

SECOND REGULAR SESSION

# HOUSE BILL NO. 1690

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GRIER.

3212H.02I

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapters 59, 442, and 486, RSMo, by adding thereto seventeen new sections relating to electronic certification of documents, with a penalty provision and a delayed effective date.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapters 59, 442, and 486, RSMo, are amended by adding thereto seventeen new sections, to be known as sections 59.568, 59.569, 442.145, 486.410, 486.415, 486.420, 486.425, 486.430, 486.435, 486.440, 486.445, 486.450, 486.455, 486.460, 486.465, 486.470, and 486.475, to read as follows:

**59.568. 1. If a statute, regulation, or ordinance requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic record that otherwise complies with the requirements of this chapter.**

**2. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature if the notary has attached an electronic notarial certificate that meets the requirements of this chapter.**

**59.569. 1. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, be in writing, or be signed, the requirement is satisfied by a paper copy of an electronic document bearing an electronic**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 signature that a notary public has certified to be a true and correct copy of a document  
5 that was originally in electronic form and bearing an electronic signature under subsection  
6 3 of this section.

7 2. A requirement that a document or a signature associated with a document be  
8 notarized, acknowledged, verified, witnessed, or made under oath is satisfied by a paper  
9 copy of an electronic document bearing an electronic signature of the person authorized  
10 to perform that act, and all other information required to be included, that a notary public  
11 has certified to be a true and correct copy of a document that was originally in electronic  
12 form and bearing an electronic signature of the person under subsection 3 of this section.

13 3. A clerk or recorder shall record a paper copy of a document that was originally  
14 in electronic form and that is otherwise entitled to be recorded under the laws of this state,  
15 provided that the paper copy is certified to be a true and correct copy of the electronic  
16 original by a notary public duly commissioned under the laws of this state as evidenced by  
17 a certificate attached to or made a part of the document. The certificate shall:

18 (1) Be signed and dated by the notary public and be signed in the same manner as  
19 on file with the secretary of state;

20 (2) Identify the jurisdiction in which the certification is performed;

21 (3) Contain the title of the notary public;

22 (4) Indicate the date of expiration, if any, of the notary public's commission; and

23 (5) Include an official seal or stamp of the notary public affixed to or embossed on  
24 the certificate.

25 4. The following form of certificate is sufficient, for the purposes of this section, if  
26 completed with the information required under subsection 3 of this section:

27 State of \_\_\_\_\_

28 County of \_\_\_\_\_

29 I certify that the foregoing and annexed document entitled  
30 \_\_\_\_\_ (document title, if applicable), dated \_\_\_\_\_  
31 (document date, if applicable), and containing \_\_\_\_\_ pages is a true and  
32 correct copy of an electronic document bearing one or more electronic  
33 signatures this \_\_\_\_\_ (date).

34

35

36 \_\_\_\_\_  
Signature of notary public

37 Seal/stamp

38 (\_\_\_\_\_)

39 Notary Public

40 My commission expires: \_\_\_\_\_

41 My notary registration number is: \_\_\_\_\_

42 5. A notary public duly commissioned under the laws of this state has the authority  
43 to make the certification provided in this section.

44 6. A notary public making the certification provided in this section shall:

45 (1) Confirm that the electronic document contains an electronic signature that is  
46 capable of independent verification and renders any subsequent changes or modifications  
47 to the electronic document evident;

48 (2) Personally print or supervise the printing of the electronic document onto  
49 paper; and

50 (3) Not make any changes or modifications to the electronic document other than  
51 the certification described under subsection 3 of this section.

52 7. If a certificate is completed with the information required by subsection 3 of this  
53 section and is attached to or made a part of a paper document, the certificate shall be  
54 conclusive evidence that the requirements of subsection 6 of this section have been satisfied  
55 with respect to the document.

56 8. A document purporting to convey or encumber real property or any interest  
57 therein recorded by a clerk or recorder for the jurisdiction in which the real property is  
58 located, regardless if the document may not be certified in accordance with the provisions  
59 of this section, shall impart the same notice to third persons and be effective, from the time  
60 of recording, as if the document had been certified in accordance with the provisions of this  
61 section.

