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Brief description of action Temporary regulations relating to AB 413 of the 2017 Legislative Session and the electronic notarial acts including those using audio-video communications. Includes provisions relating to electronic notaries public and solution providers.

Authority citation: AB 413 of the 2017 Legislative Session Sections 29-63, inclusive, NRS 240.017, 240.018, 240.030, 240.1657 and 240.206

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**TEMPORARY REGULATION OF
THE SECRETARY OF STATE**

Adopted November 8, 2018

AUTHORITY: AB 413 of the 2017 Legislative Session Sections 29-63, inclusive, NRS 240.017, 240.018, 240.030, 240.1657 and 240.206

Chapter 240 of the NAC is hereby amended by adding thereto the provisions set forth as sections 1 – 54, inclusive, of this regulation.

Section 1. As used in sections 1 to 54, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 to 12, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 2. “Principal” means the natural person whose signature is notarized in a traditional or electronic notarization.

Sec 3. “Electronic notarial certificate” means the portion of an electronically notarized electronic document that is completed by an electronic notary public and that bears the notary public’s electronic signature, electronic seal and certification language as provided by Nevada law.

Sec. 4. “Electronic notarization solution” means a set of applications, programs, hardware, software or technology designed to enable the performance of an electronic notarial act.

Sec. 5. “Exclusive control” has the same meaning as “sole control” as defined in NRS 240.201(8).

Sec. 6. “Identity proofing” means a process or a service operating according to this chapter through which a third person or party affirms the identity of the principal through a review of personal information from public or proprietary data sources.

Sec. 7. “Outside the United States” means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

Sec. 8. “Real time” means the actual span of uninterrupted, simultaneous communication during which all parts of an electronic notarial act using audio-video communication occur.

Sec. 9. “Session” means one or more notarial acts performed on a single set of documents as a single event by a single notary public with one or more principals and any applicable witnesses.

Sec. 10. “Solution provider” means a third-party vendor providing a software solution or other service enabling a Nevada electronic notary public to perform his or her duties or complete an electronic notarial act.

Sec. 11. “Tamper-evident” means that any change to an electronic document shall display evidence of the change.

Sec 12. “Credential” includes a government-issued card or other document issued as a means of identifying the principal that complies with NRS 240.1655 and that contains the photograph and signature of the principal.

Sec. 13. Upon an applicant’s meeting the qualifications for registration as an electronic notary public, the Secretary of State shall cause the registration to be updated to allow the applicant to perform electronic notarial acts.

Sec 14. In addition to the provisions of NRS 240.192, a registration as an electronic notary public shall include:

1. The notary public’s commission number as assigned by the Secretary of State;
2. The name of the solution provider(s) whose platform or product the notary public intends to use to perform electronic notarization;
3. A copy of the notary public’s electronic seal and electronic signature which is an exact representation of the signature on file with the Secretary of State; and
4. A statement certifying that the notary public will comply with the provisions of this Chapter and NRS Chapter 240.

Sec 15. An electronic notarization, including notarization using audio-video communication may only be performed by an electronic notary public registered with and approved by the

Secretary of State to perform such notarization. A notary public providing electronic notary services without Secretary of State approval is subject to suspension or termination of his or her notary commission and other penalties as prescribed by this Chapter and NRS Chapter 240.

Sec. 16. A Nevada electronic notary public performing an electronic notarial act using audio-video communication must be able to:

1. Identify the principal using multi-factor identification as prescribed by this Chapter and NRS Chapter 240; and
2. Identify the document as the same document in which the principal executed the signature.

Sec 17. A Nevada electronic notary public shall take reasonable steps to:

1. Ensure the integrity, security and authenticity of electronic notarizations;
2. Maintain a secure backup of the electronic journal;
3. Maintain a secure backup of the recording, if the electronic notarial act is performed using audio-video communication; and
4. Ensure that any audio-video communication for the purpose of an electronic notarial act using audio-video communication is secure from unauthorized access or interception.

Sec 18. Nothing in this regulation shall require a principal to participate in an electronic notarial act using audio-video communication.

Sec. 19. Nothing in this regulation shall require a Nevada electronic notary public to perform an electronic notarial act using audio-video communication.

