



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3796

Introduced 2/17/2023, by Rep. Stephanie A. Kifowit

SYNOPSIS AS INTRODUCED:

5 ILCS 312/1-104	from Ch. 102, par. 201-104
5 ILCS 312/2-105	from Ch. 102, par. 202-105
5 ILCS 312/6-102.5	
5 ILCS 312/6-102.75 new	
5 ILCS 312/6A-104	

Amends the Illinois Notary Public Act. Defines "e-mail communication", "government employee", "public body", and "recorded". Makes changes to the definition of "remote notarial act" to allow notarial acts to be performed by email. Authorizes surety bonds to be obtained through email. Allows a public body to establish a signature depository wherein signatures may be used by the public body notaries for future notarization.

LRB103 30142 DTM 56566 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Notary Public Act is amended by
5 changing Sections 1-104, 2-105, 6-102.5, and 6A-104 and by
6 adding Section 6-102.75 as follows:

7 (5 ILCS 312/1-104) (from Ch. 102, par. 201-104)

8 (Text of Section before amendment by P.A. 102-160)

9 Sec. 1-104. Notary Public and Notarization Defined.

10 (a) The terms "notary public" and "notary" are used
11 interchangeably to mean any individual appointed and
12 commissioned to perform notarial acts.

13 (b) "Notarization" means the performance of a notarial
14 act.

15 (c) "Accredited immigration representative" means a
16 not-for-profit organization recognized by the Board of
17 Immigration Appeals under 8 C.F.R. 292.2(a) and employees of
18 those organizations accredited under 8 C.F.R. 292.2(d).

19 (Source: P.A. 93-1001, eff. 8-23-04.)

20 (Text of Section after amendment by P.A. 102-160)

21 Sec. 1-104. Definitions. As used in this Act:

22 "Accredited immigration representative" means a not for

1 profit organization recognized by the Board of Immigration
2 Appeals under 8 C.F.R. 292.29(a) and employees of those
3 organizations accredited under 8 C.F.R. 292.29(d).

4 "Acknowledgment" means a declaration by an individual
5 before a notarial officer that the individual has signed a
6 record for the purpose stated in the record and, if the record
7 is signed in a representative capacity, that the individual
8 signed the record with proper authority and signed it as the
9 act of the individual or entity identified in the record.

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

13 "Communication technology" means an electronic device or
14 process that allows a notary public and a remotely located
15 individual to communicate with each other simultaneously by
16 audio-video communication.

17 "Credential" means a tangible record evidencing the
18 identity of a person, including a valid and unexpired
19 identification card or other document issued by the federal
20 government or any state government that contains the
21 photograph and signature of the principal.

22 "Digital certificate" means a computer-based record or
23 electronic file to a notary public or applicant for commission
24 as an electronic notary public for the purpose of creating an
25 official electronic signature. The digital certificate shall
26 be kept in the exclusive control of the electronic notary

1 public.

2 "Dynamic knowledge based authentication assessment" means
3 an identity assessment that is based on a set of questions
4 formulated from public or private data sources for which the
5 person taking the assessment has not previously provided an
6 answer that meets any rules adopted by the Secretary of State.

7 "Electronic" means of or relating to technology having
8 electrical, digital, magnetic, wireless, optical,
9 electromagnetic, or similar capabilities.

10 "Electronic document" means information that is created,
11 generated, sent, communicated, received, or stored by
12 electronic means.

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

- 16 (1) taking an acknowledgment;
17 (2) administering an oath or affirmation;
18 (3) executing a jurat;
19 (4) certifying a true and correct copy; and
20 (5) performing such other duties as may be prescribed
21 by a specific statute.

22 "Electronic notarial certificate" means the portion of a
23 notarized electronic document that is completed by an online
24 notary public and contains the following:

- 25 (1) the electronic notary public's electronic
26 signature, electronic seal, title, and commission

1 expiration date;

2 (2) other required information concerning the date and
3 placement of the electronic notarization; and

4 (3) the facts attested to or certified by the
5 electronic notary public in the particular notarization.

6 "Electronic notarial certificate" includes the form of an
7 acknowledgment, jurat, verification on oath or affirmation, or
8 verification of witness or attestation that is completed
9 remotely by an electronic notary public and:

10 (1) contains the electronic notary's electronic
11 signature, electronic seal, title and commission, and
12 expiration date;

13 (2) contains other required information concerning the
14 date and place of the electronic notarization;

15 (3) otherwise conforms to the requirements for an
16 acknowledgment, jurat, verification on oath or
17 affirmation, or verification of witness or attestation
18 under the laws of this State; and

19 (4) indicates that the person making the
20 acknowledgment, oath, or affirmation appeared.

