

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Grall offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. The Division of Law Revision and Information is directed to create part I of chapter 117, Florida Statutes, consisting of ss. 117.01-117.108, Florida Statutes, to be entitled "General Provisions."

Section 2. Subsection (1) of section 117.01, Florida Statutes, is amended to read:

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.-

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13 (1) The Governor may appoint as many notaries public as he
14 or she deems necessary, each of whom shall be at least 18 years
15 of age and a legal resident of this ~~the~~ state. A permanent
16 resident alien may apply and be appointed and shall file with
17 his or her application a recorded Declaration of Domicile. The
18 residence required for appointment must be maintained throughout
19 the term of appointment. Notaries public shall be appointed for
20 4 years and may only ~~shall~~ use and exercise the office of notary
21 public if he or she is within the boundaries of this state. An
22 applicant must be able to read, write, and understand the
23 English language.

24 Section 3. Subsections (4) and (5) of section 117.021,
25 Florida Statutes, are renumbered as subsections (5) and (6),
26 respectively, paragraph (c) of subsection (2) is amended, and
27 new subsections (4) and (7) are added to that section, to read:

28 117.021 Electronic notarization.—

29 (2) In performing an electronic notarial act, a notary
30 public shall use an electronic signature that is:

31 (c) Retained under the notary public's sole control and
32 includes access protection through the use of passwords or codes
33 under control of the notary public; and

34 (4) A person may not require a notary public to perform a
35 notarial act with respect to an electronic record with a
36 technology that the notary public has not selected.

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37 (7) The Department of State, in collaboration with the
38 Agency for State Technology, shall adopt rules establishing
39 standards for tamper-evident technologies that will indicate any
40 alteration or change to an electronic record after completion of
41 an electronic notarial act and shall publish a list of
42 technologies that satisfy such standards and are approved for
43 use in electronic notarizations, effective January 1, 2019. All
44 electronic notarizations performed on or after January 1, 2019,
45 must comply with the adopted standards and use an approved
46 technology.

47 Section 4. Paragraph (a) of subsection (2), paragraphs
48 (a), (c), (g), (h), and (i) of subsection (4), subsection (5),
49 paragraph (a) of subsection (12), and subsections (13) and (14)
50 of section 117.05, Florida Statutes, are amended, and paragraph
51 (c) is added to subsection (12) of that section, to read:

52 117.05 Use of notary commission; unlawful use; notary fee;
53 seal; duties; employer liability; name change; advertising;
54 photocopies; penalties.—

55 (2) (a) The fee of a notary public may not exceed \$10 for
56 any one notarial act, except as provided in ss. ~~117.045~~ and
57 117.275.

58 (4) When notarizing a signature, a notary public shall
59 complete a jurat or notarial certificate in substantially the
60 same form as those found in subsection (13). The jurat or

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61 certificate of acknowledgment shall contain the following
62 elements:

63 (a) The venue stating the location of the notary public at
64 the time of the notarization in the format, "State of Florida,
65 County of"

66 (c) That the signer personally appeared before the notary
67 public at the time of the notarization either by physical
68 presence or by means of audio-video communication technology
69 pursuant to part II of this chapter.

70 (g) The notary public's ~~notary's~~ official signature.

71 (h) The notary public's ~~notary's~~ name, typed, printed, or
72 stamped below the signature.

73 (i) The notary public's ~~notary's~~ official seal affixed
74 below or to either side of the notary public's ~~notary's~~
75 signature.

76 (5) A notary public may not notarize a signature on a
77 document unless he or she personally knows, or has satisfactory
78 evidence, that the person whose signature is to be notarized is
79 the individual who is described in and who is executing the
80 instrument. A notary public shall certify in the certificate of
81 acknowledgment or jurat the type of identification, either based
82 on personal knowledge or other form of identification, upon
83 which the notary public is relying. In the case of an online
84 notarization, the online notary public shall comply with the
85 procedures set forth in part II of this chapter.

