

HOUSE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE CLAMAN

Introduced: 4/5/19

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the recording of documents; relating to notaries and notarization;**
2 **and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 40.17.020(a) is amended to read:

5 (a) A conveyance that is eligible for recording under AS 40.17.030 and
6 40.17.110 may be offered for recording only in the recording district in which land
7 affected by the conveyance is located. If land affected by the conveyance is located in
8 more than one recording district, an original conveyance **or an electronic document**
9 **of the conveyance** may be offered for recording in the recording district in which part
10 of the land is located and an original, [OR] a certified copy, **or an electronic**
11 **document of the conveyance** may be offered for recording in each other recording
12 district in which part of the land is located. A certified copy **or an electronic**
13 **document of the conveyance** recorded has the same effect from the time it is
14 recorded as though it were the original conveyance.

1 * **Sec. 2.** AS 40.17 is amended by adding a new section to read:

2 **Sec. 40.17.025. Validity of electronic documents.** (a) If a law requires, as a
3 condition for recording, that a document be an original, be on paper or another
4 tangible medium, or be in writing, the requirement is satisfied by an electronic
5 document.

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

8 (c) A requirement that a document or a signature associated with a document
9 be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the
10 electronic signature of the person authorized to perform that act, and all other
11 information required to be included, are attached to or logically associated with the
12 document or signature. A physical or electronic image of a stamp, impression, or seal
13 need not accompany an electronic signature.

14 (d) The recorder may accept for recording a tangible copy of an electronic
15 record containing a notarial certificate as satisfying a requirement that a record
16 accepted for recording be an original, if the notarial officer executing the notarial
17 certificate certifies that the tangible copy is an accurate copy of the electronic record.

18 * **Sec. 3.** AS 40.17.030(a) is amended to read:

19 (a) Except as provided in (b), (c), and (e) of this section and AS 40.17.025, to
20 be eligible for recording, a document must

- 21 (1) contain original signatures;
- 22 (2) be legible or capable of being converted into legible form by a
23 machine or device used in the recording office;
- 24 (3) be capable of being copied by the method used in the recording
25 office;
- 26 (4) contain a title reflecting the overall intent of the document;
- 27 (5) contain the information needed to index the document under
28 regulations of the department;
- 29 (6) contain a book and page reference or serial number reference if the
30 document amends, corrects, extends, modifies, assigns, or releases a document
31 previously recorded in this state;

(7) contain the name and address of a person to whom the document may be returned after recording;

(8) if it is a deed, contain the mailing addresses of all persons named in the document who grant or acquire an interest under the document;

(9) contain the name of the recording district in which it is to be recorded; and

(10) be accompanied by the applicable recording fee set by regulation; if the document is to be recorded for multiple purposes, it must be accompanied by the applicable fee for each of the multiple purposes.

* **Sec. 4.** AS 40.17 is amended by adding a new section to read:

Sec. 40.17.033. Recording of documents. (a) The recorder

(1) who implements a function listed in this section, shall implement the function in compliance with the standards established by the department under AS 40.17.800;

(2) may receive, index, store, archive, and transmit electronic documents;

(3) may provide for access to and search and retrieval of documents and information by electronic means;

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index under AS 40.17.040;

(5) may convert paper documents accepted for recording into electronic form;

(6) may convert into electronic form information recorded before the recorder began to record electronic documents;

(7) may accept electronically a fee that the recorder is authorized to collect;

(8) may agree with other officials of a state or a political subdivision of a state or of the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

(b) In this section, "paper document" means a document that is received by the recorder in a form that is not electronic.

* **Sec. 5.** AS 40.17 is amended by adding new sections to read:

Sec. 40.17.800. Administration and standards. (a) In addition to the regulations required or authorized by this chapter, the department shall adopt standards to implement the provisions of this chapter that apply to electronic recording.

