

1 State of Arkansas As Engrossed: H3/3/21 H4/13/21 H4/15/21
2 93rd General Assembly **A Bill**
3 Regular Session, 2021

HOUSE BILL 1367

4
5 By: Representative Penzo
6 By: Senator B. Ballinger

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8 **For An Act To Be Entitled**

9 AN ACT TO REGULATE THE WITNESSING OF CERTAIN
10 DOCUMENTS BY A NOTARY PUBLIC; TO DECLARE AN
11 EMERGENCY; AND FOR OTHER PURPOSES.

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14 **Subtitle**

15 TO REGULATE THE WITNESSING OF CERTAIN
16 DOCUMENTS BY A NOTARY PUBLIC; AND TO
17 DECLARE AN EMERGENCY.

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19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code § 21-14-107(f)(2), concerning the signature
23 and seal of a notary public, is amended to read as follows:

24 (2)(A) A Except as provided in subdivision (f)(2)(B) of this
25 section, a notarial certificate is incomplete if:

26 ~~(A)(i)~~ The information within the notarial
27 certificate is known or believed by the notary public to be false;

28 ~~(B)(ii)~~ A notary public affixes an official
29 signature or seal on a the notarial certificate that is incomplete under
30 subsection (a) or subsection (b) of this section;

31 ~~(C)(iii)~~ An official signature or seal on a the
32 notarial certificate is known to be executed at a time when the principal or
33 signer was not present; or

34 ~~(D)(iv)~~ A The signed or sealed notarial certificate
35 is executed with the understanding that the notarial certificate will be
36 completed or attached to a document outside of the presence of the notary



1 public.

2 (B)(i) A notarial certificate is complete if an official
3 signature or seal on the notarial certificate is executed at a time when the
4 principal or signer is not present in person but is otherwise present
5 remotely through real-time audio and visual means.

6 (ii) A signed or sealed notarial certificate is
7 allowed to be executed with the understanding that the notarial certificate
8 will be completed or attached to a document outside of the physical presence
9 of the notary public if the notary public is present via real-time audio and
10 visual means.

11 (C) As used in this subdivision (f)(2):

12 (i) "Notary public" means a notary public who is:

13 (a) An attorney licensed by the State of
14 Arkansas;

15 (b) A title agent licensed by the State of
16 Arkansas;

17 (c) Supervised by an attorney or a title agent
18 licensed by the State of Arkansas; or

19 (d) Employed by a:

20 (1) Nonbank financial institution
21 licensed or registered by the State Securities Department; or

22 (2) Bank, savings and loan association,
23 or state or federal credit union with federal depository insurance;

24 (ii)(a) "Real-time audio and visual means" means
25 technology by which all parties can see and hear the other parties
26 simultaneously.

27 (b) "Real-time audio and visual means"
28 includes without limitation videoconference technology; and

29 (iii) "Videoconference technology" means Skype,
30 Zoom, FaceTime, and other similar technologies.

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32 SECTION 2. Arkansas Code Title 21, Chapter 14, Subchapter 1, is
33 amended to add an additional section to read as follows:

34 21-14-115. Notary public – Definitions.

35 (a) As used in this section:

36 (1) "Notary public" means a notary public who is:

1 (A) An attorney licensed by the State of Arkansas;
2 (B) A title agent licensed by the State of Arkansas;
3 (C) Supervised by either an attorney or a title agent
4 licensed by the State of Arkansas;

5 (D) Employed by a:

6 (i) Nonbank financial institution licensed or
7 registered by the State Securities Department; or

8 (ii) Bank, savings and loan association, or state or
9 federal credit union with federal depository insurance; or

10 (E) An attorney who is eligible under § 12-64-105(a);

11 (2)(A) "Real-time audio and visual means" means technology by
12 which all parties can see and hear the other parties simultaneously.

13 (B) "Real-time audio and visual means" includes without
14 limitation videoconference technology; and

15 (3) "Videoconference technology" means Skype, Zoom, FaceTime,
16 and other similar technologies.

