**Section 176.805 Electronic Notarization System Provider Registration, Information Submitted for Registration, and Confidentiality of Certain Information**

a) Certification Required to Provide Electronic Notarization Systems. No person or entity may provide electronic notarization systems under 5 ILCS 312/6A-101 unless certified as a provider by the Secretary of State. All certified providers must apply for certification on an annual, calendar-year basis, with applications for recertification due in the Secretary's office not later than September 1 of each year. Nothing in this Part is intended to prohibit a governmental entity from developing an internal electronic notarization system that complies with the requirement in this Part for certification.

b) Who May Provide Electronic Notarization Systems. Without regard to the specific business operations of the provider, all certified system providers under this Section shall be responsible for ensuring that all of the duties and responsibilities of the system provider are carried out in accordance with this Part. System providers may provide these services through their own resources, through a subsidiary, or through contractual relationships with third parties.

c) The Secretary of State shall be solely responsible for certifying providers that apply for certification with the Secretary. Persons or entities desiring to be certified as providers may apply for certification at any time. An application for certification or recertification as a system provider must include the following information:

1) The legal name of the provider;

2) The type of business organization of the provider;

3) The mailing address, physical address, email address, and website address of the provider;

4) The name and phone number of a contact person for the provider;

5) If the applicant is a business entity, proof that the applicant is in good standing with the Illinois Secretary of State, Business Services Department;

6) An attestation that the technology used by the applicant is in compliance with the provisions of this Part and Article VI-A of the Act relating to the performance of electronic notarial acts, with a copy of all manuals and information guides made available to Illinois electronic notaries;

7) A certification that the vendor shall comply with the Illinois Notary Public Act and this Part regarding retention and storage and the disposition of documents, the electronic journal, and audio-video recordings if the provider no longer makes its system available to electronic notaries public for any reason;

8) Copies of publicly available policy and procedure manuals and training materials that are used for training or usage in Illinois;

9) Proof of liability insurance. The provider must maintain general commercial liability or product liability insurance with minimum liability limits of $1 million per occurrence and $3 million aggregate total. The Secretary will accept other commercially acceptable insurance arrangements, in the same minimum amounts, if the Secretary determines that they provide an equivalent level of coverage; and

10) A declaration that the system complies with the laws of the State of Illinois governing electronic notarial acts.

d) An electronic notarization system provider may assert a claim that the information provided to the Secretary of State under subsection (b)(7) by an entity applying for certification with the Secretary of State is the provider's confidential, proprietary information and a trade secret of the system provider and is not a public record nor subject to subsection 7(g) of the Freedom of Information Act [5 ILCS 140].

e) The Secretary of State will certify a system if it meets all of the following requirements:

1) Provides secure access to the system by two-factor verification or another secure means that identifies the electronic notary public accessing the system;

2) Takes all reasonable steps to ensure that an electronic notary public using its system is duly commissioned by the Secretary of State and that the commission is in active status;

3) Provides for uninterrupted, continuous, and simultaneous audio-video communication between an electronic notary public and a principal;

4) Provides audio-video communication with a video resolution and audio quality that ensures that:

A) An electronic notary public and a principal can see, hear, and communicate with each other in real time; and

B) An electronic notary public can match the appearance of a principal with the credential presented by the principal;

5) Provides a secure communication link for audio-video communication that ensures that only the parties to an electronic notarial act and those persons authorized by each party to the electronic notarial act are part of the audio-video communication;

6) For systems providing an electronic journal of electronic notarial acts, ensures it complies with the provisions of this Subpart J and 5 ILCS 312/3-107 governing the requirement that an electronic notary public keep an electronic journal for each electronic notarial act;

7) Provides for the recording of an electronic notarial act performed by audio-video communication that complies with 5 ILCS 312/6A-104 and that is of sufficient quality to ensure verification of the recorded electronic notarial act;

8) Enables an electronic notary public to be satisfied that an electronic document presented for the performance of an electronic notarial act is the same electronic document on which the electronic notarial act was performed;

9) Enables an electronic notary public to affix the wording of a notarial certificate required by 5 ILCS 312/6A-105, as applicable, and the electronic official notary seal of the electronic notary public required by 5 ILCS 312/3-101;

10) Enables a person viewing an electronic document on which an electronic notarial act was performed to view the electronic signature and electronic seal of the electronic notary public who performed the electronic notarial act;

11) Provides a method for determining whether an electronic document on which an electronic notarial act was performed has been altered after the electronic seal of the electronic notary public who performed the electronic notarial act has been affixed to the electronic document and the electronic notarial act was completed;

