

By: Representative Carpenter

To: Judiciary A

HOUSE BILL NO. 1322

1 AN ACT TO CREATE A NEW SECTION WITHIN CHAPTER 34, TITLE 25,
 2 MISSISSIPPI CODE OF 1972, TO ENACT THE REMOTE ONLINE NOTARIZATION
 3 ACT; TO DEFINE TERMS; TO PROVIDE FOR REMOTE NOTARIZATION USING
 4 COMMUNICATION TECHNOLOGY; TO PROSCRIBE CERTAIN RESTRICTIONS; TO
 5 PROVIDE A PROCEDURE FOR A CERTIFICATE OF THE NOTARIAL ACT; TO
 6 PROVIDE FOR THE RETENTION OF RECORDS; TO AUTHORIZE THE SECRETARY
 7 OF STATE TO PROMULGATE RULES; TO AMEND SECTIONS 25-34-7, 25-34-9,
 8 25-34-15, 25-34-31, 25-34-37 AND 25-34-39, MISSISSIPPI CODE OF
 9 1972, TO CONFORM; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** (1) As used in this section, the following terms
 12 have the meaning ascribed herein unless the context clearly
 13 requires otherwise:

14 (a) "Communication technology" means an electronic
 15 device or process that:

16 (i) Allows a notary public and a remotely located
 17 individual to communicate with each other simultaneously by sight
 18 and sound; and

19 (ii) When necessary and consistent with other
 20 applicable law, facilitates communication with a remotely located
 21 individual who has a vision, hearing or speech impairment.



22 (b) "Foreign state" means a jurisdiction other than the
23 United States, a state, or a federally recognized Indian tribe.

24 (c) "Identity proofing" means a process or service by
25 which a third person provides a notary public with a means to
26 verify the identity of a remotely located individual by a review
27 of personal information from public or private data sources.

28 (d) "Outside the United States" means a location
29 outside the geographic boundaries of the United States, Puerto
30 Rico, the United States Virgin Islands, and any territory, insular
31 possession, or other location subject to the jurisdiction of the
32 United States.

33 (e) "Remotely located individual" means an individual
34 who is not in the physical presence of the notary public who
35 performs a notarial act under subsection (3) of this Section.

36 (2) A remotely located individual may comply with Section
37 25-34-15 by using communication technology to appear before a
38 notary public.

39 (3) A notary public located in this state may perform a
40 notarial act using communication technology for a remotely located
41 individual if:

42 (a) The notary public:

43 (i) Has personal knowledge under Section
44 25-34-13(1) of the identity of the individual;

45 (ii) Has satisfactory evidence of the identity of
46 the remotely located individual by oath or affirmation from a



47 credible witness appearing before the notary public and identified
48 by the notary public through:

49 1. Personal knowledge under Section
50 25-34-13(1); or

51 2. By using at least two (2) different types
52 of identity proofing; or

53 (iii) Has obtained satisfactory evidence of the
54 identity of the remotely located individual by using at least two
55 (2) different types of identity proofing;

56 (b) The notary public is able reasonably to confirm
57 that a record before the notary public is the same record in which
58 the remotely located individual made a statement or on which the
59 individual executed a signature;

60 (c) The notary public, or a person acting on behalf of
61 the notary public, creates an audio-visual recording of the
62 performance of the notarial act; and

63 (d) For a remotely located individual located outside
64 the United States:

65 (i) The record:

66 1. Is to be filed with or relates to a matter
67 before a public official or court, governmental entity, or other
68 entity subject to the jurisdiction of the United States; or

69 2. Involves property located in the
70 territorial jurisdiction of the United States or involves a
71 transaction substantially connected with the United States; and



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

75 (4) If a notarial act is performed under this section, the
76 certificate of notarial act required by Section 25-34-31 must
77 indicate that the notarial act was performed using communication
78 technology.

79 (5) A short-form certificate for a notarial act subject to
80 this section is sufficient if it contains a statement
81 substantially as follows: "This notarial act involved the use of
82 communication technology."