Sec 20. If the principal or electronic notary public must exit the audio-video communication session, the audio-video communication link is broken, or the resolution or quality of the transmission becomes such that the electronic notary public believes the process has been compromised and cannot be completed, the identity authentication process and any incomplete electronic notarial acts must be started from the beginning.

SOLUTION/SOLUTION PROVIDER

Sec. 21. A solution provider must maintain a current State business license in Nevada at all times a Nevada electronic notary public is utilizing their solution.

Sec 22. A solution provider shall take reasonable steps to ensure that a Nevada electronic notary public using its solution has complied with Nevada law pertaining to the registration, training and other requirements pertaining to notaries public in Nevada.

Sec 23. A solution provider must register with the Secretary of State. Registration shall be made electronically and shall include:

1. Legal name of the solution provider;
2. How the business is organized;
3. Mailing address of the solution provider;

4. Physical address of the solution provider;
5. Contact name;
6. Phone number of the contact person;
7. The name of the solution provided;
8. The name of the provider or providers of the knowledge-based authentication, credential analysis and digital certificate services;
9. The Nevada State Business License number;
10. A description of the technology used to ensure compliance with the provisions of this chapter and NRS Chapter 240;
11. Plan for the disposition, including but not limited to the retention and storage of documents, journals, recordings, etc., in the event the solution provider no longer provides the electronic notary solution, for whatever reason; and
12. Declaration that the solution complies with Nevada Laws pertaining to notarization.

Any information provided to the Secretary of State pursuant to subsection 10 of this section is confidential and shall not be disclosed by the Secretary of State except when required by law.

Sec. 24. A solution provider's solution must be approved by the Secretary of State prior to use in this state and must:

1. Provide secure access to the solution by password or other secure means identifying the Nevada electronic notary public;

2. Verify from the Secretary of State's notary registry, if the registry is available, each time an electronic notary public logs into the solution to ensure that the electronic notary public is in active status before performing an electronic notarization;
3. Prohibit the start or completion of the electronic notarial act if the solution cannot verify that the electronic notary public is currently registered as an electronic notary public, if the registry is available;
4. Provide for the uninterrupted, continuous, simultaneous audio-video communication between the electronic notary public and principal;
5. Provide for high-quality video resolution and audio quality to ensure that the electronic notary public and the principal can see, hear and communicate with each other in real-time and that will allow the electronic notary public to match the principal with the credential;
6. Provide for a secure communication link that ensures that only the parties to the electronic notarial act and those mutually agreed upon by the parties to the transaction are part of the audio-video communication;
7. Provide an electronic notary journal that complies with the provisions of this chapter and NRS Chapter 240 to document the electronic notarial acts;
8. Provide for the recording of the electronic notarial act in compliance with sections 45 – 48 of these regulations in sufficient quality to ensure the verification of the electronic notarial act;
9. Provide confirmation that the electronic document presented is the same electronic document notarized;

10. Allow for the affixation of the notarial wording and electronic notary seal as required by this chapter and NRS Chapter 240;
11. Allow for viewing of the electronic notary seal and electronic signature by a person viewing the electronic document;
12. Provide a method of determining if the electronic document has been altered after the electronic notarial seal has been affixed and the electronic notarial act has been completed;
13. Prevent unauthorized access to:
 - a. The transmission between the electronic notary public and the principal;
 - b. The recording of the electronic notarial act by audio-video communication;
 - c. Any personal identifying information (PII) used in credential analysis and identity proofing or other part of the audio-video communication, including but not limited to:
 - i. Methods of credential analysis and the output;
 - ii. The credentials offered to the electronic notary public;
 - iii. Knowledge-based authentication questions and answers;
 - iv. Birthdate; and
 - v. Social security numbers;
 - d. The electronic document that is being notarized; and
14. Provide a method of generating a paper copy of the document including the notarial certificate, signature and seal and any other document associated with the execution of the notarial act.

Upon material change of the solution provided which affects compliance with the requirements of NRS 240 or this chapter, the solution provider shall immediately notify the Secretary of State and all Nevada notaries public using its solution of the change. The Secretary of State shall determine if the solution still meets the state requirements due to the change.

