

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 13
HOUSE BILL 2178

AN ACT

AMENDING SECTIONS 38-294, 41-311, 41-313, 41-315, 41-317, 41-323, 41-332 AND 41-351, ARIZONA REVISED STATUTES; REPEALING SECTIONS 41-352, 41-353, 41-354, 41-355, 41-357, 41-358, 41-359, 41-360, 41-361, 41-362, 41-363, 41-364, 41-365, 41-366, 41-367, 41-368, 41-369 AND 41-370, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 41-352; AMENDING SECTION 44-7011, ARIZONA REVISED STATUTES; RELATING TO NOTARIES PUBLIC.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-294, Arizona Revised Statutes, is amended to
3 read:

4 38-294. Resignations

5 Resignations shall be in writing, ~~and~~ and made as follows:

6 1. By members of the legislature, to the presiding officer of the
7 body of which ~~he~~ THE LEGISLATOR is a member, who shall immediately
8 transmit the resignation to the governor.

9 2. By state officers, ~~notaries public~~ and officers of the militia,
10 to the governor.

11 3. By other officers commissioned by the governor, to the governor.

12 4. By county officers, to the chairman of the board of supervisors
13 of their county.

14 5. By the chairman of the board of supervisors, to the county
15 recorder of the county.

16 6. In cases not otherwise provided for, by filing the resignation
17 in the office of the secretary of state.

18 7. By appointive officers, to the body or officer ~~which~~ THAT
19 appointed them, unless otherwise provided.

20 Sec. 2. Section 41-311, Arizona Revised Statutes, is amended to
21 read:

22 41-311. Definitions

23 In this article, unless the context otherwise requires:

24 1. "Acknowledgment" means a notarial act in which a notary
25 certifies that a signer, whose identity is proven by satisfactory
26 evidence, appeared before the notary and acknowledged that the signer
27 signed the document.

28 2. "Commission" means to authorize to perform notarial acts and the
29 written authority to perform those acts.

30 3. "Copy certification" means a notarial act in which the notary
31 certifies that the notary has made a photocopy of an original document
32 that is neither a public record nor publicly recordable.

33 4. "Incomplete document" means a document that has not been signed
34 where a signature line is provided or where other obvious blanks appear in
35 the document or that lacks a notarial certificate.

36 5. "Jurat" means a notarial act in which the notary certifies that
37 a signer, whose identity is proven by satisfactory evidence, has made in
38 the notary's presence a voluntary signature and has taken an oath or
39 affirmation vouching for the truthfulness of the signed document.

40 6. "Notarial act" or "notarization" means any act that a notary is
41 authorized to perform under section 41-313 AND THAT VERIFIES ONLY THE
42 IDENTITY OF A SIGNER OF A DOCUMENT AND NOT THE TRUTHFULNESS, ACCURACY OR
43 VALIDITY OF THE DOCUMENT.

44 7. "Notarial certificate" or "certificate" means the part of or
45 attachment to a notarized document for completion by the notary that bears

1 the notary's signature and seal and THAT states the venue, date and facts
2 that are attested by the notary in a particular notarization.

3 8. "Notary public" or "notary" means any person commissioned to
4 perform notarial acts under this article.

5 9. "Oath" or "affirmation" means a notarial act or part of a
6 notarial act in which a person made a vow in the presence of the notary
7 under penalty of perjury, with reference made to a supreme being in the
8 case of an oath.

9 10. "Personal knowledge" means familiarity with an individual
10 resulting from interactions with that individual over a sufficient time to
11 eliminate reasonable doubt that the individual has the identity claimed.

12 11. "Satisfactory evidence of identity" means:

13 (a) Proof of identity is evidenced by one of the following:

14 (i) An unexpired driver license OR NONOPERATING IDENTIFICATION
15 LICENSE that is issued by a state or territory of the United States.

16 (ii) An unexpired passport that is issued by the United States
17 department of state.

18 (iii) An unexpired identification card that is issued by any branch
19 of the United States armed forces.

20 (iv) AN INMATE IDENTIFICATION CARD THAT IS ISSUED BY THE STATE
21 DEPARTMENT OF CORRECTIONS, IF THE INMATE IS IN THE CUSTODY OF THE
22 DEPARTMENT.

