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THIRD REPRINT **A.B. 413**

ASSEMBLY BILL NO. 413–COMMITTEE ON JUDICIARY

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to electronic documents and electronic signatures. (BDR 12-597)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to electronic documents; establishing provisions relating to electronic wills and trusts; revising provisions governing electronic notaries public; authorizing electronic notaries public to perform authorized electronic notarial acts remotely using audio-video communication; establishing provisions concerning electronic documents relating to real property located in this State; authorizing the Secretary of State to require notaries public registering as electronic notaries public to complete an online course on electronic notarization; increasing the amount of the fees authorized to be charged by an electronic notary public for the performance of certain electronic notarial acts and authorizing the collection of a fee to recover certain costs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes provisions relating to electronic wills. (NRS 132.119, 133.085, 136.185) **Sections 10-17** of this bill establish various other provisions relating to electronic wills. **Sections 8 and 19** of this bill revise the description of an electronic will and **section 10** establishes the circumstances in which an electronic will is self-proving. **Sections 11 and 12** establish the qualifications and duties of a qualified custodian of an electronic will, who is required to store electronic records of electronic wills in a system that protects electronic records from destruction, alteration or unauthorized access and detects any change to an electronic record. **Sections 13 and 14** set forth the circumstances in which a qualified custodian is authorized to cease serving in such a capacity. **Section 15** establishes provisions concerning affidavits relating to the creation of a certified paper original of an electronic will, which **section 3** of this bill generally defines as

a tangible document containing the text of an electronic will. **Section 16** sets forth provisions relating to the ability of an electronic notary public or other notarial officer to perform certain notarial acts. **Section 17** establishes various provisions for purposes relating to the execution and filing of any document with a court in any proceeding relating to an electronic will and for certain other purposes.

Section 18 of this bill establishes requirements relating to a declaration or affidavit of a witness to an electronic will. **Section 20** of this bill provides the methods by which an electronic will may be revoked. **Section 21** of this bill sets forth provisions relating to the jurisdiction in which an electronic will may be proved and the admittance of a certified paper original of an electronic will to probate.

Sections 23-28 of this bill revise provisions relating to trusts. **Section 24** provides that a video recording or other electronic record may be admissible in court as evidence of certain issues relating to a trust, and **section 28** revises the description of an electronic trust.

Existing law establishes the Electronic Notary Public Authorization Act pursuant to which an electronic notary public appointed by the Secretary of State is authorized to perform electronic notarial acts. (NRS 240.181-240.206) **Section 39** of this bill renames the act as the Electronic Notarization Enabling Act and **section 45** of this bill requires electronic notaries public to register with, instead of be appointed by, the Secretary of State. **Section 35** of this bill: (1) authorizes an electronic notary public to perform authorized electronic notarial acts remotely using audio-video communication, which **section 30** of this bill generally defines as communication by which a person is able to see, hear and communicate with another person in real time using electronic means; and (2) sets forth certain requirements relating to such electronic notarial acts. **Section 36** of this bill authorizes an electronic notary public to perform an electronic notarial act using audio-video communication for a person located: (1) in this State; (2) outside this State but within the United States; or (3) in certain circumstances, outside the United States.

Section 37 of this bill requires an electronic notary public to arrange for a recording to be made of each electronic notarial act performed using audio-video communication and to give all participating persons advance notice of the recording. **Section 37** also requires the recording to be kept for not less than 7 years. **Section 51** of this bill requires an electronic notary public to keep an electronic journal of each notarial act which he or she performs and to maintain and protect the electronic journal at all times. **Section 51** also provides that, except as otherwise provided by law, an electronic notary public is required to keep all required notarial records for a period of 7 years after the termination of the registration of the electronic notary public.

Section 38 of this bill establishes provisions relating to the confirmation of the identity of a person for whom an electronic notarial act is performed using audio-video communication. **Section 50** of this bill requires an electronic notary public to render an electronic document that is the subject of an electronic notarial act tamper-evident.

Section 38.3 of this bill establishes provisions concerning electronic documents relating to real property located in this State.

Section 46.5 of this bill authorizes the Secretary of State to require a notary public who registers with the Secretary of State as an electronic notary public to complete an online course of study on electronic notarization. **Section 38.7** of this bill establishes provisions relating to the completion of such a course of study.

Section 48 of this bill increases the amount of fees which an electronic notary public may charge for performing certain electronic notarial acts and authorizes an electronic notary public to charge a reasonable fee to recover any cost of providing a copy of an entry or a recording of an audio-video communication in the electronic

journal maintained by the electronic notary public. **Section 48** also prohibits an electronic notary public who is an officer or employee of the State or a local government from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of such employment.

Sections 56-60 of this bill delete certain provisions of Assembly Bill No. 476 of this session that are replaced with the provisions of **sections 45, 46, 46.5, 51 and 52** of this bill, and **section 61** of this bill provides that the provisions of this bill are intended to supersede any provisions of Assembly Bill No. 476 that conflict with the provisions of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 132 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. ***Except as otherwise specifically provided in this title, the provisions of this title must be construed in a manner consistent with the provisions of chapter 719 of NRS.***

Sec. 3. ***"Certified paper original" means a tangible document that contains the text of an electronic will and, if applicable, a self-proving affidavit concerning the electronic will.***

Sec. 4. ***"Electronic notary public" has the meaning ascribed to it in NRS 240.186.***

Sec. 5. ***"Qualified custodian" means a person who meets the requirements of section 11 of this act.***

Sec. 6. NRS 132.025 is hereby amended to read as follows:

132.025 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 132.030 to 132.370, inclusive, ***and sections 3, 4 and 5 of this act*** have the meanings ascribed to them in those sections.

Sec. 7. NRS 132.117 is hereby amended to read as follows:

132.117 "Electronic record" means a record created, generated ***, sent, communicated, received*** or stored by electronic means.

Sec. 8. NRS 132.119 is hereby amended to read as follows:

132.119 "Electronic will" means ~~[a testamentary document that complies]~~ ***an instrument, including, without limitation, a codicil, that is executed by a person in accordance*** with the requirements of NRS 133.085 ~~[.]~~ ***and which disposes of the property of the person upon or after his or her death.***

Sec. 9. Chapter 133 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 to 17, inclusive, of this act.

Sec. 10. ***1. An electronic will is self-proving if:***

(a) The declarations or affidavits of the attesting witnesses are incorporated as part of, attached to or logically associated with the electronic will, as described in NRS 133.050;

(b) The electronic will designates a qualified custodian to maintain custody of the electronic record of the electronic will; and

(c) Before being offered for probate or being reduced to a certified paper original that is offered for probate, the electronic will was at all times under the custody of a qualified custodian.

2. A declaration or affidavit of an attesting witness made pursuant to NRS 133.050 and an affidavit of a person made pursuant to section 15 of this act must be accepted by a court as if made before the court.

Sec. 11. *A qualified custodian of an electronic will:*

1. Must not be an heir of the testator or a beneficiary or devisee under the electronic will.

2. Shall consistently employ, and store electronic records of electronic wills in, a system that protects electronic records from destruction, alteration or unauthorized access and detects any change to an electronic record.

