STATE OF MISSISSIPPI

Office of the Governor

EXECUTIVE ORDER NO. 1467

WHEREAS, on March 14, 2020, pursuant to the Constitution of the State of Mississippi and Miss. Code Ann. § 33-15-11(b)(17), I issued a Proclamation declaring that a State of Emergency exists in the State of Mississippi as a result of the outbreak of COVID-19; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19 beginning on January 27, 2020, on March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic, and on March 13, 2020, the President of the United States declared a nationwide state of emergency due to the coronavirus COVID-19 pandemic; and

WHEREAS, the worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Mississippi significantly impact the life and health of our people, as well as the economy of Mississippi; and

WHEREAS, the risk of spread of COVID-19 within Mississippi constitutes a public emergency that may result in substantial injury or harm to life, health, and property within Mississippi; and

WHEREAS, on March 11, 2020, the Mississippi State Department of Health confirmed the first presumptive case of COVID-19 in Mississippi and as of April 6, 2020 there are 1738 presumptive and confirmed cases in Mississippi that have tested positive for COVID-19; and

WHEREAS, the Centers for Disease Control (CDC) guidance for responding to COVID-19 recommends avoiding crowds as much as possible, especially for older adults and individuals with serious chronic medical conditions and Mississippi State Department of Health has recommended avoiding social gatherings where 10 people or more may come into close contact; and

WHEREAS, limiting social interaction between members of the public to minimize the risk of person-to-person transmission, who may be in a position to interact and transmit COVID-19 to other individuals, including vulnerable populations including older adults and individuals with serious chronic medical conditions is necessary to slow the transmission of COVID-19; and

WHEREAS, the uninterrupted delivery of essential services and functions is vital to infrastructure viability, critical to maintain continuity of functions critical to public health and safety, as well as economic and national security, and is crucial to community resilience, continuity of essential functions and to promote the security and safety of Mississippi residents even as the nation limits human interaction and engages in social distancing;

NOW, THEREFORE, I, Tate Reeves, Governor of the State of Mississippi, by the authority vested in me by the Constitution and laws of the State of Mississippi, do hereby order and direct as follows:

1. In order to provide Mississippi citizens and businesses with a secure, safe, and legal method by which to execute important legal documents for the duration of the State of Emergency in my March 14, 2020 Proclamation, providing an alternative to the in-person physical presence requirement under the current notarial process is a necessary measure to combat the COVID-19 emergency. Accordingly, pursuant to Miss. Code Ann. §33-15-11(c)(1) and §33-15-31, this Executive Order temporarily modifies 1 Miss. Admin. Code Pt. 5, R. 1.5 for the duration of the State of Emergency and for fourteen days thereafter and allows notaries public commissioned under the laws of this State to perform a notarization for a principal not in the physical presence of the notary public, provided the following conditions are met:

   (A) the principal and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the signing;

   (B) the notary public:

      i. has reasonably identified the principal by one or more of the following:

         a) personal knowledge of the principal;

b) at least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources;

c) a government identification credential, which may be remotely presented through communication technology, that is issued to the individual and contains the signature and photograph of the individual; or

d) oath or affirmation of a credible witness who (I) is in the physical presence of either the notary public or the principal or (II) is able to communicate with the notary public and the principal simultaneously by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the principal and has been reasonably identified by the notary public under clause (a) or (b); and

ii. either directly or through an agent:

a) creates an audio and visual recording of the performance of the notarization; and

b) retains such recording as a notarial record during the term of the notary public's office, including renewals thereof, unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto; and

iii. for a principal physically located outside the geographic boundaries of the State of Mississippi –

a) the record or document –

1) is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the State of Mississippi; or

2) involves property located in the territorial jurisdiction of the State of Mississippi or a transaction substantially connected to the State of Mississippi; and

b) the notary public has no actual knowledge that the act of making the statement or signing the record or document is prohibited by the laws of the jurisdiction in which the principal is physically located.

2. If a State law requires a principal to appear personally before or be in the physical presence of a notary public at the time of a notarization that requirement shall be satisfied if the principal and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.

3. Nothing in this Order shall require a notary public commissioned under the laws of the State of Mississippi to perform a notarization-

(A) with respect to an electronic record or document;

(B) for a principal not in the physical presence of the notary public; or

(C) using a technology that the notary public has not selected.

4. In the case of a document in tangible form signed by a remotely located individual while being witnessed by a notary public using simultaneous audio-video communication technology,

(A) once signed, the requesting person shall mail the signed documents to the notary public for certification and execution with the notary public's signature and the official stamp or seal.

(B) the official date and time of the notarization shall be the date and time when the notary public witnesses the signature via the electronic devices that provide the audio-video presence.

5. In the case of an electronic document or record signed electronically by a remotely located individual through the use of a remote online notarization platform,

(A) once signed, the notary public may affix their signature and their official stamp or seal.

(B) The official date and time of the notarization shall be the date and time determined by the remote online notarization platform.

6. In addition to the Five Dollar ($5.00) fee per signature that a notary public may charge for a notarial act, a notary public may charge an additional fee for notarial acts under this rule of up to Twenty-Five Dollars ($25.00) for any notarial act conducted when witnessing the signing of a document by a remotely located individual for the purpose of covering the cost of the remote online notarization platform.