62 9. This section shall not apply to a plat, map, or survey of real property if, under  
63 another law of this state or under a rule, regulation, or ordinance applicable to a clerk or  
64 recorder:

65 (1) There are requirements of format or medium for the execution, creation, or  
66 recording of such plat, map, or survey beyond the requirements applicable to a deed to real  
67 property; or

68 (2) The plat, map, or survey is required to be recorded in a different location than  
69 a deed to real property.

442.145. 1. For the purposes of sections 442.150 to 442.360, a person may  
2 personally appear before the officer taking the acknowledgment by:

3 (1) Being in the same physical location as another person and close enough to see,  
4 hear, communicate with, and exchange tangible identification credentials with that  
5 individual; or

6 (2) Interacting with another individual by means of communication technology that  
7 complies with the provisions of sections 486.410 to 486.475.

8 2. The acknowledging officer shall designate in the acknowledgment form, as  
9 provided under section 442.210, whether the principal personally appeared before the  
10 officer under subdivision (1) or (2) of subsection 1 of this section. In cases of a personal  
11 appearance under subdivision (2) of subsection 1 of this section, it shall be deemed in  
12 compliance with sections 442.150 to 442.360 if the acknowledging officer amends the  
13 acknowledgment form to read "before me personally appears by means of communication  
14 of technology".

486.410. As used in sections 486.410 to 486.475, the following terms mean:

2 (1) "Appear", "personally appear", or "in the presence of ":

3 (a) Being in the same physical location as another person and close enough to see,  
4 hear, communicate with, and exchange tangible identification credentials with that  
5 individual; or

6 (b) Interacting with another individual by means of communication technology that  
7 complies with the provisions of sections 486.410 to 486.475;

8 (2) "Communication technology", an electronic device or process that allows a  
9 notary public physically located in this state and a remotely located individual to  
10 communicate with each other simultaneously by sight and sound and that, as necessary,  
11 makes reasonable accommodations for individuals with vision, hearing, or speech  
12 impairments;

13 (3) "Credential analysis", a process or service that meets the standards established  
14 by the secretary of state through which a third person affirms the validity of a government-  
15 issued identification credential through review of public and proprietary data sources;

16 (4) "Electronic", relating to technology having electrical, digital, magnetic, wireless,  
17 optical, electromagnetic, or similar capabilities;

18 (5) "Electronic record", information that is created, generated, sent,  
19 communicated, received, or stored by electronic means;

20 (6) "Electronic seal", information within a notarized electronic record that  
21 confirms the remote online notary public's name, jurisdiction, identifying number, and  
22 commission expiration date and generally corresponds to information in notary seals used  
23 on paper documents;

24 (7) "Electronic signature", an electronic sound, symbol, or process attached to or  
25 logically associated with an electronic record and executed or adopted by a person with the  
26 intent to sign the electronic document;

27           (8) "Identity proofing", a process or service operating according to standards  
28 established by the secretary of state through which a third person affirms the identity of  
29 an individual through review of personal information from public and proprietary data  
30 sources and may include dynamic knowledge based authentication or such other means or  
31 methods as may conform to standards established by the secretary of state;

32           (9) "Notarial act", an act, whether performed with respect to a tangible or  
33 electronic record, by a notary public and involving a function authorized under section  
34 486.250. The term includes taking an acknowledgment, administering an oath or  
35 affirmation, taking a verification of oath or affirmation, certifying that a copy of a  
36 document is a true copy of another document, and performing any other act permitted by  
37 law;

38           (10) "Outside the United States", outside the geographic boundaries of a state or  
39 commonwealth of the United States, the District of Columbia, Puerto Rico, the United  
40 States Virgin Islands, and any territory or insular possession subject to the jurisdiction of  
41 the United States;

42           (11) "Principal", an individual:

43           (a) Whose electronic signature is notarized in a remote online notarization; or

44           (b) Making an oath or affirmation or an acknowledgment other than in the  
45 capacity of a witness for the remote online notarization;

