the notarial officer simultaneously by sight and sound through an electronic device or process at the time of such act.

VIII. “Notarial officer” has the meaning given that term in RSA 456-B:1, V.

IX. "Person" has the meaning given that term in RSA 294-E:2, XII.

X. "Record" has the meaning given that term in RSA 294-E:2, XIII.

XI. “Requirement” includes a duty, a standard of care, or a prohibition.

XII. “Simultaneously” means substantially simultaneously and without unreasonable interruption or disconnection but includes reasonably short delays inherent or common in the method of communication.

XIII. “Stamp or seal of office” means an image containing information as specified under the law of the state in which a notarial officer is commissioned, which is used by the notarial officer to authenticate the notarization of a record, and which may consist of a physical image or impression

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1 affixed to or embossed on a tangible record or an electronic image attached to or logically associated
2 with an electronic record.

3 XIV. "State" means any state of the United States, the District of Columbia, the
4 Commonwealth of Puerto Rico, every territory or possession subject to the jurisdiction of the United
5 States, and every federally recognized Indian tribe, and includes any executive, legislative, or
6 judicial agency, court, department, board, office, clerk, recorder, register, commission, authority,
7 institution, or instrumentality and any county, municipality, or other political subdivision thereof.

8 456-C:2 Remote Notarization; Requirements.

9 I. Subject to the provisions of this chapter, a notarial officer commissioned under the laws of
10 this state may perform a notarization for an individual not in the physical presence of the notary
11 officer if:

12 (a) The individual and the notarial officer can communicate simultaneously by sight and
13 sound through an electronic device or process at the time of the notarization;

14 (b) The notarial officer:

15 (1) Has reasonably identified the individual by one or more of the following:

16 (A) Personal knowledge of the individual;

17 (B) At least 2 different types of processes or services by which a third person
18 provides a means to verify the identity of the individual through a review of public or private data
19 sources; or

20 (C) Oath or affirmation of a credible witness who (i) is in the physical presence of
21 either the notarial officer or the individual or (ii) is able to communicate with the notarial officer and
22 the individual simultaneously by sight and sound through an electronic device or process at the time
23 of the notarization, if the credible witness has personal knowledge of the individual and has been
24 reasonably identified by the notarial officer under subparagraph (A) or (B); and

25 (2) Either directly or through an agent:

26 (A) Creates an audio and visual recording of the performance of the notarization;

27 and

28 (B) Retains such recording as a notarial record during the term of the notarial
29 officer's office, including renewals thereof, unless a law of the state requires a different period of
30 retention, and if any laws of the state govern the content, retention, security, use, effect, and
31 disclosure of such recording and any information contained therein such recording shall be subject
32 thereto; and

33 (3) For an individual physically located outside the geographic boundaries of the
34 state of New Hampshire:

35 (A) The record:

(i) Is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the state of New Hampshire; or

(ii) Involves property located in the territorial jurisdiction of the state of New Hampshire or a transaction substantially connected to the state of New Hampshire; and

(B) The notarial officer has no actual knowledge that the act of making the statement or signing the record is prohibited by the laws of the jurisdiction in which the individual is physically located.

II. If a state law requires an individual to appear personally before or be in the physical presence of a notarial officer at the time of a notarization that requirement shall be satisfied if the individual and the notarial officer are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.

III. Nothing in this chapter shall require a notarial officer commissioned under the laws of the state of New Hampshire to perform a notarization:

(a) With respect to an electronic record;

(b) For an individual not in the physical presence of the notarial officer; or

(c) Using a technology that the notarial officer has not selected.

456-C:3 Remote Notarization; Procedure for Certification.

I. Once signed, the requesting person shall mail the signed copy of the documents to the notarial officer for certification and execution with the notarial officer's signature and the official stamp or seal.

II. The official date and time of the notarization shall be the date and time when the notarial officer witnesses the signature via the electronic devices that provide the audio/video presence.

456-C:4 Validity.

I. The validity and recognition of a notarization under this chapter shall 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 chapter for any reason not addressed in this chapter, including on the basis:

(a) That a person did not, with present intent to authenticate or adopt a record:

(1) Execute or adopt on the record a tangible symbol; or

(2) Attach to or logically associate with the record an electronic signature;

(b) That an individual was incompetent, lacked authority or capacity to execute the record, or did not knowingly and voluntarily execute a record; or

(c) Of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.

1 II. Nothing in this chapter shall affect or supersede a state law or rule governing,
2 authorizing, or prohibiting the practice of law.

3 III. The failure of a notarial officer to meet a requirement specified in this chapter shall not
4 invalidate or impair the recognition of a notarization performed by the notarial officer under the
5 authority granted in this chapter.

6 IV. This chapter shall not be construed to create a public or private cause of action or
7 remedy.

8 V. This chapter shall not affect the validity of a notarization performed before the effective
9 date hereof. The validity and recognition of a notarization performed pursuant to the terms of this
10 chapter shall not be affected by the subsequent repeal or amendment of this chapter.

11 VI. If any provision of this chapter or the application of such provision to any person or
12 circumstance is held to be invalid or unconstitutional, the remainder of this chapter and the
13 application of the provisions thereof to other persons or circumstances shall not be affected thereby.

14 2 Effective Date. This act shall take effect January 1, 2022.