

1 HB470
2 209093-2
3 By Representative Whitt
4 RFD: State Government
5 First Read: 25-FEB-21

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8 SYNOPSIS: Under existing law, an individual is
9 required to personally appear before a notary
10 public for verification of his or her
11 identification and signature when executing certain
12 instruments.

13 This bill would ratify and validate all
14 deeds, conveyances, deeds of trust, mortgages,
15 mineral leases, marriage contracts, and other
16 instruments in writing, affecting or purporting to
17 affect title to any real estate or personal
18 property situated in this state that were
19 acknowledged via remote notarization before July 1,
20 2021.

21 This bill would also authorize the use
22 remote notarization for acknowledgements.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to attestations by notaries public; to
2 amend Section 35-4-26, Code of Alabama 1975, to ratify
3 defective acknowledgments taken via remote notarization before
4 July 1, 2021; and to add Section 36-20-73.1 to the Code of
5 Alabama 1975, to authorize remote notarization.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 35-4-26 of the Code of Alabama
8 1975, is amended to read as follows:

9 "§35-4-26.

10 "(a) Acknowledgments, proofs of conveyances, and
11 affidavits may be taken within the United States and beyond
12 the State of Alabama, by judges and clerks of any federal
13 court, judges and clerks of any state court of record in any
14 state, notaries public, commissioners appointed by the
15 Governor of this state, the commissioner of deeds for the
16 state wherein the acknowledgment is taken, or by any
17 commissioned officer of any of the Armed Forces of the United
18 States. Beyond the limits of the United States, the
19 acknowledgments, proofs, and affidavits may be taken by the
20 judges of any court of record, mayor or chief magistrate of
21 any city, town, borough, or county, by any diplomatic,
22 consular, or commercial agent of the United States, notaries
23 public, or by any commissioned officer of any of the Armed
24 Forces of the United States.

25 "(b) Notwithstanding any provision of this chapter,
26 the acknowledgment of any instrument executed outside the
27 State of Alabama which is in compliance with the manner and

1 form prescribed by the laws of the place of its execution, is
2 executed in a state, territory, or insular possession of the
3 United States or the District of Columbia, and is verified by
4 the official seal of the officer before whom it is
5 acknowledged, shall have the same effect as an acknowledgment
6 in the manner and form prescribed by the laws of this state
7 for instruments executed within the state.

8 "(c) All deeds, conveyances, deeds of trust,
9 mortgages, mineral leases, marriage contracts, and other
10 instruments in writing, affecting or purporting to affect
11 title to any real estate or personal property situated in this
12 state, which have been recorded or executed ~~prior to August 1,~~
13 ~~2004~~ before July 1, 2021, and which may be defective or
14 ineffectual because of the failure to have the form of
15 acknowledgment as required by Section 35-4-29, or an
16 acknowledgment taken through the use of two-way audio visual
17 communication technology, are ratified and shall be binding
18 and effectual and valid as though the instruments contained
19 the required form of acknowledgment.

20 "(d) In addition to the acknowledgment of
21 instruments in the manner and form provided by this chapter,
22 persons serving in or with the Armed Forces of the United
23 States or their dependents may acknowledge the same wherever
24 located before any commissioned officer of any of the Armed
25 Forces of the United States. The instrument may not be
26 rendered invalid by the failure to state therein the place of
27 execution or acknowledgment, but shall include the state in

1 which the acknowledgment occurred. No authentication of the
2 certificate of acknowledgment of the officer shall be
3 required, but the officer taking the acknowledgment shall
4 endorse thereon or attach thereto a certificate substantially
5 in the following form:

6 ""On this ____ day of _____, _____, before me,
7 _____, the undersigned officer, personally appeared
8 _____ (Serial No. _____) known to me or
9 satisfactorily proven to be (serving in or with the Armed
10 Forces of the United States) (a dependent of _____,
11 Serial No. _____, a person serving in or with the Armed
12 Forces of the United States) and to be the person whose name
13 is subscribed to the within instrument, and acknowledgment
14 before me on this day that, being informed of the contents of
15 this instrument, he or she executed the same voluntarily on
16 the day the same bears date. The undersigned does further
17 certify that he or she is at the date of this certificate a
18 commissioned officer of the rank stated below and is in the
19 active service of the Armed Forces of the United States.

20 "" _____

21 ""Signature of Officer

22 "" _____

23 ""Rank and Serial No. of Officer and Command to
24 which attached."

25 Section 2. Section 36-20-73.1 is added to the Code
26 of Alabama 1975, to read as follows:

1 (a) For the purposes of this section, the following
2 terms shall have the following meanings:

3 (1) ORIGINAL SIGNATURE. A signature signed directly
4 onto a document in wet ink by a person who is named on the
5 document.

6 (2) SIGNATORY. The person who is named on the
7 document and is to sign the document.

8 (b) Unless otherwise provided by law, the powers and
9 functions of a notary public require his or her original
10 signature.

11 (c) For purposes of this article, and subject to
12 subsections (d) to (f), inclusive, an individual may
13 personally appear before an acknowledging notary by either of
14 the following:

15 (1) Physically appearing before the notary.

16 (2) Appearing through the use of two-way audio-video
17 communication technology that allows a notary public and a
18 remotely located signatory to communicate with each other
19 simultaneously by sight and sound, provided that the notary
20 public is physically located in this state and the two-way
21 audio-video communication is recorded and maintained for a
22 period of seven years by the notary public.

23 (d) If appearing through the use of two-way audio
24 video communication, the identity of the signatory shall be
25 verified by the notary public using either of the following
26 methods:

1 (1) The personal knowledge of the notary public of
2 the identity of the signatory.

3 (2)a. The presentation of two valid forms of
4 government issued identification, one of which shall include
5 the face and signature of the signatory; and

6 b. A process by which the notary public verifies the
7 identity of the signatory through a review of public or
8 private data sources.

9 (e) The two-way audio-video communication recording
10 shall contain all of the following:

11 (1) The date and time of the remote notarial act.

12 (2) A description of the documents to which the
13 remote notarial act relates.

14 (3) An attestation by the notary public of being
15 physically located in this state.

16 (4) A description of how the identification of the
17 signatory was verified.

18 (5) A clear image of any government issued
19 identification, if applicable.

20 (6) A clear image of the act of signing observed by
21 the notary public.

22 (f) The official date and time of the notarization
23 is the date and time the notary public witnessed the
24 signature, including the date and time the signature was
25 witnessed via two-way audio-video communication technology.

26 All documents used during the two-way audio-video

1 communication, shall be provided to the notary for his or her
2 authentication and original signature.

3 (g) Any action taken before July 1, 2021, allowing
4 for the remote notarization of signatures under the Alabama
5 Emergency Management Act of 1955, Chapter 9 of Title 31, is
6 ratified and confirmed.

7 Section 3. This act shall become effective July 1,
8 2021, following its passage and approval by the Governor, or
9 its otherwise becoming law.