SPONSOR: Sen. DeLuca & Rep. Hudson
Bunting, Sens. Ennis, Sorenson, Venables, Cloutier; Reps. Carson, Johnson, Lavelle, Maier, B. Short, Stone, Viola, Wagner

DELAWARE STATE SENATE

144th GENERAL ASSEMBLY

SENATE BILL NO. 246
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO NOTARIES PUBLIC.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 43 of Title 29 of the Delaware Code by striking Chapter 43 in its entirety and by substituting in lieu thereof the following:

"CHAPTER 43. NOTARIES PUBLIC

Subchapter I. Office and Duties

§ 4301. Appointment of notaries in general; qualifications; revocation.

(a) In addition to the notaries public authorized to be appointed under §§ 4302-4306 of this title, the Governor may appoint as many notaries public as the Governor may decide is necessary and proper in each county of the State. The Governor may delegate such duties relative to the appointment of notaries to the Secretary of State as the Governor may decide is necessary and proper. For purposes of this title, 'Secretary' shall mean the Secretary of State. Any person who acts as a notary under Delaware law shall register and be commissioned and otherwise be in compliance with the provisions of this title.

(b) Any person who desires to become a notary shall be at least 18 years of age and shall provide such evidence as the Secretary may require to show:

(1) Good character and reputation;

(2) A reasonable need for a notary commission; and

(3) Legal residence including street address of the notary within the State.

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(c) The Governor may also appoint, as notaries public for notarial acts other than electronic notarial acts, nonresidents of this State who otherwise meet the requirements of subsections (b)(1) and (2) of this section, provided that such individuals maintain an office or regular place of employment in Delaware. Nonresidents seeking appointment as notaries public shall include with their application an affidavit containing a residential and a Delaware employment address. Those appointed as notaries shall also file an affidavit for each change of address.

Service of process, subpoenas and other documents upon nonresident notaries may be made personally or by leaving them with any person of suitable age and discretion at the Delaware place of employment. Substituted service shall be effectual if served upon the Secretary of State, under the guideline of § 376(b) of Title 8 in the event that the office has been closed or such individual ceases to be regularly employed at the filed Delaware employment address. The Secretary of State shall then forward such documents to the filed residential address.

(d) The Governor, or as permitted, the Secretary may revoke any notary commission for cause.

(e) The Secretary may promulgate regulations governing applications, registrations, and guidelines for all notaries public.

§ 4302. Appointment of electronic notaries; term.

(a) The Governor may appoint as many electronic notaries as the Governor may decide is necessary and proper. The Governor may delegate such duties relative to the appointment of electronic notaries to the Secretary of State as the Governor may decide is necessary and proper. Any person who acts as an electronic notary under Delaware law shall register and be commissioned and otherwise be in compliance with the provisions of this title.

(b) Any person who desires to become an electronic notary shall be at least 18 years of age and shall provide such evidence as the Secretary may require to show:

(1) Good character and reputation;

(2) A reasonable need for an electronic notary commission; and

(3) Legal residence including street address of the electronic notary within the State.

(c) The Governor may also appoint, as notaries public for electronic notarial acts, nonresidents of this State who otherwise meet the requirements of subsections (b)(1) and (2) of this section provided that such individual shall have demonstrated to the satisfaction of the Secretary that:

(1) Such individual maintains an office or regular place of employment in Delaware;

(2) Such individual is an attorney at law in good standing licensed in any state, commonwealth, territory, district or possession of the United States; or

(3) Such individual is a current employee of a banking, trust or insurance company organized and regulated under the laws of the United States or any state, commonwealth, territory or possession of the United States, and such banking, trust or insurance company shall have previously submitted to the Secretary and had approved by the Secretary an application demonstrating that such banking, trust or insurance company is in good standing and has a reasonable need for permitting one or more of its employees to become an electronic notary under Delaware law.

Nonresidents seeking appointment as a Delaware electronic notary public shall include with their application an affidavit containing their primary residential address within any state, commonwealth, territory, district or possession of the United States and their employment address in Delaware or within any state, commonwealth, territory or possession of the United States. Those appointed as electronic notaries public shall also file an affidavit for each change of address. Each nonresident electronic notary not having an employment address in Delaware shall also designate a registered agent in the State of Delaware to receive service of process, subpoenas and other documents.