23 (v) ANY FORM OF INMATE IDENTIFICATION THAT IS ISSUED BY A COUNTY
24 SHERIFF, IF THE INMATE IS IN THE CUSTODY OF THE COUNTY SHERIFF.

25 ~~(iv)~~ (vi) Any other unexpired identification card that is issued
26 by the United States government or a state or tribal government, that
27 contains the individual's photograph, signature and physical description
28 and that contains the individual's height, weight, HAIR color ~~of hair~~ and
29 EYE color ~~of eyes~~.

30 ~~(v)~~ (vii) The oath or affirmation of a credible person who is
31 personally known to the notary and who personally knows the individual.

32 ~~(vi)~~ (viii) The oath or affirmation of a credible person who
33 personally knows the individual and who provides satisfactory evidence of
34 identity pursuant to item (i), (ii), (iii), ~~or~~ (iv), (v) OR (vi) of this
35 subdivision.

36 ~~(vii)~~ (ix) Personal knowledge of the individual by the notary.

37 (b) In addition to subdivision (a) OF THIS PARAGRAPH, for the
38 purposes of a real estate conveyance or financing, proof of identity may
39 be evidenced by one of the following:

40 (i) A valid unexpired passport that is issued by the United States
41 government.

42 (ii) A valid unexpired passport that is issued by a national
43 government other than the United States government and that is accompanied
44 by a valid unexpired visa or other documentation that is issued by the
45 United States government and that is necessary to establish an
46 individual's legal presence in the United States.

1 (iii) Any other valid unexpired identification that is deemed
2 acceptable by the United States department of homeland security to
3 establish an individual's legal presence in the United States and that is
4 accompanied with supporting documents as required by the United States
5 department of homeland security.

6 12. "Venue" means this state and THE county where a notarial act
7 occurs.

8 Sec. 3. Section 41-313, Arizona Revised Statutes, is amended to
9 read:

10 41-313. Duties

11 A. Notaries public shall perform the following notarial acts, when
12 requested:

13 1. Take acknowledgments and give certificates of the
14 acknowledgments endorsed on or attached to the instrument.

15 2. Administer oaths and affirmations.

16 3. Perform jurats.

17 4. Perform copy certification.

18 B. Notaries public shall perform the notarial acts prescribed in
19 subsection A of this section only if:

20 1. The signer is in the presence of the notary at the time of
21 notarization.

22 2. The signer signs in a language that the notary understands.

23 3. ~~Subject to subsection D,~~ The signer communicates directly with
24 the notary in a language they both understand or indirectly through a
25 translator who is physically present with the signer and notary at the
26 time of the notarization and WHO communicates directly with the signer and
27 the notary in languages the translator understands.

28 4. The notarial certificate is worded and completed using only
29 letters, characters and a language that are read, written and understood
30 by the notary public.

31 C. If a notary attaches a notarial certificate to a document using
32 a separate sheet of paper, the attachment must contain a description of
33 the document that includes at a minimum the title or type of document, the
34 document date, the number of pages of the document and any additional
35 signers other than those named in the notarial certificate.

36 ~~D. A notary may perform a notarial act on a document that is a~~
37 ~~translation of a document that is in a language that the notary does not~~
38 ~~understand only if the person performing the translation signs an~~
39 ~~affidavit containing an oath or affirmation that the translation is~~
40 ~~accurate and complete. The notarized translation and affidavit shall be~~
41 ~~attached to the document and shall contain all of the elements described~~
42 ~~in subsection C.~~

43 ~~E.~~ D. Notaries public shall:

44 1. Keep, maintain and protect as a public record a journal of all
45 official acts performed by the notary as described in section 41-319.

1 2. Provide and keep the official seal that is imprinted in dark ink
2 with the words "notary public", the name of the county in which the notary
3 is commissioned, the name of the notary as it appears on the notarial
4 application, the great seal of the state of Arizona, THE NOTARIAL
5 COMMISSION NUMBER and the expiration date of the notarial commission.

6 3. Authenticate with the official seal all official acts on every
7 certificate or acknowledgment signed and sealed by the notary.

8 4. Respond to any requests for information and comply with any
9 investigations that are initiated by the secretary of state or the
10 attorney general.

