

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Operations Committee

BILL: CS/SB 2490

INTRODUCER: Judiciary Committee and Senator Haridopolos

SUBJECT: Notary Public/Electronic Notarization

DATE: April 20, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	Fav/CS
2.	McKay	Wilson	GO	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes notaries public to use electronic notarization for documents requiring notarization. This bill implements standards for secure electronic notarization in order to receive the same level of credibility and reliability as paper-based notarizations. It also authorizes the Department of State to adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized.

This bill creates section 117.021, Florida Statutes.

II. Present Situation:

Background of Notaries Public

A notary public is a “public officer whose function it is to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgements of deeds and other conveyances, and certify them, and to perform certain official acts, chiefly in commercial matters.”¹ Notaries originated during the Roman Republic and were originally scribes who took notes in shorthand.² The term “notary” originated around 100 A.D., when a person called a “notarius” adopted a new system of

¹ 66 C.J.S. *Notaries* s. 2 (2007); see also *Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a “person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments.” BLACK’S LAW DICTIONARY (8th ed. 2004).

² John E. Seth, *Notaries in the American Colonies*, 32 J. MARSHALL L. REV. 863, 865 (1999).

shorthand writing.³ The Public Notaries Act of 1801 established notaries public to be appointed and overseen by the archbishop, and to this day, notaries in England are appointed by the Archbishop of Canterbury.⁴ The appointment and use of notaries were brought to the United States by the British and French settlers, and the 10th Amendment to the Constitution gave the states the power to appoint and oversee the conduct of notaries public.⁵ Today there are three distinct groups of notaries practicing in the world: civil law notaries, English notaries, and United States notaries.⁶ There were over 4 million notaries documented in the United States in 1999.⁷ Currently, there are almost a million registered notaries in the State of Florida, and the Department of State (department) anticipates there will be approximately 750,000 initial new registrations in the next year.⁸

The office of notary public is established by statute. In Florida, notaries public are governed by ch. 117, F.S. A person interested in becoming a notary must be at least 18 years of age, be a legal resident of the state, and be able to read, write, and understand the English language.⁹ Notaries are appointed by the Governor for a term of four years.¹⁰ An applicant must submit a signed and sworn application, approved by the Department of State, as well as a \$39 application fee,¹¹ and a surety bond in the amount of \$7,500.¹² The application must include the following information:

- Full name;
- Residence address and telephone number;
- Business address and telephone number;
- Date of birth;
- Race;
- Sex;
- Social security number;
- Citizenship status;
- Driver's license number;
- Affidavit of good character from someone unrelated to the applicant who has known the applicant for one year or more;
- A list of all professional licenses and commissions issued by the state during the previous 10 years and whether such license was suspended or revoked; and
- Whether the applicant has been convicted of a felony.¹³

³ Tom Halliwell, *The Notary: A Short History*, at <http://www.learnedcounsel.com/notaryhistory.html> (last visited April 2, 2007).

⁴ J. Nick Badgerow, "Notarize This": *The Notary's and the Lawyer's Liability for Forged Signatures*, 73 J. KAN. B.A. 18, 18 (2004).

⁵ *Id.* at 19.

⁶ Seth, *supra* note 2, 884.

⁷ *Id.* at 885.

⁸ Revised Fiscal Impact Statement from the Department of State, SB 2490, March 26, 2007.

⁹ Section 117.01(1), F.S.

¹⁰ *Id.*

¹¹ Section 117.01(2), F.S., requires a \$25 fee, together with a \$10 commission fee required by s. 113.01, F.S., and a surcharge of \$4 which is appropriated to the Executive Office of the Governor to be used to educate and assist notaries.

¹² Section 117.01(2) and (7), F.S.

¹³ Section 117.01(2), F.S.