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86 (12) (a) A notary public may supervise the making of a copy
 87 ~~photocopy~~ of a tangible or electronic record or the printing of
 88 an electronic record, ~~an original document~~ and attest to the
 89 trueness of the copy or of the printout, provided the document
 90 is neither a vital record in this state, another state, a
 91 territory of the United States, or another country, nor a public
 92 record, if a copy can be made by the custodian of the public
 93 record.

94 (c) A notary public must use a certificate in
 95 substantially the following form in notarizing a copy of a
 96 tangible or electronic record or a printout of an electronic
 97 record:

98 STATE OF FLORIDA
 99 COUNTY OF

100 On this day of, ... (year)...., I attest that the
 101 preceding or attached document is a true, exact, complete, and
 102 unaltered copy of a tangible or electronic record presented to
 103 me by the document's custodian or a printout made by me from
 104 such record, if, at the time of printing, no security features,
 105 if present on the electronic record, indicated that the record
 106 had been altered since execution.

107 ...(Signature of Notary Public - State of Florida)...
 108 ...(Print, Type, or Stamp Commissioned Name of Notary
 109 Public)...

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110 (13) The following notarial certificates are sufficient
111 for the purposes indicated, if completed with the information
112 required by this chapter. The specification of forms under this
113 subsection does not preclude the use of other forms.

114 (a) For an oath or affirmation:

115 STATE OF FLORIDA

116 COUNTY OF

117 Sworn to (or affirmed) and subscribed before me by means of
118 [] physical presence or [] online notarization, this day of
119, ... (year) ..., by ... (name of person making
120 statement)

121 ... (Signature of Notary Public - State of Florida) ...

122 ... (Print, Type, or Stamp Commissioned Name of Notary
123 Public) ...

124 Personally Known OR Produced Identification

125

126 Type of Identification Produced.....

127 (b) For an acknowledgment in an individual capacity:

128 STATE OF FLORIDA

129 COUNTY OF

130 The foregoing instrument was acknowledged before me by means of
131 [] physical presence or [] online notarization, this day of
132, ... (year) ..., by ... (name of person acknowledging)

133 ... (Signature of Notary Public - State of Florida) ...

134 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

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135 Personally Known OR Produced Identification
136

137 Type of Identification Produced.....

138 (c) For an acknowledgment in a representative capacity:

139 STATE OF FLORIDA

140 COUNTY OF

141 The foregoing instrument was acknowledged before me by means of
142 [] physical presence or [] online notarization, this day of
143, ... (year) ..., by ... (name of person) ... as ... (type of
144 authority, . . . e.g. officer, trustee, attorney in fact) ...
145 for ... (name of party on behalf of whom instrument was
146 executed)

147 ... (Signature of Notary Public - State of Florida) ...

148 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

149 Personally Known OR Produced Identification

150

151 Type of Identification Produced.....

152 (14) A notary public must make reasonable accommodations
153 to provide notarial services to persons with disabilities.

154 (a) A notary public may notarize the signature of a person
155 who is blind after the notary public has read the entire
156 instrument to that person.

157 (b) A notary public may notarize the signature of a person
158 who signs with a mark if:

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159 1. The document signing is witnessed by two disinterested
160 persons;

161 2. The notary public prints the person's first name at the
162 beginning of the designated signature line and the person's last
163 name at the end of the designated signature line; and

164 3. The notary public prints the words "his (or her) mark"
165 below the person's signature mark.

166 (c) The following notarial certificates are sufficient for
167 the purpose of notarizing for a person who signs with a mark:

168 1. For an oath or affirmation:

169 ... (First Name) ... (Last Name) ...
170 ... His (or Her) Mark ...

171 STATE OF FLORIDA

172 COUNTY OF

173 Sworn to and subscribed before me by means of [] physical
174 presence or [] online notarization, this day of,
175 ... (year) ..., by ... (name of person making statement) ..., who
176 signed with a mark in the presence of these witnesses:

177 ... (Signature of Notary Public - State of Florida) ...

