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4

A Bill

HOUSE BILL 1479

5 By: Representative Sturch
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ARKANSAS ELECTRONIC NOTARY
9 PUBLIC ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11
12 TO CREATE THE ARKANSAS ELECTRONIC NOTARY
13 PUBLIC ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 21, Chapter 14, is amended to add an
20 additional subchapter to read as follows:

Subchapter 3 – The Electronic Notary Public Act

21-14-301. Title.

22
23 This subchapter shall be known and may be cited as the "Arkansas
24 Electronic Notary Public Act".
25

21-14-302. Definitions.

26
27 As used in this subchapter:

28
29 (1) "Electronic" means relating to technology having electrical,
30 digital, magnetic, wireless, optical, electromagnetic, or similar
31 capabilities;

32 (2) "Electronic document" means information that is created,
33 generated, sent, communicated, received, or stored by electronic means;

34 (3)(A) "Electronic notarial act" means an official act by a
35 notary public performed with respect to an electronic document and using
36 electronic means authorized by the Secretary of State;



1 (B) "Electronic notarial act" includes:
 2 taking an acknowledgment, administering an oath or affirmation, taking a
 3 verification on oath or affirmation, witnessing or attesting a signature,
 4 certifying or attesting a copy, and noting a protest of a negotiable
 5 instrument

6 (4) "Electronic notarial certificate" means the portion of a
 7 notarized electronic document that:

8 (A) Is completed by the notary public;

9 (B) Bears the following of the notary public:

10 (i) Signature or official electronic seal;

11 (ii) Official title;

12 (iii) Commission number;

13 (iv) Commission expiration date; and

14 (v) All required information regarding the date and
 15 place of the electronic notarial act; and

16 (C) States the facts attested to or certified by the
 17 notary public in an electronic notarization;

18 (5) "Electronic notary seal" or "official electronic seal" means
 19 information within a notarized document that includes:

20 (A) The following information about the notary public:

21 (i) Name;

22 (ii) Jurisdiction of appointment;

23 (iii) Commission number; and

24 (iv) Commission expiration date; and

25 (B) Information that generally corresponds to dates in
 26 notary public seals utilized on paper documents under § 21-14-107;

27 (6) "Electronic notary public" means a notary public who has
 28 registered with the Secretary of State and possesses the capability of
 29 performing electronic notarial acts;

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

33 (8) "Non-repudiation" means the inability of the signer of an
 34 electronic document to deny his or her electronic signature without a factual
 35 basis;

36 (9) "Notary public electronic signature" means the forms of

1 electronic signatures that have been approved by the Secretary of State as an
2 acceptable means for an electronic notary to affix his or her official
3 signature to an electronic record that is being notarized;

4 (10) "Physical proximity" means the principal and the notary
5 public are physically close enough to see, hear, communicate, and give
6 identification credentials to each other without reliance on an electronic
7 device such as a telephone, computer, video camera, or facsimile machine;

8 (11) "Registration" or "register" means a separate commission to
9 perform electronic notarial acts under the laws of this state;

10 (12) "Solution provider" means a business entity that has
11 submitted an application, meets standards, and has been approved by the
12 Secretary of State to offer electronic notarization solutions to duly
13 commissioned electronic notaries public;

14 (13) "Tamper-evident" means any changes to an electronic
15 document that display evidence of the change;

16 (14) "Traditional notary public" means a person commissioned by
17 the Secretary of State to perform notarial acts under § 21-14-101 et seq.;
18 and

19 (15) "Unique to the electronic notary public or under sole
20 control" means the device or system the notary uses to sign and seal the
21 document that is accessible only by the notary, attributed to the notary, and
22 not any other person or entity.

23
24 21-14-303. Appointment and commission.

25 A notary public who is appointed and commissioned by the Secretary of
26 State as a traditional notary public and who is in good standing with the
27 Secretary of State is eligible to become an electronic notary public.

28
29 21-14-304. Registration and application.

30 (a)(1)(A) The Secretary of State shall require a notary public to
31 register the capability to notarize electronically before performing an
32 electronic notarial act.

33 (B) The Secretary of State shall promulgate rules to
34 enforce the requirement under subdivision (a)(1)(A) of this section.

35 (2) A person who seeks to become an electronic notary public
36 shall submit to the Secretary of State:

1 (A) An application stating the intent to become an
 2 electronic notary public on a form provided by the Secretary of State;

3 (B) An attestation that he or she has not been convicted
 4 of a felony; and

5 (C) A filing fee of twenty dollars (\$20.00).

