

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1479

By: Representative Sturch

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS ELECTRONIC NOTARY
PUBLIC ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS ELECTRONIC NOTARY
PUBLIC ACT.

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

SECTION 1. Arkansas Code Title 21, Chapter 14, is amended to add an additional subchapter to read as follows:

Subchapter 3 – The Electronic Notary Public Act

21-14-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Electronic Notary Public Act".

21-14-302. Definitions.

As used in this subchapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(2) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means;

(3)(A) "Electronic notarial act" means an official act by a notary public performed with respect to an electronic document and using electronic means authorized by the Secretary of State;



(B) "Electronic notarial act" includes: taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that:

(A) Is completed by the notary public;

(B) Bears the following of the notary public:

(i) Signature or official electronic seal;

(ii) Official title;

(iii) Commission number;

(iv) Commission expiration date; and

(v) All required information regarding the date and place of the electronic notarial act; and

(C) States the facts attested to or certified by the notary public in an electronic notarization;

(5) "Electronic notary seal" or "official electronic seal" means information within a notarized document that includes:

(A) The following information about the notary public:

(i) Name;

(ii) Jurisdiction of appointment;

(iii) Commission number; and

(iv) Commission expiration date; and

(B) Information that generally corresponds to dates in notary public seals utilized on paper documents under § 21-14-107;

(6) "Electronic notary public" means a notary public who has registered with the Secretary of State and possesses the capability of performing electronic notarial acts;

(7) "Electronic signature" means an electronic sound, symbol, or process attached to an electronic document and executed or adopted by a person with the intent to sign the electronic document;

(8) "Non-repudiation" means the inability of the signer of an electronic document to deny his or her electronic signature without a factual basis;

(9) "Notary public electronic signature" means the forms of

electronic signatures that have been approved by the Secretary of State as an acceptable means for an electronic notary to affix his or her official signature to an electronic record that is being notarized;

(10) "Physical proximity" means the principal and the notary public are physically close enough to see, hear, communicate, and give identification credentials to each other without reliance on an electronic device such as a telephone, computer, video camera, or facsimile machine;

(11) "Registration" or "register" means a separate commission to perform electronic notarial acts under the laws of this state;

(12) "Solution provider" means a business entity that has submitted an application, meets standards, and has been approved by the Secretary of State to offer electronic notarization solutions to duly commissioned electronic notaries public;

(13) "Tamper-evident" means any changes to an electronic document that display evidence of the change;

(14) "Traditional notary public" means a person commissioned by the Secretary of State to perform notarial acts under § 21-14-101 et seq.;
and

(15) "Unique to the electronic notary public or under sole control" means the device or system the notary uses to sign and seal the document that is accessible only by the notary, attributed to the notary, and not any other person or entity.

21-14-303. Appointment and commission.

A notary public who is appointed and commissioned by the Secretary of State as a traditional notary public and who is in good standing with the Secretary of State is eligible to become an electronic notary public.

21-14-304. Registration and application.

(a)(1)(A) The Secretary of State shall require a notary public to register the capability to notarize electronically before performing an electronic notarial act.

(B) The Secretary of State shall promulgate rules to enforce the requirement under subdivision (a)(1)(A) of this section.

(2) A person who seeks to become an electronic notary public shall submit to the Secretary of State:

(A) An application stating the intent to become an electronic notary public on a form provided by the Secretary of State;

(B) An attestation that he or she has not been convicted of a felony; and

(C) A filing fee of twenty dollars (\$20.00).

(b) An applicant shall:

(1) Successfully complete an approved training course provided by the Secretary of State; and

(2)(A) Pass an examination approved by the Secretary of State.

(B) An applicant may attend the exam up to two (2) times in a twelve-month period.

(C) If the applicant does not pass the examination during the time period in subdivision (b)(2)(B) of this section, he or she shall repeat the application process under this section.

21-14-305. Term and renewal.

(a) The commission date of the electronic notary public shall begin on the date the person passes the examination under § 21-14-304.

(b) The term of the electronic notary public shall not extend past the expiration date of the surety bond for the traditional notary public commission.

(c) An electronic notary public shall every two (2) years of his or her commission:

(1) Complete a refresher training course offered and approved by the Secretary of State; and

(2) Remit to the Secretary of State evidence of successful completion of the course under subdivision (c)(1) of this section on a form provided by the Secretary of State.

(d) The electronic notary public may submit an application for the renewal of his or her electronic notary commission to the Secretary of State no more than thirty (30) calendar days before the expiration of his or her electronic notary commission.

(e) To renew an electronic notary commission, a person shall complete the procedure under § 21-14-304.

21-14-306. Form and manner of performing an electronic notarial act.

(a) An electronic notarial act shall be executed through an approved solution provider.

(b) When performing an electronic notarial act, an electronic notary public shall:

(1) Complete an electronic notarial certificate that shall include all information necessary in a paper-based notarization under § 21-14-107; and

(2)(A) Attach his or her electronic signature and seal to the certificate in a tamper-evident manner.

(B) Evidence of tampering may be used as proof by the Secretary of State to determine whether the electronic notarial act is valid or invalid.

(c) The electronic signature of an electronic notary public is reliable if the electronic seal is:

(1) Unique to the electronic notary public;

(2) Capable of independent verification;

(3) Retained under the sole control of the electronic notary public; and

(4) Attached to or associated with the electronic document in a tamper-evident manner.

(d)(1) The electronic signature of an electronic notary public in combination with the electronic notary seal shall be used only for the purpose of performing an electronic notarial act.

(2) The electronic notary public shall not disclose access information used to affix the electronic signature of the electronic notary public except when requested by:

(A) Law enforcement;

(B) The courts; or

(C) An electronic document preparation and transmission vendor.

(3) Control of security aspects remains under the sole control of the commissioned electronic notary public, and include without limitation:

(A) Passwords;

(B) Token devices;

(C) Biometrics;

(D) Personal identification numbers; and

(E) Phrases.

(e) The liability, sanctions, and remedies for the improper performance of electronic notarial acts are the same under the law for the improper performance of a notarial act performed by a traditional notary public under acts under §§ 21-14-111 - 21-14-113.

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

(a) An electronic notary public shall not perform an electronic notarial act if the document signer does not appear in person before the electronic notary public at the time of the electronic notarial act.

(b)(1) The methods for identifying a document signer for an electronic notarial act shall be the same as the methods required for a paper-based notarization under § 21-14-101 et seq.

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

21-14-308. Fees.

(a) An electronic notary public may charge and collect fees that are:

(1) Reasonably established by the electronic notary public; and

(2) Disclosed and agreed upon by the client and principal before the electronic notarial act occurs.

(b)(1) An electronic notary public who knowingly charges, demands, or receives a fee not authorized by law or who charges, demands, or receives a fee greater than provided under this section is guilty of a violation.

(2) Upon conviction, he or she shall be fined in a sum not less than one hundred dollars (\$100) for each offense.

APPROVED: 03/01/2017