178 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

179 Personally Known OR Produced Identification

180

181 Type of Identification Produced.....

182 2. For an acknowledgment in an individual capacity:

183 ... (First Name) ... (Last Name) ...

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184 ...His (or Her) Mark...

185 STATE OF FLORIDA

186 COUNTY OF

187 The foregoing instrument was acknowledged before me by means of
188 []) physical presence or [)] online notarization, this day of
189, ...(year)..., by ...(name of person acknowledging)...,
190 who signed with a mark in the presence of these witnesses:

191 ...(Signature of Notary Public - State of Florida)...

192 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

193 Personally Known OR Produced Identification

194

195 Type of Identification Produced.....

196 (d) A notary public may sign the name of a person whose
197 signature is to be notarized when that person is physically
198 unable to sign or make a signature mark on a document if:

199 1. The person with a disability directs the notary public
200 to sign in his or her presence;

201 2. The document signing is witnessed by two disinterested
202 persons;

203 3. The notary public writes below the signature the
204 following statement: "Signature affixed by notary public,
205 pursuant to s. 117.05(14), Florida Statutes," and states the
206 circumstances of the signing in the notarial certificate.

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207 (e) The following notarial certificates are sufficient for
208 the purpose of notarizing for a person with a disability who
209 directs the notary public to sign his or her name:

210 1. For an oath or affirmation:

211 STATE OF FLORIDA

212 COUNTY OF

213 Sworn to (or affirmed) before me by means of [] physical
214 presence or [] online notarization, this day of,
215 ...(year)..., by ...(name of person making statement)..., and
216 subscribed by ...(name of notary)... at the direction of ~~and in~~
217 ~~the presence of~~ ...(name of person making statement)..., and in
218 the presence of these witnesses:

219 ... (Signature of Notary Public - State of Florida)...

220 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

221 Personally Known OR Produced Identification

222

223 Type of Identification Produced.....

224 2. For an acknowledgment in an individual capacity:

225 STATE OF FLORIDA

226 COUNTY OF

227 The foregoing instrument was acknowledged before me by means of
228 [] physical presence or [] online notarization, this day of
229, ...(year)..., by ...(name of person acknowledging)...
230 and subscribed by ...(name of notary)... at the direction of ~~and~~

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231 ~~in the presence of~~ ... (name of person acknowledging) ..., and in
232 the presence of these witnesses:

233 ... (Signature of Notary Public - State of Florida)...

234 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

235 Personally Known OR Produced Identification

236

237 Type of Identification Produced.....

238 Section 5. Subsections (2) and (9) of section 117.107,

239 Florida Statutes, are amended to read:

240 117.107 Prohibited acts.—

241 (2) A notary public may not sign notarial certificates
242 using a facsimile signature stamp unless the notary public has a
243 physical disability that limits or prohibits his or her ability
244 to make a written signature and unless the notary public has
245 first submitted written notice to the Department of State with
246 an exemplar of the facsimile signature stamp. This subsection
247 does not apply to or prohibit the use of an electronic signature
248 and seal by a notary public performing an electronic or online
249 notarization in accordance with this chapter.

250 (9) A notary public may not notarize a signature on a
251 document if the person whose signature is being notarized does
252 not appear before the notary public either by means of physical
253 presence or audio-video communication technology pursuant to
254 part II of this chapter ~~is not in the presence of the notary~~
255 ~~public~~ at the time the signature is notarized. Any notary public

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256 who violates this subsection is guilty of a civil infraction,
257 punishable by penalty not exceeding \$5,000, and such violation
258 constitutes malfeasance and misfeasance in the conduct of
259 official duties. It is no defense to the civil infraction
260 specified in this subsection that the notary public acted
261 without intent to defraud. A notary public who violates this
262 subsection with the intent to defraud is guilty of violating s.
263 117.105.