83 (6) A notary public, guardian, conservator, or agent of a
84 notary public, or personal representative of a deceased notary
85 public shall retain the audio-visual recording created under
86 subsection (3)(c) of this section or cause the recording to be
87 retained by a repository designated by or on behalf of the person
88 required to retain the recording. Unless a different period is
89 required by rule adopted under subsection (8)(d) of this section,
90 the recording must be retained for a period of at least ten (10)
91 years after the recording is made.

92 (7) Before a notary public performs the notary public's
93 initial notarial act under this section, the notary public must
94 notify the Secretary of State that the notary public will be
95 performing notarial acts and identify the technologies the notary
96 public intends to use. If the Secretary of State has established



97 standards under subsection (8) of this section or Section 25-34-51
98 for approval of communication technology or identity proofing, the
99 communication technology and identity proofing must conform to the
100 standards.

101 (8) In addition to adopting rules under Section 25-34-51,
102 the Secretary of State may adopt rules under this section
103 regarding performance of a notarial act. The rules may:

104 (a) Prescribe the means of performing a notarial act
105 involving a remotely located individual using communication
106 technology;

107 (b) Establish standards for communication technology
108 and identity proofing;

109 (c) Establish requirements or procedures to approve
110 providers of communication technology and the process of identity
111 proofing; and

112 (d) Establish standards and a period for the retention
113 of an audio-visual recording created under subsection (3)(c) of
114 this section.

115 (9) Before adopting, amending or repealing a rule governing
116 performance of a notarial act with respect to a remotely located
117 individual, the Secretary of State must consider:

118 (a) The most recent standards regarding the performance
119 of a notarial act with respect to a remotely located individual
120 promulgated by national standard-setting organizations and the



121 recommendations of the National Association of Secretaries of
122 State;

123 (b) Standards, practices, and customs of other
124 jurisdictions that have laws substantially similar to this
125 section; and

126 (c) The views of governmental officials and entities
127 and other interested persons.

128 (10) By allowing its communication technology or identity
129 proofing to facilitate a notarial act for a remotely located
130 individual or by providing storage of the audio-visual recording
131 created under subsection (3)(c) of this section, the provider of
132 the communication technology, identity proofing, or storage
133 appoints the Secretary of State as the provider's agent for
134 service of process in any civil action in this state related to
135 the notarial act.

136 **SECTION 2.** Section 25-34-7, Mississippi Code of 1972, is
137 amended as follows:

138 25-34-7. (1) A notarial officer may perform the following
139 notarial acts:

- 140 (a) Take acknowledgements;
- 141 (b) Administer oaths and affirmations;
- 142 (c) Take verifications on oath or affirmation;
- 143 (d) Certify depositions of witnesses;
- 144 (e) Witness or attest signatures;
- 145 (f) Make or note a protest of a negotiable instrument;



146 (g) Make an affidavit regarding the truth of any
147 witnesses or attested signatures in question along with any
148 corrected language and, if the authenticity or correctness of
149 language affects real property, file the same in the land records
150 in the office of the chancery clerk where the land is
151 located; * * *

152 (h) Certify that a tangible copy of an electronic
153 record is an accurate representation of the electronic record; and

154 (* * *i) Any other acts so authorized by the law of
155 this state.

156 (2) A notarial officer may not perform a notarial act when
157 the officer:

158 (a) Is a party to the record being notarized;

159 (b) Is a spouse, child, sibling, parent, grandparent,
160 grandchild, aunt or uncle, or niece or nephew, including a son or
161 daughter-in-law, a mother or father-in-law, a stepchild or
162 stepparent, or a half-sibling, of the person whose signature is
163 being notarized or the person taking a verification on oath or
164 affirmation from the officer; or

165 (c) Will receive as a direct result any commission,
166 fee, advantage, right, title, beneficial interest, cash, property
167 or other consideration exceeding in value the fees required by
168 rules established by the Secretary of State.