3. Shall store in the electronic record of an electronic will each of the following:

(a) A photograph or other visual record of the testator and the attesting witnesses that was taken contemporaneously with the execution of the electronic will;

(b) A photocopy, photograph, facsimile or other visual record of any documentation that was taken contemporaneously with the execution of the electronic will and provides satisfactory evidence of the identities of the testator and the attesting witnesses, including, without limitation, documentation of the methods of identification used pursuant to subsection 4 of NRS 240.1655; and

(c) An audio and video recording of the testator, attesting witnesses and notary public, as applicable, taken at the time the testator, each attesting witness and notary public, as applicable, placed his or her electronic signature on the electronic will, as required pursuant to paragraph (b) of subsection 1 of NRS 133.085.

4. Shall provide to any court that is hearing a matter involving an electronic will which is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualifications of the qualified custodian and the policies and practices of the qualified custodian concerning the maintenance, storage and production of electronic wills.

Sec. 12. *1. With regard to an electronic record of an electronic will, a qualified custodian:*

(a) Shall provide access to or information concerning the electronic will or the certified paper original of the electronic will only to:

(1) The testator or another person as directed by the written instructions of the testator; and

(2) After the death of the testator, the nominated personal representative of the testator or any interested person; and

(b) May, in the absolute discretion of the qualified custodian, destroy the electronic record at any time:

(1) Five or more years after the admission of any will of the testator to probate;

(2) Five or more years after the revocation of the electronic will;

(3) Five or more years after ceasing to serve as the qualified custodian of the electronic record of the electronic will pursuant to section 13 of this act;

(4) Ten or more years after the death of the testator; or

(5) One hundred and fifty years after the execution of the electronic will.

2. At the direction of a testator in a writing executed with the same formalities required for the execution of an electronic will, a qualified custodian shall cancel, render unreadable or obliterate the electronic record.

Sec. 13. *1. A qualified custodian may cease serving in such a capacity by:*

(a) If not designating a successor qualified custodian, providing to the testator:

(1) Thirty days' written notice that the qualified custodian has decided to cease serving in such a capacity; and

(2) The certified paper original of, and all records concerning, the electronic will.

(b) If designating a successor qualified custodian:

(1) Providing 30 days' written notice that the qualified custodian has decided to cease serving in such a capacity to:

(I) The testator; and

(II) The designated successor qualified custodian; and

(2) Providing to the successor qualified custodian the electronic record of the electronic will and an affidavit which states:

(I) That the qualified custodian ceasing to act in such a capacity is eligible to act as a qualified custodian in this State and is the qualified custodian designated by the testator in the

electronic will or was designated to act in such a capacity by another qualified custodian pursuant to this paragraph;

(II) That an electronic record was created at the time the testator executed the electronic will;

(III) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created; and

(IV) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

2. For purposes of making the affidavit pursuant to subparagraph (2) of paragraph (b) of subsection 1, a qualified custodian is entitled to rely conclusively on any affidavits provided by a predecessor qualified custodian if all such affidavits are provided to the successor qualified custodian.

3. Subject to the provisions of section 14 of this act, if the testator designates a successor qualified custodian in a writing executed with the same formalities required for the execution of an electronic will, a qualified custodian shall cease serving in such a capacity and provide to the designated successor qualified custodian:

(a) The electronic record; and

(b) The affidavit described in subparagraph (2) of paragraph (b) of subsection 1.

4. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of such entity constitutes the affidavit of the qualified custodian.

Sec. 14. *1. A person must execute a written statement affirmatively agreeing to serve as the qualified custodian of an electronic will before he or she may serve in such a capacity.*

2. Except as otherwise provided in paragraph (a) of subsection 1 of section 13 of this act, a qualified custodian may not cease serving in such a capacity until a successor qualified custodian executes the written statement required by subsection 1.

Sec. 15. *1. Upon the creation of a certified paper original of an electronic will:*

(a) If the electronic will has always been in the custody of a qualified custodian, the qualified custodian shall state in an affidavit:

(1) That the qualified custodian is eligible to act as a qualified custodian in this State;

(2) That the qualified custodian is the qualified custodian designated by the testator in the electronic will or was designated

to act in such a capacity pursuant to paragraph (b) of subsection 1 of section 13 of this act;

(3) That an electronic record was created at the time the testator executed the electronic will;

(4) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will, and has not been altered since the time it was created;

(5) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will;

(6) That the certified paper original is a true, correct and complete tangible manifestation of the electronic will; and

(7) That the records described in subsection 3 of section 11 of this act are in the custody of the qualified custodian.

(b) If the electronic will has not always been under the custody of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to the certified paper original shall each state in an affidavit the following information, to the best of their knowledge:

(1) When the electronic will was created, if not indicated in the electronic will;

(2) When, how and by whom the electronic will was discovered;

(3) The identities of each person who has had access to the electronic will;

(4) The method in which the electronic will was stored and the safeguards in place to prevent alterations to the electronic will;

(5) Whether the electronic will has been altered since its execution; and

(6) That the certified paper original is a true, correct and complete tangible manifestation of the electronic will.

2. For purposes of making an affidavit pursuant to paragraph (a) of subsection 1, the qualified custodian may rely conclusively on any affidavits delivered by a predecessor qualified custodian.

Sec. 16. *1. Notwithstanding any other provision of law, an electronic notary public or other notarial officer may, for purposes of this title, including, without limitation, all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will:*

(a) Notarize the signature or electronic signature of a person, as applicable, who is not in the physical presence of the electronic notary public or other notarial officer if the person is in his or her presence within the meaning of section 17 of this act; and

(b) Notarize any document relating to a will, codicil or testamentary trust.

2. This section must be liberally construed and applied to promote the purposes of NRS 133.085 and sections 10 to 17, inclusive, of this act.

Sec. 17. *1. For purposes of this title, including, without limitation, any declaration or affidavit made by an attesting witness as described in NRS 133.050, for all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will and for purposes of executing a power of attorney pursuant to NRS 162A.220, an advance directive or any document relating to an advance directive:*

(a) A person shall be deemed to be in the presence of or appearing before another person if such persons are in:

(1) The same physical location; or

(2) Different physical locations but can communicate with each other by means of audio-video communication.

(b) An electronic notary public may electronically notarize electronic documents, including, without limitation, documents constituting or relating to an electronic will, in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act.

(c) Any requirement that a document be signed may be satisfied by an electronic signature.

(d) If a provision of law requires a written record, an electronic record satisfies such a provision.

(e) Except as otherwise provided in subparagraph (3), regardless of the physical location of the person executing a document or of any witness, if a document is executed electronically, the document shall be deemed to be executed in this State and will be governed by the laws of this State and subject to the jurisdiction of the courts of this State if:

(1) The person executing the document states that he or she understands that he or she is executing, and that he or she intends to execute, the document in and pursuant to the laws of this State;

(2) The document states that the validity and effect of its execution are governed by the laws of this State;

(3) Any attesting witnesses or an electronic notary public whose electronic signatures are contained in the document were physically located within this State at the time the document was executed in accordance with this section; or

(4) In the case of a self-proving electronic will, the electronic will designates a qualified custodian who, at the time of execution:

(I) If a natural person, is domiciled in this State; or

(II) If an entity, is organized under the laws of this State or whose principal place of business is located in this State.

2. Notwithstanding the provisions of subsection 1, the validity of a notarial act performed by an electronic notary public must be determined by applying the laws of the jurisdiction in which the electronic notary public is commissioned or appointed.