Service of process, subpoenas and other documents upon nonresident electronic notaries may be made personally or by leaving them with any person of suitable age and discretion at the Delaware place of employment or the electronic notary's registered agent, if applicable. Substituted service shall be effectual if served upon the Secretary of State, under the guideline of § 376(b) of Title 8 in the event that the office has been closed or such individual ceases to be regularly employed at the filed Delaware employment address or such registered agent has resigned. The Secretary of State shall then forward such documents to the electronic notary's filed residential address or employment address outside of the State.

(d) An applicant to become an electronic notary shall submit a registration form established by the Secretary for registering and being commissioned as an electronic notary, which shall include:

1. The applicant's full legal name;

2. A description of the technology or technologies the registrant will use for electronic identification, electronic signatures and such other aspects involved in performing each electronic notarial transaction;

3. If the device used to create the registrant's electronic signature is issued or registered through a licensed authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that were due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail;

4. The electronic mail address of the registrant;

5. The electronic signature of the notary which shall be unique to the notary;

6. Evidence that the electronic notary has taken a course of instruction, whether in the classroom, distance learning or online, in accordance with standards established by the Secretary prior to being commissioned as an electronic notary, and continuing education, whether in the classroom, distance learning or online, in accordance with standards established by the Secretary, during the two year term as provided in § 4307; and

7. Such other information as the Secretary shall reasonably request.

The registration form shall (i) be signed by the applicant using the electronic signature described in the form; (ii) include any decrypting instructions, codes, keys, or software that allow the registration to be read; and (iii) be transmitted electronically to the Secretary.

Nothing herein shall be construed to prevent an electronic notary from using updated technology or technologies during the term of the commission; however, the electronic notary shall notify the Secretary electronically within 90 days of installation or use of such updated technology or technologies and provide a brief description thereof.

(e) The Governor, or as permitted, the Secretary may revoke any electronic notary commission for cause.

(f) The Secretary may promulgate regulations or establish such additional standards and guidelines governing applications, registrations, appointments, and the conduct of resident and nonresident electronic notaries.

§ 4303. Appointment of certain officers as notaries; term.

The Governor shall appoint every person who is appointed to the office of justice of the peace and as Secretary of Finance also as a notary public. The Secretary of Finance shall only act as a notary public in connection with work performed in carrying out the duties of the office. The notary commission of any person appointed a notary public under this section shall terminate at the same time such person's term of office terminates.

§ 4304. Appointment of notary for each bank or branch.

The Governor shall appoint 1 notary public for each trust company, bank, banking association or branch or branches thereof in this State, whether state or national, chartered or organized under the laws of this State or of the United States.

§ 4305. Appointment of court reporters as notaries public.

The Governor may, upon the request of the Chief Justice of the Supreme Court, appoint any of the official court reporters as a notary public.

§ 4306. Appointment of notaries for certain service organizations; limitations.

(a) The Governor may, upon the request of the department commander of a State recognized veterans' organization, appoint 1 notary public for each requesting organization for a term of 4 years, without charge to any appointee, commander or organization.

(b) Any such notary, so appointed, shall have no authority to perform any duties with respect to such office or to take affidavits or acknowledgements, except on documents and papers in connection with and for the benefit of any veteran, their families or dependents. The notaries public, so appointed, shall make no charge for any service rendered.

(c) The Governor may, upon the request of any administrative head of any volunteer fire company or volunteer ambulance and rescue company, appoint 1 notary public for each requesting organization for a term of 4 years, without charge to any appointee, chief or organization. Any such notary, so appointed, shall have no authority to perform any duties with respect to such office or to take affidavits or acknowledgements, except on documents and papers in connection with and for the benefit of any members of the organizations listed herein to include their families or dependents. The notaries public, so appointed, shall make no charge to any service rendered.

(d) Upon the request of the administrative head of any State, County, municipal, or local governmental agency or unit of this State whose personnel include full-time police officers who are statutorily responsible for the prevention or investigation of crime involving injury to persons or property and who are authorized to execute search warrants and to make arrests, the Governor shall appoint a sufficient number of notaries public or electronic notaries public as may be requested by the administrative head to facilitate the law enforcement responsibilities of the agency or unit. The appointments shall be for a term of 4 years, without charge to the appointee, administrative head, or police agency. Any such notary, so appointed, shall have no authority to perform any duties with respect to such office or to take affidavits or acknowledgments, except on documents and papers in connection with, and for the benefit of, their respective police agency. The notaries public or electronic notaries public so appointed shall make no charge for any service rendered and the Secretary may waive the fees established pursuant to the schedule authorized under § 4307(c) for any electronic notarial acts or services performed by such electronic notaries public.

§ 4307. Term of office; fees; resignation.

