

FIRST REGULAR SESSION

# SENATE BILL NO. 409

100TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS WIELAND, ROMINE AND CRAWFORD.

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Read 1st time February 19, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2069S.01I

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## AN ACT

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

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

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Section A. Chapters 59, 442, and 486, RSMo, are amended by adding  
2 thereto seventeen new sections, to be known as sections 59.568, 59.569, 442.145,  
3 486.410, 486.415, 486.420, 486.425, 486.430, 486.435, 486.440, 486.445, 486.450,  
4 486.455, 486.460, 486.465, 486.470, and 486.475, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

32       4. The following form of certificate is sufficient for the purposes  
33 of this section, if completed with the information required in  
34 subsection 3 of this section:

35       State of .....

36       County of .....

37       I certify that the foregoing and annexed document entitled

38       ..... (document title, if applicable), (dated) .....

39       (document date, if applicable), and containing ..... pages is

40       a true and correct copy of an electronic document bearing

41       one or more electronic signatures this ..... (date).

42 .....  
43 **Signature of notary public**  
44 **Seal/stamp**  
45 **(.....)**  
46 **Notary Public**  
47 **(My commission expires:**  
48 **.....)**  
49 **(My notary registration number is:**  
50 **.....)**

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

53 **6. A notary public making the certification provided in this**  
54 **section shall:**

55 **(1) Confirm that the electronic document contains an electronic**  
56 **signature that is capable of independent verification and renders any**  
57 **subsequent changes or modifications to the electronic document**  
58 **evident;**

59 **(2) Personally print or supervise the printing of the electronic**  
60 **document onto paper; and**

61 **(3) Not make any changes or modifications to the electronic**  
62 **document other than the certification described in subsection 3 of this**  
63 **section.**

64 **7. If a certificate is completed with the information required by**  
65 **subsection 3 of this section and is attached to or made a part of a paper**  
66 **document, the certificate shall be conclusive evidence that the**  
67 **requirements of subsection 6 of this section have been satisfied with**  
68 **respect to the document.**

69 **8. A document purporting to convey or encumber real property**  
70 **or any interest therein that has been recorded by a clerk or recorder**  
71 **for the jurisdiction in which the real property is located, although the**  
72 **document may not have been certified in accordance with the**  
73 **provisions of this section, shall impart the same notice to third persons**  
74 **and be effective, from the time of recording, as if the document had**  
75 **been certified in accordance with the provisions of this section.**

76 **9. This section does not apply to a plat, map, or survey of real**  
77 **property if under another law of this state or under a rule, regulation,**  
78 **or ordinance applicable to a clerk or recorder:**

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

82           (2) Such plat, map, or survey shall be recorded in a different  
83 location than a deed to real property.

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

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

7           (2) Interacting with another individual by means of  
8 communication technology that complies with the provisions of sections  
9 486.410 to 486.475.

10          2. The acknowledging officer shall designate in the  
11 acknowledgment form, as provided in section 442.210, whether the  
12 principal personally appeared before the officer pursuant to  
13 subdivision (1) or (2) of subsection 1 of this section. In cases of a  
14 personal appearance under subdivision (2) of subsection 1 of this  
15 section, it shall be deemed in compliance with sections 442.150 to  
16 442.360 if the acknowledging officer amends the acknowledgment form  
17 to read "before me personally appears by means of communication of  
18 technology".

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

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

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

7           (b) Interacting with another individual by means of  
8 communication technology that complies with the provisions of sections  
9 486.410 to 486.475;

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

15 speech impairments;

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

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

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

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

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

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

40 (9) "Notarial act", an act, whether performed with respect to a  
41 tangible or electronic record, by a notary public and involving a  
42 function authorized under section 486.250. The term includes taking an  
43 acknowledgment, administering an oath or affirmation, taking a  
44 verification on oath or affirmation, certifying that a copy of a document  
45 is a true copy of another document, and performing any other act  
46 permitted by law;

47 (10) "Outside the United States", outside the geographic  
48 boundaries of a state or commonwealth of the United States, the  
49 District of Columbia, Puerto Rico, the United States Virgin Islands, and  
50 any territory or insular possession subject to the jurisdiction of the  
51 United States;

52           (11) "Principal", an individual:

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

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

57           (12) "Remote online notarial certificate", the form of an  
58 acknowledgment, jurat, verification on oath or affirmation, or  
59 verification of witness or attestation that is completed by a remote  
60 online notary public, and:

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

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

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

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

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

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

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

80           (a) Identify the individual seeking the remote online notary  
81 public's services; and

82           (b) Perform credential analysis;

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

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

          486.420. 1. The secretary of state by rule shall develop and

2 maintain standards for remote online notarization in accordance with  
3 sections 486.410 to 486.475, including but not limited to, standards for  
4 credential analysis and identity proofing.