3. As used in this section:

(a) "Advance directive" has the meaning ascribed to it in NRS 449.905.

(b) "Audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.

Sec. 18. NRS 133.050 is hereby amended to read as follows:

133.050 1. Any attesting witness to a will ***, including, without limitation, an electronic will,*** may sign a declaration under penalty of perjury or an affidavit before any person authorized to administer oaths in or out of the State, stating such facts as the witness would be required to testify to in court to prove the will. The declaration or affidavit must be written on the will or, if that is impracticable, on some paper attached thereto. ***If the will is an electronic will, the declaration or affidavit must be in a record incorporated as part of, attached to or logically associated with the electronic will.*** The sworn statement of any witness so taken must be accepted by the court as if it had been taken before the court.

2. The affidavit described in subsection 1 may be in substantially the following form:

State of Nevada }
}ss.
County of..... }

(Date).....

Then and there personally appeared ..... and ....., who, being duly sworn, depose and say: That they witnessed the execution of the foregoing will of the testator, ...; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time

of the execution of the will appeared to them to be of full age and of sound mind and memory.

.....
Affiant

.....
Affiant

Subscribed and sworn to before me
this ..... day of the month of ..... of the year .....

.....
Notary Public

3. The declaration described in subsection 1 may be in substantially the following form:

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, ... and ....., declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, ...; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this ..... day of ....., ...

..... Declarant

..... Declarant

4. If a testator or a witness signing an affidavit or declaration described in subsection 1 appears by means of audio-video communication, the form for the affidavit or declaration, as set forth in subsections 2 and 3, respectively, must be modified to indicate that fact.

5. As used in this section, "audio-video communication" has the meaning ascribed to it in section 17 of this act.

Sec. 19. NRS 133.085 is hereby amended to read as follows:

133.085 1. An electronic will is a will of a testator that:

(a) Is ~~[written,]~~ created and ~~[stored]~~ ***maintained*** in an electronic record; ***and***

(b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one ***of the following:***

(1) An authentication characteristic of the testator; ~~[and~~

~~(c) Is created and stored in such a manner that:~~

~~(1) Only one authoritative copy exists;]~~

(2) The ~~[authoritative copy is maintained and controlled by the testator or a custodian designated by the testator in the]~~ electronic ~~[will;]~~ ***signature and electronic seal of an electronic notary public, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon; or***

(3) ~~[Any attempted alteration of the authoritative copy is readily identifiable; and~~

~~(4) Each copy of the authoritative copy is readily identifiable as a copy that is not the authoritative copy.]~~ ***The electronic signatures of two or more attesting witnesses, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon.***

2. Every person of sound mind over the age of 18 years may, by last electronic will, dispose of all of his or her estate, real and personal, but the estate is chargeable with the payment of the testator's debts.

3. ~~[An electronic will that meets the requirements of this section is subject to no other form, and may be made in or out of this State. An electronic will is valid and has the same force and effect as if formally executed.~~

~~4. An electronic will shall be deemed to be executed in this State if the authoritative copy of the electronic will is:~~

~~(a) Transmitted to and maintained by a custodian designated in the electronic will at the custodian's place of business in this State or at the custodian's residence in this State; or~~

~~(b) Maintained by the testator at the testator's place of business in this State or at the testator's residence in this State.~~

~~5.]~~ ***Except as otherwise provided in this section and sections 10 to 17, inclusive, of this act, all questions relating to the force, effect, validity and interpretation of an electronic will that complies with the provisions of this section and sections 10 to 17, inclusive, of this act must be determined in the same manner as a will executed in accordance with NRS 133.040.***

4. The provisions of this section do not apply to a trust other than a trust contained in an electronic will.

~~[6.]~~ ***5.*** As used in this section:

(a) "Authentication characteristic" means a characteristic of a certain person that is unique to that person and that is capable of measurement and recognition in an electronic record as a biological aspect of or physical act performed by that person. Such a characteristic may consist of a fingerprint, a retinal scan, voice

recognition, facial recognition, ***video recording,*** a digitized signature or other ***commercially reasonable*** authentication using a unique characteristic of the person.

(b) ~~[“Authoritative copy” means the original, unique, identifiable and unalterable electronic record of an electronic will.~~

~~(c)]~~ “Digitized signature” means a graphical image of a handwritten signature that is created, generated or stored by electronic means.

(c) “Electronic seal” has the meaning ascribed to it in NRS 240.187.

Sec. 20. NRS 133.120 is hereby amended to read as follows:

133.120 1. A written will ***other than an electronic will*** may only be revoked by:

(a) Burning, tearing, cancelling or obliterating the will, with the intention of revoking it, by the testator, or by some person in the presence and at the direction of the testator; ~~[or]~~

(b) Another will or codicil in writing, executed as prescribed in this chapter ~~[.]~~ ***; or***

(c) An electronic will, executed as prescribed in this chapter.

2. ***An electronic will may only be revoked by:***

(a) Another will, codicil, electronic will or other writing, executed as prescribed in this chapter; or

(b) Cancelling, rendering unreadable or obliterating the will with the intention of revoking it, by:

(1) The testator or a person in the presence and at the direction of the testator; or

(2) If the will is in the custody of a qualified custodian, the qualified custodian at the direction of a testator in an electronic will.

3. This section does not prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Sec. 21. NRS 136.185 is hereby amended to read as follows:

136.185 ***1.*** An electronic will ***executed or deemed to be executed in or pursuant to the laws of this State*** may be proved ~~[by authentication satisfactory to the court.]~~ ***and letters granted in the county in which the decedent was a resident at the time of his or her death or the domicile or registered office of the qualified custodian exists.***

2. A certified paper original of an electronic will may be offered for and admitted to probate in the same manner as if it were a will executed in accordance with NRS 133.040.

3. A certified paper original of an electronic will that is self-proving pursuant to section 10 of this act is presumed to be valid

and, absent any objection, must be admitted to probate expeditiously without requiring any further proof of validity.

4. An electronic will that is executed or deemed to be executed in or pursuant to the laws of another state in accordance with the laws of the other state or of this State is a valid electronic will in this State.

Sec. 22. Chapter 163 of NRS is hereby amended by adding thereto the provisions set forth as sections 23 and 24 of this act.

Sec. 23. ***As used in this chapter, unless the context otherwise requires, when the terms "execute" or "sign" are used in reference to a will, trust or instrument to convey property, the terms include the use of an electronic signature.***

Sec. 24. ***Subject to the provisions of any applicable court rules, a video recording or other electronic record may be admissible as evidence of:***

1. The proper execution of a trust.

2. The intentions of a settlor.

3. The mental state or capacity of a settlor.

4. The authenticity of a trust.

5. Matters that are determined by a court to be relevant to the administration of a trust.

Sec. 25. NRS 163.0016 is hereby amended to read as follows:

163.0016 "Nontestamentary trust" means a trust ***, including, without limitation, an electronic trust,*** that is created and takes effect during the lifetime of the settlor.

Sec. 26. NRS 163.0018 is hereby amended to read as follows:

163.0018 "Testamentary trust" means a trust that is created by the terms of the will ***, including, without limitation, the electronic will,*** of a person.

