

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1367

5 By: Representative Penzo
6

For An Act To Be Entitled

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

12 TO REGULATE THE WITNESSING OF CERTAIN
13 DOCUMENTS BY A NOTARY PUBLIC; AND TO
14 DECLARE AN EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 21-14-107(f)(2), concerning the signature
22 and seal of a notary public, is amended to read as follows:

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

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

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

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

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



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

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

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

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

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

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

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

18 (d) Employed by a financial institution
 19 registered or insured with the State Bank Department, the State Securities
 20 Department, or the National Credit Union Administration;

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

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

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

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

31 21-14-115. Notary public – Definitions.

32 (a) As used in this section:

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

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

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

36 (C) Supervised by either an attorney or a title agent

1 licensed by the State of Arkansas; or

2 (D) Employed by a financial institution registered or
 3 insured with the State Bank Department, the State Securities Department, or
 4 the National Credit Union Administration;

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

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

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

11 (b)(1) A notary public may notarize signatures, including
 12 acknowledgments and jurats, virtually through real-time audio and visual
 13 means, provided that the notary public and the signer are both physically
 14 located in the State of Arkansas at the time of signing and the signing of
 15 documents is visually seen by the person who confirms it.

16 (2)(A) An individual who:

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

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

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

28 (3)(A) If two (2) or more individuals sign a document
 29 simultaneously in different locations, the individuals shall necessarily sign
 30 separate signature pages, and all documents executed under this section shall
 31 be executed in counterparts.

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

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1 SECTION 3. Arkansas Code § 21-14-202 is amended to read as follows:
 2 21-14-202. Use of facsimile signatures and seals authorized – Filing
 3 required – Definition.

4 (a) Any Except as provided in subsection (b) of this section, a notary
 5 public may affix a notary certificate bearing the notary public’s facsimile
 6 signature and facsimile seal in lieu of the notary public’s manual signature
 7 and rubber or embossed seal in blue or black ink on a commercial document,
 8 after filing with the Secretary of State:

9 (1) The notary public’s manual signature certified by the notary
 10 public under oath;

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

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

15 (4) The written consent of any other person or persons signing
 16 the commercial documents to the use of the notary public’s facsimile
 17 signature and facsimile seal on the commercial documents.

18 (b)(1) A notary public does not have to file with the Secretary of
 19 State his or her signatures, general descriptions of potential commercial
 20 documents to be notarized via facsimile signature, the names of persons
 21 signing documents via facsimile signature, or the written consent of such
 22 persons if the notary public determines that the commercial documents would
 23 be best notarized via facsimile signature.

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

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

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

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

30 (D) Employed by a financial institution registered or
 31 insured with the State Bank Department, the State Securities Department, or
 32 the National Credit Union Administration.

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 34 SECTION 4. Arkansas Code § 21-14-306, concerning the form and manner
 35 of performing an electronic notarial act, is amended to add an additional
 36 subsection to read as follows:

1 (f)(1) An electronic notary public is not required if the notary
 2 public has sufficient physical proximity to allow for the use of and reliance
 3 on an electronic device, including without limitation a telephone, computer,
 4 video camera, or facsimile machine, and otherwise registers with a separate
 5 commission to perform electronic notarial acts under the laws of this state.

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

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

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

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

12 (D) Employed by a financial institution registered or
 13 insured with the State Bank Department, the State Securities Department, or
 14 the National Credit Union Administration.

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 16 SECTION 5. Arkansas Code § 21-14-307 is amended to read as follows:

17 21-14-307. Physical proximity of signers of electronic documents
 18 required - Definitions.

19 (a) ~~An~~ Except as provided in subsection (c) of this section, an
 20 electronic notary public shall not perform an electronic notarial act if the
 21 document signer does not appear in person before the electronic notary public
 22 at the time of the electronic notarial act.

23 (b)(1) The methods for identifying a document signer for an electronic
 24 notarial act shall be the same as the methods required for a paper-based
 25 notarization under this chapter.

26 (2) The electronic notary public shall not under any
 27 circumstances base identification merely upon familiarity with the electronic
 28 signature of the signer or an electronic verification process that
 29 authenticates the electronic signature of the signer when the signer is not
 30 in the physical presence of the electronic notary public.

31 (c)(1) An electronic notary public is not required if the notary
 32 public has sufficient physical proximity to allow an electronic notary public
 33 to perform and witness electronic notarial acts when the document signer or
 34 witness does not appear in person before the electronic notary public at the
 35 time of the electronic notarial act, but is otherwise present via real-time
 36 audio and visual means.

(2) As used this subsection:

(A) "Notary public" means a notary public who is:

(i) An attorney licensed by the State of Arkansas;

(ii) A title agent licensed by the State of

Arkansas;

(iii) Supervised by an attorney or a title agent

licensed by the State of Arkansas; or

(iv) Employed by a financial institution registered

or insured with the State Bank Department, the State Securities Department,

or the National Credit Union Administration;

(B)(i) "Real-time audio and visual means" means technology

by which all parties can see and hear the other parties simultaneously.

(ii) "Real-time audio and visual means" includes

without limitation videoconference technology; and

(C) "Videoconference technology" means Skype, Zoom,

FaceTime, and other similar technologies.

SECTION 6. DO NOT CODIFY. RETROACTIVITY. This act is retroactive to March 30, 2020.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations is causing delays in conducting business and satisfying requirements for notarization and signing of certain documents due to the inability to hold in-person meetings; that a need exists to allow for remote witnessing of certain documents; and that this act is immediately necessary because businesses in Arkansas will suffer and the question as to the legal effectiveness of signatures during a disaster emergency can result in confusion and uncertainty and it is the intent of the General Assembly that this act be retroactive to prevent further harm to businesses and citizens. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

1 the expiration of the period of time during which the Governor may veto the
2 bill; or

3 (3) If the bill is vetoed by the Governor and the veto is
4 overridden, the date the last house overrides the veto.

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