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SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES CLAMAN, Rasmussen, Kopp, Josephson, Wool, Story

Introduced: 2/17/20

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the recording of documents; relating to notaries and notarization,
2 including notarial acts performed for remotely located individuals; and providing for an
3 effective date."

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

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

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

1 the original conveyance.

2 * **Sec. 2.** AS 40.17.030(a) is amended to read:

3 (a) Except as provided in (b), (c), and (e) of this section, to be eligible for
4 recording, a document must

5 (1) contain original signatures; **original signatures may be provided**
6 **in electronic form;**

7 (2) be legible or capable of being converted into legible form by a
8 machine or device used in the recording office;

9 (3) be capable of being copied by the method used in the recording
10 office;

11 (4) contain a title reflecting the overall intent of the document;

12 (5) contain the information needed to index the document under
13 regulations of the department;

14 (6) contain a book and page reference or serial number reference if the
15 document amends, corrects, extends, modifies, assigns, or releases a document
16 previously recorded in this state;

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

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

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

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

26 * **Sec. 3.** AS 40.17 is amended by adding a new section to read:

27 **Sec. 40.17.140. Application of electronic provisions.** (a) The provisions of
28 AS 09.80 (Uniform Electronic Transactions Act) apply to this chapter.

29 (b) In applying this chapter, the department shall accept notarial acts
30 performed for remotely located individuals under AS 44.50.075.

31 * **Sec. 4.** AS 44.50.033 is amended to read:

1 **Sec. 44.50.033. Application fee.** A person applying for a commission as a
 2 notary public shall pay a nonrefundable application fee [OF \$40]. **The lieutenant**
 3 **governor shall set the amount of the fee by regulation.** However, an applicant for a
 4 limited governmental notary public commission under AS 44.50.010(a)(2) who is
 5 employed by the state may not be required to pay an application fee.

6 * **Sec. 5.** AS 44.50.034(a) is amended to read:

7 (a) A person applying for a commission as a notary public without limitation
 8 under AS 44.50.010(a)(1) shall execute an official bond of **\$2,500** [\$1,000] and submit
 9 the bond with the application under AS 44.50.032. The bond must be for a term of
 10 four years from the date of commission.

11 * **Sec. 6.** AS 44.50.060 is amended to read:

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

13 (1) administer oaths and affirmations;

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

19 **(3) give a notarial certificate that a tangible copy of an electronic**
 20 **record is an accurate copy of the electronic record.**

21 * **Sec. 7.** AS 44.50.062 is amended to read:

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

23 (1) violate state or federal law in the performance of acts authorized by
 24 this chapter;

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

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

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

31 (5) affix the notary public's official seal to a document unless the

1 person who is to sign the document

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

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

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

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

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

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

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

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

22 (B) will receive directly from a transaction connected with the
23 notarial act a commission, fee, advantage, right, title, interest, cash, property,
24 or other consideration exceeding in value the normal fee charged by the notary
25 for the notarial act.

26 * **Sec. 8.** AS 44.50.072 is amended to read:

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

30 * **Sec. 9.** AS 44.50.072 is amended by adding new subsections to read:

31 (b) The regulations adopted by the lieutenant governor under this section must

1 provide standards for

2 (1) communication technology and identity proofing; and

3 (2) sufficient forms of notarial certificates for notarial acts performed
4 for remotely located individuals.

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

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

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

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

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

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

17 (1) the most recent standards regarding electronic records adopted by
18 national bodies;

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

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

23 (e) A regulation adopted by the lieutenant governor regarding the performance
24 of notarial acts with respect to electronic records may not require, or accord greater
25 legal status or effect to, the implementation or application of a specific technology or
26 technical specification.

27 * **Sec. 10.** AS 44.50 is amended by adding a new section to read:

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

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

31 (b) A notary public located in this state may perform a notarial act using

1 communication technology for a remotely located individual if

2 (1) the notary public has

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

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

7 (C) obtained satisfactory evidence of the identity of the
8 remotely located individual by using

9 (i) a government-issued identification card;

10 (ii) a credential analysis of the identification card
11 described in (i) of this subparagraph; in this sub-subparagraph,
12 "credential analysis" means a form of identity proofing by which a third
13 person affirms the accuracy of a government-issued identification card;
14 and

15 (iii) at least one type of identity proofing;

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

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

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

22 (A) the record

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

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

29 (B) the act of making the statement or signing the record is not
30 prohibited by the foreign state in which the remotely located individual is
31 located.

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

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

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

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

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

24 (2) establish standards for communication technology and identity
25 proofing;

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

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

30 (g) Before adopting, amending, or repealing a regulation governing
31 performance of a notarial act with respect to a remotely located individual, the

1 lieutenant governor shall consider

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

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

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

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

15 (i) In this section,

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

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

22 * **Sec. 11.** AS 44.50 is amended by adding a new section to read:

23 **Sec. 44.50.078. Journal.** (a) A notary public shall maintain a journal in which
24 the notary public chronicles all notarial acts that the notary public performs under
25 AS 44.50.075. The notary public shall retain the journal for 10 years after the
26 performance of the last notarial act chronicled in the journal.