Sec. 27. NRS 163.00185 is hereby amended to read as follows:

163.00185 "Trust instrument" means a will, trust agreement, declaration, or other instrument ***, including, without limitation, an electronic trust,*** that creates or defines the duties and powers of a trustee and shall include a court order or any instrument that modifies a trust instrument or, in effect, alters the duties and powers of a trustee or other terms of a trust instrument.

Sec. 28. NRS 163.0095 is hereby amended to read as follows:

163.0095 1. An electronic trust is a trust instrument that:

(a) Is ~~[written,]~~ created and ~~[stored]~~ ***maintained*** in an electronic record ~~[;]~~ ***in such a manner that any alteration thereto is detectable;***

(b) Contains the electronic signature of the settlor ~~[;]~~ and ***the date and time thereof;***

(c) ***Includes, without limitation, an authentication method which is attached to or logically associated with the trust instrument to identify the settlor or is electronically notarized in accordance with all applicable provisions of law;***

(d) Is subject to the provisions of chapter 719 of NRS; and

(e) Meets the requirements set forth in this chapter for a valid trust.

2. ~~[An]~~ ***Regardless of the physical location of the settlor, an*** electronic trust shall be deemed to be executed in this State ***and will be governed by the laws of this State and subject to the jurisdiction of the courts of this State*** if the electronic trust is:

(a) Transmitted to and maintained by a custodian designated in the trust instrument at the custodian's place of business in this State or at the custodian's residence in this State; or

(b) Maintained by the settlor at the settlor's place of business in this State or at the settlor's residence in this State, or by the trustee at the trustee's place of business in this State or at the trustee's residence in this State.

3. ***Notwithstanding the provisions of subsection 2, the validity of a notarial act performed by an electronic notary public must be determined by applying the laws of the jurisdiction in which the electronic notary public is commissioned or appointed.***

4. The provisions of this section do not apply to a testamentary trust.

5. As used in this section:

(a) "Authentication characteristic" has the meaning ascribed to it in NRS 133.085.

(b) "Authentication method" means a method of identification using any applicable method authorized or required by law, including, without limitation, a digital certificate using a public key or a physical device, including, without limitation, a smart card, flash drive or other type of token, an authentication characteristic or another commercially reasonable method.

(c) "Public key" has the meaning ascribed to it in NRS 720.110.

Sec. 29. Chapter 240 of NRS is hereby amended by adding thereto the provisions set forth as sections 30 to 38.7, inclusive, of this act.

Sec. 30. ***"Audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.***

Sec. 31. ***"Credential" means a tangible record evidencing the identity of a person.***

Sec. 32. *"Dynamic knowledge-based authentication assessment" means an identity assessment that is based on a set of questions formulated from public or private data sources for which the person taking the assessment has not previously provided an answer and that meets any rules or regulations adopted by the Secretary of State.*

Sec. 33. *"Electronic" means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*

Sec. 34. *"In the presence of" or "appear before" means being:*

1. In the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person; or

2. In a different physical location from another person but able to see, hear and communicate with the person by means of audio-video communication that meets any rules or regulations adopted by the Secretary of State.

Sec. 35. *1. An electronic notary public may perform any of the acts set forth in NRS 240.196 using audio-video communication in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act and any rules or regulations adopted by the Secretary of State.*

2. Before an electronic notary public performs electronic notarial acts using audio-video communication, he or she must register with the Secretary of State pursuant to NRS 240.192 and identify the technology that the electronic notary public intends to use, which must conform to any rules or regulations adopted by the Secretary of State.

3. If an electronic notarial act is performed using audio-video communication:

(a) The technology used must allow the persons communicating to see and speak to each other simultaneously;

(b) The signal transmission must be in real time; and

(c) The electronic notarial act must be recorded in accordance with section 37 of this act.

Sec. 36. *1. An electronic notary public may perform an electronic notarial act using audio-video communication in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act and any rules or regulations adopted by the Secretary of State for a person who is physically located:*

(a) In this State;

(b) Outside this State but within the United States; or

(c) Outside the United States if:

(1) The electronic notary public has no actual knowledge of the electronic notarial act being prohibited in the jurisdiction in which the person is physically located; and

(2) The person placing his or her electronic signature on the electronic document confirms to the electronic notary public that the requested electronic notarial act and the electronic document:

(I) Are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity or other entity in the United States;

(II) Relate to property located in the United States; or

(III) Relate to a transaction substantially connected to the United States.

2. An electronic notary public who is registered with the Secretary of State pursuant to NRS 240.192 may perform an electronic notarial act using audio-video communication in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act and any rules or regulations adopted by the Secretary of State if the electronic notary public is physically present in this State at the time of performing the electronic notarial act, regardless of whether the person who placed the electronic signature on the electronic document is physically located in another jurisdiction at the time of the electronic notarial act. The validity of the notarial act will be determined by applying the laws of this State.

Sec. 37. *1. An electronic notary public shall arrange for a recording to be made of each electronic notarial act performed using audio-video communication. Before performing any electronic notarial act using audio-video communication, the electronic notary public must inform all participating persons that the electronic notarization will be electronically recorded.*

2. If the person for whom the electronic notarial act is being performed is identified by personal knowledge, the recording of the electronic notarial act must include an explanation by the electronic notary public as to how he or she knows the person and how long he or she has known the person.

3. If the person for whom the electronic notarial act is being performed is identified by a credible witness:

(a) The credible witness must appear before the electronic notary public; and

(b) The recording of the electronic notarial act must include:

(1) A statement by the electronic notary public as to whether he or she identified the credible witness by personal knowledge or satisfactory evidence; and

(2) An explanation by the credible witness as to how he or she knows the person for whom the electronic notarial act is being performed and how long he or she has known the person.

4. An electronic notary public shall keep a recording made pursuant to this section for a period of not less than 7 years, regardless of whether the electronic notarial act was actually completed.

Sec. 38. *1. For the purposes of performing an electronic notarial act for a person using audio-video communication, an electronic notary public has satisfactory or documentary evidence of the identity of the person if the electronic notary public confirms the identity of the person by:*

(a) Personal knowledge;

(b) Each of the following:

(1) Remote presentation by the person of a government-issued identification credential that contains a photograph and the signature of the person;

(2) Credential analysis of the government-issued identification credential and the data thereon; and

(3) A dynamic knowledge-based authentication assessment;

(c) Any other method that complies with any rules or regulations adopted by the Secretary of State; or

(d) A valid certificate that complies with any rules or regulations adopted by the Secretary of State.

2. As used in this section:

(a) "Certificate" has the meaning ascribed to it in NRS 720.030.

(b) "Credential analysis" means a process or service that complies with any rules or regulations adopted by the Secretary of State through which a third party affirms the validity of a government-issued identification credential or any data thereon through the review of data sources.

(c) "Remote presentation" means the transmission of a quality image of a government-issued identification credential to an electronic notary public through communication technology for the purpose of enabling the electronic notary public to identify the person appearing before the electronic notary public and to perform a credential analysis.

Sec. 38.3. *1. If an electronic document relating to real property located in this State contains an electronic acknowledgment, notwithstanding any omission or error in the certificate of acknowledgment or failure of the document to show an acknowledgment in compliance with applicable law, upon the document being recorded with the county recorder of the county in*

which the real property is located or filed with the Secretary of State:

(a) The electronic document shall be deemed to be lawfully recorded or filed; and

(b) All persons, including, without limitation, any creditor, encumbrancer, mortgagee, subsequent purchaser for valuable consideration or any other subsequent transferee thereof or of any interest therein, are deemed to have notice of its contents.

