



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

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):

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

3 "CHAPTER 43. NOTARIES PUBLIC

4 Subchapter I. Office and Duties

5 § 4301. Appointment of notaries in general; qualifications; revocation.

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

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

14 (1) Good character and reputation;

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

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

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

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

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

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

31 § 4302. Appointment of electronic notaries; term.

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

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

38 (1) Good character and reputation;

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

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

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

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

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

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

53 Nonresidents seeking appointment as a Delaware electronic notary public shall include with their application
54 an affidavit containing their primary residential address within any state, commonwealth, territory, district or

55 possession of the United States and their employment address in Delaware or within any state,
56 commonwealth, territory or possession of the United States. Those appointed as electronic notaries public
57 shall also file an affidavit for each change of address. Each nonresident electronic notary not having an
58 employment address in Delaware shall also designate a registered agent in the State of Delaware to receive
59 service of process, subpoenas and other documents.

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

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

- 69 1. The applicant's full legal name;
- 70 2. A description of the technology or technologies the registrant will use for electronic identification,
71 electronic signatures and such other aspects involved in performing each electronic notarial transaction;
- 72 3. If the device used to create the registrant's electronic signature is issued or registered through a licensed
73 authority, the name of that authority, the source of the license, the starting and expiration dates of the device's
74 term of registration, and any revocations, annulments, or other premature terminations of any registered device of
75 the registrant that were due to misuse or compromise of the device, with the date, cause, and nature of each
76 termination explained in detail;
- 77 4. The electronic mail address of the registrant;
- 78 5. The electronic signature of the notary which shall be unique to the notary;
- 79 6. Evidence that the electronic notary has taken a course of instruction, whether in the classroom, distance
80 learning or online, in accordance with standards established by the Secretary prior to being commissioned as an
81 electronic notary, and continuing education, whether in the classroom, distance learning or online, in accordance
82 with standards established by the Secretary, during the two year term as provided in § 4307; and
- 83 7. Such other information as the Secretary shall reasonably request.

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

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

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

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

94 § 4303. Appointment of certain officers as notaries; term.

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

100 § 4304. Appointment of notary for each bank or branch.

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

104 § 4305. Appointment of court reporters as notaries public.

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

107 § 4306. Appointment of notaries for certain service organizations; limitations.

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

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

115 (c) The Governor may, upon the request of any administrative head of any volunteer fire company or
116 volunteer ambulance and rescue company, appoint 1 notary public for each requesting organization for a term of
117 4 years, without charge to any appointee, chief or organization. Any such notary, so appointed, shall have no
118 authority to perform any duties with respect to such office or to take affidavits or acknowledgements, except on

119 documents and papers in connection with and for the benefit of any members of the organizations listed herein to
120 include their families or dependents. The notaries public, so appointed, shall make no charge to any service
121 rendered.

122 (d) The Governor shall, upon the request of the Chief of Police or acting Chief of Police of a unit of
123 government whose personnel are full-time police officers and statutorily responsible for the prevention or
124 investigation of crime involving injury to persons or property and who are authorized to execute search warrants
125 and to make arrests, appoint a sufficient number of notaries public as may be requested by the Chief of Police or
126 acting Chief of Police for the proper administration of their agencies. The appointments shall be for a term of 4
127 years, without charge to the appointee, Chief of Police or acting Chief of Police or police agency. Any such
128 notary, so appointed, shall have no authority to perform any duties with respect to such office or to take affidavits
129 or acknowledgments, except on documents and papers in connection with, and for the benefit of, their respective
130 police agency. The notaries public appointed shall make no charge for any service rendered.

131 § 4307. Term of office; fees; resignation.

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

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

139 (c) The Secretary may establish a schedule of fees for each electronic notarial act or service, not to exceed
140 \$10 per notarial act or service.