27 (b) A notary public may create a journal on a tangible medium or in an
28 electronic format. A notary public shall maintain at least one journal in a tangible
29 medium to chronicle all notarial acts described in (a) of this section. A notary public
30 may maintain one or more journals in an electronic format to chronicle all notarial acts
31 described in (a) of this section. If a journal is maintained in an electronic format, the

1 journal must be in a permanent, tamper-evident electronic format complying with the
2 regulations of the lieutenant governor under AS 44.50.072.

3 (c) A notary shall make an entry in a journal contemporaneously with
4 performance of the notarial act, and an entry must contain the following information:

5 (1) the date and time of the notarial act;

6 (2) a description of the record, if any, and type of notarial act;

7 (3) the full name and address of each individual for whom the notarial
8 act is performed;

9 (4) if identity of the individual is based on personal knowledge, a
10 statement to that effect;

11 (5) if identity of the individual is based on satisfactory evidence, a
12 brief description of the method of identification and the identification credential
13 presented, if any, including the date of issuance and expiration of the identification
14 credential; and

15 (6) the fee, if any, charged by the notary public.

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

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

22 * **Sec. 12.** AS 44.50 is amended by adding a new section to read:

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

29 (b) Before a notary public performs the notary public's initial notarial act with
30 respect to an electronic record, a notary public shall notify the lieutenant governor that
31 the notary public will be performing notarial acts with respect to electronic records

1 and identify the technology the notary public intends to use. If the lieutenant governor
 2 has established standards for approval of technology under AS 44.50.072, the
 3 technology must conform to the standards. If the technology conforms to the
 4 standards, the lieutenant governor shall approve the use of the technology.

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

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

10 **Sec. 44.50.165. Validity of notarial acts.** The failure of a notarial officer to
 11 perform a duty or meet a requirement specified in this chapter does not invalidate a
 12 notarial act performed by the notarial officer. The validity of a notarial act under this
 13 chapter does not prevent an aggrieved person from seeking to invalidate the record or
 14 transaction that is the subject of the notarial act or from seeking other remedies based
 15 on a law of this state other than this chapter or a law of the United States. This section
 16 does not validate a purported notarial act performed by an individual who does not
 17 have the authority to perform a notarial act.

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

19 **Sec. 44.50.185. Relation to Electronic Signatures in Global and National**
 20 **Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031
 21 (Electronic Signatures in Global and National Commerce Act) but does not modify,
 22 limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the
 23 notices described in 15 U.S.C. 7003(b).

24 * **Sec. 15.** AS 44.50.200(2) is amended to read:

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

28 * **Sec. 16.** AS 44.50.200 is amended by adding new paragraphs to read:

29 (4) "acknowledgment" means a declaration by an individual before a
 30 notarial officer that the individual has signed a record for the purpose stated in the
 31 record and, if the record is signed in a representative capacity, that the individual

1 signed the record with proper authority and signed it as the act of the individual or
2 entity identified in the record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (A) execute or adopt a tangible symbol; or

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

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

11 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
 12 read:

13 APPLICABILITY. (a) Sections 1 - 3 of this Act apply to the recording of documents
 14 on or after the effective date of secs. 1 - 3 of this Act.

15 (b) Sections 4 - 16 of this Act apply to a notarial act performed on or after the
 16 effective date of secs. 4 - 16 of this Act.

17 (c) Sections 4 and 5 of this Act apply to a person who applies for a new or subsequent
 18 commission as a notary public under AS 44.50.032 or 44.50.038 on or after the effective date
 19 of secs. 4 and 5 of this Act.

20 (d) In this section,

21 (1) "document" has the meaning given in AS 40.17.900;

22 (2) "notary public" has the meaning given in AS 44.50.200, as amended by
 23 sec. 15 of this Act.

24 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 TRANSITION: REGULATIONS. The lieutenant governor may adopt regulations
 27 necessary to implement the changes made by secs. 1 - 16 of this Act. The regulations adopted
 28 under this section take effect under AS 44.62 (Administrative Procedure Act), but not before
 29 the effective date of secs. 1 - 16 of this Act.

30 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 SAVING CLAUSE. (a) This Act does not affect the validity or effect of a document
2 recorded before the effective date of secs. 1 - 3 of this Act. In this subsection, "document" has
3 the meaning given in AS 40.17.900.

4 (b) This Act does not affect the validity or effect of a notarial act performed before
5 the effective date of secs. 4 - 16 of this Act. In this subsection, "notarial act" has the meaning
6 given in AS 44.50.200, as amended by sec. 15 of this Act.

7 * **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

8 * **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect January 1, 2021.