

2. successfully completing an education program provided by the secretary of state covering the statutes and rules governing the remote online notarization;

3. paying a one-time fee of \$100 to the secretary of state upon filing the application for authorization to perform remote online notarization.

B. A notary public authorized to perform remote online notarization may do so for as long as:

1. the notary maintains a valid notarial commission as provided by R.S. 35:191(A)(3);

2. the authority of the notary to perform notarial functions is not suspended; and

3. the authority of the notary to perform remote online notarization has not suspended or revoked.

C. Identity proofing shall be performed through either of the following:

1. dynamic knowledge-based authentication that is performed through the administration of a quiz completed by the party or witness whose identity is being verified that satisfies the following requirements:

a. the quiz shall consist of five questions related to the personal history or identity of the party or witness, formulated from public or proprietary data sources;

b. each question shall contain a minimum of five possible answer choices;

c. all questions must be answered within two minutes; and

d. following a failed attempt by a party or witness, the quiz may be administered no more than once within a 24-hour period. The second administration may consist of no more than 40 percent of the questions presented during the first administration;

2. analysis of biometric data, including facial recognition, voiceprint analysis, or fingerprint analysis.

D. Credential analysis shall ensure that the credential is unexpired, government-issued identification credential that contains the photograph and signature of the party or witness whose identity is being verified by a process that does both of the following:

1. uses automated software processes to aid the notary public in verifying the identity of a party or any witness; and

2. ensures the credential passes an authenticity test consistent with sound commercial practices that meet the following requirements:

a. confirms the integrity of visual, physical, or cryptographic security features;

b. confirms that the credential is not fraudulent or modified in a manner not authorized by the issuing authority;

c. confirms the validity of personal information set forth on the credential when the issuing authority provides access to the information;

d. provides output of the authenticity test to the notary public.

e. enables the notary public to visually compare the information and photo presented on the credential itself and the party or witness as viewed by the notary public through substantially simultaneous audio-visual transmission; and

f. enables the notary public to determine that the party or witness is in possession of the credential at the time of their remote online notarization.

## NOTICE OF INTENT

### Department of State Office of the Secretary of State

#### Remote Online Notarization (LAC 46:XLVI.144)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and under the authority granted in La. R.S. 35:624, the Office of the Louisiana Secretary of State hereby gives notice of its intent to promulgate rules regarding the practice of remote notarization for commissioned notaries public in the state of Louisiana.

#### Title 46

### PROFESSIONS AND OCCUPATIONAL STANDARDS

#### Part XLVI. Notaries Public

#### Chapter 1. Notaries Public

#### §144. Authority to Perform Remote Online Notarization

A. A notary public who has been duly appointed and commissioned as provided for under La. R.S. 35:191, who currently holds a valid commission as provided by R.S. 35:191(A)(3), and whose authority to exercise the functions of a notary public is not suspended may be authorized by the secretary of state to perform remote online notarization upon satisfaction of the following requirements:

1. submitting an application using the form provided by the secretary of state for authorization to perform remote online notarization during the term of that notary public's commission;

E. Communication technology systems used to perform remote online notarization to do each of the following:

1. provide sufficient video resolution and audio clarity to enable the notary public, the party, and any witness to engage in substantially simultaneous communication by sight and sound;

2. provide sufficient captured-image resolution for credential analysis to be performed in accordance with Part D.2;

3. include a communication encryption protocol and means of authentication that reasonably ensures that only the parties, participating witnesses, and notary public have access to the audio-video communication;

4. ensure that the electronic record that is presented for remote online notarization is the same record electronically signed by the party;

5. create and store or transmit securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity-proofing process and the means and methods used to generate the credential analysis output, and;

6. prevent unauthorized access to all of the following:

a. the live transmission of the audio-video communication;

b. any recording of the audio-video communication being stored or being transmitted by the communication technology;

c. the verification methods and credentials used to verify the indemnity of the party; and

d. the instrument presented for electronic notarization.

7. provide for the notary public to maintain in the notary's records a copy of the remote online notarial act;

8. provide the notary public a method of generating a paper copy of the remote notarial act;

9. provide the notary public a detailed audit record of the remote online notarization;

10. provide a means by which the notary public is able to add a statement to any document being notarized that the act is a remote notarial act;

11. provide a mean by which the notary public is able to attach the notary public's electronic signature and insert the notary public's identifying information into the remote online notarial act;

12. provide a means by which each party and each witness can attach such person's electronic signature; and

13. provide a means by which the notary public can digitally sign the remote online notarial act in a manner that renders any subsequent change or modification of the remote online notarial act to be evident.

