

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

As Engrossed: H3/3/21

A Bill

HOUSE BILL 1367

5 By: Representative Penzo
6 By: Senator B. Ballinger
7

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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Subtitle

15 TO REGULATE THE WITNESSING OF CERTAIN
16 DOCUMENTS BY A NOTARY PUBLIC; AND TO
17 DECLARE AN EMERGENCY.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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 financial institution
20 registered or insured with the State Bank Department, the State Securities
21 Department, or the National Credit Union Administration;

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

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

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

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

32 21-14-115. Notary public – Definitions.

33 (a) As used in this section:

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

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

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

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

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

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

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

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

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

17 (2)(A) An individual who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. Arkansas Code § 21-14-306, concerning the form and manner of performing an electronic notarial act, is amended to add an additional

1 subsection to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

1 audio and visual means.

2 (2) As used this subsection:

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

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

5 (ii) A title agent licensed by the State of
6 Arkansas;

7 (iii) Supervised by an attorney or a title agent
8 licensed by the State of Arkansas; or

9 (iv) Employed by a financial institution registered
10 or insured with the State Bank Department, the State Securities Department,
11 or the National Credit Union Administration;

12 (B)(i) "Real-time audio and visual means" means technology
13 by which all parties can see and hear the other parties simultaneously.

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

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

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

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

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

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(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

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

/s/Penzo