12) Prevents unauthorized access to:

A) An audio-video communication between an electronic notary public and a principal;

B) The recording of an electronic notarial act required by 5 ILCS 312/6A-104 for an electronic notarial act performed using audio-video communication;

C) Any personally identifiable information used in a credential analysis, identity proofing, or any other part of an audio-video communication, including without limitation:

i) A method of credential analysis and the output of that analysis;

ii) Any credential presented to an electronic notary public;

iii) The questions and answers used to conduct a dynamic knowledge-based authentication assessment; and

iv) The principal's birthdate, Social Security number, and other personally identifiable information;

D) The electronic document on which an electronic notarial act was performed; and

13) Provides a method of generating a paper copy of the electronic journal or journal entry of an electronic notary public and an electronic document on which an electronic notarial act was performed, including, without limitation, the electronic notarial certificate for the electronic document, the electronic signature and electronic seal of the electronic notary public who performed the electronic notarial act and any other document associated with the electronic document.

14) Submits the following plans:

A) A cybersecurity plan outlining security, audit, and other procedures to ensure that the electronic notarization system is secure from cyberattacks, intrusion, and compromise of the user data:

B) A business continuity plan in the case of business interruptions that last longer than two weeks; and

C) A business termination and succession plan in the case of the termination of business by the electronic notarization system provider.

f) The Secretary will notify the applicant to be certified or recertified as a system provider in writing whether the application has been approved or denied. Before denying an application due to minor typographical or clerical errors, the Secretary will advise the applicant of the error and give the applicant 10 business days to correct the error.

g) If an original or amended application to be certified or recertified as a system provider is denied, the applicant may not reapply until 12 months after the date of the denial or the date of the final order of the Secretary upholding the denial if the decision is reviewed in a formal administrative hearing. Before denying an application based on errors, the Secretary of State shall advise the applicant of the error and give the applicant 30 business days to correct the error.

h) In deciding whether to grant or deny an application, the Secretary of State will take into consideration the applicant's past performance in Illinois and other jurisdictions, whether the applicant's license or certification has ever been suspended, revoked, denied, canceled, or withdrawn, and whether another state has denied the applicant's application to operate as a provider in that state.

i) An applicant that has been certified under this Section may at any time submit an amended application seeking certification to provide systems in addition to the systems previously certified for use by the applicant.

j) If there is any change after a provider's certification that affects the ability of an electronic notary public to comply with this Part when performing an electronic notarial act, the provider must immediately notify the Secretary of State of the change. Upon receiving notice of the change, the Secretary of State will determine whether the provider continues to comply with this Part. If the Secretary of State determines that the provider no longer complies with this Part, a provider shall not allow the use of the system to perform an electronic notarial act in this State.

k) Services That Must Be Provided. After certification or recertification by the Secretary, providers shall provide the following services and meet the following requirements:

1) The provider shall only allow the use of systems that have been authorized in Illinois under this Section;

2) The provider shall provide a toll-free customer service/question/complaint hotline, online chat feature, or a dedicated email address that is answered, at a minimum, between 9:00 am and 5:00 pm, Central Time, Monday through Friday;

3) The provider must provide a course of training and written instructions for electronic notaries on operation, maintenance, and safeguards against improper operations for use of the system and, if providing electronic journal capability, instruct the electronic notary on maintaining the required journal of notarial acts performed on the system (see Subpart J). The provider must give the Secretary of State copies of all materials used in the course of this training and available to Illinois electronic notaries;

4) Upon an inquiry from the Secretary of State, providers must verify to the Secretary of State within seven days whether an Illinois electronic notary has been enrolled in the system and provide the Secretary, upon request, with additional reports including but not limited to records of usage in Illinois;

5) The provider must notify the Secretary of State in writing within 10 business days if the provider or the manufacturer becomes unable to provide systems in Illinois or if the provider has been suspended or decertified in any other jurisdiction;

6) The Secretary of State may designate the form, format, and method of delivery (e.g., facsimile, electronic transfer, etc.), for any reports, information, or data required to be filed with the Secretary under this Section, including but not limited to, noncompliance report forms, tampering, or certifications;

7) Upon an allegation that the system provider failed to comply with a material provision of this Part, the Director of Index will notify the system provider, in writing, of the allegations. Within 30 days after receiving the written notice from the Director, the provider must respond to the allegations in writing, and provide an explanation of any corrective action taken. If the provider fails to correct any noncompliance found, the Secretary will deny, suspend, or revoke the certification. This penalty will be in addition to any private causes of action that may exist for an electronic notary that has been aggrieved by the noncompliance of the provider;

8) Upon the request of the Secretary of State, the provider shall, at no cost to the Secretary of State, provide the Secretary with an online demonstration and allow the Secretary of State to ask any relevant questions. The system provider shall also provide to the Secretary a publicly available, detailed description of the system, including complete instructions for operation provided to notaries public.