2. For the purposes of this section, a document is deemed to comply with all applicable requirements upon the acceptance for recording by the county recorder of the county in which the real property is located or the filing of the document with the Secretary of State, as required by law.

Sec. 38.7. ***1. Except as otherwise provided in this section, a notary public who registers with the Secretary of State as an electronic notary public pursuant to NRS 240.192 for the first time must successfully complete any required course of study on electronic notarization required pursuant to NRS 240.195 before filing such registration with the Secretary of State.***

2. A notary public may register with the Secretary of State as an electronic notary public pursuant to NRS 240.192 and thereafter perform the functions of an electronic notary public pursuant to this chapter without completing any course of study on electronic notarization required pursuant to NRS 240.195 if, at the time of registration, the course of study is not yet offered by the Secretary of State or a vendor approved by the Secretary of State.

3. If a notary public registers and performs the functions of an electronic notary public without first completing any required course of study on electronic notarization pursuant to subsection 2, he or she must complete the required course of study and pass any required examination within 120 days after the course of study is first offered by the Secretary of State or a vendor approved by the Secretary of State. The registrant shall thereafter complete any required course of study in accordance with paragraph (b) or (c) of subsection 3 of NRS 240.195, as applicable.

Sec. 39. NRS 240.181 is hereby amended to read as follows:

240.181 NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** may be cited as the Electronic ~~[Notary Public Authorization]~~ ***Notarization Enabling*** Act.

Sec. 40. NRS 240.182 is hereby amended to read as follows:

240.182 As used in NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS 240.183 to 240.188, inclusive, ***and sections 30 to 34, inclusive, of this act*** have the meanings ascribed to them in those sections.

Sec. 40.5. NRS 240.185 is hereby amended to read as follows:

240.185 "Electronic notarial act" means an act that an electronic notary public of this State is authorized to perform. The term includes:

1. Taking an acknowledgment;
2. Administering an oath or affirmation;
3. Executing a jurat; ~~[and]~~
4. ***Certifying a true and correct copy; and***
5. Performing such other duties as may be prescribed by a specific statute.

Sec. 41. NRS 240.186 is hereby amended to read as follows:

240.186 "Electronic notary public" means a person ~~[appointed by]~~ ***registered with*** the Secretary of State pursuant to NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** to perform electronic notarial acts.

Sec. 42. NRS 240.187 is hereby amended to read as follows:

240.187 "Electronic seal" means information within a notarized electronic document that includes the name, jurisdiction and expiration date of the ~~[appointment]~~ ***registration*** of an electronic notary public and generally includes the information required to be set forth in a mechanical stamp pursuant to NRS 240.040.

Sec. 43. NRS 240.189 is hereby amended to read as follows:

240.189 An electronic notary public shall comply with those provisions of NRS 240.001 to 240.169, inclusive, which are not inconsistent with NRS 240.181 to 240.206, inclusive ~~[.]~~ ***, and sections 30 to 38.7, inclusive, of this act.*** To the extent that the provisions of NRS 240.001 to 240.169, inclusive, conflict with the provisions of NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act,*** the provisions of NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** control.

Sec. 44. NRS 240.191 is hereby amended to read as follows:

240.191 1. ~~[The Secretary of State may appoint electronic notaries public in this State.~~

~~2. The Secretary of State shall not appoint as an electronic notary public a person who submits an application containing a substantial and material misstatement or omission of fact.~~

~~3. An electronic notary public may cancel his or her appointment by submitting a written notice to the Secretary of State.~~

~~4.]~~ It is unlawful for a person to:

(a) Represent himself or herself as an electronic notary public ~~[appointed pursuant to this section]~~ if the person has not ~~[received a certificate of appointment from]~~ ***registered with*** the Secretary of State pursuant to NRS 240.192.

(b) Submit ~~[an application for appointment]~~ ***a registration*** as an electronic notary public that contains a substantial and material misstatement or omission of fact.

~~[5.]~~ ***2.*** The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection ~~[4.]~~ ***1.***

Sec. 45. NRS 240.192 is hereby amended to read as follows:

240.192 1. Each person ~~[applying for appointment]~~ ***registering*** as an electronic notary public must:

(a) At the time of ~~[application,]~~ ***registration,*** be a notarial officer in this State ~~[and]~~ ***who has complied with the requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033,*** have been a notarial officer in this State for not less than 4 years ~~[;]~~ ***and have complied with all applicable notarial requirements set forth in this chapter;***

(b) ~~[Submit to]~~ ***Register with*** the Secretary of State ***by submitting*** an electronic ~~[application]~~ ***registration*** pursuant to subsection 2;

(c) Pay to the Secretary of State ~~[an application]~~ ***a registration*** fee of $50 ~~[;]~~ ***, which is in addition to the application fee required pursuant to NRS 240.030 to be a notarial officer in this State; and***

(d) ~~[Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if the applicant were a public officer;~~

~~(e)]~~ Submit to the Secretary of State ***with the registration*** proof satisfactory to the Secretary of State that the ~~[applicant]~~ ***registrant*** has ~~[successfully]~~ ***:***

(1) Successfully completed ~~[a]~~ ***any required*** course of study ***on electronic notarization*** provided pursuant to NRS 240.195; and

~~[(f) Enter into a bond to the State of Nevada in the sum of $10,000, to be filed with the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. The applicant must submit to the Secretary of State a certificate issued by the appropriate county clerk which indicates that the applicant filed the bond required pursuant to this paragraph.]~~

(2) Complied with the requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033.

2. ~~[The application for an appointment]~~ ***Unless the Secretary of State establishes a different process for submitting a registration as an electronic notary public, the registration*** as an electronic notary public must be submitted as an electronic document ***by electronic mail to nvnotary@sos.nv.gov or, if another electronic mail address is designated by the Secretary of State, to***

such other designated electronic mail address, and must contain, without limitation, the following information:

(a) ~~[The applicant's full legal name, and the name to be used for appointment, if different.]~~ ***All information required to be included in an application for appointment as a notary public pursuant to NRS 240.030.***

(b) ~~[The county in which the applicant resides.~~

~~(c) The electronic mail address of the applicant.~~

~~(d)]~~ A description of the technology or device ~~[, approved by the Secretary of State,]~~ that the ~~[applicant]~~ ***registrant*** intends to use to create his or her electronic signature in performing electronic notarial acts.

~~[(e)]~~ ***(c)*** The electronic signature of the ~~[applicant.~~

~~(f)]~~ ***registrant.***

(d) Any other information ~~[requested]~~ ***required pursuant to any rules or regulations adopted*** by the Secretary of State.