11 Sec. 4. Section 41-315, Arizona Revised Statutes, is amended to
12 read:

13 41-315. Bond

14 A. A person who has been commissioned as a notary shall file with
15 the secretary of state an oath of office and a bond in an amount
16 prescribed by the secretary of state in order for the commission to become
17 effective. A licensed surety shall execute the bond. The bond shall be
18 effective for four years beginning on the commission's effective date.

19 B. The secretary of state shall not accept any bond that was issued
20 more than sixty days before or more than ~~thirty~~ SIXTY days after the date
21 on which the secretary of state commissions a notary.

22 Sec. 5. Section 41-317, Arizona Revised Statutes, is amended to
23 read:

24 41-317. Resignation; delivering notary seal, notarial journal
25 and records; failure to comply; storing records;
26 certified copies

27 A. A NOTARY SHALL SUBMIT THE NOTARY'S RESIGNATION IN WRITING TO THE
28 SECRETARY OF STATE.

29 ~~A.~~ B. On the resignation or revocation of a notarial commission or
30 the death of a notary, the notary seal, notarial journal and records,
31 except those records of notarial acts that are not public record, shall be
32 delivered by certified mail or other means providing a receipt to the
33 secretary of state. If a notary does not apply for reappointment, on
34 expiration of the notarial commission the notary seal, journal and records
35 shall be delivered to the secretary of state as required for resignation
36 under this subsection. A notary who neglects for three months thereafter
37 to deposit such records, seal and papers, or the personal representative
38 of a deceased notary who neglects for three months after ~~his~~ appointment
39 to deposit such records, seal and papers, shall forfeit to the state not
40 less than fifty nor more than five hundred dollars.

41 ~~B.~~ C. While a notary public is commissioned, a notary public shall
42 keep all records and journals of the notary's acts for at least five years
43 after the date the notarial act was performed. On receipt of the records
44 and journals from a notary public who no longer is commissioned, the
45 secretary of state shall keep all records and journals of notaries public
46 deposited in the secretary of state's office for five years and shall give

1 certified copies thereof when required, and for the copy certifications
2 the secretary of state shall receive the same fees as are by law allowed
3 to notaries public. The copy certifications shall be as valid and
4 effectual as if given by a notary public.

5 Sec. 6. Section 41-323, Arizona Revised Statutes, is amended to
6 read:

7 41-323. Change of address; lost, stolen or compromised
8 journal or seal; civil penalty

9 A. Within thirty days after the change of a notary's mailing,
10 business or residential address, the notary shall deliver to the secretary
11 of state, by certified mail or other means providing a receipt, a signed
12 notice of the change that provides both the old and new addresses.

13 B. Within ten days after the loss, ~~or~~ theft **OR COMPROMISE** of an
14 official journal or seal, the notary shall deliver to the secretary of
15 state, by certified mail or other means providing a receipt, a signed
16 notice of the loss, ~~or~~ theft **OR COMPROMISE**. The notary also shall inform
17 the appropriate law enforcement agency in the case of theft.

18 C. If a notary fails to comply with subsection A or B **OF THIS**
19 **SECTION**, the notary has failed to fully and faithfully discharge the
20 duties of a notary and the secretary of state may impose a civil penalty
21 of twenty-five dollars against the notary. The notary shall pay any civil
22 penalty imposed by the secretary of state pursuant to this subsection
23 before the renewal of the notary's commission.

24 Sec. 7. Section 41-332, Arizona Revised Statutes, is amended to
25 read:

26 41-332. Notary education fund

27 The notary education fund is established consisting of monies
28 deposited pursuant to ~~sections~~ **SECTION** 41-312 ~~and 41-353~~. The secretary
29 of state shall administer the fund. Monies in the fund are subject to
30 legislative appropriation.