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

10 3. The rules shall be adopted not later than twelve months from  
11 the date of the enactment of sections 486.410 to 486.475.

486.425. 1. A remote online notary public:

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

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

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

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

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

20 4. An individual registering to perform electronic notarial acts  
21 shall submit to the secretary of state an application in a format  
22 prescribed by the secretary of state which shall include:

23 (1) Disclosure of any and all license or commission revocations  
24 or other disciplinary actions against the registrant; and

25 (2) Any other information, evidence, or declaration required by  
26 the secretary of state.

27 5. Upon the applicant's fulfillment of the requirements for

28 registration under this section, the secretary of state shall approve the  
29 registration. The applicant's notary public commission number shall  
30 act as his or her registration number. Upon successful registration, the  
31 notary public shall also be a remote online notary public throughout  
32 the period of such registration.

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

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

6 (1) In this state;

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

8 (3) Outside the United States if:

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

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

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

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

19 c. Relate to a transaction substantially connected to the United  
20 States.

21 2. The validity of a remote online notarization performed by a  
22 remote online notary public of this state in accordance with sections  
23 486.410 to 486.475 shall be governed by the laws of this state.

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

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

6 (2) The type of notarial act;

7 (3) The type, the title, or a description of the electronic



8 document or proceeding;

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

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

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

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

17 (c) A record of the identity verification made under sections  
18 486.410 to 486.475, if applicable; or

19 (d) The following:

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

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

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

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

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

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

32 (2) Maintain a backup for the electronic journal required by  
33 subsection 1 of this section and the recording required by subsection  
34 2 of this section; and

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

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

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

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

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

47           6. The secretary of state shall establish:

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

50           (2) Procedures for preservation of the audio and video recording  
51 and the electronic journal if the remote online notary public dies or is  
52 adjudicated incompetent, or if the remote online notary public's  
53 commission or authority to perform notarial acts is otherwise  
54 terminated; and

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

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

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

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

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

7 to 486.475 only while the remote online notary public is physically  
8 located within this state.

9       2. In performing a remote online notarization, a remote online  
10 notary public shall verify the identity of a person creating an  
11 electronic signature at the time that the signature is taken by using  
12 communication technology that meets the requirements of sections  
13 486.410 to 486.475 and rules adopted thereunder. Identity shall be  
14 verified by:

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

17       (2) Each of the following:

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

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

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

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

29       4. The electronic notarial certificate for a remote online  
30 notarization shall include a notation that the notarization is a remote  
31 online notarization.

32       5. A remote online notarial act meeting the requirements of  
33 sections 486.410 to 486.475 satisfies the requirement of any law of this  
34 state relating to a notarial act that requires a principal to appear or  
35 personally appear before a notary or that the notarial act be performed  
36 in the presence of a notary.

486.450. A remote online notary public or the remote online  
2 notary public's employer may charge a fee not to exceed twenty-five  
3 dollars for performance of a remote online notarization.

486.455. 1. Except as provided in subsection 2 of this section, a  
2 remote online notary public whose registration terminates shall destroy  
3 the coding, disk, certificate, card, software, or password that enable  
4 electronic affixation of the online notary public's official electronic

5 signature or seal. The remote online notary public shall certify  
6 compliance with this subsection to the secretary of state.

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

486.460. A person who, without authorization, knowingly obtains,  
2 conceals, damages, or destroys the certificate, disk, coding, card,  
3 program, software, or hardware enabling an online notary public to  
4 affix an official electronic signature or seal shall be guilty of a class D  
5 misdemeanor.

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

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

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

Section B. Section A of this act shall become effective July 1, 2020.

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