(b) To keep the standards, practices, and technology of this state in harmony and compatible with the standards and practices of recording offices in other jurisdictions that enact substantially AS 40.17.025, 40.17.033, and this section, the department, so far as is consistent with the purposes, policies, and provisions of AS 40.17.025, 40.17.033, and this section, in adopting, amending, and repealing standards may consider

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards adopted by national standard-setting bodies;
- (3) the views of interested persons and governmental officials and entities;
- (4) the needs of recording districts of varying size, populations, and resources; and
- (5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

Sec. 40.17.810. Uniformity of application and construction. In applying and construing the provisions of AS 40.17.025, 40.17.033, and 40.17.800, consideration must be given to the need to promote uniformity of the law among the states that enact those provisions.

Sec. 40.17.820. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act) but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the

1 notices described in 15 U.S.C. 7003(b).

2 * **Sec. 6.** AS 40.17.900(5) is repealed and reenacted to read:

3 (5) "document" means information that is

4 (A) inscribed on a tangible medium or that is stored in an
5 electronic or other medium and is retrievable in perceivable form; and

6 (B) eligible to be recorded in the land records maintained by
7 the recorder;

8 * **Sec. 7.** AS 40.17.900 is amended by adding new paragraphs to read:

9 (11) "electronic" means relating to technology having electrical,
10 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

11 (12) "electronic document" means a document that is received by the
12 recorder in an electronic form;

13 (13) "electronic signature" means an electronic sound, symbol, or
14 process attached to or logically associated with a document and executed or adopted
15 by a person with the intent to sign the document.

16 * **Sec. 8.** AS 40.17 is amended by adding a new section to read:

17 **Sec. 40.17.950. Short title.** AS 40.17.025, 40.17.033, and 40.17.800 may be
18 cited as the Uniform Real Property Electronic Recording Act.

19 * **Sec. 9.** AS 44.50.060 is amended to read:

20 **Sec. 44.50.060. Duties.** A notary public may

21 (1) administer oaths and affirmations;

22 (2) take the acknowledgment of or proof of execution of instruments in
23 writing, and give a notarial certificate of the proof or acknowledgment, included in or
24 attached to the instrument; the notarial certificate shall be signed by the notary public
25 in the notary public's own handwriting or by electronic means as authorized by
26 regulations adopted by the lieutenant governor;

27 (3) certify that a tangible copy of an electronic record is an
28 accurate copy of the electronic record.

29 * **Sec. 10.** AS 44.50.062 is amended to read:

30 **Sec. 44.50.062. Prohibited acts.** A notary public may not

31 (1) violate state or federal law in the performance of acts authorized by

1 this chapter;

2 (2) influence a person to enter into or avoid a transaction involving a
3 notarial act by the notary public;

4 (3) affix the notary public's signature or seal on a notarial certificate
5 that is incomplete;

6 (4) charge a fee for a notarial act unless a fee schedule has been
7 provided to the signer before the performance of the notarial act;

8 (5) affix the notary public's official seal to a document unless the
9 person who is to sign the document

10 (A) **except as provided by AS 44.50.075,** appears and signs
11 the document before the notary public or, for an acknowledgment, appears and
12 indicates to the notary public that the person voluntarily affixed the person's
13 signature on the document for the purposes stated within the document;

14 (B) gives an oath or affirmation if required under law or if the
15 notarial certificate states that the document was signed under oath or
16 affirmation; [AND]

17 (C) **in the case of a notarial act performed in the physical**
18 **presence of the notary public,** is personally known to the notary public,
19 produces government-issued identification containing the photograph and
20 signature of the person signing, or produces

21 (i) government-issued identification containing the
22 signature of the person signing, but without a photograph; and

23 (ii) another valid identification containing the
24 photograph and signature of the person signing; **and**

25 **(D) in the case of a notarial act performed for a remotely**
26 **located individual, satisfies the requirements of AS 44.50.075;**

27 (6) perform a notarial act if the notary public

28 (A) is a signer of or named in the document that is to be
29 notarized; or

30 (B) will receive directly from a transaction connected with the
31 notarial act a commission, fee, advantage, right, title, interest, cash, property,

1 or other consideration exceeding in value the normal fee charged by the notary
2 for the notarial act.

3 * **Sec. 11.** AS 44.50.072 is amended to read:

4 **Sec. 44.50.072. Regulations.** The lieutenant governor shall [MAY] adopt
5 regulations under AS 44.62 (Administrative Procedure Act) to carry out the purposes
6 of this chapter.