31 Sec. 8. Section 41-351, Arizona Revised Statutes, is amended to
32 read:

33 41-351. Definition of electronic signature

34 In this article, unless the context otherwise requires, ~~:-~~

35 ~~1. "Approved time stamp provider" means a person or organization~~
36 ~~recognized by the secretary of state as capable of reliably providing time~~
37 ~~stamp services on notary service electronic documents.~~

38 ~~2. "Electronic" means relating to technology having electrical,~~
39 ~~digital, magnetic, wireless, optical, electromagnetic or similar~~
40 ~~capabilities.~~

41 ~~3. "Electronic acknowledgment" means a notarial act in which an~~
42 ~~electronic notary electronically certifies that the signer, whose identity~~
43 ~~is proven by satisfactory evidence, either:~~

44 ~~(a) Appeared before the electronic notary and acknowledged that the~~
45 ~~signer executed the instrument.~~

1 ~~(b) Provided secure electronic acknowledgment that the signer~~
2 ~~executed the electronic instrument presented to the electronic notary.~~

3 ~~4. "Electronic commission" means the written authority to perform~~
4 ~~electronic notarization acts.~~

5 ~~5. "Electronic document" means any record created, generated, sent,~~
6 ~~communicated, received or stored by electronic means.~~

7 ~~6. "Electronic jurat" means an electronic notarial act in which the~~
8 ~~electronic notary certifies that a signer, whose identity is proven by~~
9 ~~satisfactory evidence, has made in the electronic notary's presence a~~
10 ~~voluntary electronic signature or mark and has taken an oath or~~
11 ~~affirmation vouching for the truthfulness of the signed electronic~~
12 ~~document.~~

13 ~~7. "Electronic notary public" or "electronic notary" means any~~
14 ~~person commissioned to perform notarial acts under this article.~~

15 ~~8. "Electronic notary token" means the electronic attachment to a~~
16 ~~notarized electronic document that is attached by the electronic notary~~
17 ~~and that contains the notary's electronic signature. The electronic~~
18 ~~notary token is linked to the electronic document to which it relates in a~~
19 ~~manner so that if the document is changed the electronic notary token is~~
20 ~~invalidated.~~

21 ~~9. "electronic signature" means an electronic method or process~~
22 ~~that through the application of a security procedure allows a~~
23 ~~determination that the electronic signature at the time it was executed~~
24 ~~was all of the following:~~

25 ~~(a) 1. Unique to the person using it.~~

26 ~~(b) 2. Capable of verification.~~

27 ~~(c) 3. Under the sole control of the person using it.~~

28 ~~(d) 4. Linked to the electronic document to which it relates in a~~
29 ~~manner so that if the document is changed the electronic signature is~~
30 ~~invalidated.~~

31 ~~10. "Notary service electronic certificate" means the materials and~~
32 ~~methods issued by an electronic notary to a prospective signer so that~~
33 ~~signer may create a notary service electronic signature.~~

34 ~~11. "Notary service electronic signature" means an act completed by~~
35 ~~a signer using a properly issued notary service electronic certificate to~~
36 ~~sign an electronic document.~~

37 ~~12. "Oath" or "affirmation" means an act in which a person makes a~~
38 ~~vow in the presence of the electronic notary under penalty of perjury,~~
39 ~~with reference made to a supreme being in the case of an oath.~~

40 ~~13. "Personal knowledge" means familiarity with an individual~~
41 ~~resulting from interactions with that individual over a sufficient time to~~
42 ~~eliminate reasonable doubt that the individual has the identity claimed.~~

43 ~~14. "Satisfactory evidence of identity" means:~~

44 ~~(a) Proof of identity is evidenced by one of the following:~~

45 ~~(i) An unexpired driver license that is issued by a state or~~
46 ~~territory of the United States.~~

1 ~~(ii) An unexpired passport that is issued by the United States~~
2 ~~department of state.~~

3 ~~(iii) An unexpired identification card that is issued by any branch~~
4 ~~of the United States armed forces.~~

5 ~~(iv) Any other unexpired identification card that is issued by the~~
6 ~~United States government or a state or tribal government, that contains~~
7 ~~the individual's photograph, signature and physical description and that~~
8 ~~contains the individual's height, weight, color of hair and color of eyes.~~

9 ~~(v) The oath or affirmation of a credible person who is personally~~
10 ~~known to the electronic notary and who personally knows the individual~~
11 ~~signer.~~

12 ~~(vi) The oath or affirmation of a credible person who personally~~
13 ~~knows the individual and who provides satisfactory evidence of identity~~
14 ~~pursuant to item (i), (ii), (iii) or (iv) of this subdivision.~~

15 ~~(vii) Personal knowledge of the individual signer by the electronic~~
16 ~~notary.~~