21 "Electronic notarization system" means a set of
22 applications, programs, hardware, software, or technology to
23 enable an electronic notary to perform electronic notarial
24 acts through audio-video communication.

25 "Electronic notary public" means a person commissioned by
26 the Secretary of State to perform electronic notarial acts.

1 "Electronic presentation" means the transmission of a
2 quality image of a government-issued identification credential
3 to an electronic notary public through communication
4 technology for the purpose of enabling the electronic notary
5 public to identify the person appearing before the electronic
6 notary public and to perform a credential analysis.

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

9 "Electronic seal" means information within a notarized
10 electronic document that includes the names, commission
11 number, jurisdiction, and expiration date of the commission of
12 an electronic notary public and generally includes the
13 information required to be set forth in a mechanical stamp
14 under subsection (b-5) of Section 3-101.

15 "Electronic signature" means the official signature of the
16 commissioned notary that is on file with the Secretary of
17 State and has been reduced to an electronic format that may be
18 attached to or logically associated with a record and executed
19 or adopted by an individual with the intent to sign the record.

20 "Email communication" means an email message in which the
21 signatory authorizes the notary to complete a remote notarial
22 act and to affix the signature maintained in the signatory
23 depository.

24 "Government employee" means any individual employed by any
25 judicial, legislative, executive, administrative, or advisory
26 body of the State, any State university or college, any

1 county, any township, any city, any village, any incorporated
2 town, any school district, and any other municipal
3 corporation, board, bureau, committee, or commission of this
4 State or any subsidiary body of any of the foregoing.

5 "Identity proofing" means a process or service operating
6 according to criteria approved by the Secretary of state
7 through which a third person affirms the identity of an
8 individual through review of personal information from public
9 and proprietary data sources, including (a) by means of
10 dynamic knowledge-based authentication, such as a review of
11 personal information from public or proprietary data sources;
12 or (b) by means of analysis of biometric data, such as, but not
13 limited to, facial recognition, voiceprint analysis, or
14 fingerprint analysis.

15 "In the presence of" or "appear before" means:

16 (1) being in the same physical location as another
17 person and close enough to see, hear, communicate with and
18 exchange credentials with that person; or

19 (2) being in a different physical location from
20 another person, but able to see, hear, and/or communicate
21 with the person by means of audio-video communication that
22 meets any rules adopted by the Secretary of State.

23 "Notarial act" means an act, whether performed with
24 respect to a tangible or electronic record, that a notary
25 public, a remote notary public, or an electronic notary public
26 may perform under the laws of this State. "Notary act"

1 includes taking an acknowledgment, administering an oath, or
2 affirmation, taking a verification on oath, or affirmation,
3 witnessing or attesting a signature, certifying or attesting a
4 copy, and noting a protest of a negotiable instrument.

5 "Notary public" or "notary" means an individual
6 commissioned to perform notarial acts.

7 "Notarization" means the performance of a notarial act.

8 "Outside the United States" means a location outside of
9 the geographic boundaries of a state or commonwealth of the
10 United States, the District of Columbia, Puerto Rico, the
11 United States Virgin Islands, and any territory, or insular
12 possession, or other location subject to the jurisdiction of
13 the United States.

14 "Principal" means an individual:

15 (1) whose signature is notarized; or

16 "Public body" means all judicial, legislative, executive,
17 administrative, or advisory bodies of the State, a State
18 university or college, a county, a township, a city, a
19 village, an incorporated town, a school district and any other
20 municipal corporation, board, bureau, committee, or commission
21 of this State or any subsidiary body of any of the foregoing.

22 (2) taking an oath or affirmation from the notary but
23 not in the capacity of a witness for the notarization.

24 "Public key certificate" means an electronic credential
25 which is used to identify an individual who signed an
26 electronic record with the certificate.

1 "Real time" means the actual span of uninterrupted time
2 during which all parts of an electronic notarial act occur.

3 "Recorded" means captured via two-way video or captured
4 via email exchange.

5 "Remote notarial act" means a notarial act that is done by
6 way of audio-video communication technology or email
7 communication that allows for direct, contemporaneous
8 interaction between the government employee individual signing
9 the document (the signatory) and a government employee ~~the~~
10 witness by audio-video communication or email communication
11 ~~sight and sound~~ but that requires the notary public to use his
12 or her physical stamp and seal to notarize the document
13 without the aid of an electronic seal or signature.

14 "Remote notary public" means any notary public that
15 performs a remote notarial act.

16 "Tamper evident" means that any change to an electronic
17 document shall display evidence of the change.