7 * **Sec. 12.** AS 44.50.072 is amended by adding new subsections to read:

8 (b) The regulations adopted by the lieutenant governor under this section must
9 provide standards for

10 (1) communication technology and identity proofing; and

11 (2) sufficient forms of notarial certificates for notarial acts performed
12 for remotely located individuals.

13 (c) The regulations adopted by the lieutenant governor under this section may

14 (1) prescribe the manner of performing notarial acts regarding tangible
15 and electronic records;

16 (2) include provisions to ensure that a change to or tampering with a
17 record bearing a certificate of a notarial act is self-evident;

18 (3) include provisions to ensure integrity in the creation, transmittal,
19 storage, or authentication of electronic records or signatures; and

20 (4) include provisions to prevent fraud or a mistake in the performance
21 of notarial acts.

22 (d) In adopting, amending, or repealing a regulation regarding notarial acts
23 with respect to electronic records, the lieutenant governor shall consider, so far as is
24 consistent with this chapter,

25 (1) the most recent standards regarding electronic records adopted by
26 national bodies;

27 (2) standards, practices, and customs of other jurisdictions with
28 substantially similar provisions; and

29 (3) the views of other governmental officials and entities and other
30 interested persons.

31 (e) A regulation adopted by the lieutenant governor regarding the performance

1 of notarial acts with respect to electronic records may not require, or accord greater
 2 legal status or effect to, the implementation or application of a specific technology or
 3 technical specification.

4 * **Sec. 13.** AS 44.50 is amended by adding a new section to read:

5 **Sec. 44.50.075. Notarial act performed for remotely located individual. (a)**

6 A remotely located individual may comply with AS 44.50.062(5)(A) by using
 7 communication technology to appear before a notary public.

8 (b) A notary public located in this state may perform a notarial act using
 9 communication technology for a remotely located individual if

10 (1) the notary public has

11 (A) personal knowledge of the identity of the individual;

12 (B) obtained satisfactory evidence of the identity of the
 13 remotely located individual by oath or affirmation from a credible witness
 14 appearing before the notary public under AS 44.50.062(5)(A); or

15 (C) obtained satisfactory evidence of the identity of the
 16 remotely located individual by using at least two different types of identity
 17 proofing;

18 (2) is able reasonably to confirm that a record before the notary public
 19 is the same record in which the remotely located individual made a statement or on
 20 which the individual executed a signature;

21 (3) the notary public, or a person acting on behalf of the notary public,
 22 creates an audiovisual recording of the performance of the notarial act; and

23 (4) for a remotely located individual located outside the United States,

24 (A) the record

25 (i) is to be filed with or relates to a matter before a
 26 public official, court, governmental entity, or other entity subject to the
 27 jurisdiction of the United States; or

28 (ii) involves property located in the territorial
 29 jurisdiction of the United States or involves a transaction substantially
 30 connected with the United States; and

31 (B) the act of making the statement or signing the record is not

1 prohibited by the foreign state in which the remotely located individual is
2 located.

3 (c) If a notarial act is performed under this section, the certificate of notarial
4 act required under AS 44.50.060 must state that the notarial act was performed using
5 communication technology. A statement is sufficient if it states substantially as
6 follows: "This notarial act involved the use of communication technology."

7 (d) A notary public, guardian, conservator, or agent of a notary public, or a
8 personal representative of a deceased notary public shall retain the audiovisual
9 recording created under (b)(3) of this section or cause the recording to be retained by a
10 repository designated by or on behalf of the person required to retain the recording.
11 Unless a different period is required by regulation adopted under (f)(4) of this section,
12 the recording must be retained for a period of at least 10 years after the recording is
13 made.

14 (e) Before a notary public performs the notary public's initial notarial act
15 under this section, the notary public shall notify the lieutenant governor that the notary
16 public will be performing notarial acts with respect to remotely located individuals
17 and identify the communication technologies the notary public intends to use. If the
18 lieutenant governor has established standards under (f)(3) of this section or
19 AS 44.50.072 for approval of communication technology or identity proofing, the
20 communication technologies and identity proofing must conform to the standards.

