AN ACT

Relating to the recording of documents; relating to notaries and notarization, including notarial acts performed for remotely located individuals; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1
AN ACT

Relating to the recording of documents; relating to notaries and notarization, including notarial acts performed for remotely located individuals; and providing for an effective date.

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

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

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

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

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

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

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

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

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

(6) contain a book and page reference or serial number reference if the document amends, corrects, extends, modifies, assigns, or releases a document 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. 3. AS 40.17 is amended by adding a new section to read:

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

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

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

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

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

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

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

(1) administer oaths and affirmations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) perform a notarial act if the notary public

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

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

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

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

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

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

(1) communication technology and identity proofing; and

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 44.50.075. Notarial act performed for remotely located individual.** (a)
A remotely located individual may comply with AS 44.50.062(5)(A) by using
communication technology to appear before a notary public.

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

(1) the notary public has

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

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

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

       (i) a government-issued identification card;

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

       and

       (iii) at least one type of identity proofing;

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

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

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

   (A) the record

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

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

   (B) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.
(c) If a notarial act is performed under this section, the notarial certificate required under AS 44.50.060 must state that the notarial act was performed using communication technology. A statement is sufficient if it states substantially as follows: "This notarial act involved the use of communication technology."

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

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

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

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

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

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

(4) establish standards and a period for the retention of an audiovisual 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 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. 11. 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 under AS 44.50.075. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A notary public may create a journal on a tangible medium or in an electronic format. A notary public shall maintain at least one journal in a tangible medium to chronicle all notarial acts described in (a) of this section. A notary public may maintain one or more journals in an electronic format to chronicle all notarial acts described in (a) of this section. If a journal is maintained in an electronic format, the
journal must be in a permanent, tamper-evident electronic format complying with the regulations of the lieutenant governor under AS 44.50.072.

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

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

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

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

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

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

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

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

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

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

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

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the lieutenant governor that the notary public will be performing notarial acts with respect to electronic records.
and identify the communication technology the notary public intends to use. If the lieutenant governor has established standards for approval of communication technology under AS 44.50.072 or 44.50.075, the technology must conform to the standards. If the communication technology conforms to the standards, the lieutenant governor shall approve the use of the communication technology.

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

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

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

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


* Sec. 15. 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. 16. 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. 17. The uncodified law of the State of Alaska is amended by adding a new section to read:

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

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

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

(d) In this section,

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

(2) "notarial act" has the meaning given in AS 44.50.200, as amended by sec. 15 of this Act.

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

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

* Sec. 19. The uncodified law of the State of Alaska is amended by adding a new section to
SAVING CLAUSE. (a) This Act does not affect the validity or effect of a document recorded before the effective date of secs. 1 - 3 of this Act. In this subsection, "document" has the meaning given in AS 40.17.900.

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

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

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