3. ~~[An applicant for appointment as an electronic notary public who resides in an adjoining state, in addition to the requirements set forth in subsections 1 and 2, must submit to the Secretary of State with the application:~~

~~(a) An affidavit setting forth the adjoining state in which the applicant resides, the applicant's mailing address and the address of the applicant's place of business or employment that is located within the State of Nevada;~~

~~(b) A copy of the applicant's state business registration issued pursuant to chapter 76 of NRS and any business license required by the local government where the applicant's business is located, if the applicant is self-employed; and~~

~~(c) Unless the applicant is self-employed, a copy of the state business registration of the applicant's employer issued pursuant to chapter 76 of NRS, a copy of any business license of the applicant's employer that is required by the local government where the business is located and an affidavit from the applicant's employer setting forth the facts which show that the employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.~~

~~4. In completing an application, bond, oath or other document necessary to apply for appointment as an electronic notary public, an applicant must not be required to disclose his or her residential address or telephone number on any such document which will become available to the public.~~

~~5. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when the applicant applies for appointment or, if the applicant is a resident of an adjoining state, with the clerk of the~~

~~county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as an electronic notary public to the applicant.~~

~~6. The term of an electronic notary public commences on the effective date of the bond required pursuant to paragraph (f) of subsection 1. An electronic notary public shall not perform an electronic notarial act after the effective date of the bond unless the electronic notary public has been issued a certificate of appointment pursuant to subsection 5.~~

~~7. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of $10 for each duplicate or amended certificate of appointment which is issued to an electronic notary public. If the electronic notary public does not receive an original certificate of appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the electronic notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.~~ ***Unless the Secretary of State establishes a different process for the payment of the registration fee required pursuant to paragraph (c) of subsection 1, the registration fee must be paid by check or draft, made payable to the Secretary of State and transmitted to the Office of the Secretary of State.***

4. Registration as an electronic notary public shall be deemed effective upon the payment of the registration fee required pursuant to paragraph (c) of subsection 1 if the registrant has satisfied all other applicable requirements.

Sec. 46. NRS 240.194 is hereby amended to read as follows:

240.194 1. The ~~[initial term]~~ ***period*** of ~~[appointment]~~ ***registration*** ~~[as]~~ ***of*** an electronic notary public is ~~[2 years. Each]~~ ***coterminous with his or her*** term of appointment ***as a notary public pursuant to NRS 240.010. Registration*** as an electronic notary public ~~[subsequent to the initial term is 4 years.]~~ ***must be renewed at the same time a person renews his or her appointment as a notary public.***

2. The ~~[appointment]~~ ***registration*** of an electronic notary public is suspended by operation of law when the electronic notary public is no longer appointed as a notary public in this State. If the ~~[appointment]~~ ***registration*** of an electronic notary public has expired or been revoked or suspended, the Secretary of State shall immediately notify the electronic notary public in writing that his or

her ~~[appointment]~~ ***registration*** as an electronic notary public will be suspended by operation of law until he or she is appointed as a notary public in this State.

3. If, at any time ~~[during his or her appointment, an]~~ ***, a registered*** electronic notary public changes his or her electronic mail address, county of residence, name, electronic signature or the technology or device used to create his or her electronic signature, the electronic notary public shall, within 10 days after making the change, submit to the Secretary of State:

(a) An electronic document, signed with the electronic signature submitted by the electronic notary public pursuant to subsection 2 of NRS 240.192, that includes the change of information; and

(b) A fee of $10.

Sec. 46.5. NRS 240.195 is hereby amended to read as follows:

240.195 1. ***In addition to any courses of study a notary public is required to complete pursuant to NRS 240.018, the Secretary of State may, by rule or regulation, require a notary public who registers with the Secretary of State as an electronic notary public pursuant to NRS 240.192 to complete an additional course of study on electronic notarization in accordance with this section.***

2. Except as otherwise provided in subsection ~~[2, an applicant for appointment]~~ ***3, a registrant*** as an electronic notary public must successfully:

(a) Complete ~~[a]~~ ***any*** course of study ***on electronic notarization*** that is ***required pursuant to subsection 1*** in accordance with the requirements of subsection ~~[5;]~~ ***6;*** and

(b) Pass an examination at the completion of the course.

~~[2.]~~ ***3.*** The following persons are required to enroll in and successfully complete ~~[a]~~ ***any*** course of study ~~[as]~~ ***on electronic notarization that is*** required pursuant to subsection 1:

(a) A person ~~[applying]~~ ***registering*** for ~~[his or her]~~ ***the*** first ~~[appointment]~~ ***time*** as an electronic notary public;

(b) A person renewing his or her ~~[appointment]~~ ***registration*** as an electronic notary public; and

(c) A person who has committed a violation of this chapter or whose ~~[appointment]~~ ***registration*** as an electronic notary public has been suspended, and who has been required by the Secretary of State to enroll in a course of study provided pursuant to this section.

~~[3.]~~ ***4.*** A course of study required to be completed pursuant to subsection 1 must:

(a) ~~[Include at least]~~ ***Be taken online and be of a duration of not more than*** 3 hours ~~[of instruction;]~~ ***, including instruction and completion of an examination of the course content;***

(b) Provide instruction in electronic notarization, including, without limitation, notarial law and ethics, technology and procedures;

(c) ~~[Include an examination of the course content;~~

~~(d)]~~ Comply with ~~[the]~~ ***any*** regulations adopted pursuant to NRS 240.206 ~~[.]~~ ***relating to courses of study on electronic notarization;*** and

~~[(e)]~~ ***(d)*** Be approved by the Secretary of State.

~~[4.]~~ ***5.*** The Secretary of State may, with respect to a course of study required to be completed pursuant to subsection 1 ~~[:~~

~~(a) Provide such a course of study; and~~

~~(b) Charge]~~ ***, charge*** a reasonable fee to each person who enrolls in such a course of study.

~~[5.]~~ ***6.*** A course of study provided pursuant to this section:

(a) Must satisfy the criteria set forth in subsection ~~[3]~~ ***4*** and comply with ~~[the]~~ ***any*** requirements set forth in the regulations adopted pursuant to NRS 240.206 ~~[.]~~ ***relating to courses of study on electronic notarization.***

(b) May be provided ~~[in person or online]~~ by the Secretary of State or a vendor approved by the Secretary of State.

~~[6.]~~ ***7.*** The Secretary of State shall deposit the fees collected pursuant to ~~[paragraph (b) of]~~ subsection ~~[4]~~ ***5*** in the Notary Public Training Account created pursuant to NRS 240.018.

Sec. 47. NRS 240.196 is hereby amended to read as follows:

240.196 A person ~~[appointed]~~ ***registered*** as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** may ~~[, during normal business hours,]~~ perform the following electronic notarial acts for a person who requests the electronic notarial act and tenders ~~[the appropriate]~~ ***any authorized*** fee:

1. Taking an acknowledgment;
2. Executing a jurat; ~~[and]~~
3. Administering an oath or affirmation ~~[.]~~ ***;***
4. ***Certifying a true and correct copy; and***
5. ***Performing such other duties as prescribed by law.***

Sec. 48. NRS 240.197 is hereby amended to read as follows:

240.197 1. ***Except as otherwise provided in this section:***

(a) An electronic notary public may charge the following fees ***:*** ~~[and no more:~~

~~(a)]~~ ***(1)*** For taking an acknowledgment, for each signature..... ~~[$10]~~ ***$25***

~~[(b)]~~ ***(2)*** For executing a jurat, for each signature..... ~~[$10]~~ ***$25***

~~[(c)]~~ ***(3)*** For administering an oath or affirmation without a signature..... ~~[$10]~~ ***$25***

~~[~~2.~~]~~ ***(b)*** An electronic notary public shall not charge a fee to perform ~~[~~a service~~]~~ ***an electronic notarial act*** unless he or she is authorized to charge a fee for such ~~[~~a service~~]~~ ***an electronic notarial act*** pursuant to this section.