6 (b) An applicant shall:

7 (1) Successfully complete an approved training course provided
 8 by the Secretary of State; and

9 (2)(A) Pass an examination approved by the Secretary of State.

10 (B) An applicant may attend the exam up to two (2) times
 11 in a twelve-month period.

12 (C) If the applicant does not pass the examination during
 13 the time period in subdivision (b)(2)(B) of this section, he or she shall
 14 repeat the application process under this section.

15
 16 21-14-305. Term and renewal.

17 (a) The commission date of the electronic notary public shall begin on
 18 the date the person passes the examination under § 21-14-304.

19 (b) The term of the electronic notary public shall not extend past the
 20 expiration date of the surety bond for the traditional notary public
 21 commission.

22 (c) An electronic notary public shall every two (2) years of his or
 23 her commission:

24 (1) Complete a refresher training course offered and approved by
 25 the Secretary of State; and

26 (2) Remit to the Secretary of State evidence of successful
 27 completion of the course under subdivision (c)(1) of this section on a form
 28 provided by the Secretary of State.

29 (d) The electronic notary public may submit an application for the
 30 renewal of his or her electronic notary commission to the Secretary of State
 31 no more than thirty (30) calendar days before the expiration of his or her
 32 electronic notary commission.

33 (e) To renew an electronic notary commission, a person shall complete
 34 the procedure under § 21-14-304.

35
 36 21-14-306. Form and manner of performing an electronic notarial act.

1 (a) An electronic notarial act shall be executed through an approved
 2 solution provider.

3 (b) When performing an electronic notarial act, an electronic notary
 4 public shall:

5 (1) Complete an electronic notarial certificate that shall
 6 include all information necessary in a paper-based notarization under § 21-
 7 14-107; and

8 (2)(A) Attach his or her electronic signature and seal to the
 9 certificate in a tamper-evident manner.

10 (B) Evidence of tampering may be used as proof by the
 11 Secretary of State to determine whether the electronic notarial act is valid
 12 or invalid.

13 (c) The electronic signature of an electronic notary public is
 14 reliable if the electronic seal is:

15 (1) Unique to the electronic notary public;

16 (2) Capable of independent verification;

17 (3) Retained under the sole control of the electronic notary
 18 public; and

19 (4) Attached to or associated with the electronic document in a
 20 tamper-evident manner.

21 (d)(1) The electronic signature of an electronic notary public in
 22 combination with the electronic notary seal shall be used only for the
 23 purpose of performing an electronic notarial act.

24 (2) The electronic notary public shall not disclose access
 25 information used to affix the electronic signature of the electronic notary
 26 public except when requested by:

27 (A) Law enforcement;

28 (B) The courts; or

29 (C) An electronic document preparation and transmission
 30 vendor.

31 (3) Control of security aspects remains under the sole control
 32 of the commissioned electronic notary public, and include without
 33 limitation:

34 (A) Passwords;

35 (B) Token devices;

36 (C) Biometrics;

1 (D) Personal identification numbers; and

2 (E) Phrases.

3 (e) The liability, sanctions, and remedies for the improper
 4 performance of electronic notarial acts are the same under the law for the
 5 improper performance of a notarial act performed by a traditional notary
 6 public underacts under §§ 21-14-111 - 21-14-113.

7
 8 21-14-307. Physical proximity of signers of electronic documents
 9 required.

10 (a) An electronic notary public shall not perform an electronic
 11 notarial act if the document signer does not appear in person before the
 12 electronic notary public at the time of the electronic notarial act.

13 (b)(1) The methods for identifying a document signer for an electronic
 14 notarial act shall be the same as the methods required for a paper-based
 15 notarization under § 21-14-101 et seq.

16 (2) The electronic notary public shall not under any
 17 circumstances base identification merely upon familiarity with the electronic
 18 signature of the signer or an electronic verification process that
 19 authenticates the electronic signature of the signer when the signer is not
 20 in the physical presence of the electronic notary public.

21
 22 21-14-308. Fees.

23 (a) An electronic notary public may charge and collect fees that are:

24 (1) Reasonably established by the electronic notary public; and

25 (2) Disclosed and agreed upon by the client and principal before
 26 the electronic notarial act occurs.

27 (b)(1) An electronic notary public who knowingly charges, demands, or
 28 receives a fee not authorized by law or who charges, demands, or receives a
 29 fee greater than provided under this section is guilty of a violation.

30 (2) Upon conviction, he or she shall be fined in a sum not less
 31 than one hundred dollars (\$100) for each offense.

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 34 **APPROVED: 03/01/2017**