46           (12) "Remote online notarial certificate", the form of an acknowledgment, jurat,  
47 verification of oath or affirmation, or verification of witness or attestation that is completed  
48 by a remote online notary public, and:

49           (a) Contains the online notary public's electronic signature, electronic seal, title,  
50 and commission expiration date;

51           (b) Contains other required information concerning the date and place of the  
52 remote online notarization;

53           (c) Otherwise conforms to the requirements for an acknowledgment, jurat,  
54 verification on oath or affirmation, or verification of witness or attestation under the laws  
55 of this state; and

56           (d) Indicates that the person making the acknowledgment, oath, or affirmation  
57 appeared remotely online;

58           (13) "Remote online notarization" or "remote online notarial act", a notarial act  
59 performed by means of communication technology that meets the standards as provided  
60 under sections 486.410 to 486.475;

61           (14) "Remote online notary public", a notary public who has registered with the  
62 secretary of state to perform remote online notarizations under sections 486.410 to 486.475;

63 (15) "Remote presentation", transmission to the remote online notary public  
64 through communication technology of an image of a government-issued identification  
65 credential that is of sufficient quality to enable the remote online notary public to:

- 66 (a) Identify the individual seeking the remote online notary public's services; and  
67 (b) Perform credential analysis;

68 (16) "Remotely located individual", an individual who is not in the physical  
69 presence of the notary.

486.415. The secretary of state is authorized to adopt rules necessary to implement  
2 sections 486.410 to 486.475, including rules to facilitate remote online notarizations.

486.420. 1. The secretary of state by rule shall develop and maintain standards for  
2 remote online notarization in accordance with sections 486.410 to 486.475 including, but  
3 not limited to, standards for credential analysis and identity proofing.

4 2. In developing standards for remote online notarization, the secretary of state  
5 shall review and consider standards established by the National Association of Secretaries  
6 of State (NASS), or its successor agency, and national standard setting bodies such as the  
7 Mortgage Industry Standards and Maintenance Organization (MISMO).

8 3. The rules shall be adopted no later than twelve months from the date of the  
9 enactment of sections 486.410 to 486.475.

486.425. 1. A remote online notary public:

2 (1) Is a notary public appointed and commissioned to perform notarial acts under  
3 this chapter;

4 (2) May perform notarial acts as provided by this chapter in addition to performing  
5 remote online notarizations; and

6 (3) May perform remote online notarizations authorized under this chapter.

7 2. A notary public commissioned in this state may become a remote online notary  
8 public in accordance with sections 486.410 to 486.475. Before a notary performs a remote  
9 online notarization, he or she shall register with the secretary of state in accordance with  
10 rules for registration as a remote online notary public and identify the technology that the  
11 remote online notary public uses, which shall conform to any rules or regulations adopted  
12 by the secretary of state.

13 3. Unless terminated under sections 486.410 to 486.475, the term of registration to  
14 perform electronic notarial acts shall begin on the registration starting date set by the  
15 secretary of state and shall continue as long as the notary public's current commission  
16 remains valid.

17           **4. An individual registering to perform electronic notarial acts shall submit to the**  
18 **secretary of state an application in a format prescribed by the secretary of state, which**  
19 **shall include:**

20           **(1) Disclosure of any and all license or commission revocations or other disciplinary**  
21 **actions against the registrant; and**

22           **(2) Any other information, evidence, or declaration required by the secretary of**  
23 **state.**

24           **5. Upon the applicant's fulfillment of the requirements for registration under this**  
25 **section, the secretary of state shall approve the registration. The applicant's notary public**  
26 **commission number shall act as his or her registration number. Upon successful**  
27 **registration, the notary public shall also be a remote online notary public throughout the**  
28 **period of such registration.**

29           **6. The secretary of state may reject a registration application if the applicant fails**  
30 **to comply with this section.**

**486.430. 1. A remote online notary public may perform a remote online notarial**  
2 **act using communication technology in accordance with sections 486.410 to 486.475 and**  
3 **any rules or regulations adopted by the secretary of state for a remotely located individual**  
4 **who is physically located:**

