

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/9/21 S4/13/21

A Bill

SENATE BILL 340

5 By: Senator B. Ballinger
6 By: Representative Penzo
7

For An Act To Be Entitled

9 AN ACT TO REGULATE THE WITNESSING OF CERTAIN
10 DOCUMENTS BY A NOTARY PUBLIC; TO ALLOW FOR REMOTE
11 WITNESSING OF CERTAIN DOCUMENTS BY A NOTARY PUBLIC;
12 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
13
14

Subtitle

16 TO REGULATE THE WITNESSING OF CERTAIN
17 DOCUMENTS BY A NOTARY PUBLIC; TO ALLOW
18 FOR REMOTE WITNESSING OF CERTAIN
19 DOCUMENTS BY A NOTARY PUBLIC; AND TO
20 DECLARE AN EMERGENCY.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 *SECTION 1. Arkansas Code § 21-14-302(6), concerning the definition of*
26 *"electronic notary public" in the Arkansas Electronic Notary Public Act, is*
27 *amended to read as follows:*

28 *(6) "Electronic notary public" means a notary public who has*
29 *registered with the Secretary of State and possesses the capability of*
30 *performing electronic notarial acts and online notarial acts;*
31

32 *SECTION 2. Arkansas Code § 21-14-302(12), concerning the definition of*
33 *"solution provider" in the Arkansas Electronic Notary Public Act, is amended*
34 *to read as follows:*

35 *(12) "Solution provider" means a business entity that has*
36 *submitted an application, meets standards, and has been approved by the*



1 Secretary of State to offer electronic ~~notarization~~ notarial acts or online
2 notarial acts or solutions to duly commissioned electronic notaries public;
3

4 SECTION 3. Arkansas Code § 21-14-302, concerning definitions used in
5 the Arkansas Electronic Notary Public Act, is amended to add additional
6 subdivisions to read as follows:

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

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

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

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

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

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

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

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

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

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

35 (B) "Online notarial act" includes:

36 (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 4. 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

1 *electronic notary public or an online notary public on a form provided by the*
2 *Secretary of State;*

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

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

6 *(b) An applicant shall:*

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

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

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

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

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

17
18 *SECTION 5. Arkansas Code § 21-14-307, concerning the requirement of*
19 *physical proximity in the Arkansas Electronic Notary Public Act, is amended*
20 *to add an additional subsection to read as follows:*

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

23
24 *SECTION 6. Arkansas Code Title 21, Chapter 14, Subchapter 3, is*
25 *amended to add additional sections to read as follows:*

26 *21-14-309. Online notarization process.*

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

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

33 *(2) The online notary public:*

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

36 *(B) Is able to reasonably confirm that a record before the*

1 notary public is the same record on which the principal made a statement or
2 on which the principal executed a signature; and

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

6 (3) For a remotely located individual located outside the United
7 States, an online notary public confirms that the record:

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

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

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

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

21 (2) Identity may be verified by:

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

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

26 (C) Each of the following:

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

31 (ii) Credential analysis; and

32 (iii) Identity proofing.

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

36 (d) The electronic notarial certificate for an online notarial act

1 shall include a notation that the notarization is an online notarization.

2
3 21-14-310. Electronic record of online notarial acts.

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

6 (2) The electronic record shall contain for each online notarial
7 act:

8 (A) The date and time of the online notarial act;

9 (B) The type of online notarial act;

10 (C) The type, the title, or a description of the
11 electronic document or proceeding;

12 (D) The printed name and address of each principal
13 involved in the transaction or proceeding;

14 (E) Evidence of identity of each principal involved in the
15 transaction or proceeding in the form of:

16 (i) A statement that the person is personally known
17 to the online notary public;

18 (ii) A notation of the type of identification
19 document provided to the online notary public;

20 (iii) A record of the identity verification made
21 under § 21-14-309, if applicable; or

22 (iv) The following:

23 (a) The printed name and address of each
24 credible witness swearing to or affirming the person's identity; and

25 (b) For each credible witness not personally
26 known to the online notary public, a description of the type of
27 identification documents provided to the online notary public;

28 (F) A recording of any video and audio conference that is
29 the basis for satisfactory evidence of identity and a notation of the type of
30 identification presented as evidence;

31 (G) An audio and video copy of the performance of the
32 notarial act; and

33 (H) The fee, if any, charged for the notarization.

34 (b) A notary public shall take reasonable steps to:

35 (1) Ensure the integrity, security, and authenticity of online
36 notarial acts;

1 (2) Maintain a backup for the electronic record required by
2 subsection (a) of this section; and

3 (3) Protect the backup record from unauthorized use.

4 (c) The electronic record required by subsection (a) of this section
5 shall be maintained for at least five (5) years after the date of the
6 transaction or proceeding.

7
8 21-14-311. Termination of electronic notary public's commission.

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

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

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

22
23 21-14-312. Wrongful possession, concealment, or destruction of
24 software or hardware – Criminal offense.

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

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

30
31 21-14-313. Recording of electronic record.

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

36 (b) If a law requires, as a condition for recording, that a document

1 be signed, then the requirement is satisfied by an electronic signature.

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

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

11
12 21-14-314. Rules.

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

15
16 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that the risk of exposure to
18 coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome
19 coronavirus 2 (SARS-CoV-2) or any of its mutations is causing delays in
20 conducting business and satisfying requirements for notarization and signing
21 of certain documents due to the inability to hold in-person meetings; that a
22 need exists to allow for remote witnessing of certain documents; and that
23 this act is immediately necessary because businesses in Arkansas will suffer,
24 the question as to the legal effectiveness of signatures during a disaster
25 emergency can result in confusion and uncertainty, and it is the intent of
26 the General Assembly that this act be retroactive to prevent further harm to
27 businesses and citizens. Therefore, an emergency is declared to exist, and
28 this act being immediately necessary for the preservation of the public
29 peace, health, and safety shall become effective on:

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

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

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

36

/s/B. Ballinger

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36