

State of Arkansas  
93rd General Assembly  
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# A Bill

SENATE BILL 14

By: Senator D. Sullivan  
By: Representative Gonzales

## For An Act To Be Entitled

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

## Subtitle

TO REGULATE THE WITNESSING OF CERTAIN DOCUMENTS BY A NOTARY PUBLIC UNDER CERTAIN CIRCUMSTANCES; 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)~~ (i) The information within the notarial certificate is known or believed by the notary public to be false;

~~(B)(ii)~~ (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)~~ (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)~~ (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) If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.:

(a) 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; and

(b) 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.

(ii) The procedures described under subdivision (f)(2)(B)(i) of this section expire thirty (30) days after the emergency declaration unless:

(a) The Governor finds that the threat or danger has passed and terminates the state of emergency by executive order or proclamation under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., before the expiration of the thirty-day period following the adoption of the rules; or

(b) An extension of the thirty-day period is approved by passage of:

(1) A concurrent resolution of the General Assembly, if the General Assembly is in regular, fiscal, or extraordinary session; or

(2) A resolution of the Legislative Council, if the General Assembly is not in regular, fiscal, or extraordinary session.

(iii) As used in this subdivision (f)(2)(B):

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

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

(2) A title agent licensed by the State

of Arkansas;

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

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

(b)(1) "Real-time audio and visual means" means technology by which all parties can see and hear the other parties simultaneously.

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

(c) "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 – Public emergency exceptions.

(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; 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;

(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) If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.:

(A) A notary public may notarize signatures, including acknowledgments and jurats, virtually through real-time audio and visual

means, provided that the notary public and the signer are both physically located in the State of Arkansas at the time of signing and the signing of documents is visually seen by the person that confirms it;

(B)(i) An individual who witnesses or signs a document through real-time audio and visual means may be considered either in the presence of or as an in-person witness if the presence and identity of the witnesses are validated at the time of signing by a notary public.

(ii) 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; and

(C)(i) 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.

(ii) 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.

(2) The procedures described under subdivision (b)(1) of this section expire thirty (30) days after the emergency declaration unless:

(A) The Governor finds that the threat or danger has passed and terminates the state of emergency by executive order or proclamation under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., before the expiration of the thirty-day period following the adoption of the rules; or

(B) An extension of the thirty-day period is approved by passage of:

(i) A concurrent resolution of the General Assembly, if the General Assembly is in regular, fiscal, or extraordinary session; or

(ii) A resolution of the Legislative Council, if the General Assembly is not in regular, fiscal, or extraordinary session.

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 – Public emergency exceptions.

(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) If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., 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 the commercial documents would be best notarized via facsimile signature.

(2) The procedures described under subdivision (b)(1) of this section expire thirty (30) days after the emergency declaration unless:

(A) The Governor finds that the threat or danger has passed and terminates the state of emergency by executive order or proclamation under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., before the expiration of the thirty-day period following the adoption of the rules; or

(B) An extension of the thirty-day period is approved by passage of:

(i) A concurrent resolution of the General Assembly, if the General Assembly is in regular, fiscal, or extraordinary session; or

(ii) A resolution of the Legislative Council, if the General Assembly is not in regular, fiscal, or extraordinary session.

(3) 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 subsection to read as follows:

(f)(1) If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., an electronic notary public is not required if the notary public has sufficient physical proximity to allow for the use of and reliance on an electronic device, including without limitation a telephone, computer, video camera, or facsimile machine, and otherwise registers with a separate commission to perform electronic notarial acts under the laws of this state.

(2) The procedures described under subdivision (f)(1) of this section expire thirty (30) days after the emergency declaration unless:

(A) The Governor finds that the threat or danger has passed and terminates the state of emergency by executive order or proclamation under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., before the expiration of the thirty-day period following the adoption of the rules; or

(B) An extension of the thirty-day period is approved by passage of:

(i) A concurrent resolution of the General Assembly, if the General Assembly is in regular, fiscal, or extraordinary session; or

(ii) A resolution of the Legislative Council, if the General Assembly is not in regular, fiscal, or extraordinary session.

(3) 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 5. Arkansas Code § 21-14-307 is amended to read as follows:

21-14-307. Physical proximity of signers of electronic documents required – Public emergency exceptions.

(a) ~~An~~ Except as provided in subsection (c) of this section, 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 this chapter.

(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.

(c)(1) If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., an electronic notary public is not required if the notary public has sufficient physical proximity to allow an electronic notary public 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 via real-time audio and visual means.

(2) The procedures described under subdivision (c)(1) of this section expire thirty (30) days after the emergency declaration unless:

(A) The Governor finds that the threat or danger has passed and terminates the state of emergency by executive order or proclamation under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., before the expiration of the thirty-day period following the adoption of the rules; or

(B) An extension of the thirty-day period is approved by passage of:

(i) A concurrent resolution of the General Assembly, if the General Assembly is in regular, fiscal, or extraordinary session; or

(ii) A resolution of the Legislative Council, if the General Assembly is not in regular, fiscal, or extraordinary session.

(3) As used 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 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 creating a disruption for Arkansans to conduct their personal affairs; that allowing certain notarial acts to be performed remotely and through real-time audio and visual means can provide a way for daily life to continue for Arkansans without risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and is vital to ensuring the safety and protection of the citizens of this state; and that this act is immediately necessary to protect Arkansans from exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and to conduct regular and safe business in Arkansas. 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.