5           **(1) In this state;**

6           **(2) Outside this state but within the United States; or**

7           **(3) Outside the United States if:**

8           **(a) The remote online notary public has no actual knowledge of the remote online**  
9 **notarial act being prohibited in the jurisdiction in which the person is physically located;**  
10 **and**

11           **(b) The person placing his or her electronic signature on the electronic document**  
12 **confirms to the remote online notary public that the requested remote online notarial act**  
13 **and the electronic document:**

14           **a. Are part of or pertain to a matter that is to be filed with or is currently before**  
15 **a court, governmental entity, or other entity in the United States;**

16           **b. Relate to property located in the United States; or**

17           **c. Relate to a transaction substantially connected to the United States.**

18           **2. The validity of a remote online notarization performed by a remote online notary**  
19 **public of this state in accordance with sections 486.410 to 486.475 shall be governed by the**  
20 **laws of this state.**

**486.435. 1. A remote online notary public shall keep a secure electronic journal of notarial acts performed by the remote online notary public. The electronic journal shall contain for each remote online notarization:**

**(1) The date and time of the notarization;**

**(2) The type of notarial act;**

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

**(4) The printed name and address of each principal involved in the transaction or proceeding;**

**(5) Evidence of identity of each principal involved in the transaction or proceeding in the form of:**

**(a) A statement that the person is personally known to the remote online notary public;**

**(b) A notation of the type of identification document provided to the remote online notary public;**

**(c) A record of the identity verification made under sections 486.410 to 486.475, if applicable; or**

**(d) The following:**

**a. The printed name and address of each credible witness swearing to or affirming the person's identity; and**

**b. For each credible witness not personally known to the remote online notary public, a description of the type of identification documents provided to the remote online notary public; and**

**(6) The fee, if any, charged for the notarization.**

**2. The remote online notary public shall create an audio and video copy of the performance of the notarial act.**

**3. The remote online notary public shall take reasonable steps to:**

**(1) Insure the integrity, security, and authenticity of remote online notarizations;**

**(2) Maintain a backup for the electronic journal required by subsection 1 of this section and the recording required by subsection 2 of this section; and**

**(3) Protect the backup record from unauthorized use.**

**4. The electronic journal required by subsection 1 of this section and the recording required by subsection 2 of this section shall be maintained for at least ten years after the date of the transaction or proceeding.**

**5. The remote online notary public may designate as custodian of the recording and the electronic journal:**



36 (1) The employer of the remote online notary public if evidenced by a record signed  
37 by the remote online notary public and the employer; or

38 (2) A repository meeting the standards established by the secretary of state.

39 6. The secretary of state shall establish:

40 (1) Standards for the retention of a video and audio recording of the performance  
41 of the notarial act;

42 (2) Procedures for preservation of the audio and video recording and the electronic  
43 journal if the remote online notary public dies or is adjudicated incompetent or if the  
44 remote online notary public's commission or authority to perform notarial acts is otherwise  
45 terminated; and

46 (3) Standards for third party repositories for the retention of the audio and video  
47 recording of the performance of the notarial act.

486.440. 1. A remote online notary public shall keep the remote online notary  
2 public's electronic record, electronic signature, and electronic seal secure and under the  
3 remote online notary public's exclusive control, which requirement may be satisfied by  
4 password-controlled access. The remote online notary public shall not allow another  
5 person to use the remote online notary public's electronic record, electronic signature, or  
6 electronic seal.

7 2. A remote online notary public shall attach the remote online notary public's  
8 electronic signature and seal to the electronic notarial certificate of an electronic document  
9 in a manner that is capable of independent verification and renders any subsequent change  
10 or modification to the electronic document evident.

11 3. A remote online notary public shall immediately notify an appropriate law  
12 enforcement agency and the secretary of state of the theft or vandalism of the remote online  
13 notary public's electronic record, electronic signature, or electronic seal. A remote online  
14 notary public shall immediately notify the secretary of state of the loss or use by another  
15 person of the remote online notary public's electronic record, electronic signature, or  
16 electronic seal.