(a) Notaries public shall be commissioned for the term of 2 years. The fee for a 2-year term is $60. Any notary public who wishes to renew his or her commission may request a 2-year reappointment for $60 or a 4-year reappointment for $90.

(b) Electronic notaries public shall be commissioned for the term of 2 years. The fee for a 2-year term is $60. The Secretary may establish such other fees to cover the actual costs incurred by the State to issue or provide any special identification cards, hardware or other related materials, technologies or training to electronic notaries public.

(c) The Secretary may establish a schedule of fees for each electronic notarial act or service, not to exceed $10 per notarial act or service.

(d) Every notary who wishes to resign from office or who no longer meets the qualifications for a commission during their term of office shall immediately mail or deliver the official commission to the Secretary, who shall cancel the same.

(e) Every notary who is registered to perform electronic notarizations who wishes to resign or who no longer meets the qualifications for a commission or whose term of office shall have expired shall immediately erase, delete or destroy the coding, disk, certificate, card, software or password that enables the electronic affixation of the notary's official electronic signature or seal and shall so certify to the Secretary. The failure of an electronic notary to comply with this subparagraph may result in the Secretary imposing a civil penalty on the notary of $500.00.

§ 4308. Oath.

The notaries and resident electronic notaries shall severally take and subscribe the oath or affirmation prescribed by Article XIV of the Constitution. The nonresident electronic notaries shall severally take and subscribe the oath or affirmation on a commission issued by the Secretary before a clerk of court, deed recorder or other judicial officer, pay such fees as may be applicable for administering such oath or affirmation, and pay such fees as may be applicable to obtain a true and certified copy of such commission signed by the person who administered the oath or affirmation. The nonresident electronic notary will not be registered to perform electronic notarial acts until a true and certified copy of the fully executed commission is received by the Secretary as an electronic or paper document.

§ 4309. Seal and powers.

(a) The notary shall have a seal and shall exercise the powers and perform the duties belonging to that office. The notary shall also have power to take the acknowledgement of deeds and other instruments. The notary public must ensure, either from personal knowledge of identity or from satisfactory evidence of identity as defined in §

4321, that the individual whose presence and signature is being certified is in fact the person he or she claims to be.

(b) A notary who has registered with the Secretary to perform electronic notarizations as required by § 4302 of this title shall have an electronic seal and may perform a notarial act by electronic means. The electronic notary must ensure, either from personal knowledge of identity or from satisfactory evidence of identity as defined in § 4321, that the individual whose presence and signature is being certified is in fact the person he or she claims to be.

(c) A notary public or electronic notary public shall not notarize a document without the person signing the document being personally present.

§ 4310. Engraving of seal; effect of use of nonconforming seal; electronic notarial seal; notary's official signature; electronic signature.

(a) The seal required by § 4309 of this title shall be used in the transaction of official business by notaries public. Each notary public shall provide, keep and use a seal that is either an engraved embossed seal or a black-inked rubber stamp seal to be used on the paper document being notarized. The seal shall contain the notary's name exactly as it appears on the commission, the words 'My Commission expires on' and the commission expiration date and the words 'Notary Public' and 'State of Delaware.'

(b) If the official seal of any notary public is not engraved in conformity with this section, it shall not invalidate an official act, but such act shall be as valid as though the seal had been engraved in conformity with the requirements of this section.

(c) The electronic seal required by § 4309 of this title shall be used in the transaction of all official electronic notarial acts and shall contain the notary's name exactly as it appears on the commission, the words 'My Commission expires on' and the commission expiration date and the words 'Notary Public' and 'State of Delaware.'

(d) In acting as a notary public, a notary shall sign the notary's name exactly and only as it appears on the commission, or otherwise execute the notary's electronic signature in a manner that attributes such signature to the notary public identified on the commission.

(e) The notary's official electronic seal and signature shall be attached to an electronic document in a manner that is capable of independent verification and prevents any subsequent changes or modifications to the electronic document.

(f) A notary performing electronic notarial acts shall:

(1) Use an electronic seal and signature that conform to generally accepted standards for secure electronic notarization;

(2) Use the notary's electronic seal and signature only for the purpose of performing electronic notarial acts;

(3) Take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by its issuing or registering authority;

(4) Keep the electronic seal and signature secure under the notary's exclusive control and shall not allow them to be used by any other person; and

(5) Take reasonable steps to ensure the integrity, security and authenticity of electronic notarizations.