D. The secretary of state shall maintain a registry of identify-proofing, credential-analysis, and communication providers who have certified by affidavit that their technologies meet the minimum requirements set forth in Parts C and D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 35:624 and R.S. 49:222.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, LR 47:

### **Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

### **Poverty Impact Statement**

The proposed Rule has no known impact on poverty as described in R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### **Small Business Analysis**

The proposed amendments to the Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

### **Provider Impact Statement**

The proposed amendments to the Rule does not have any known or unforeseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### **Public Comments**

Interested persons may submit written comments relative to the proposed Rule or request a public hearing on the proposed Rule until 4:30 p.m., November 10, 2021, by U.S. mail to the Louisiana Department of State, Attn: Steve Hawkland, 8585 Archives Ave., Baton Rouge, LA 70809.

R. Kyle Ardoin  
Secretary of State

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Remote Online Notarization**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule is anticipated to increase the expenditure of self-generated funds by the Secretary of State in the amount of \$176,000 in FY 22 with recurring costs of \$14,080 annually thereafter.

ACT 254 of the 2020 Regular Session requires the Secretary of State to make changes to notary functionality within the Commercial Online Registration Application (CORA). Other changes are made necessary by this proposed rule drafted by a stakeholder committee as required by the act. The changes are necessary to find and denote a notary as authorized to perform Remote Online Notarization (RON), to provide proof of completion of an education program prior to requesting authorization, to apply for and receive such authorization online, and to request removal of their authorization when filing their annual report or at any other time. Other changes to CORA are required to provide notaries with a list of vendors approved by the department to be used for remote online notarization and to allow those vendors to automate confirmation that a notary is both authorized and not revoked or suspended.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

In order to recoup a portion of the cost of implementation, a one-time registration fee of \$100 to perform remote online notarization was approved by the stakeholder committee. This fee includes a prepaid resignation. The use of the Application Programming Interface (API) by vendors to confirm that a notary is authorized and not revoked or suspended is free but an annual fee of \$500 is required for other users. Both vendors and other businesses using the API must renew annually. Based on the projected number of current notaries who might desire to perform online notarization and other businesses who might be interested in using the API, self-generated revenue collections will increase by approximately \$1,133 for FY 22, \$2,609 for FY 23, and \$4,315 for FY 24.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO SMALL BUSINESSES, DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The adoption of this proposed rule will increase costs only for notaries wishing to perform remote online notary services by \$20. Legislative discussions on ACT 254 considered that RON vendors will charge for their services with market forces keeping rates reasonable. The cost of a digital certificate used to sign and prevent modification of documents produced via RON was also considered. RON benefits notaries by saving travel time and fuel and document handling expenses. More notarizations might occur daily as a result of RON thus increasing their revenue stream. RON can increase the health and safety of notaries by reducing in-person exposure and appearances in homes of strangers in unfamiliar neighborhoods.

Other businesses, besides RON vendors, who wish to utilize the optional API to integrate notary searches into their applications will have \$500 per year in cost. Businesses can still search manually on our website for notaries or download a database of all notaries for free.

As discussed during ACT 254 deliberations, small businesses and non-governmental organizations will benefit from RON by being able to use notaries not physically located near them, saving travel time and scheduling difficulties. They

may also benefit by not having to have a notary employed by them or available during all business hours. Businesses wishing to utilize RON must have internet access and might have an additional cost to purchase increased bandwidth.

RON vendors were consulted in the drafting of the rule and the requirements placed on them are consistent with those required by other states.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

ACT 254 may reduce the income of traditional notaries by transferring work to online notaries. Total available work itself should not be reduced as non-Louisiana notaries are not allowed to perform RON. Notaries employed by businesses that move to online notarization may see their work duties change or may need to work independently. Competition in some regions of the state where there aren't many notaries available could increase and might cause downward pressure on the unregulated fees that they are able to charge.

Shanda R. Jones  
Undersecretary  
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Alan M. Boxberger  
Deputy Fiscal Officer  
Legislative Fiscal Office