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

144 (e) Every notary who is registered to perform electronic notarizations who wishes to resign or who no longer
145 meets the qualifications for a commission or whose term of office shall have expired shall immediately erase,
146 delete or destroy the coding, disk, certificate, card, software or password that enables the electronic affixation of
147 the notary's official electronic signature or seal and shall so certify to the Secretary. The failure of an electronic
148 notary to comply with this subparagraph may result in the Secretary imposing a civil penalty on the notary of
149 \$500.00.

150 § 4308. Oath.

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

159 § 4309. Seal and powers.

160 (a) The notary shall have a seal and shall exercise the powers and perform the duties belonging to that office.
161 The notary shall also have power to take the acknowledgement of deeds and other instruments. The notary public
162 must ensure, either from personal knowledge of identity or from satisfactory evidence of identity as defined in §
163 4321, that the individual whose presence and signature is being certified is in fact the person he or she claims to
164 be.

165 (b) A notary who has registered with the Secretary to perform electronic notarizations as required by § 4302 of
166 this title shall have an electronic seal and may perform a notarial act by electronic means. The electronic notary
167 must ensure, either from personal knowledge of identity or from satisfactory evidence of identity as defined in §
168 4321, that the individual whose presence and signature is being certified is in fact the person he or she claims to
169 be.

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

172 § 4310. Engraving of seal; effect of use of nonconforming seal; electronic notarial seal; notary's official signature;
173 electronic signature.

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

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

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

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

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

192 (f) A notary performing electronic notarial acts shall:

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

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

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

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

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

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

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

212 § 4311. Fees for services.

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

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

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

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

220 § 4312. Special fee provisions for certain services to members of the armed forces and to veterans; penalties;
221 jurisdiction of justices of peace.

222 (a) No notary public or other person who is authorized by law to take the acknowledgment of instruments or
223 to administer oaths or affirmations shall charge any person serving in the armed forces of the United States, or a
224 veteran of any war, or the widow or children of a soldier, or soldier's parents, or widower or other relative of any
225 person in the armed services the fee provided by law when an acknowledgment, oath or affirmation is taken in
226 connection with any paper or papers required to be executed by the Veterans Administration or in support of any
227 claim or other papers connected with or referring to the service of any male or female now serving or who
228 hereafter may serve or who, in the past, has served in the armed forces of the United States.

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

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

232 § 4313. Commission; signature of Governor; seal.

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

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

239 § 4314. Official electronic journal of notarial acts.

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

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

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

244 (2) The type of notarial act;

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

- 246 (4) The printed name and address of each person whose signature is notarized or who requests a notarial act;
247 (5) The evidence of identity of each principal, in the form of either: a statement that the person is ‘personally
248 known’ to the notary; a notation of the type of identification document and the identification number on such
249 identification document; or the printed name and address of the credible witness swearing or affirming to the
250 person’s identity;
251 (6) The fee, if any, charged for the notarial act; and,
252 (7) Such other information as the notary may deem to be necessary and appropriate.

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

254 (d) A notary shall keep the official journal secure under the notary’s exclusive control and shall not allow it to be used
255 by any other person.

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

258 Subchapter II. Notarial Acts

259 § 4321. Definitions.

260 As used in this chapter:

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

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

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

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

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

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

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

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

283 (9) 'Electronic notarial certificate' means the portion of a notarized electronic document that is
284 completed by the notary public, bears the notary public's signature, title, commission expiration date, and other
285 required information concerning the date and place of the electronic notarization, and states the facts attested to or
286 certified by the notary public in a particular notarization.

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

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

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

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

- 296 a. Taking an acknowledgement;
- 297 b. Administering an oath or affirmation;
- 298 c. Taking a verification upon oath or affirmation;
- 299 d. Witnessing or attesting a signature;
- 300 e. Certifying or attesting a copy;
- 301 f. Noting a protest of a negotiable instrument.

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

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

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

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

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

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

314 (20) 'Representative capacity' shall mean:

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

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

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

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

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

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

331 (23) 'Secretary' means Secretary of State.