169 (3) A notarial officer is not disqualified from performing a
170 notarial act by virtue of his or her profession when the officer:



171 (a) Is an employee performing a notarial act on behalf
172 of, or which benefits, the employer;

173 (b) Is an attorney who maintains an attorney-client
174 relationship with the person whose signature is the subject of the
175 notarial act; or

176 (c) Is a shareholder of a corporation or member of a
177 limited liability company which is a party to a record that is the
178 subject of the notarial act.

179 (4) A notarial act performed in violation of subsection (2)
180 is voidable.

181 **SECTION 3.** Section 25-34-9, Mississippi Code of 1972, is
182 amended as follows:

183 25-34-9. (1) Except as provided in subsection (2) of this
184 section, a notarial officer may charge a fee in an amount not to
185 exceed Five Dollars (\$5.00) for services rendered unless otherwise
186 prohibited by law or by rules promulgated by the Secretary of
187 State.

188 (2) For performing a notarial act using communication
189 technology for a remotely located individual, a notarial officer
190 may charge a fee in an amount not to exceed Twenty-five Dollars
191 (\$25.00).

192 **SECTION 4.** Section 25-34-15, Mississippi Code of 1972, is
193 amended as follows:

194 25-34-15. Except as provided in Section 1 of this act, if a
195 notarial act relates to a statement made in or a signature



196 executed on a record, the individual making the statement or
197 executing the signature must appear physically in person before
198 the notarial officer at the time of the notarial act.

199 **SECTION 5.** Section 25-34-31, Mississippi Code of 1972, is
200 amended as follows:

201 25-34-31. (1) A notarial act must be evidenced by a
202 certificate as provided by this section or Section 1 of this act.
203 Unless otherwise provided for by Section 1 of this act, the
204 certificate must:

205 (a) Be executed contemporaneously with the performance
206 of the notarial act;

207 (b) Be signed and dated by the notarial officer and, if
208 the notarial officer is a notary public, be signed in the same
209 manner as on file with the Secretary of State;

210 (c) Identify the jurisdiction in which the notarial act
211 is performed;

212 (d) Contain the title of office of the notarial
213 officer; and

214 (e) If the notarial officer is a notary public,
215 indicate the date of expiration of the notary public's commission.

216 (2) If a notarial act regarding a tangible record is
217 performed by a notary public, the notary public's official seal
218 must be affixed to the certificate. If a notarial act is
219 performed regarding a tangible record by a notarial officer other
220 than a notary public and the certificate contains the information



221 specified in subsection (1) (b), (c) and (d), the notarial
222 officer's official seal may be affixed to the certificate. If a
223 notarial act regarding an electronic record is performed by a
224 notarial officer and the certificate contains the information
225 specified in subsection (1) (b), (c) and (d), the notarial
226 officer's official seal may be attached to or logically associated
227 with the certificate.

228 (3) The party drafting a record that is the subject of a
229 notarial act is responsible for the form of the certificate, its
230 wording and legal sufficiency. A notary public is not required to
231 draft, edit or amend a certificate where the record presented does
232 not contain an acceptable certificate; instead, the notary must
233 refuse to perform the notarial act with respect to the record.

234 (4) A certificate of a notarial act is sufficient if it
235 meets the requirements of subsections (1) and (2) and:

236 (a) Is in a form otherwise permitted by the law of this
237 state;

238 (b) Is in a form permitted by the law applicable in the
239 jurisdiction in which the notarial act was performed; or

240 (c) Sets forth the actions of the notarial officer and
241 the actions are sufficient to meet the requirements of the
242 notarial act as provided in Sections 25-34-7, 25-34-9, 25-34-11
243 and 25-34-15 or any law of this state other than this chapter.

244 (5) By executing a certificate of a notarial act, a notarial
245 officer certifies that the officer has complied with the



246 requirements and made the determinations specified in Sections
247 25-34-7, 25-34-9, 25-34-11 and 25-34-15.

248 (6) A notarial officer may not affix the officer's signature
249 to, or logically associate it with, a certificate until the
250 notarial act has been performed.

251 (7) If a notarial act is performed regarding a tangible
252 record, a certificate must be part of, or securely attached to,
253 the record. If a notarial act is performed regarding an
254 electronic record, the certificate must be affixed to, or
255 logically associated with, the electronic record. If the
256 Secretary of State has established standards under Section
257 25-34-39 for attaching, affixing or logically associating the
258 certificate, the process must conform to those standards.