PAYMENT

Sec 25. The registration as an electronic notary public must be accompanied by the fee provided by NRS 240.192(1)(c) and must be paid by:

1. Credit card;
2. Debit card;
3. Trust account established with the Secretary of State; or
4. Any other payment method utilized by the Secretary of State for the provision of online services.

If the payment method which is used to pay the application fee for an application for registration as an electronic notary public is subsequently dishonored by a bank due to challenge or any other reason, the Secretary of State may immediately and without a hearing revoke the registration as an electronic notary public.

COURSE OF STUDY

Sec. 26. As provided by NRS 240.195, a notary public wishing to register as an electronic notary public must take the additional required course of study provided by the Secretary of

State. This course of study is in addition to that required in NRS 240.018 and requires a separate fee as provided for in NRS 240.195.

Sec. 27. Fees for the course of study are paid using the methods authorized in Section 25 of this regulation.

ELECTRONIC NOTARY REGISTRATION

Sec. 28. In addition to the requirements of NRS 240.030 and NRS 240.192, the registration must include a statement that the applicant will comply with the provisions of this chapter and NRS Chapter 240.

Sec. 29. A registrant for registration as an electronic notary public must provide the electronic signature required by NRS 240.192(2)(c) in a file format that can be read without the need for additional software and that can be compared to the exemplar of the electronic notary public's holographic (handwritten) signature on file with the Secretary of State for authentication purposes.

Sec. 30. All requirements for registration as required by this chapter and NRS Chapter 240 must be completed or the registration as an electronic notary public may be denied.

Sec. 31. A notary public whose registration as an electronic notary public has been approved by the Secretary of State will retain the commission number related to the notary public's underlying commission.

Sec 32. The effective date of the registration as an electronic notary public is the date all requirements have been met and confirmed by the Secretary of State and the registration is entered into the Secretary of State's processing system.

Sec. 33. The cancellation of the registration as an electronic notary public pursuant to NRS 240.203 is effective upon receipt by the Secretary of State of the notice requesting cancellation from the electronic notary public or the electronic notary's executor or authorized representative, as appropriate.

IDENTITY PROOFING AND CREDENTIAL ANALYSIS

Sec. 34. An electronic notary public, pursuant to this Chapter and NRS Chapter 240, must identify a principal by one of the following methods:

1. The electronic notary public personally knows the principal; or
2. The principal is introduced by oath of a credible witness who personally knows the principal and the electronic notary public; or
3. Multi-factor identification pursuant to this Chapter and NRS Chapter 240.

Sec. 35. Credential analysis must be provided by a reputable third-party vendor or software tool that can demonstrate proven credential analysis processes and shall employ at a minimum technology that provides the following:

1. The credential must pass an authenticity test, consistent with sound commercial practices that:
 - a. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
 - b. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
 - c. Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of credential details; and
2. Provide the output of the authenticity test to the electronic notary public. The credential analysis procedure must enable the electronic notary public to visually compare the following for consistency;
 - a. The information and photograph on the presented credential image; and
 - b. The principal as viewed by the electronic notary public in real-time through audio-video communication.

Sec. 36. If the electronic notary public is unable to validate a presented credential of the principal, or to match the principal's physical features with the credential, the electronic notary public shall not complete the electronic notarial act. No further attempt may be made by that notary or solution provider to complete the notarial act using audio-video communication using that credential.

DYNAMIC KNOWLEDGE-BASED AUTHENTICATION (KBA)

Sec. 37. Dynamic knowledge-based authentication procedure must meet the following requirements:

1. Each principal must answer questions and achieve a passing score. The procedure must include:
 - a. Five questions, drawn from public or private data sources.
 - b. A minimum of five possible answer choices per question.
 - c. Require that 80% of the questions are correctly answered within two minutes by the principal;
2. Require that if the principal does not correctly answer 80% of the questions that:
 - a. The principal may make an additional two attempts with the same electronic notary public within a 48-hour period;
 - b. If the principal retakes the quiz an additional time within the 48-hour period, 40% (two) of the prior questions must be replaced.
3. Confirm affirmatively that that the principal has or has not correctly answered the questions; and
4. Keep the questions asked and responses of the knowledge-based authentication confidential.