486.445. 1. A remote online notary public may perform a remote online  
2 notarization under sections 486.410 to 486.475 that meets the requirements of such sections  
3 and rules adopted thereunder, regardless of whether the principal is physically located in  
4 this state at the time of the remote online notarization. A remote online notary public shall  
5 perform a remote online notarization authorized under sections 486.410 to 486.475 only  
6 while the remote online notary public is physically located within this state.

7 2. In performing a remote online notarization, a remote online notary public shall  
8 verify the identity of a person creating an electronic signature at the time that the signature

9 is taken by using communication technology that meets the requirements of sections  
10 486.410 to 486.475 and rules adopted thereunder. Identity shall be verified by:

11 (1) The remote online notary public's personal knowledge of the person creating  
12 the electronic signature; or

13 (2) Each of the following:

14 (a) Remote presentation by the person creating the electronic signature of a  
15 government-issued identification credential, including a passport or driver's license, that  
16 contains the signature and a photograph of the person;

17 (b) Credential analysis of the credential described in paragraph (a) of this  
18 subdivision; and

19 (c) Identity proofing of the person described in paragraph (a) of this subdivision.

20 3. The remote online notary public shall take reasonable steps to ensure that the  
21 two-way video and audio communication used in a remote online notarization is secure  
22 from unauthorized interception.

23 4. The electronic notarial certificate for a remote online notarization shall include  
24 a notation that the notarization is a remote online notarization.

25 5. A remote online notarial act meeting the requirements of sections 486.410 to  
26 486.475 satisfies the requirement of any law of this state relating to a notarial act that  
27 requires a principal to appear or personally appear before a notary or that the notarial act  
28 be performed in the presence of a notary.

486.450. In addition to any fee authorized by section 486.350, a remote online  
2 notary public or the employer of the remote online notary public may charge a fee for the  
3 provision of the remote online notarization service, provided that the fee is disclosed to the  
4 principal prior to the service.

486.455. 1. Except as provided under subsection 2 of this section, a remote online  
2 notary public whose registration terminates shall destroy the coding, disk, certificate, card,  
3 software, or password that enables electronic affixation of the online notary public's  
4 official electronic signature or seal. The remote online notary public shall certify  
5 compliance with this subsection to the secretary of state.

6 2. A former remote online notary public whose registration terminated for a reason  
7 other than revocation or a denial of renewal is not required to destroy the items described  
8 under subsection 1 of this section if the former remote online notary public is reregistered  
9 as a remote online notary public with the same electronic signature and seal within three  
10 months after the former remote online notary public's former registration terminated.

486.460. A person who, without authorization, knowingly obtains, conceals,  
2 damages, or destroys the certificate, disk, coding, card, program, software, or hardware

3 enabling an online notary public to affix an official electronic signature or seal shall be  
4 guilty of a class D misdemeanor.

2 486.465. In the event of a conflict between the provisions of sections 486.410 to  
3 486.475 and any other law in this state, the provisions of sections 486.410 to 486.475 shall  
control.

2 486.470. If the online notarial act is an acknowledgment or jurat, then the  
3 acknowledgment form shall indicate that the person signing the document or taking the  
4 oath appeared using communication technology. The secretary of state by rule shall  
promulgate forms for an acknowledgment or jurat performed online.

2 486.475. The secretary of state shall promulgate rules necessary to administer the  
3 provisions of sections 486.410 to 486.475. Any rule or portion of a rule, as that term is  
4 defined in section 536.010, that is created under the authority delegated in this section shall  
5 become effective only if it complies with and is subject to all of the provisions of chapter  
6 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and  
7 if any of the powers vested with the general assembly pursuant to chapter 536 to review,  
8 to delay the effective date, or to disapprove and annul a rule are subsequently held  
9 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
after August 28, 2020, shall be invalid and void.

2 Section B. The enactment of sections 59.568, 59.569, 442.145, 486.410, 486.415,  
3 486.420, 486.425, 486.430, 486.435, 486.440, 486.445, 486.450, 486.455, 486.460, 486.465,  
486.470, and 486.475 of this act shall become effective July 1, 2021.

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