Any notary public who lawfully changes his or her name must, within 60 days after such change, request an amended commission from the Secretary of State by sending in \$25, his or her current commission, and a notice of change form obtained from the Secretary of State.¹⁴ The department serves as the custodian of records for notary public applications and must maintain the records for the full term of the notary commission.¹⁵ The Governor may suspend a notary public for any grounds provided in s. 7, Art. IV of the State Constitution.¹⁶

Uniform Electronic Transaction Act

The Uniform Electronic Transaction Act (UETA), codified in s. 668.50, F.S., “adjusted statute of fraud provisions to include electronic ‘records’ and ‘signatures’ for the memorialization of all kinds of transactions.”¹⁷ Specifically, s. 668.50(11), F.S., provides, “If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature¹⁸ of the person authorized by applicable law to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.” UETA provides for electronic notarization, but does not provide any standards to govern electronic notarization.

III. Effect of Proposed Changes:

This bill creates s. 117.021, F.S., to allow for electronic notarization of documents. According to industry representatives, the bill implements standards for secure electronic notarization approved by the National Association of Secretaries of State (NASS) in 2006. However, this bill does not provide any definitions, unlike the national standards adopted by NASS. It may be helpful to include certain definitions¹⁹ in proposed s. 117.021, F.S., or at a minimum include cross-references to appropriate statutes.

The bill requires that the provisions found in ch. 117, F.S., which apply to traditional notarization, apply to electronic notarization of documents as well.²⁰

This bill provides the specifications of the electronic signature of a notary public to be:

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public’s sole control; and

¹⁴ Section 117.05(9), F.S.

¹⁵ Section 117.01(2), F.S.

¹⁶ Section 117.01(4), F.S.

¹⁷ National Conference of Commissioners on Uniform State Laws, *Summary, Uniform Real Property Electronic Recording Act*, at http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-urpera.asp (last visited April 2, 2007).

¹⁸ Current law provides for electronic signatures in part I, ch. 668, F.S.

¹⁹ Definitions such as “electronic,” “electronic document,” “electronic notarial act,” “electronically enabled notary public,” “electronic notary seal,” “electronic signature,” “electronic notarial certificate,” “non-repudiation,” “notary electronic signature,” “physical appearance,” “unique to the notary public,” and “under the sole control” are included in the National E-Notarization Standards promulgated by the National Association of Secretaries of State. See National Association of Secretaries of State, *National E-Notarization Standards*, at www.nass.org/issues.html (follow “NASS Approves National Standards on E-Notarization” hyperlink) (last visited April 2, 2007).

²⁰ Specifically, ss. 117.01, 117.03, 117.04, 117.05(1)-(11), (13), and (14), 117.105, and 117.107, F.S., continue to govern electronic notarizations.

- Attached to or logically associated with the electronic document in such a manner that any subsequent alterations to the document render evidence of the change.

When a signature is required to be accompanied by a notary public seal, the bill provides that this requirement is satisfied when the electronic signature of the notary public contains all of the following seal information:

- The full name of the notary public exactly as provided on the notary public's application for appointment;
- The words "Notary Public State of Florida";
- The date the commission of the notary public expires; and
- The commission number of the notary public.

The bill provides the Department of State with the authority to adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized in proposed s. 117.021, F.S.

This act shall take effect January 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on the Department of State associated with the rulemaking process, should this be deemed necessary.

VI. Technical Deficiencies:

New s. 177.021(4), F.S., creates a penalty provision that provides that failure of the notary public to comply with any of the requirements relating to electronic notarizations may constitute grounds for suspension of the notary public's commission by the *Executive Office of the Governor*. The bill incorporates the provisions of s. 117.01, F.S., which includes penalty provisions applicable to all notaries, providing that the *Governor* may suspend a notary public for, among other things, *intentional* violation of the chapter. Because the penalty provisions included in the bill are slightly different than the ones already in statute, conflict or confusion could potentially arise. Since the penalty provisions of s. 117.01(4), F.S., apply to all notaries public, new s. 117.021(4), F.S., is unnecessary; eliminating the new subsection would resolve any apparent conflict or confusion.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
