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2 93rd General Assembly
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A Bill

SENATE BILL 14

4
5 By: Senator D. Sullivan
6 By: Representative Gonzales

For An Act To Be Entitled

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

Subtitle

16 TO REGULATE THE WITNESSING OF CERTAIN
17 DOCUMENTS BY A NOTARY PUBLIC UNDER
18 CERTAIN CIRCUMSTANCES; AND TO DECLARE AN
19 EMERGENCY.

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

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

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

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

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

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

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

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

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

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

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

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

36 (2) A title agent licensed by the State

1 of Arkansas;

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

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

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

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

12 (c) "Videoconference technology" means Skype,
13 Zoom, FaceTime, and other similar technologies.

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

17 21-14-115. Notary public – Public emergency exceptions.

18 (a) As used in this section:

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

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

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

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

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

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

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

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

33 (b)(1) If the Governor declares a disaster emergency under the
34 Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.:

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

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

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

8 (ii) The identity and physical presence of witnesses
 9 and signers in this state shall be validated at the time of execution of the
 10 documents to be witnessed; and

11 (C)(i) If two (2) or more individuals sign a document
 12 simultaneously in different locations, the individuals shall necessarily sign
 13 separate signature pages, and all documents executed under this section shall
 14 be executed in counterparts.

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

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

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

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

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

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

32
 33 SECTION 3. Arkansas Code § 21-14-202 is amended to read as follows:

34 21-14-202. Use of facsimile signatures and seals authorized – Filing
 35 required – Public emergency exceptions.

36 (a) Any Except as provided in subsection (b) of this section, a notary

1 public may affix a notary certificate bearing the notary public's facsimile
2 signature and facsimile seal in lieu of the notary public's manual signature
3 and rubber or embossed seal in blue or black ink on a commercial document,
4 after filing with the Secretary of State:

5 (1) The notary public's manual signature certified by the notary
6 public under oath;

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

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

11 (4) The written consent of any other person or persons signing
12 the commercial documents to the use of the notary public's facsimile
13 signature and facsimile seal on the commercial documents.

14 (b)(1) If the Governor declares a disaster emergency under the
15 Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., a notary public
16 does not have to file with the Secretary of State his or her signatures,
17 general descriptions of potential commercial documents to be notarized via
18 facsimile signature, the names of persons signing documents via facsimile
19 signature, or the written consent of such persons if the notary public
20 determines the commercial documents would be best notarized via facsimile
21 signature.

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

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

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

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

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

35 (3) As used in this subsection, "notary public" means a notary
36 public who is:

- 1 (A) An attorney licensed by the State of Arkansas;
 2 (B) A title agent licensed by the State of Arkansas;
 3 (C) Supervised by either an attorney or a title agent
 4 licensed by the State of Arkansas; or
 5 (D) Employed by a financial institution registered or
 6 insured with the State Bank Department, the State Securities Department, or
 7 the National Credit Union Administration.

8
 9 SECTION 4. Arkansas Code § 21-14-306, concerning the form and manner
 10 of performing an electronic notarial act, is amended to add an additional
 11 subsection to read as follows:

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

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

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

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

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

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

32 (3) As used in this subsection, "notary public" means a notary
 33 public who is:

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

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

36 (C) Supervised by either an attorney or a title agent

1 licensed by the State of Arkansas; or

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

5
6 SECTION 5. Arkansas Code § 21-14-307 is amended to read as follows:

7 21-14-307. Physical proximity of signers of electronic documents
8 required – Public emergency exceptions.

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

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

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

21 (c)(1) If the Governor declares a disaster emergency under the
22 Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., an electronic
23 notary public is not required if the notary public has sufficient physical
24 proximity to allow an electronic notary public to perform and witness
25 electronic notarial acts when the document signer or witness does not appear
26 in person before the electronic notary public at the time of the electronic
27 notarial act, but is otherwise present via real-time audio and visual means.

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

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

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

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

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

5 (3) As used this subsection:

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

7 (i) An attorney licensed by the State of Arkansas;

8 (ii) A title agent licensed by the State of
9 Arkansas;

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

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

15 (B)(i) "Real-time audio and visual means" means technology
16 by which all parties can see and hear the other parties simultaneously.

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

19 (C) "Videoconference technology" means Skype, Zoom,
20 FaceTime, and other similar technologies.

21
22 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that risk of exposure to
24 coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome
25 coronavirus 2 (SARS-CoV-2) or any of its mutations is creating a disruption
26 for Arkansans to conduct their personal affairs; that allowing certain
27 notarial acts to be performed remotely and through real-time audio and visual
28 means can provide a way for daily life to continue for Arkansans without risk
29 of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory
30 syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and is vital to
31 ensuring the safety and protection of the citizens of this state; and that
32 this act is immediately necessary to protect Arkansans from exposure to
33 coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome
34 coronavirus 2 (SARS-CoV-2) or any of its mutations and to conduct regular and
35 safe business in Arkansas. Therefore, an emergency is declared to exist, and
36 this act being immediately necessary for the preservation of the public

1 peace, health, and safety shall become effective on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,
4 the expiration of the period of time during which the Governor may veto the
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is
7 overridden, the date the last house overrides the veto.

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