21 (f) In addition to adopting regulations under AS 44.50.072, the lieutenant
22 governor may adopt regulations regarding performance of a notarial act under this
23 section. The regulations may

24 (1) prescribe the means of performing a notarial act involving a
25 remotely located individual using communication technology;

26 (2) establish standards for communication technology and identity
27 proofing;

28 (3) establish requirements or procedures to approve providers of
29 communication technology and the process of identity proofing; and

30 (4) establish standards and a period for the retention of an audiovisual
31 recording created under (b)(3) of this section.

(g) Before adopting, amending, or repealing a regulation governing performance of a notarial act with respect to a remotely located individual, the lieutenant governor shall consider

(1) the most recent standards regarding the performance of a notarial act with respect to a remotely located individual adopted by national standard-setting organizations;

(2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(3) the views of other governmental officials and entities and other interested persons.

(h) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created under (b)(3) of this section, the provider of the communication technology, identity proofing, or storage appoints the lieutenant governor as the provider's agent for service of process in any civil action in this state related to the notarial act.

(i) In this section,

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

(2) "outside the United States" means a location outside the geographic boundaries of the United States, the Commonwealth of Puerto Rico, the United States Virgin Islands, and a territory, insular possession, or other location subject to the jurisdiction of the United States.

* **Sec. 14.** AS 44.50 is amended by adding a new section to read:

Sec. 44.50.078. Journal. (a) A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. If

1 the journal is maintained on a tangible medium, it must be in a permanent, bound
 2 register with numbered pages. If the journal is maintained in an electronic format, it
 3 must be in a permanent, tamper-evident electronic format complying with the
 4 regulations of the lieutenant governor under AS 44.50.072.

5 (c) An entry in a journal shall be made contemporaneously with performance
 6 of the notarial act and contain the following information:

- 7 (1) the date and time of the notarial act;
- 8 (2) a description of the record, if any, and type of notarial act;
- 9 (3) the full name and address of each individual for whom the notarial
 10 act is performed;
- 11 (4) if identity of the individual is based on personal knowledge, a
 12 statement to that effect;
- 13 (5) if identity of the individual is based on satisfactory evidence, a
 14 brief description of the method of identification and the identification credential
 15 presented, if any, including the date of issuance and expiration of the identification
 16 credential; and
- 17 (6) the fee, if any, charged by the notary public.

18 (d) If a notary public's journal is lost or stolen, the notary public shall
 19 promptly notify the lieutenant governor upon discovering that the journal is lost or
 20 stolen.

21 (e) Upon resignation from, or revocation or suspension of, a notary public's
 22 commission, the notary public shall retain the notary public's journal in accordance
 23 with (a) of this section and inform the lieutenant governor where the journal is located.

24 (f) Instead of retaining a journal as provided in (a) and (e) of this section, a
 25 current or former notary public may transmit the journal to the lieutenant governor or
 26 a repository approved by the lieutenant governor.

27 (g) Notwithstanding (a) and (e) of this section, upon the death or adjudication
 28 of incompetency of a current or former notary public, the notary public's personal
 29 representative or guardian or another person knowingly in possession of the notary
 30 public's journal shall transmit the journal to the lieutenant governor or a repository
 31 approved by the lieutenant governor.

1 * **Sec. 15.** AS 44.50 is amended by adding a new section to read:

2 **Sec. 44.50.145. Notification regarding performance of notarial act on**
 3 **electronic record; selection of technology; acceptance of tangible copy of**
 4 **electronic record.** (a) A notary public may select one or more tamper-evident
 5 technologies with which to perform notarial acts with respect to electronic records. A
 6 person may not require a notary public to perform a notarial act with respect to an
 7 electronic record with a technology that the notary public has not selected.

8 (b) Before a notary public performs the notary public's initial notarial act with
 9 respect to an electronic record, a notary public shall notify the lieutenant governor that
 10 the notary public will be performing notarial acts with respect to electronic records
 11 and identify the technology the notary public intends to use. If the lieutenant governor
 12 has established standards for approval of technology under AS 44.50.072, the
 13 technology must conform to the standards. If the technology conforms to the
 14 standards, the lieutenant governor shall approve the use of the technology.

