

## LEGISLATIVE BILL 465

Approved by the Governor April 18, 2016

Introduced by Harr, 8.

A BILL FOR AN ACT relating to notaries public; to adopt the Electronic Notary Public Act; and to provide an operative date.  
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 17 of this act shall be known and may be cited as the Electronic Notary Public Act.

Sec. 2. For purposes of the Electronic Notary Public Act:

(1) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

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

(3) Electronic notarial act means an official act by an electronic notary public that involves electronic documents;

(4) Electronic notary public means a notary public registered with the Secretary of State that has the capability of performing electronic notarial acts in conformance with the Electronic Notary Public Act;

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

(6) Electronic notary solution provider means a provider of any electronic notary seals or electronic signatures;

(7) Electronic signature means an electronic 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; and

(8) Notary public's electronic signature means an electronic signature which has been approved by the Secretary of State in rules and regulations adopted and promulgated under section 16 of this act as an acceptable means for an electronic notary public to attach or logically associate the notary public's official signature to an electronic document that is being notarized.

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

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

(b) Satisfy the education requirement of section 5 of this act; and

(c) Pay the fee required under section 6 of this act.

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

Sec. 4. (1) Before performing an electronic notarial act, a notary public shall register with the Secretary of State in a manner prescribed by the Secretary of State.

(2) The registration shall specify the technology the notary public intends to use to perform an electronic notarial act. Such technology shall be provided by an electronic notary solution provider approved by the Secretary of State.

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

(4) A person registered as an electronic notary public may renew his or her electronic notary public registration at the same time he or she renews his or her notary public commission.

Sec. 5. (1) Before registering as an electronic notary public, a notary public shall take a course of instruction approved by the Secretary of State and pass an examination for such course in addition to the requirements provided in section 64-101.01.

(2) The content of the course and the basis for the examination shall include notarial laws, procedures, technology, and the ethics of electronic notarization.

Sec. 6. The fee for registering or reregistering as an electronic notary shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Electronic Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Administration Cash Fund for use in administering the Electronic Notary Public Act.

Sec. 7. The following types of electronic notarial acts may be performed by an electronic notary public:

(1) Acknowledgments;

(2) Jurats;

(3) Verifications or proofs; and

(4) Oaths or affirmations.

Sec. 8. An electronic notarial act shall not be performed if the signer of the electronic document is not in the physical presence of the electronic notary public at the time of notarization and is not personally known to the

electronic notary public or identified by the notary public through satisfactory evidence as provided in section 64-105.

Sec. 9. In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary public and shall be immediately perceptible and reproducible in the electronic document to which the notary public's electronic signature is attached: (1) The electronic notary seal; (2) the notary public's electronic signature; and (3) the completed wording of one of the following notarial certificates: (a) Acknowledgment, (b) jurat, (c) verification or proof, or (d) oath or affirmation.

Sec. 10. (1) A notary public's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing an electronic notarial act.

(2) An electronic notary public shall safeguard his or her electronic signature, electronic notary seal, and all other notarial records. Notarial records shall be maintained by the electronic notary public, and the electronic notary public shall not surrender or destroy the records except as required by a court order or as allowed under rules and regulations adopted and promulgated by the Secretary of State.

(3) When not in use, the electronic notary public shall keep his or her electronic signature, electronic notary seal, and all other notarial records secure, under his or her exclusive control, and shall not allow them to be used by any other notary public or any other person.

(4) Within ten days after discovering that his or her electronic notary seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of being attached to or logically associated with an electronic document, an electronic notary public shall notify the Secretary of State and appropriate law enforcement agency in the case of theft or vandalism.

Sec. 11. (1) When the registration of an electronic notary public expires or is resigned, canceled, or revoked or when an electronic notary public dies, he or she or his or her duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic signature.

(2) A former electronic notary public whose previous registration was not revoked, canceled, or denied by the Secretary of State need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic signature if he or she is reregistered as an electronic notary public using the same electronic signature within three months after the registration expires.

Sec. 12. Electronic evidence of the authenticity of the notary public's electronic signature and electronic notary seal of an electronic notary public of this state, if required, shall be attached to, or logically associated with, a document with a notary public's electronic signature transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States Government.

Sec. 13. (1) An electronic certificate of authority evidencing the authenticity of the notary public's electronic signature and electronic notary seal of an electronic notary public of this state shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I .....(name, title, jurisdiction of commissioning official) certify that ..... (name of electronic notary public), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of Nebraska 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)

(2) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Administration Cash Fund.

Sec. 14. A person violating the Electronic Notary Public Act is subject to having his or her registration removed under the removal procedures provided in section 64-113.

Sec. 15. Nothing in the Electronic Notary Public Act requires a notary public to register as an electronic notary public if he or she does not perform electronic notarial acts.

Sec. 16. The Secretary of State may adopt and promulgate rules and regulations to insure the integrity, security, and authenticity of electronic notarizations in accordance with the Electronic Notary Public Act. Such rules and regulations shall include procedures for the approval of electronic notary solution providers by the Secretary of State. In addition, the Secretary of State may require an electronic notary public to create and to maintain a record, journal, or entry of each electronic notarial act.

Sec. 17. Sections 64-101 to 64-119 and 64-211 to 64-215 and the Uniform Recognition of Acknowledgments Act govern an electronic notary public unless the provisions of such sections and act are in conflict with the Electronic Notary Public Act, in which case the Electronic Notary Public Act controls.

Sec. 18. This act becomes operative on July 1, 2017.