~~[~~3.~~]~~ ***(c)*** All fees prescribed in this section are payable in advance, if demanded.

~~[~~4.~~]~~ ***(d)*** An electronic notary public may charge an additional fee for traveling to perform an electronic notarial act if:

~~[~~(a)~~]~~ ***(1)*** The person requesting the electronic notarial act asks the electronic notary public to travel;

~~[~~(b)~~]~~ ***(2)*** The electronic notary public explains to the person requesting the electronic notarial act that the fee for travel is in addition to the fee authorized in ~~[~~subsection 1~~]~~ ***paragraph (a)*** and is not required by law;

~~[~~(c)~~]~~ ***(3)*** The person requesting the electronic notarial act agrees in advance upon the hourly rate that the electronic notary public will charge for the additional fee for travel; and

~~[~~(d)~~]~~ ***(4)*** The additional fee for travel does not exceed:

~~[~~(1)~~]~~ ***(I)*** If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 6 a.m. and 7 p.m., $10 per hour.

~~[~~(2)~~]~~ ***(II)*** If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 7 p.m. and 6 a.m., $25 per hour.

➥ The electronic notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.

~~[~~5.~~]~~ ***(e)*** An electronic notary public is entitled to charge the amount of the additional fee for travel agreed to in advance by the person requesting the electronic notarial act pursuant to ~~[~~subsection 4~~]~~ ***paragraph (d)*** if:

~~[~~(a)~~]~~ ***(1)*** The person requesting the electronic notarial act cancels the request after the electronic notary public begins traveling to perform the requested electronic notarial act.

~~[~~(b)~~]~~ ***(2)*** The electronic notary public is unable to perform the requested electronic notarial act as a result of the actions of the person who requested the electronic notarial act or any other person who is necessary for the performance of the electronic notarial act.

~~[~~6.~~]~~ ***(f)*** For each additional fee for travel that an electronic notary public charges pursuant to ~~[~~subsection 4,~~]~~ ***paragraph (d),*** the electronic notary public shall enter in the ***electronic*** journal that he or she keeps pursuant to NRS 240.201:

~~[~~(a)~~]~~ ***(1)*** The amount of the fee; and

~~[~~(b)~~]~~ ***(2)*** The date and time that the electronic notary public began and ended such travel.

~~[7.]~~ ***(g) An electronic notary public may charge a reasonable fee to recover any cost of providing a copy of an entry or a recording of an audio-video communication in an electronic journal maintained pursuant to NRS 240.201.***

2. A person who employs an electronic notary public may prohibit the electronic notary public from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of the employment. Such a person shall not require the electronic notary public whom the person employs to surrender to the person all or part of a fee charged by the electronic notary public for an electronic notarial act performed outside the scope of the employment of the electronic notary public.

3. An electronic notary public who is an officer or employee of the State or a local government shall not charge a fee for an electronic notarial act that the electronic notary public performs within the scope of such employment.

4. This section does not apply to any compensation for services provided by an electronic notary public which do not constitute electronic notarial acts or comply with the other requirements of this chapter.

Sec. 49. NRS 240.198 is hereby amended to read as follows:

240.198 ***Except as otherwise specifically provided by law:***

1. An electronic notary public shall not willfully electronically notarize the signature or electronic signature of a person unless the person is in the presence of the electronic notary public at the time of notarization and:

(a) Is known to the electronic notary public; or

(b) If unknown to the electronic notary public, provides a credible witness or documentary evidence of identification to the electronic notary public.

2. A person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets an electronic notary public to commit a violation of subsection 1,

➥ is guilty of a gross misdemeanor.

3. ~~[An electronic notary public shall not electronically notarize any electronic document related to the following:~~

~~(a) A will, codicil or testamentary trust; and~~

~~(b) Any transaction governed by the Uniform Commercial Code other than NRS 104.1306, 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive.~~

~~4. An appointment]~~ ***Registration*** as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** does not authorize the electronic notary public to perform notarial acts in another state.

4. A notarial act performed by an electronic notary public in this State for a person located outside this State by means of audio-video communication in accordance with the provisions of this chapter shall not be deemed to be performed outside this State.

Sec. 50. NRS 240.199 is hereby amended to read as follows:

240.199 ***1.*** An electronic notarial act must be evidenced by the following, which must be attached to or logically associated with the electronic document that is the subject of the electronic notarial act and which must be immediately perceptible and reproducible:

~~[1.]~~ ***(a)*** The electronic signature of the electronic notary public;

~~[2.]~~ ***(b)*** The electronic seal of the electronic notary public; and

~~[3.]~~ ***(c)*** The wording of a notarial certificate pursuant to NRS 240.1655, 240.166 to 240.167, inclusive, 240.1685 or 240.169 ~~[.]~~ ***, including, without limitation, language explicitly stating that the notarial act was performed using audio-video communication, if applicable.***

2. Upon the completion of an electronic notarial act in accordance with subsection 1, an electronic notary public shall use technology to render the electronic document tamper-evident.

Sec. 51. NRS 240.201 is hereby amended to read as follows:

240.201 1. An electronic notary public shall keep ~~[a]~~ ***an electronic*** journal of each electronic notarial act which includes, without limitation, the requirements of subsections 1 and 5 of NRS 240.120 ~~[.]~~ ***, but does not include the electronic signatures of the person for whom the electronic notarial act was performed and any witnesses.***

2. ***An electronic notary public who performs electronic notarial acts shall:***

(a) Describe each electronic notarial act in the electronic journal and specify whether the electronic notarial act was performed using audio-video communication;

(b) Maintain and protect the electronic journal at all times under his or her sole control; and

(c) Provide for lawful inspection and copying of the electronic journal.

3. An electronic notary public may maintain more than one electronic journal to record electronic notarial acts.

4. The fact that the employer or contractor of an electronic notary public keeps a record of electronic notarial acts does not relieve the electronic notary public of the duties required by this section.

5. An electronic journal must:

(a) Enable access by a password or other secure means of authentication; and

(b) Be capable of providing tangible or electronic copies of any entry made therein.

6. The Secretary of State may suspend the ~~[appointment]~~ ***registration*** of an electronic notary public who fails to produce any ***electronic*** journal entry within 10 days after receipt of a request from the Secretary of State.

~~[3.]~~ ***7.*** Upon ~~[resignation,]~~ ***surrender,*** revocation or expiration of ~~[an appointment]~~ ***a registration*** as an electronic notary public, all notarial records required pursuant to NRS 240.001 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** must ***, except as otherwise provided by law,*** be ~~[delivered to the Secretary of State.]~~ ***kept by the electronic notary public for a period of 7 years after the termination of the registration of the electronic notary public.***

8. As used in this section, "sole control" means being in the direct physical custody of or safeguarded by an electronic notary public with a password or other secure means of authentication.

Sec. 52. NRS 240.202 is hereby amended to read as follows:

240.202 1. The electronic signature and electronic seal of an electronic notary public must be used only for the purposes of performing electronic notarial acts.

2. An electronic notary public shall safeguard his or her electronic signature, the electronic seal and all notarial records maintained by the electronic notary public as follows:

(a) When not in use, the electronic notary public shall keep the electronic signature, electronic seal and all notarial records secure, under the exclusive control of the electronic notary public and protected by a password where applicable.