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

334 § 4322. Notarial acts.

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

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

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

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

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

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

353 § 4323. Notarial acts -- Acts in this State.

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

- 355 (1) A notary public of this State;
- 356 (2) A judge, clerk or deputy clerk of any court of this State;
- 357 (3) A person licensed to practice law in this State;
- 358 (4) A person authorized by the law of this State to administer oaths; and
- 359 (5) Any other person authorized to perform the specific act by the law of this State.

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

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

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

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

369 § 4324. Notarial acts -- Acts in other jurisdictions of the United States.

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

373 (1) A notary public of that jurisdiction;

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

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

376 (b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in §
377 4325 of this title have the same effect as if performed by a notarial officer of this State.

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

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

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

385 § 4325. Notarial acts -- Acts under federal authority.

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

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

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

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

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

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

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

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

400 § 4326. Foreign notarial acts.

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

404 (1) A notary public or notary;

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

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

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

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

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

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

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

420 § 4327. Certificate of notarial acts.

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

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

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

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

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

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

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

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

441 § 4328. Short forms.

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

444 (1) For an acknowledgment in an individual capacity:

445 State of

446 County of

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

448

449 (signature of notarial officer)

450 (Seal)

451

452 (title and rank)

453 (my commission expires:

454 (2) For an acknowledgment in a representative capacity:

455 State of

456 County of

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

459

460 (signature of notarial officer)

461 (Seal)

462

463 (title and rank)

464 (my commission expires:)

465 (3) For a verification upon oath or affirmation:

466 State of..... .

467 County of..... .

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

469

470 (signature of notarial officer)

471 (Seal)

472

473 (title and rank)

474 (my commission expires:)

475 (4) For witnessing or attesting a signature:

476 State of..... .

477 County of..... .

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

479

480 (signature of notarial officer)

481 (Seal)

482

483 (title and rank)

484 (my commission expires:)

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

486 State of..... .

487 County of..... .

488 I certify that this is a true and correct copy of a document in the

489 possession of (name(s) of person(s)).

490

491 (signature of notarial officer)

492 (Seal)

493

494 (title and rank)

495 (my commission expires:)

496 § 4329. Electronic Certificate of Authority.

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

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

505

Certificate of Authority for an Electronic Notarial Act

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

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

511 (Electronic signature and seal of commissioning official)”

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

SYNOPSIS

Section 1. This Act implements a key recommendation of the Delaware Information Assurance Task Force by modernizing Delaware’s notary public laws. Eighteen states have enacted electronic notarization statutes and the National Association of Secretaries of State has approved national standards and procedures for electronic notarization of documents. Adoption of an electronic notarization statute in Delaware will facilitate electronic commerce and the creation of a trusted, secure and legally enforceable exchange of legal documents designed to protect the public and businesses from fraud and forgery.

The Act allows the Governor to appoint resident and non-resident electronic notaries who maintain offices or a regular place of employment in Delaware. The Act allows the Governor to appoint non-resident attorneys at law and non-resident employees of financial services companies licensed in the United States that have demonstrated a reasonable need for permitting their employees to become electronic notaries under Delaware law. This unique feature may, in time, allow for the wide-scale adoption and use of Delaware law for electronic notarization. The Act permits the Secretary of State to adopt a schedule of fees for each electronic notarial act or service – thereby creating a potential revenue source for the State.

The Act further updates the State’s notary laws by clarifying the identification requirements for persons whose presence and signature is being certified by a notary, clarifying that notaries must affix a photographically reproducible image of the official seal on every document, and increasing the two-year notary commissioning fee from a net \$53 to \$60 and the four-year commissioning fee from a net \$78 to \$90.

Section 2. The Act takes effect on February 1, 2009 in order to provide the Secretary of State with sufficient time to provide appropriate training to existing Delaware notaries and to establish guidelines, standards and rules effecting electronic notaries.

Author: Senator DeLuca