18 "Unique to the electronic notary public" and "sole
19 control" mean, with respect to an electronic notarization that
20 the signing device used to affix the electronic signature of
21 the electronic notary public and to render the official
22 electronic seal information tamper evident must be accessible
23 by and attributable solely to the electronic notary public to
24 the exclusion of all other persons and entities for the
25 necessary period of time that such device is engaged and
26 operating to effectuate the authorized electronic

1 notarization.

2 (Source: P.A. 102-160 (See Section 99 of P.A. 102-160 for
3 effective date of P.A. 102-160).)

4 (5 ILCS 312/2-105) (from Ch. 102, par. 202-105)

5 (Text of Section before amendment by P.A. 102-160)

6 Sec. 2-105. Bond. Every application for appointment and
7 commission as a notary public shall be accompanied by an
8 executed bond commencing on the date of the appointment with a
9 term of 4 years, in the sum of \$5,000, with, as surety thereon,
10 a company qualified to write surety bonds in this State. The
11 bond shall be conditioned upon the faithful performance of all
12 notarial acts in accordance with this Act. The Secretary of
13 State may prescribe an official bond form.

14 (Source: P.A. 84-322.)

15 (Text of Section after amendment by P.A. 102-160)

16 Sec. 2-105. Bond.

17 (a) Every application for appointment and commission as a
18 notary public shall be accompanied by or logically associated
19 with an executed bond commencing on the date of the
20 appointment with a term of 4 years, in the sum of \$5,000, with,
21 as surety thereon, a company qualified to write surety bonds
22 in this State. The bond shall be conditioned upon the faithful
23 performance of all notarial acts in accordance with this Act.
24 The Secretary of State may prescribe an official bond form.

1 (b) A notary public that performs notarizations either
2 remotely or electronically and by means of audio-video
3 communication or email communication shall obtain and maintain
4 a surety bond in the amount of \$25,000 from a surety or
5 insurance company licensed to do business in this State, and
6 this bond shall be exclusively conditioned on the faithful
7 performance of remote notarial acts or electronic notarial
8 acts by means of audio-video communication or email
9 communication. When a notary is required to hold both the
10 \$5,000 bond and the \$25,000 bond, one bond totaling \$30,000
11 shall satisfy the provisions of this Section.

12 (c) The bonding company issuing the bond to a notary
13 public or an electronic notary public shall submit
14 verification of the bond information for the notary to the
15 Secretary of State in a format prescribed by the Secretary of
16 State.

17 (Source: P.A. 102-160 (See Section 99 of P.A. 102-160 for
18 effective date of P.A. 102-160).)

19 (5 ILCS 312/6-102.5)

20 (This Section may contain text from a Public Act with a
21 delayed effective date)

22 Sec. 6-102.5. Remote notarial acts.

23 (a) Any commissioned notary public may perform any
24 notarial act described under Section 6-102 remotely, after
25 first determining, either from personal knowledge or from

1 satisfactory evidence, that the signature is that of the
2 person appearing before the notary and named therein. A notary
3 public has satisfactory evidence that a person is the person
4 whose true signature is on a document if that person:

5 (1) is personally known to the notary;

6 (2) is identified upon the oath or affirmation of a
7 credible witness personally known to the notary; or

8 (3) is identified on the basis of identification
9 documents. Identification documents are documents that are
10 (i) valid at the time of the notarial act, (ii) issued by a
11 State agency, federal government agency, or consulate, and
12 (iii) bearing the photographic image of the individual's
13 face and signature of the individual.

14 (b) A remote notarial action must be performed in
15 accordance with the following audio-video communication
16 requirements:

17 (1) Two-way audio-video communication or email
18 communication technology must allow for remotely located
19 notaries and principals to engage in direct,
20 contemporaneous interaction between the individual signing
21 the document (signatory) and the witness by sight, ~~and~~
22 sound, or writing.

23 (2) The two-way audio video communication or email
24 communication technology must be recorded and preserved by
25 the signatory or the signatory's designee for a period of
26 at least 3 years if otherwise required by law.

1 (3) The signatory must attest to being physically
2 located in Illinois during the two-way audio-video
3 communication or email communication.

4 (4) The signatory must affirmatively state on the
5 two-way audio-video communication or email communication
6 what document the signatory is signing.

7 (5) Each page of the document being witnessed must be
8 shown to the witness on the two-way audio-video
9 communication or email communication technology in a means
10 clearly legible to the witness.

11 (6) The act of signing must be captured sufficiently
12 up close on the two-way audio-video communication or email
13 communication for the witness to observe.

14 (c) Application of the notary's seal and signature:

15 (1) The signatory must transmit by overnight mail,
16 fax, or electronic means a legible copy of the entire
17 signed document directly to the notary no later than the
18 day after the document is signed.