(g) Immediately upon discovering that the notary's physical or electronic seal, electronic signature or official journal required under § 4314 of this title has been lost, stolen or may be otherwise used by a person other than the notary, the notary shall immediately notify the Secretary who shall disable use of the missing technology on any electronic system of the Secretary. Upon request of the electronic notary and completion of a new registration form (i) signed by the applicant using the electronic signature described in the form; and (ii) including any decrypting instructions, codes, keys, or software that allow the registration to be read; the Secretary may reinstate the electronic notary. The electronic notary may notify appropriate law enforcement agency in the case of theft or vandalism.

(h) Any notary public failing to comply with the requirements of this section may be removed by the Governor for neglect.

§ 4311. Fees for services.

(a) The maximum fee a notary public can charge for any paper notarial act is $5.

(b) The maximum fee a notary public can charge for any electronic notarial act is $25.

(c) The fees prescribed in this section shall be the maximum fees to be charged by any notary public and, upon violation hereof, the Secretary may revoke the commission of such notary, and such notary shall not be reappointed within a period of 2 years.

(d) A notary public may choose to waive any fee for any notarial act; provided, however, that a notary public may not waive any fee(s) for an electronic notarial act or service assessed pursuant to §4307(c) of this Chapter.

§ 4312. Special fee provisions for certain services to members of the armed forces and to veterans; penalties; jurisdiction of justices of peace.

(a) No notary public or other person who is authorized by law to take the acknowledgment of instruments or to administer oaths or affirmations shall charge any person serving in the armed forces of the United States, or a

veteran of any war, or the widow or children of a soldier, or soldier's parents, or widower or other relative of any person in the armed services the fee provided by law when an acknowledgment, oath or affirmation is taken in connection with any paper or papers required to be executed by the Veterans Administration or in support of any claim or other papers connected with or referring to the service of any male or female now serving or who hereafter may serve or who, in the past, has served in the armed forces of the United States.

(b) Whoever violates subsection (a) of this section shall be fined not less than $10 nor more than $25 and, in default of the payment of such fine, shall be imprisoned for not more than 5 days.

(c) Justices of the peace shall have jurisdiction of offenses under this section.

§ 4313. Commission; signature of Governor; seal.

(a) The commission appointing a notary public or electronic notary public shall be in such form as the Secretary of State shall designate, shall be executed with the signature of the Governor or with an electronic or a facsimile signature of the Governor, which may be engraved, printed or stamped thereon, and shall be signed by the Secretary of State.

(b) The commission shall have placed thereon the impression of the Great Seal of the State, or a facsimile of the Great Seal shall be engraved or printed thereon.

§ 4314. Official electronic journal of notarial acts.

(a) A notary performing electronic notarial acts shall keep, maintain, protect and provide for lawful inspection an electronic journal of notarial acts. The Secretary shall establish standards for the maintenance of electronic journals.

(b) For every electronic notarial act, the notary shall record in the journal at the time of notarization the following:

(1) The date and time of day of the notarial act;

(2) The type of notarial act;

(3) The type, title or a description of the document or proceeding;

(4) The printed name and address of each person whose signature is notarized or who requests a notarial act;

(5) The evidence of identity of each principal, in the form of either: a statement that the person is ‘personally known’ to the notary; a notation of the type of identification document and the identification number on such identification document; or the printed name and address of the credible witness swearing or affirming to the person’s identity;

(6) The fee, if any, charged for the notarial act; and,

(7) Such other information as the notary may deem to be necessary and appropriate.

(c) A notary shall not record a Social Security or credit card number in the journal.

(d) A notary shall keep the official journal secure under the notary’s exclusive control and shall not allow it to be used

by any other person.

(e) A notary shall maintain a back-up record of an electronic journal and ensure protection of such back-up record from unauthorized use. The Secretary shall establish standards for back-up records.

Subchapter II. Notarial Acts

§ 4321. Definitions.

As used in this chapter:

(1) 'Acknowledgment' shall mean a statement by a person that the person has executed an instrument for the purposes stated therein. If the instrument is executed in a representative capacity, an acknowledgement certifies that the person who signed the instrument did so with proper authority and executed the instrument as the act of the person or entity stated therein.

(2) 'Affirmation' shall mean a promise of truthfulness that is a solemn, spoken pledge on one's own, personal honor without reference to a Supreme Being.

(3) 'Copy certification' means a notarial act in which a notary (i) is presented with a document that is not a public record; (ii) copies or supervises the copying of the document using a photographic or electronic copying process; (iii) compares the document to the copy; and (iv) determines that the copy is accurate and complete.

(4) 'Credible witness' means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to confirm that individual's identity.