17 ~~(b) In addition to subdivision (a) of this paragraph, for the~~
18 ~~purposes of a real estate conveyance or financing, proof of identity may~~
19 ~~be evidenced by one of the following:~~

20 ~~(i) A valid unexpired passport that is issued by the United States~~
21 ~~government.~~

22 ~~(ii) A valid unexpired passport that is issued by a national~~
23 ~~government other than the United States government and that is accompanied~~
24 ~~by a valid unexpired visa or other documentation that is issued by the~~
25 ~~United States government and that is necessary to establish an~~
26 ~~individual's legal presence in the United States.~~

27 ~~(iii) Any other valid unexpired identification that is deemed~~
28 ~~acceptable by the United States department of homeland security to~~
29 ~~establish an individual's legal presence in the United States and that is~~
30 ~~accompanied with supporting documents as required by the United States~~
31 ~~department of homeland security.~~

32 ~~15. "Time stamp token" means a secure electronic method to affix a~~
33 ~~statement of the time and date that the document was recognized as a valid~~
34 ~~notary service electronic document by an approved time stamp provider. A~~
35 ~~time stamp token is attached by an approved time stamp provider to the~~
36 ~~document in a way that if the document changes the time stamp token is~~
37 ~~invalidated.~~

38 Sec. 9. Repeal

39 Sections 41-352, 41-353, 41-354, 41-355, 41-357, 41-358, 41-359,
40 41-360, 41-361, 41-362, 41-363, 41-364, 41-365, 41-366, 41-367, 41-368,
41 41-369 and 41-370, Arizona Revised Statutes, are repealed.

42 Sec. 10. Title 41, chapter 2, article 3, Arizona Revised Statutes,
43 is amended by adding a new section 41-352, to read:

44 41-352. Electronic notarization; rules

45 A. NOTARIAL COMMISSIONS, DUTIES AND ACTS AS PRESCRIBED BY THIS
46 ARTICLE MAY BE PERFORMED ELECTRONICALLY.

1 B. A NOTARY PUBLIC MAY ACCEPT DOCUMENTS SIGNED WITH AN ELECTRONIC
2 SIGNATURE.

3 C. ON OR BEFORE DECEMBER 31, 2019, THE SECRETARY OF STATE SHALL
4 ADOPT RULES THAT ESTABLISH STANDARDS FOR SECURE AND FEASIBLE
5 IMPLEMENTATION OF ELECTRONIC NOTARIZATION.

6 Sec. 11. Section 44-7011, Arizona Revised Statutes, is amended to
7 read:

8 44-7011. Notarization; acknowledgment

9 Notwithstanding title 41, chapter 2, article 2, if the law requires
10 a signature or record to be notarized, acknowledged, verified or made
11 under oath, that requirement is satisfied if a notary completes a notarial
12 act on the electronic message or document. That notarial act on the
13 electronic message or document is complete without the imprint of the
14 notary's seal if all of the following apply:

15 1. The electronic message or document is signed pursuant to this
16 chapter or section 18-106 in the presence of a notary.

17 2. The notary confirms that the electronic signature on the
18 electronic message or document is verifiably the electronic signature
19 issued to the signer pursuant to this chapter or section 18-106.

20 3. The notary electronically signs with an electronic signature
21 that is consistent with this chapter, ~~title 41, chapter 2, article 3~~ or
22 any other applicable law.

23 4. The following information appears electronically within the
24 message electronically signed by the notary:

25 (a) The notary's full name and commission number exactly as it
26 appears on the notary's commission.

27 (b) The words "electronic notary public", "state of Arizona" and
28 "my commission expires on (date)".

29 (c) The address of the notary's principal place of contact exactly
30 as it appears on the notary's commission.

31 (d) The notary's e-mail or other electronic address exactly as it
32 appears on the notary's commission.

33 Sec. 12. Notaries public; seal; applicability

34 A notary public who is appointed after the effective date of this
35 act shall use an official seal that is imprinted with the notary public's
36 notarial commission number. A notary public who was appointed before the
37 effective date of this act shall replace the notary's official seal on
38 reappointment with an official seal that is imprinted with the notary
39 public's notarial commission number.

APPROVED BY THE GOVERNOR MARCH 16, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 16, 2018.