259 (8) The signature of a notarial officer certifying a
260 notarial act may not be deemed evidence to show that the notarial
261 officer had knowledge of the contents of the record so signed,
262 other than those specific contents which constitute the signature,
263 execution, acknowledgment, oath, affirmation, affidavit,
264 verification or other act which the signature of that notarial
265 officer chronicles.

266 **SECTION 6.** Section 25-34-37, Mississippi Code of 1972, is
267 amended as follows:

268 25-34-37. (1) A notary public must maintain a journal in
269 which the notary public chronicles all notarial acts that the
270 notary public performs.



271 (2) A journal must be created on a tangible or electronic
272 medium. A notary public shall maintain only one (1) physical
273 journal at a time, but may maintain one or more electronic
274 journals, to chronicle all notarial acts, whether those notarial
275 acts are performed regarding tangible or electronic records. If
276 the journal is tangible, it must be a permanent, bound register
277 with numbered pages. An electronic journal must conform to
278 specifications set forth in rules by the Secretary of State.

279 (3) An entry in a journal must be made contemporaneously
280 with performance of the notarial act and contain the following
281 information:

282 (a) The date and time of the notarial act;

283 (b) A description of the record, if any, and type of
284 notarial act;

285 (c) The full name and address of each individual for
286 whom the notarial act is performed;

287 (d) If identity of the individual is based on personal
288 knowledge, a statement to that effect;

289 (e) If identity of the individual is based on
290 satisfactory evidence, a brief description of the method of
291 identification and the identification credential presented, if
292 any, including the date of issuance and expiration of any
293 identification credential;

294 (f) The address where the notarial act was performed if
295 not the notary's business address; and



296 (g) The fee, if any, charged by the notary public.

297 (4) If the journal of notary public is lost or stolen, the
298 notary public must notify promptly the Secretary of State upon
299 discovery that the journal is lost or stolen.

300 (5) On resignation from, or the revocation or suspension of,
301 a notary public's commission, the notary public must deposit all
302 journal records with the circuit clerk of the county of residence
303 of the notary public.

304 (6) Upon the death or adjudication of incompetency of a
305 current or former notary public, the notary public's personal
306 representative or guardian or any other person knowingly in
307 possession of the journal shall:

308 (a) Notify the Secretary of State of the death or
309 adjudication in writing; and

310 (b) Within thirty (30) days of death or adjudication of
311 incompetency, transmit all journal records to the circuit clerk of
312 the county of residence of the notary public.

313 **SECTION 7.** Section 25-34-39, Mississippi Code of 1972, is
314 amended as follows:

315 25-34-39. (1) A notary public may perform a notarial act
316 with respect to electronic records pursuant to this chapter.

317 (2) The Secretary of State has the sole power to determine
318 the methods by which notarial acts with respect to electronic
319 records may be implemented in this state. Those methods must be
320 set forth in rules promulgated by the Secretary of State.



321 (3) A notary public seeking to perform notarial acts with
322 respect to electronic records must file an additional registration
323 with the Secretary of State subsequent to being granted a notary
324 commission.

325 (4) A notary public may select one or more tamper-evident
326 technologies with which to perform notarial acts with respect to
327 electronic records, so long as the technologies comply with rules
328 promulgated by the Secretary of State. A person may not require a
329 notary public to perform a notarial act with respect to an
330 electronic record with a technology that the notary public has not
331 selected.

332 (5) A recorder shall accept for recording a tangible copy of
333 an electronic record containing a notarial certificate as
334 satisfying any requirement that a record accepted for recording be
335 an original, if the notarial officer executing the notarial
336 certificate certifies that the tangible copy is an accurate copy
337 of the electronic record.

338 **SECTION 8.** Section 1 of this act shall be codified as a
339 separate section in Chapter 34, Title 25, Mississippi Code of
340 1972.

341 **SECTION 9.** This act shall take effect and be in force from
342 and after July 1, 2022.