(5) 'Document' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including a record as defined in the Uniform Electronic Transactions Act (Chapter 12A).

(6) 'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(7) 'Electronic document' means information that is created, generated, sent, communicated, received, or stored by electronic means.

(8) 'Electronic notarial act' and 'electronic notarization' mean an official act by a notary under this title or as otherwise authorized by law that involves electronic documents.

(9) 'Electronic notarial certificate' means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, and other

required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular notarization.

(10) 'Electronic notary public' or 'electronic notary' means a notary public who has been commissioned by the Secretary with the capability of performing electronic notarial acts under this article.

(11) 'Electronic notary seal' or 'electronic seal' means information within a notarized electronic document that confirms the notary's name, jurisdiction, and commission expiration date and generally corresponds to data in notary seals used on paper documents.

(12) 'Electronic signature' means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

(13) 'Notarial act' shall mean any act that a notary public of this State is authorized to perform and includes:

a. Taking an acknowledgement;

b. Administering an oath or affirmation;

c. Taking a verification upon oath or affirmation;

d. Witnessing or attesting a signature;

e. Certifying or attesting a copy;

f. Noting a protest of a negotiable instrument.

(14) 'Notarial officer' shall mean a notary public or any other officer authorized to perform notarial acts.

(15) 'Oath' shall mean a promise of truthfulness that is a solemn, spoken pledge to a Supreme Being.

(16) 'Personal knowledge of identity' or 'personally knows' means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

(17) 'Prima-facie evidence' shall mean evidence that would, if uncontested, establish a fact or raise a presumption of a fact.

(18) 'Principal' means (i) a person whose signature is notarized or (ii) a person, other than a credible witness, taking an oath or affirmation from the notary.

(19) 'Record of notarial acts' means a device for creating and preserving a chronological record of notarizations performed by a notary.

(20) 'Representative capacity' shall mean:

a. For and on behalf of a corporation, partnership, trust or other entity as an authorized officer, agent, partner or other representative;

b. As a public officer, personal representative, guardian or other representative in the capacity recited in the instrument;

c. As an attorney in fact for a principal; or

d. In any other capacity as an authorized representative of another.

(21) 'Satisfactory evidence of identity' means identification of an individual based on (i) examination of one or more of the following documents bearing a photographic image of the individual's face and signature: a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card or (ii) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual or of two credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in subdivision (i).

(22) 'Seal' means a device for affixing on a paper document an image containing the notary's name and other information related to the notary's commission.

(23) 'Secretary' means Secretary of State.

(24) 'Verification upon oath or affirmation' shall mean a statement by a person who asserts that the statement is true and makes the assertion upon oath or affirmation.

§ 4322. Notarial acts.

(a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge of identity or from satisfactory evidence of identity, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge of identity or from satisfactory evidence of identity, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge of identity or from satisfactory evidence of identity, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document the notary public must supervise the making of a photocopy of an original document and shall attest to the authenticity of such copy. Notaries public, however, shall not attest to copies of official or public records, only of documents that cannot be certified by a public official.

(e) In making or noting a protest of a negotiable instrument, a notarial officer must determine the matters set forth in § 3-505 of Title 6.

(f) An electronic notarial act performed by a notary public or other person authorized in this title shall constitute a notarial act under the laws of this State, provided that the official signature and seal of an electronic notary (i) shall be attached to or logically associated with the document; (ii) shall be independently verifiable; and (iii) will be invalidated if the underlying document is modified.

§ 4323. Notarial acts -- Acts in this State.

(a) A notarial act may be performed within this State by the following persons:

(1) A notary public of this State;

(2) A judge, clerk or deputy clerk of any court of this State;

(3) A person licensed to practice law in this State;

(4) A person authorized by the law of this State to administer oaths; and

(5) Any other person authorized to perform the specific act by the law of this State.

(b) Notarial acts performed within this State under federal authority as provided in § 4325 of this title have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) An electronic notarial act performed by a person appointed by the Governor under this Chapter shall be deemed to have been performed within this State.

(e) A document notarized by a notary public or other person referenced in this section above, which appears on its face to be properly notarized, shall be presumed to have been notarized properly in accordance with the laws and regulations of this State.

§ 4324. Notarial acts -- Acts in other jurisdictions of the United States.

(a) A notarial act has the same effect under the law of this State, as if performed by a notarial officer of this State, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:

(1) A notary public of that jurisdiction;

(2) A judge, clerk or deputy clerk of a court of that jurisdiction; or

(3) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in § 4325 of this title have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine, and that the person holds the designated title.