OTHER METHOD OF IDENTITY PROOFING

Sec. 38. An electronic notary public may satisfy NRS 240.1997(1)(b)(3) by utilizing a solution provider approved by the Secretary of State to verify the identity of the principal for whom an electronic notarial act by audio-video communication is performed. The solution must meet or exceed the accuracy of identity verifications conducted through a dynamic knowledge-based authentication assessment.

Sec 39. An application for approval of a solution provider pursuant to section 38 may be made by a written request to the Secretary of State. The application must identify the identity proofing method used by a solution provider and include sufficient evidence to demonstrate that the method meets the requirements of section 38. The Secretary of State may approve, reject, or request additional information on the application.

SEAL

Sec. 40. The electronic seal used by an electronic notary public affixed to an electronic document during an electronic notarial act must include information required in NRS 240.040 and shall generally conform to the size and other requirements of a seal used by a traditional notary except:

1. That once the electronic seal, electronic signature and electronic notarial certificate are affixed and the electronic notarial act is complete, the document is rendered tamper-evident; and

2. If the electronic notarial act is performed by audio-video communication, a statement that the electronic notarial act was performed by means of audio-video communication and substantially conforming to “Notarial act performed by audio-video communication” must appear adjacent to the stamp or in the notarial certificate.

JOURNAL

Sec. 41. The electronic journal required pursuant to NRS 240.201 must not contain any personal identifying information (PII) that would not be otherwise required pursuant to this act. The electronic journal of a notarial act shall not include the recording of the notarial act if the act is performed by audio-video communication required under NRS 240.1995 and this chapter.

Sec. 42. An electronic journal may not allow a record to be deleted or altered in content or sequence by the electronic notary public or any other person after the journal entry is recorded. This provision does not preclude a solution provider from providing technical services or maintenance with respect to an electronic journal.

Sec. 43. Pursuant to NRS 240.201, the electronic journal must be open to lawful inspection.

Sec. 44. The electronic journal required pursuant to NRS 240.201 must be securely backed up.

RECORDING OF REMOTE NOTARIAL ACT

Sec 45. The recording of an electronic notarial act pursuant to NRS 240.1995 and any personal identifying information (PII) disclosed during the performance of an electronic notarial act using audio-video communication must be protected from unauthorized access.

Sec. 46. The recording of an electronic notarial act pursuant to NRS 240.1995 is available:

1. To the principal for whom the electronic notarial act was performed;
2. To the Secretary of State's Office;
3. To law enforcement or state, federal or local agencies in the course of an enforcement action or otherwise in accordance with duties set forth by law;
4. Pursuant to subpoena or court order; and
5. To the electronic notary public that performed the electronic notarial act using audio-video communications for the purposes of subsections 1 - 4.
6. To other parties in accordance with permission granted by the parties to the transaction.

Sec 47. An employer of an electronic notary public or a solution provider is authorized to access the electronic seal, electronic signature, solution or recording of the notarial act using audio-video communication for all authorized purposes and to ensure compliance with law

Sec. 48. A Nevada notary public is responsible for maintaining accurate and reliable notarial records. A Nevada electronic notary public may use a solution provider for the storage of the electronic journal and the recording of an electronic notarial act using audio-video

communication subject to the provisions of this chapter and NRS Chapter 240 if the solution provider:

1. Has registered with the Secretary of State;
2. Demonstrates the capability of providing such service;
3. Allows the electronic notary public sole control of the electronic journal and the recording of the electronic notarial act using audio-video communication, subject to the authorized access granted by the notary; and
4. Provides access to the electronic journal and the recording of the electronic notarial act using audio-video communication pursuant to this chapter.