9) Providers must maintain records related to enrolled electronic notaries for 7 years after the electronic notary disenrolls from the system.

10) Providers shall, upon request of the Secretary of State, submit information regarding the operation of their platform that includes, but is not limited to, the number of current or previous Illinois electronic notaries registered to the platform and the number and type of electronic notarizations performed on the platform by Illinois notaries.

l) Criteria for Certification of Systems. Only systems that have been certified for use in Illinois under this Section may be used by Illinois electronic notaries. Certification of a system will be based on whether the system complies with any nationally recognized standards and this Part.

m) Decertification or Suspension of Providers. The Secretary of State may suspend or decertify a provider from providing electronic notarization systems in Illinois. The Secretary shall provide a written warning, and 15 days to come into compliance, to a provider regarding any violation of this Section that may lead to suspension or decertification. The provider shall respond in writing to the Secretary describing the course of corrective action. If the Director of the Index Department determines that the course of corrective action does not bring the system provider into full compliance with the Act and this Part, or there are recurring instances of the violations, the Secretary may decertify the provider from providing systems in Illinois or suspend the provider from allowing any new enrollments for 3 months. The following are considered actions warranting decertification or suspension:

1) Failure to provide information, as requested, to the Secretary of State in a timely manner;

2) Failure to maintain liability insurance as required;

3) Failure to comply with the duties and obligations contained in this Part;

4) Failure to provide Illinois electronic notaries with correct information regarding the requirements of this Section;

5) Failure to report enrollments and disenrollments to the Secretary within seven days after the enrollment or disenrollment;

6) Failure to inform the Secretary of suspension or decertification from service in another jurisdiction within 30 days;

7) Giving any instruction, codes, procedures, technological information, or advice to a notary that results in or could result in the system being circumvented by a user or third party;

8) Allowing enrollment by a person that is not commissioned as an electronic notary in Illinois;

9) Failure to meet any of the requirements of the Act or this Subpart; and

10) Solicitation of an Illinois electronic notary for any service or product other than the system that has been certified.

11) Has ceased operation as an electronic notarization system provider in the State of Illinois.

n) Notification of Decertification or Decision Not to Recertify. When the Secretary decides not to recertify or to decertify a provider or a provider ceases to operate, the Secretary will notify all affected electronic notaries public in writing. The notifications shall be sent not less than 30 days after the decision or, if the provider requests a formal administrative hearing within that 30-day period to review the decision, notification will not be sent until the entry of a final order of the hearing officer upholding the decision.

o) Applicants Who Are Denied. Applicants whose applications for certification or recertification have been denied and providers that have been suspended or decertified may request an administrative hearing under Subpart K. Decisions not to recertify or to suspend or decertify will not be carried out until at least 30 days after the notice of the decision has been sent to the applicant or provider or, if the applicant or provider requests a hearing within that 30-day period, until the entry of a final order of the hearing officer upholding that decision. The hearings held under this Part shall be conducted in accordance with all the rights, privileges, and procedures set forth in Subpart K. A request for a hearing to contest a decision to deny certification or recertification or to decertify must be made in writing and must be sent to the Office of the Secretary of State, Department of Administrative Hearings, Michael J. Howlett Building, Room 207, Springfield, Illinois 62756, (217) 524-0124.

p) Solicitation by Provider. Any solicitation sent from a provider to a potential user must conspicuously and in bold font include the following statements: "(name of provider) is a privately owned entity and is not owned, operated, or endorsed by the Illinois Secretary of State or any other Illinois government agency" and "(name of provider) is not the sole provider authorized by the Secretary of State". The solicitation or any correspondence from the provider may not be attached to or have the appearance of any official correspondence sent by the Illinois Secretary of State, may not state or otherwise indicate that the provider is the sole or only provider in Illinois. A system provider may not use any personal information (including the name, address, telephone number, or email address) provided by a notary to solicit the notary for any service or product other than the certified electronic notarization system.

q) Publication of Provider Lists. A list of certified electronic notarization system providers, in no particular order, will be published on the Illinois Secretary of State's website (https://www.ilsos.gov/departments/index/notary/home.html) upon certification.

(Source: Amended at 49 Ill. Reg. 584, effective January 1, 2025)