19 (2) The notary must sign the transmitted copy of the
20 document as a witness and transmit the signed copy of the
21 document back to the signatory via overnight mail, fax, or
22 electronic means within 24 hours after receipt.

23 (3) If necessary, the notary may sign the original
24 signed document as of the date of the original execution
25 by the signatory provided that the witness receives the
26 original signed document together with the electronically

1 witnessed copy within 30 days after the date of the remote
2 notarization.

3 (d) The Secretary of State shall adopt administrative
4 rules to implement this Section.

5 (Source: P.A. 102-160 (See Section 99 of P.A. 102-160 for
6 effective date of P.A. 102-160).)

7 (5 ILCS 312/6-102.75 new)

8 Sec. 6-102.75. Signature Depository.

9 (a) A public body that wishes for notaries employed by
10 that public body to complete remote notarial acts may
11 establish a signature depository wherein signatures may be
12 used by the public body notaries for future notarization.

13 (b) In order for a signature to be entered into the
14 depository, the signatory must:

15 (1) obtain proper notarization of the document as
16 required by Section 6-102 of this Act; and

17 (2) submit a copy of that document, within 30 business
18 days of the notarization, to the person designated as
19 responsible for maintaining the depository.

20 (c) A signatory may then request a remote notarial act via
21 email communication.

22 (5 ILCS 312/6A-104)

23 (This Section may contain text from a Public Act with a
24 delayed effective date)

1 Sec. 6A-104. Requirements for audio-video communication.

2 (a) An electronic notary public shall arrange for a
3 recording to be made of each electronic notarial act performed
4 using audio-video communication. The audio-video recording
5 required by this Section shall be in addition to the journal
6 entry for the electronic notarial act required by Section
7 3-107. Before performing any electronic notarial act using
8 audio-video communication, the electronic notary public must
9 inform all participating persons that the electronic
10 notarization will be electronically recorded.

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

16 (c) If the person for whom the electronic notarial act is
17 being performed is identified by a credible witness:

18 (1) the credible witness must appear before the
19 electronic notary public; and

20 (2) the recording of the electronic notarial act must
21 include:

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

25 (B) an explanation by the credible witness as to
26 how he or she knows the person for whom the electronic

1 notarial act is being performed and how long he or she
2 has known the person.

3 (d) If otherwise required by law, an ~~An~~ electronic notary
4 public shall keep a recording made pursuant to this Section
5 for a period of not less than 7 years, regardless of whether
6 the electronic notarial act was actually completed.

7 (e) An electronic notary public who performs an electronic
8 notarial act for a principal by means of audio-video
9 communication shall be located within the State of Illinois at
10 the time the electronic notarial act is performed. The
11 electronic notary public shall include a statement in the
12 electronic notarial certificate to indicate that the
13 electronic notarial act was performed by means of audio-video
14 communication. The statement may also be included in the
15 electronic notarial seal.

16 (f) An electronic notary public who performs an electronic
17 notarial act for a principal by means of audio-video
18 communication shall:

19 (1) be located within this State at the time the
20 electronic notarial act is performed;

21 (2) execute the electronic notarial act in a single
22 recorded session that complies with Section 6A-103;

23 (3) be satisfied that any electronic record that is
24 electronically signed, acknowledged, or otherwise
25 presented for electronic notarization by the principal is
26 the same record electronically signed by the electronic

1 notary;

2 (4) be satisfied that the quality of the audio-video
3 communication is sufficient to make the determination
4 required for the electronic notarial act under this Act
5 and any other law of this State; and

6 (5) identify the venue for the electronic notarial act
7 as the jurisdiction within Illinois where the notary is
8 physically located while performing the act.

9 (g) An electronic notarization system used to perform
10 electronic notarial acts by means of audio-video communication
11 shall conform to the requirements set forth in this Act and by
12 administrative rules adopted by the Secretary of State.

13 (h) The provisions of Section 3-107 related respectively
14 to security, inspection, copying, and disposition of the
15 journal shall also apply to security, inspection, copying, and
16 disposition of audio-video recordings required by this
17 Section.

18 (i) The Secretary of State shall adopt administrative
19 rules to implement this Section.

20 (Source: P.A. 102-160 (See Section 99 of P.A. 102-160 for
21 effective date of P.A. 102-160).)

22 Section 95. No acceleration or delay. Where this Act makes
23 changes in a statute that is represented in this Act by text
24 that is not yet or no longer in effect (for example, a Section
25 represented by multiple versions), the use of that text does

1 not accelerate or delay the taking effect of (i) the changes
2 made by this Act or (ii) provisions derived from any other
3 Public Act.