

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

State of Arkansas *As Engrossed: S3/9/21 S4/13/21 H4/26/21*
93rd General Assembly **A Bill**
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SENATE BILL 340

By: Senator B. Ballinger
By: Representative Penzo

For An Act To Be Entitled

AN ACT TO REGULATE THE WITNESSING OF CERTAIN DOCUMENTS BY A NOTARY PUBLIC; TO ALLOW FOR REMOTE 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; TO ALLOW FOR REMOTE 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. TEMPORARY LANGUAGE. DO NOT CODIFY. Notary public – Public emergency exceptions – Definitions.

(a) As used in this section:

(1) "Notary public" means a person:

(A) Appointed and commissioned as a notary public under § 21-14-101 et seq.; and

(B) 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:

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

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

(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 perform remote witnessing of certain documents.

(2)(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.

(B) A signed or sealed notarial certificate may 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 through real-time audio and visual means.

(3)(A) 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.

(B)(i) An individual who:

(a) 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

(b) 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.

(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.

(4)(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.

(5) 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 by facsimile signature, the names of persons signing documents by facsimile signature, or the written consent of those persons if the notary public determines that the commercial documents would be best notarized by facsimile signature.

SECTION 2. Arkansas Code § 21-14-302(6), concerning the definition of "electronic notary public" in the Arkansas Electronic Notary Public Act, is amended to read as follows:

(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 and online notarial acts;

SECTION 3. Arkansas Code § 21-14-302(12), concerning the definition of "solution provider" in the Arkansas Electronic Notary Public Act, is amended to read as follows:

(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~~ notarial acts or online notarial acts or solutions to duly commissioned electronic notaries public;

SECTION 4. Arkansas Code § 21-14-302, concerning definitions used in the Arkansas Electronic Notary Public Act, is amended to add additional subdivisions to read as follows:

(16) "Communication technology" means an electronic device or process that:

(A) Allows an online notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) If applicable, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment;

(17) "Credential analysis" means a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources;

(18) "Credible witness" means an individual appearing before an online notary public by means of communication technology who identifies the principal and:

(A) Is personally known to the online notary public; or

(B) Can be identified by the online notary public on the basis of remote presentation by the individual of a government-issued identification credential, including without limitation a passport or state-issued driver's license, that contains the signature and a photograph of the individual;

(19) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe;

(20) "Identity proofing" means a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources;

(21)(A) "Online notarial act" means a notarial act performed by means of communication technology.

(B) "Online notarial act" includes:

(i) Taking an acknowledgment;

(ii) Administering an oath or affirmation;

(iii) Taking a verification on oath or affirmation;

(iv) Witnessing or attesting a signature; and

(v) Certifying or attesting a copy;

(22) "Online notary public" means an electronic notary public who has been authorized by the Secretary of State to perform online notarial

acts;

(23) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States;

(24) "Principal" means an individual:

(A) Whose electronic signature is notarized through an online notarization; or

(B) Taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization;

(25) "Remote presentation" means a transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(A) Identify the individual seeking the online notary public's services; and

(B) Perform credential analysis; and

(26) "Remotely located individual" means an individual who is not within physical proximity to a notary public.

SECTION 5. Arkansas Code § 21-14-304 is amended to read as follows:

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 or online 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 or an online notary public shall submit to the Secretary of State:

(A) An application stating the intent to become an electronic notary public or an online 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 examination 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.

(c) The Secretary of State shall promulgate rules to enforce the requirements under subdivision (a)(1) of this section.

SECTION 6. Arkansas Code § 21-14-307, concerning the requirement of physical proximity in the Arkansas Electronic Notary Public Act, is amended to add an additional subsection to read as follows:

(c) This section does not apply to online notarial acts as described in § 21-14-309.

SECTION 7. Arkansas Code Title 21, Chapter 14, Subchapter 3, is amended to add additional sections to read as follows:

21-14-309. Online notarization process.

