

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

As Engrossed: H3/3/21 H4/13/21

# 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.  
12  
13

### 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:

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; or

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;

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

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

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

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

21 (2)(A) An individual who:

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

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

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

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

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

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

7           21-14-202. Use of facsimile signatures and seals authorized – Filing  
8 required – Definition.

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

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

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

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

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

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

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

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

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

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

35                           (D) Employed by a:

36                                   (i) Nonbank financial institution licensed or

1 registered by the State Securities Department; or  
2 (ii) Bank, savings and loan association, or state or  
3 federal credit union with federal depository insurance.  
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5 SECTION 4. DO NOT CODIFY. RETROACTIVITY. This act is retroactive to  
6 March 30, 2020.  
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8 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
9 General Assembly of the State of Arkansas that the risk of exposure to  
10 coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome  
11 coronavirus 2 (SARS-CoV-2) or any of its mutations is causing delays in  
12 conducting business and satisfying requirements for notarization and signing  
13 of certain documents due to the inability to hold in-person meetings; that a  
14 need exists to allow for remote witnessing of certain documents; and that  
15 this act is immediately necessary because businesses in Arkansas will suffer  
16 and the question as to the legal effectiveness of signatures during a  
17 disaster emergency can result in confusion and uncertainty and it is the  
18 intent of the General Assembly that this act be retroactive to prevent  
19 further harm to businesses and citizens. Therefore, an emergency is declared  
20 to exist, and this act being immediately necessary for the preservation of  
21 the public peace, health, and safety shall become effective on:

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

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

26 (3) If the bill is vetoed by the Governor and the veto is  
27 overridden, the date the last house overrides the veto.  
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29 /s/Penzo  
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