(d) The signature and title of an officer listed in paragraph (1) or (2) of subsection (a) of this section conclusively establish the authority of a holder of that title to perform a notarial act.

(e) A document notarized by a notary public or other person referenced in this section above, which appears on its face to be properly notarized, shall be presumed to have been notarized properly in accordance with the laws and regulations of the jurisdiction within the United States in which the document was notarized.

§ 4325. Notarial acts -- Acts under federal authority.

(a) A notarial act has the same effect under the law of this State, as if performed by a notarial officer of this State, if performed anywhere by any of the following persons under authority granted by the law of the United States:

(1) A judge, clerk or deputy clerk of a court;

(2) A commissioned officer on active duty with the military services of the United States;

(3) An officer of the foreign service or consular officer of the United States; or

(4) Any other person authorized by federal law to perform notarial acts.

(b) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and title of an officer listed in paragraph (1), (2) or (3) of subsection (a) of this section conclusively establish the authority of a holder of that title to perform a notarial act.

(d) A document notarized by a notary public or other person referenced in this section above, which appears on its face to be properly notarized, shall be presumed to have been notarized properly in accordance with the laws and regulations of the jurisdiction in which the document was notarized.

§ 4326. Foreign notarial acts.

(a) A notarial act has the same effect under the law of this State, as if performed by a notarial officer of this State, if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(1) A notary public or notary;

(2) A judge, clerk or deputy clerk of a court of record; or

(3) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An 'apostille' in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the designated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the designated title.

(e) An official stamp or seal of an officer listed in paragraph (1) or (2) of subsection (a) of this section is prima facie evidence that a person with that title has authority to perform notarial acts.

(f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, it conclusively establishes the authority of an officer with that title to perform notarial acts.

§ 4327. Certificate of notarial acts.

(a) A notarial act must be evidenced by a certificate physically or electronically signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office that the notarial officer holds and may include the official stamp or seal of office, or the electronic notary's electronic seal. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty with the military services of the United States, it must also include the officer's rank.

(b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a) of this section and it:

(1) Is in the short form set forth in § 4328 of this title;

(2) Is in a form otherwise prescribed by the law of this State;

(3) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(4) Sets forth the actions of the notarial officer, and those are sufficient to meet the requirements of the designated notarial act.

(5) Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an electronic document, the notary shall attach an official electronic seal.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by § 4322 of this title.

§ 4328. Short forms.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by §4327(a) of this title:

(1) For an acknowledgment in an individual capacity:

State of .....

County of .....

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

.....

(signature of notarial officer)

(Seal)

.....

(title and rank)

(my commission expires: .....)

(2) For an acknowledgment in a representative capacity:

State of .....

County of .....

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

.....

(signature of notarial officer)

(Seal)

.....

(title and rank)

(my commission expires: .....)

(3) For a verification upon oath or affirmation:

State of..... .

County of..... .

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

.....

(signature of notarial officer)

(Seal)

.....

(title and rank)

(my commission expires: ….....)

(4) For witnessing or attesting a signature:

State of..... .

County of..... .

Signed and attested before me on (date) by (name(s) of person(s)).

.....

(signature of notarial officer)

(Seal)

.....

(title and rank)

(my commission expires: .....)

(5) For attestation of a copy of a document:

State of..... .

County of..... .

I certify that this is a true and correct copy of a document in the possession of (name(s) of person(s).

.....

(signature of notarial officer)

(Seal)

.....

(title and rank)

(my commission expires: ….....)

§ 4329. Electronic Certificate of Authority.

(a). Form of evidence of authority of electronic notarial act. On a notarized electronic document transmitted to another state or country outside of the United States, electronic evidence of the authenticity of the official signature and seal of an electronic notary of the State of Delaware, shall be attached to or logically associated with the document and shall be in the form of an electronic certificate of authority signed by the Secretary that is independently verifiable and will be invalidated if the underlying document is modified.

(b). Certificate of authority for electronic notarial act. An electronic certificate of authority evidencing the authenticity of the official signature and seal of an electronic notary of the State of Delaware shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, (name and title), certify that (name of electronic notary), the person named as Electronic Notary Public in the attached or associated electronic document, was commissioned as an Electronic Notary Public for the State of Delaware and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this_____day of _____, 20__.

(Electronic signature and seal of commissioning official)"

Section 2. This amendment shall take effect on February 1, 2009.

SD : TGW : vnm:1051440281
LC : JWH : RAY:1901440377