(a) An electronic notary public may perform an online notarial act through a solution provider by means of communication technology under this subchapter if:

(1) The online notary public is physically located within this state but regardless of whether or not the principal is a remotely located individual at the time of the online notarial act;

(2) The online notary public:

(A) Is able to verify the principal's identity according to subsection (c) of this section;

(B) Is able to reasonably confirm that a record before the notary public is the same record on which the principal made a statement or on which the principal executed a signature; and

(C) Creates an audio-visual recording of the performance of the online notarial act or designates an individual to do this on behalf of the online notary public;

(3) For a remotely located individual located outside the United

States, an online notary public confirms that the record:

(A) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(B) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(4) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(b)(1) In performing an online notarial act, a notary public shall verify the identity of a person creating an electronic signature at the time that the electronic signature is taken by using communication technology that meets the requirements of this subchapter.

(2) Identity may be verified by:

(A) A notary public's personal knowledge of the person creating the electronic signature;

(B) Satisfactory evidence of the identity of the principal from a credible witness; or

(C) Each of the following:

(i) Remote presentation by the person creating the electronic signature of a government-issued identification credential, including without limitation a passport or a state-issued driver's license, that contains the signature and a photograph of the person;

(ii) Credential analysis; and

(iii) Identity proofing.

(c) A notary public shall take reasonable steps to ensure that the communication technology used in an online notarial act is secure from unauthorized interception.

(d) The electronic notarial certificate for an online notarial act shall include a notation that the notarization is an online notarization.

21-14-310. Electronic record of online notarial acts.

(a)(1) An electronic notary public performing an online notarial act shall keep a secure electronic record of electronic documents notarized.

(2) The electronic record shall contain for each online notarial

act:

- (A) The date and time of the online notarial act;
 - (B) The type of online notarial act;
 - (C) The type, the title, or a description of the electronic document or proceeding;
 - (D) The printed name and address of each principal involved in the transaction or proceeding;
 - (E) Evidence of identity of each principal involved in the transaction or proceeding in the form of:
 - (i) A statement that the person is personally known to the online notary public;
 - (ii) A notation of the type of identification document provided to the online notary public;
 - (iii) A record of the identity verification made under § 21-14-309, if applicable; or
 - (iv) The following:
 - (a) The printed name and address of each credible witness swearing to or affirming the person's identity; and
 - (b) For each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;
 - (F) A recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence;
 - (G) An audio and video copy of the performance of the notarial act; and
 - (H) The fee, if any, charged for the notarization.
- (b) A notary public shall take reasonable steps to:
- (1) Ensure the integrity, security, and authenticity of online notarial acts;
 - (2) Maintain a backup for the electronic record required by subsection (a) of this section; and
 - (3) Protect the backup record from unauthorized use.
- (c) The electronic record required by subsection (a) of this section shall be maintained for at least five (5) years after the date of the transaction or proceeding.

21-14-311. Termination of electronic notary public's commission.

(a)(1) Except as provided by subsection (b) of this section, an electronic notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the electronic notary public's official electronic signature or seal.

(2) An electronic notary public shall certify his or her compliance with subdivision (a)(1) of this section to the Secretary of State.

(b) A former electronic notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described in subsection (a) of this section if the former online notary public is recommissioned as an electronic notary public with the same electronic signature and seal within three (3) months after the former electronic notary public's former commission terminated.

21-14-312. Wrongful possession, concealment, or destruction of software or hardware – Criminal offense.

(a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or seal commits an offense.

(b) An offense under this section is a Class D felony.

21-14-313. Recording of electronic record.

(a) If a law requires as a condition for recording that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by use of a paper copy of an electronic document that complies with this subchapter.

(b) If a law requires, as a condition for recording, that a document be signed, then the requirement is satisfied by an electronic signature.

(c)(1) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature.

(2) A physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature if the online notary public has attached a notarial certificate that meets the requirements of this chapter.

21-14-314. Rules.

The Secretary of State may promulgate rules to administer this subchapter.

SECTION 8. DO NOT CODIFY. RETROACTIVITY. Section 1 of this act is retroactive to March 30, 2020.

SECTION 9. DO NOT CODIFY. CONTINGENT EFFECTIVENESS. Section 1 of this act is effective until Executive Order No. 21-07 expires or the Governor finds that the threat or danger to the public declared under Executive Order No. 21-07 has passed and terminates the declared state of emergency by executive order or proclamation unless the declared state of emergency under Executive Order No. 21-07 is renewed by the Governor by executive order or proclamation under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.

SECTION 10. 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, 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/B. Ballinger