PROHIBITED ACTS

Sec. 49. In addition to the prohibited acts provided by NRS 240.075, an electronic notary public shall not:

1. Perform an electronic notarial act using audio-video communication while the electronic notary public is outside Nevada;
2. Fail to record and/or properly store the recording of the electronic notarial act performed using audio-video communication;
3. Use an invalid electronic seal or digital certificate in the performance of an electronic notarial act;
4. Fail to report a change in electronic seal or digital certificate;
5. Use the electronic notary public's electronic signature and electronic seal together, or the electronic seal, except in the performance of an electronic notarial act;

6. Allow unauthorized access to the electronic notary journal, electronic signature, digital certificate or to the solution used to perform electronic notarial acts; or
7. Violate any other requirement of this chapter and NRS Chapter 240 pertaining to the performance of an electronic notarial act.

Sec 50. The penalties, prohibitions, liabilities, sanctions and remedies for the improper performance of electronic notarial acts are the same as provided by law for the improper performance of non-electronic notarial acts.

Sec. 51. NAC 240.200. The fee required to be paid to the Secretary of State pursuant to the provisions of paragraph (a) of subsection 1 of NRS 240.030 and NRS 240.192 at the time the application for appointment as a notary public or registration as an electronic notary public is submitted is imposed for the purpose of processing the application or registration and is not refundable.

Sec. 52. NAC 240.210.

1. A person applying for appointment as a notary public may use his or her given name, a short or familiar form of his or her given name or the first initial of his or her given name, followed by the person's surname.

2. The bond that a person applying for appointment as a notary public must enter into pursuant to the provisions of paragraph (d) of subsection 1 of NRS 240.030 must be entered under the same form of the person's name that appears on the application for appointment.

3. A notary public may use his or her given name, a short or familiar form of his or her given name or the first initial of his or her given name, followed by the notary public's surname, as his or her official signature which must be consistent with the original signature on the application for appointment as a notary public.

Sec. 53. NAC 240.250.

1. A person may file a complaint in writing with the Secretary of State alleging that a notary public has violated one or more of the provisions of chapter 240 of NRS. The complaint must include:

- (a) The name of the notary public;
- (b) If known, the name of the county in which the notary public resides;
- (c) If known and if assigned, the number on the certificate of appointment of the notary public;
- (d) An explanation of the reason for the complaint and, if known, the citation of each statutory provision which the notary public is alleged to have violated;
- (e) A copy of each document which is related to the matter;
- (f) Whether the notarial act was performed using audio-video communication; and
- (g) Such other information as the person considers relevant to the matter.

2. The complaint may be filed in person, by facsimile machine or by mail.

3. Within 15 days, excluding Saturdays, Sundays and legal holidays, after receiving a complaint, the Secretary of State will notify in writing the notary public who is the subject of the complaint. In the notice, the Secretary of State will include a copy of the complaint. The notice must be sent by U.S. mail or other delivery method with a tracking mechanism and must contain:

- (a) A statement of the statutory provision which the notary public is alleged to have violated;

(b) An explanation of the possible disciplinary actions that may be taken against the notary public;

(c) Instructions for the notary public to respond to the complaint by mail or by facsimile machine; and

(d) A statement that the notary public must respond to the complaint within 10 days after receiving the notice.

4. If, after receiving the response from the notary public, the Secretary of State determines that a hearing is not warranted, he or she will provide notification of his or her determination and the reasons therefor to the notary public and the person who filed the complaint.

Sec. 54. NAC 240.270.

1. The Secretary of State will provide an online course of study for the mandatory training of notaries public and electronic notaries public.

2. An applicant for appointment as a notary public who is required pursuant to NRS 240.018 to enroll in and successfully complete a course of study for the mandatory training of notaries public must include with his or her application a certificate of successful completion of such a course, which must contain a validation stamp from the Secretary of State. A certificate of successful completion of a course of study for the mandatory training of notaries public is valid for 90 days after the date of its issuance.

3. An applicant for registration as an electronic notary public who is required pursuant to NRS 240.1943 to enroll in and successfully complete a course of study for the mandatory training of electronic notaries public must include with his or her registration as an electronic notary public a certificate of successful completion of such a course. A certificate of successful completion for

the mandatory training of electronic notaries public is valid for 90 days after the date of its issuance.

The Secretary of State may authorize the provision of a course of study for the mandatory training of notaries public and electronic notaries public by a qualified third party subject to the terms and conditions established by the Secretary of State or a designee of the Secretary of State.