15 (c) A recorder may accept for recording a tangible copy of an electronic
 16 record containing a notarial certificate as satisfying any requirement that a record
 17 accepted for recording be an original, if the notarial officer executing the notarial
 18 certificate certifies that the tangible copy is an accurate copy of the electronic record.

19 * **Sec. 16.** AS 44.50 is amended by adding a new section to read:

20 **Sec. 44.50.165. Validity of notarial acts.** The failure of a notarial officer to
 21 perform a duty or meet a requirement specified in this chapter does not invalidate a
 22 notarial act performed by the notarial officer. The validity of a notarial act under this
 23 chapter does not prevent an aggrieved person from seeking to invalidate the record or
 24 transaction that is the subject of the notarial act or from seeking other remedies based
 25 on a law of this state other than this chapter or a law of the United States. This section
 26 does not validate a purported notarial act performed by an individual who does not
 27 have the authority to perform a notarial act.

28 * **Sec. 17.** AS 44.50 is amended by adding a new section to read:

29 **Sec. 44.50.185. Relation to Electronic Signatures in Global and National**
 30 **Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031
 31 (Electronic Signatures in Global and National Commerce Act) but does not modify,

limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

* **Sec. 18.** AS 44.50.200(2) is amended to read:

(2) "notarial act" means an act, whether performed with respect to a tangible or electronic record, that is identified as a notarial act under AS 09.63.120 and an act that a notary public is directed to perform under AS 44.50.060;

* **Sec. 19.** AS 44.50.200 is amended by adding new paragraphs to read:

(4) "acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record;

(5) "communication technology" means an electronic device or process that

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

(B) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a visual, hearing, or speech impairment;

(6) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(7) "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;

(8) "identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources;

(9) "in a representative capacity" means acting as

(A) an authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

(B) a public officer, personal representative, guardian, or other representative in the capacity stated in a record;

(C) an agent or attorney-in-fact for a principal; or

(D) an authorized representative of another in any other capacity;

(10) "notarial officer" means a notary public or other individual authorized to perform a notarial act;

(11) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(12) "remotely located individual" means an individual who is not in the physical presence of a notary public who performs a notarial act under AS 44.50.075;

(13) "sign" means, with present intent to authenticate or adopt a record, to

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process;

(14) "signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 1 - 8 of this Act apply to an electronic document or electronic signature received by the recorder on or after the effective date of secs. 1 - 8 of this Act. In this subsection, "electronic document" and "electronic signature" have the meanings given in AS 40.17.900, as amended by sec. 7 of this Act.

(b) Sections 9 - 19 of this Act apply to a notarial act performed on or after the effective date of secs. 9 - 19 of this Act. In this subsection, "notarial act" has the meaning given in AS 44.50.200, as amended by sec. 18 of this Act.

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

1 TRANSITION: REGULATIONS. The Department of Natural Resources may adopt
2 regulations necessary to implement the changes made by secs. 1 - 8 of this Act. The lieutenant
3 governor may adopt regulations necessary to implement the changes made by secs. 9 - 19 of
4 this Act. The regulations adopted under this section take effect under AS 44.62
5 (Administrative Procedure Act), but not before the effective date of secs. 1 - 19 of this Act.

6 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 SAVING CLAUSE. (a) This Act does not affect the validity or effect of a document
9 recorded before the effective date of secs. 1 - 8 of this Act. In this subsection, "document" and
10 "record" have the meanings given in AS 40.17.900, as amended by sec. 6 of this Act.

11 (b) This Act does not affect the validity or effect of a notarial act performed before
12 the effective date of secs. 9 - 19 of this Act. In this subsection, "notarial act" has the meaning
13 given in AS 44.50.200, as amended by sec. 18 of this Act.

14 * **Sec. 23.** Section 21 of this Act takes effect immediately under AS 01.10.070(c).

15 * **Sec. 24.** Except as provided in sec. 23 of this Act, this Act takes effect January 1, 2020.