7. In order to facilitate the recording of documents that have been electronically signed and electronically notarized using a remote online notarization platform, a notary public that has witnessed the signing of an electronic document by a remotely located individual, may certify that a tangible copy of the electronic document is a true and correct copy of the electronic document by attaching a "certificate of electronic document" using the following form:

CERTIFICATE OF ELECTRONIC DOCUMENT

I certify that the attached document, _____ (insert title), dated _____, and containing _____ pages, is a true and correct copy of an electronic document printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the electronic document's creation or execution. This certification is made under penalty of perjury.

Signed this the ____ day of _____, 20___.

_____

(*stamp or seal*) (Signature of Notary Public)

_____

(Printed name of Notary Public)

My commission expires: _____

8. The notary public making the certification provided in Section 7 above shall:

(A) confirm that the electronic document contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident;

(B) personally print or supervise the printing of the electronic document onto paper; and

(C) not make any changes or modifications to the electronic document other than the certification described in paragraph 7.

9. The validity and recognition of a notarization under this Order shall not prevent an aggrieved person from seeking to invalidate a record, document, or transaction that is the subject of a notarization or from seeking other remedies based on State or Federal law other than this Order for any reason not addressed in this Order, including on the basis-

(A) that a person did not, with present intent to authenticate or adopt a record or document

i. execute or adopt on the record or document a tangible symbol; or

ii. attach to or logically associate with the record or document an electronic signature;

(B) that a principal was incompetent, lacked authority or capacity to execute the record or document, or did not knowingly and voluntarily execute a record or document; or

(C) of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.

10. Nothing in this Order shall affect or supersede a State law or rule governing, authorizing, or prohibiting the practice of law.

11. The failure of a notary public to meet a requirement specified in this Order shall not invalidate or impair the recognition of a notarization performed by the notary public under the authority granted in this Order.

12. This Order shall not be construed to create a public or private cause of action or remedy.

13. This Order shall not affect the validity of a notarization performed before the effective date hereof. The validity and recognition of a notarization performed pursuant to the terms of this Order and during the period hereof, shall not be affected by the subsequent expiration, modification, amendment or revocation of this Order.

14. If any provision of this Order or the application of such provision to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Order and the application of the provisions thereof to other persons or circumstances shall not be affected thereby.

15. In this Order:

(A) The term "commissioned" includes appointed and licensed.

(B) With respect to real property, the term "document" has the meaning given that term in Miss. Code Ann. § 89-5-103 et seq.

(C) The term "electronic" has the meaning given that term in Miss. Code Ann. § 75-12-1, et seq, and with respect to real property, Miss. Code Ann. § 89-5-103 et seq.

(D) The term "electronic record" has the meaning given that term in Miss. Code Ann. § 75-12-1, et seq.

(E) With respect to real property, the term "electronic document" has the meaning given that term in Miss. Code Ann. § 89-5-103, et seq.

(F) The term "electronic signature" has the meaning given that term Miss. Code Ann. § 75-12-1, et seq, and with respect to real property, Miss. Code Ann. § 89-5-103 et seq.

(G) The term "information" has the meaning given that term in Miss. Code Ann. § 75-12-1, et seq.

(H) The term "law" includes any statute, regulation, or rule of law.

(I) The term "notarization" includes:

i. any act-whether performed with respect to a tangible or electronic record and whether performed in a principal, official, or representative capacity-that a notary public may perform under the State of Mississippi or the law of the State in which the principal giving the acknowledgment is located, or under the laws of the State under which the notary public is commissioned; and

ii. any such act in which a principal making a statement or executing a record is not in the physical presence of the notary public but is able to communicate with the notary public simultaneously by sight and sound through an electronic device or process at the time of such act.

(J) The term "notary public" has the meaning given that term in Miss. Code Ann. § 25-33-1, et seq.

(K) The term "principal" has the meaning given that term in Miss. Code Ann. § 25-33-1, et seq.

(L) The term "record" has the meaning given that term in Miss. Code Ann. § 75-12-1, et seq.

(M) The term "requirement" includes a duty, a standard of care, or a prohibition.

(N) The term "simultaneously "means substantially simultaneously and without unreasonable interruption or disconnection but includes reasonably short delays inherent or common in the method of communication.

(O) The term "stamp or seal of office" means an image containing information as specified under the law of the State in which a notary public is commissioned, which is used by the notary public to authenticate the notarization of a record, and which may consist of a physical image or impression affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(P) The term "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, every territory or possession subject to the jurisdiction of the United States, and every federally recognized Indian tribe, and includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, commission, authority, institution, or instrumentality and any county, municipality, or other political subdivision thereof.

(16) Any notarial act that has been performed remotely by a notary public licensed to perform remote online notarizations under the laws of another state, commonwealth, territory, district or possession of the United States shall have the same force and effect under the laws of the State of Mississippi, as if performed by a notarial officer of the State of Mississippi.

(17) That all departments, commissions, agencies, institutions, and boards of the State of Mississippi, political subdivisions thereof, counties, municipalities and school districts are authorized to cooperate in actions and measures taken in response to COVID-19 during the State of Emergency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

DONE in the City of Jackson, on the 6th day of April, in the year of our Lord, two thousand and twenty, and of the Independence of the United States of America, the two hundred and forty-fourth.

TATE REEVES
GOVERNOR

BY THE GOVERNOR

MICHAEL WATSON
SECRETARY OF STATE