

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

A Bill

SENATE BILL 340

5 By: Senator B. Ballinger
6

For An Act To Be Entitled

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

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

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

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

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

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

36 ~~(D)(iv)~~ A The signed or sealed notarial certificate



1 is executed with the understanding that the notarial certificate will be
2 completed or attached to a document outside of the presence of the notary
3 public.

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

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

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

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

15 (a) An attorney licensed by the State of
16 Arkansas;

17 (b) A title agent licensed by the State of
18 Arkansas;

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

21 (d) Employed by a financial institution
22 registered or insured with the State Bank Department, the State Securities
23 Department, or the National Credit Union Administration;

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 deeds, last wills and testaments, durable powers of attorney, and healthcare
2 proxies, may be signed in counterparts.

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

5 21-14-202. Use of facsimile signatures and seals authorized – Filing
6 required – Definition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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19 SECTION 5. Arkansas Code § 21-14-307 is amended to read as follows:
20 21-14-307. Physical proximity of signers of electronic documents
21 required - Definitions.

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

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

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

34 (c)(1) An electronic notary public is not required if the notary
35 public has sufficient physical proximity to allow an electronic notary public
36 to perform and witness electronic notarial acts when the document signer or

witness does not appear in person before the electronic notary public at the time of the electronic notarial act, but is otherwise present through real-time audio and visual means.

(2) As used in 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. 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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