

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed:* H3/3/21 H4/13/21 H4/15/21
93rd General Assembly **A Bill**
Regular Session, 2021

HOUSE BILL 1367

By: Representative Penzo

By: Senator B. Ballinger

For An Act To Be Entitled

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

Subtitle

TO REGULATE THE WITNESSING OF CERTAIN DOCUMENTS BY A NOTARY PUBLIC; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 21-14-107(f)(2), concerning the signature and seal of a notary public, is amended to read as follows:

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

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

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

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

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



public.

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

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

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

(i) "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 an attorney or a title agent licensed by the State of Arkansas; or

(d) Employed by a:

(1) Nonbank financial institution licensed or registered by the State Securities Department; or

(2) Bank, savings and loan association, or state or federal credit union with federal depository insurance;

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

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

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

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

21-14-115. Notary public – Definitions.

(a) As used in this section:

(1) "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;

(D) Employed by a:

(i) Nonbank financial institution licensed or registered by the State Securities Department; or

(ii) Bank, savings and loan association, or state or federal credit union with federal depository insurance; or

(E) An attorney who is eligible under § 12-64-105(a);

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

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

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

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

(2)(A) An individual who:

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

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

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

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

be executed in counterparts.

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

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:

(i) Nonbank financial institution licensed or registered by the State Securities Department; or

(ii) Bank, savings and loan association, or state or federal credit union with federal depository insurance.

SECTION 4. DO NOT CODIFY. RETROACTIVITY. This act is retroactive to March 30, 2020.

SECTION 5. 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, 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