17 (b)(1) A notary public may notarize signatures, including
18 acknowledgments and jurats, virtually through real-time audio and visual
19 means, provided that the notary public is physically located in the State of
20 Arkansas at the time of signing and the signing of documents is visually seen
21 by the person who confirms it.

22 (2)(A) An individual who:

23 (i) Witnesses a document through real-time audio and
24 visual means may be considered an in-person witness if the presence and
25 identity of the witnesses are validated at the time of signing by a notary
26 public; or

27 (ii) Signs a document through real-time audio and
28 visual means may be considered in the presence of an in-person witness if the
29 presence and identity of the witnesses are validated at the time of signing
30 by a notary public.

31 (B) The identity and physical presence of witnesses and
32 signers in this state shall be validated at the time of execution of the
33 documents to be witnessed.

34 (3)(A) If two (2) or more individuals sign a document
35 simultaneously in different locations, the individuals shall necessarily sign
36 separate signature pages, and all documents executed under this section shall

1 be executed in counterparts.

2 (B) Absent an express prohibition in a document against
3 signing in counterparts, all legal documents, including without limitation
4 deeds, last wills and testaments, durable powers of attorney, and healthcare
5 proxies, may be signed in counterparts.

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7 SECTION 3. Arkansas Code § 21-14-202 is amended to read as follows:

8 21-14-202. Use of facsimile signatures and seals authorized – Filing
9 required – Definition.

10 (a) Any Except as provided in subsection (b) of this section, a notary
11 public may affix a notary certificate bearing the notary public's facsimile
12 signature and facsimile seal in lieu of the notary public's manual signature
13 and rubber or embossed seal in blue or black ink on a commercial document,
14 after filing with the Secretary of State:

15 (1) The notary public's manual signature certified by the notary
16 public under oath;

17 (2) A general description of the types of commercial documents
18 to be notarized by facsimile signature and seal;

19 (3) The name and manual signature of any other person or persons
20 signing the commercial documents by manual or facsimile signature; and

21 (4) The written consent of any other person or persons signing
22 the commercial documents to the use of the notary public's facsimile
23 signature and facsimile seal on the commercial documents.

24 (b)(1) A notary public does not have to file with the Secretary of
25 State his or her signatures, general descriptions of potential commercial
26 documents to be notarized via facsimile signature, the names of persons
27 signing documents via facsimile signature, or the written consent of such
28 persons if the notary public determines that the commercial documents would
29 be best notarized via facsimile signature.

30 (2) As used in this subsection, "notary public" means a notary
31 public who is:

32 (A) An attorney licensed by the State of Arkansas;

33 (B) A title agent licensed by the State of Arkansas;

34 (C) Supervised by either an attorney or a title agent
35 licensed by the State of Arkansas; or

36 (D) Employed by a:

- 1 (i) Nonbank financial institution licensed or
- 2 registered by the State Securities Department; or
- 3 (ii) Bank, savings and loan association, or state or
- 4 federal credit union with federal depository insurance.

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6 SECTION 4. DO NOT CODIFY. RETROACTIVITY. This act is retroactive to

7 March 30, 2020.

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9 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the

10 General Assembly of the State of Arkansas that the risk of exposure to

11 coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome

12 coronavirus 2 (SARS-CoV-2) or any of its mutations is causing delays in

13 conducting business and satisfying requirements for notarization and signing

14 of certain documents due to the inability to hold in-person meetings; that a

15 need exists to allow for remote witnessing of certain documents; and that

16 this act is immediately necessary because businesses in Arkansas will suffer

17 and the question as to the legal effectiveness of signatures during a

18 disaster emergency can result in confusion and uncertainty and it is the

19 intent of the General Assembly that this act be retroactive to prevent

20 further harm to businesses and citizens. Therefore, an emergency is declared

21 to exist, and this act being immediately necessary for the preservation of

22 the public peace, health, and safety shall become effective on:

23 (1) The date of its approval by the Governor;

24 (2) If the bill is neither approved nor vetoed by the Governor,

25 the expiration of the period of time during which the Governor may veto the

26 bill; or

27 (3) If the bill is vetoed by the Governor and the veto is

28 overridden, the date the last house overrides the veto.

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30 /s/Penzo

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