(b) An electronic notary public shall not permit his or her electronic signature or electronic seal to be used by any other person.

(c) An electronic notary public shall not surrender or destroy his or her notarial records except as otherwise required by the order of a court or as allowed pursuant to NRS 240.001 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** or any regulations adopted pursuant thereto.

(d) Except as otherwise provided in subsection 3, an electronic notary public, within 10 days after discovering that his or her electronic signature or electronic seal has been stolen, lost, damaged or otherwise rendered incapable of affixing a legible image, shall:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism; and

(2) Notify the Secretary of State ***and the entity from which the electronic notary public obtained the electronic signature or electronic seal*** in writing, including, without limitation, a signature

using the name ~~[on the certificate of appointment issued]~~ ***under which the electronic notary public is registered*** pursuant to ~~[subsection 5 of]~~ NRS 240.192.

3. An electronic notary public shall take reasonable steps to maintain the technology or device used to create his or her electronic signature, and to ensure that the technology or device has not been recalled, revoked, terminated or otherwise rendered ineffective or unsecure by the entity that created the technology or device. Upon learning that the technology or device used to create his or her electronic signature has been rendered ineffective or unsecure, an electronic notary public shall cease performing electronic notarial acts until:

(a) A new technology or device is acquired; and

(b) The electronic notary public sends an electronic notice to the Secretary of State that includes ~~[, without limitation,]~~ the ~~[information]~~ ***electronic signature of the electronic notary public*** required pursuant to ~~[paragraphs (d) and (e)]~~ ***paragraph (c)*** of subsection 2 of NRS 240.192 relating to the new technology or device.

Sec. 53. NRS 240.203 is hereby amended to read as follows:

240.203 1. Except as otherwise provided in subsection 3, if an electronic notary public dies ~~[or resigns]~~ during his or her ~~[appointment,]~~ ***period of registration,*** or if the ~~[appointment]~~ ***registration*** of the electronic notary public is ***surrendered or*** revoked or expires, the electronic notary public, the executor of his or her estate or an authorized representative of the electronic notary public, as appropriate, shall:

(a) Notify the Secretary of State of the resignation or death; and

(b) Erase, delete, destroy or otherwise render ineffective the technology or device used to create his or her electronic signature.

2. Upon receipt of the notice required by subsection 1, the Secretary of State shall cancel the ~~[appointment]~~ ***registration*** of the electronic notary public, effective on the date on which the notice was received.

3. A former electronic notary public whose previous ~~[appointment]~~ ***registration*** as an electronic notary public was not revoked and whose previous ~~[application for appointment]~~ ***registration*** as an electronic notary public was not denied is not required to erase, delete, destroy or otherwise render ineffective the technology or device used to create his or her electronic signature if the former electronic notary public renews his or her ~~[appointment,]~~ ***registration,*** using the same electronic signature, within 3 months after the expiration of his or her previous ~~[appointment]~~ ***registration*** as an electronic notary public.

Sec. 54. NRS 240.204 is hereby amended to read as follows:

240.204 1. A person who knowingly creates, manufactures or distributes software or hardware for the purpose of allowing a person to act as an electronic notary public without being ~~[appointed]~~ ***registered*** in accordance with NRS 240.181 to 240.206, inclusive, ***and sections 30 to 38.7, inclusive, of this act*** is guilty of a gross misdemeanor.

2. A person who wrongfully obtains, conceals, damages or destroys the technology or device used to create the electronic signature of an electronic notary public is guilty of a gross misdemeanor.

Sec. 55. NRS 719.200 is hereby amended to read as follows:

719.200 1. Except as otherwise provided in subsection 2, the provisions of this chapter apply to electronic records and electronic signatures relating to a transaction.

2. The provisions of this chapter do not apply to a transaction to the extent it is governed by:

(a) ~~[A]~~ ***Except as otherwise specifically provided by law, a*** law governing the creation and execution of wills, codicils or testamentary trusts;

(b) The Uniform Commercial Code other than NRS 104.1306, 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive; or

(c) The provisions of NRS 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto.

3. The provisions of this chapter apply to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 to the extent it is governed by a law other than those specified in subsection 2.

4. A transaction subject to the provisions of this chapter is also subject to other applicable substantive law.

Sec. 56. Section 4 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 4. (Deleted by amendment.)

Sec. 57. Section 5 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 5. (Deleted by amendment.)

Sec. 58. Section 6 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 6. (Deleted by amendment.)

Sec. 59. Section 8 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 8. (Deleted by amendment.)

Sec. 60. Section 9 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 9. (Deleted by amendment.)

Sec. 61. The provisions of this act are intended to supersede any provisions of Assembly Bill No. 476 of this session that conflict with the provisions of this act.

Sec. 62. NRS 240.193 is hereby repealed.

Sec. 63. 1. This section and sections 56 to 60, inclusive, of this act become effective upon passage and approval.

2. Sections 1 to 28, inclusive, and 61 of this act become effective on July 1, 2017.

3. Sections 29 to 55, inclusive, and 62 of this act become effective:

(a) Upon passage and approval for the purpose of adopting any rules and regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On December 1, 2017, for all other purposes.

TEXT OF REPEALED SECTION

240.193 Requirements for bond; notification of exhaustion of penal sum; release of surety; suspension of appointment; reinstatement of appointment.

1. The bond required to be filed pursuant to NRS 240.192 must be executed by the person applying to become an electronic notary public as principal and by a surety company qualified and authorized to do business in this State. The bond must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the electronic notary public which violates a provision of NRS 240.001 to 240.206, inclusive. The surety company shall pay a final, nonappealable judgment of a court of this State that has jurisdiction, upon receipt of written notice of final judgment. The bond may be continuous, but regardless of the duration of the bond, the aggregate liability of the surety does not exceed the penal sum of the bond.

2. If the penal sum of the bond is exhausted, the surety company shall notify the Secretary of State in writing within 30 days after its exhaustion.

3. The surety bond must cover the period of the appointment of the electronic notary public, except when a surety is released.

4. A surety on a bond filed pursuant to NRS 240.192 may be released after the surety gives 30 days' written notice to the Secretary of State and the electronic notary public, but the release does not discharge or otherwise affect a claim filed by a person for damage resulting from an act of the electronic notary public which is alleged to have occurred while the bond was in effect.

5. The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer covered by a surety bond as required by this section and NRS 240.192 or the penal sum of the bond is exhausted. If the Secretary of State receives notice pursuant to subsection 4 that the bond will be released or pursuant to subsection 2 that the penal sum of the bond is exhausted, the Secretary of State shall immediately notify the electronic notary public in writing that his or her appointment will be suspended by operation of law until another surety bond is filed in the same manner and amount as the bond being terminated.

6. The Secretary of State may reinstate the appointment of an electronic notary public whose appointment has been suspended pursuant to subsection 5 if the electronic notary public, before his or her current term of appointment expires:

(a) Submits to the Secretary of State:

(1) An application for an amended certificate of appointment as an electronic notary public; and

(2) A certificate issued by the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, the county in this State in which the applicant maintains a place of business or is employed, which indicates that the applicant filed a new surety bond with the clerk; and

(b) Pays to the Secretary of State a fee of $10.

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