264 Section 6. Part II of chapter 117, Florida Statutes,
265 consisting of sections 117.201-117.305, Florida Statutes, is
266 created to read:

267 PART II

268 ONLINE NOTARIZATIONS

269 117.201 Definitions.—As used in this part, the term:

270 (1) (a) "Appear before," "before," "appear personally
271 before," or "in the presence of" means:

272 1. In the same physical location as another person and
273 close enough to see, hear, communicate with, and exchange
274 credentials with that person; or

275 2. In a different physical location from another person
276 but able to see, hear, and communicate with the person by means
277 of audio-video communication technology.

278 (b) This term also applies to ss. 92.50 and 695.03.

279 (2) "Audio-video communication technology" means
280 technology, in compliance with this chapter, that enables real-

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281 time, two-way communication using electronic means in which
282 participants are able to see, hear, and communicate with one
283 another.

284 (3) "Credential analysis" means a process or service, in
285 compliance with this chapter, in which a third party affirms
286 the validity of a government-issued identification credential
287 and data thereon through review of public or proprietary data
288 sources.

289 (4) "Errors and omissions insurance" means a type of
290 insurance that provides coverage for potential errors or
291 omissions in or relating to a notarial act.

292 (5) "Government-issued identity credential" means any
293 approved credential for verifying identity in s. 117.05(5)(b)2.

294 (6) "Identity proofing" means a process or service in
295 compliance with this chapter in which a third party affirms the
296 identity of an individual through use of public or proprietary
297 data sources, which may include knowledge-based authentication
298 or biometric verification.

299 (7) "Knowledge-based authentication" means a form of
300 identity proofing based on a set of questions that pertains to
301 an individual and formulated from public or proprietary data
302 sources.

303 (8) "Online notarization" means the performance of an
304 electronic notarization by means of audio-video communication
305 technology in compliance with this chapter.

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306 (9) "Online notary public" means a notary public, a
307 civil-law notary appointed under chapter 118, or a commissioner
308 of deeds appointed under part IV of chapter 721 that has
309 registered with the Department of State to perform online
310 notarizations under this part.

311 (10) "Principal" means an individual whose electronic
312 signature is acknowledged, witnessed, or attested in an online
313 notarization or who takes an oath or affirmation from the
314 online notary public.

315 (11) "Remote presentation" means transmission of an image
316 of a government-issued identification credential that is of
317 sufficient quality to enable the online notary public to
318 identify the individual seeking the notary's services and to
319 perform credential analysis through audio-video communication
320 technology.

321 (12) Except where the context otherwise requires, any term
322 defined in s. 668.50(2) shall have the same meaning when used in
323 this chapter.

324 117.209 Authority to perform online notarizations.-

325 (1) An online notary public may perform any of the
326 functions authorized under chapter 117 as an online
327 notarization.

328 (2) If a notarial act requires a principal to appear
329 before or in the presence of the online notary public, the
330 principal may appear before the online notary public by means of

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331 audio-video communication technology that meets the requirements
332 of this chapter and any rules adopted by the Department of State
333 under s. 117.295.

334 (3) An online notary public may perform an online
335 notarization authorized under this chapter, regardless of the
336 physical location of the principal at the time of the notarial
337 act, provided the online notary public, other than a civil-law
338 notary or a commissioner of deeds, is physically located in this
339 state while performing the online notarization.

340 (4) The validity of an online notarization performed by an
341 online notary public registered in this state shall be
342 determined by applicable laws of this state regardless of the
343 physical location of the principal at the time of the notarial
344 act.

345 (5) The authority in subsection (1) to perform a notarial
346 act as an online notarization excludes:

347 (a) Solemnizing the rites of matrimony.

348 (b) A notarial act in connection with the creation and
349 execution of a will, codicil, or revocable trust subject to the
350 execution formalities of s. 736.0403(2).

351 (c) A contract, agreement, or waiver subject to ss.
352 732.701 and 732.702.

353 117.215 Relation to other laws.

354 (1) If a provision of law requires a notary public or
355 other authorized state official to notarize a signature or

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356 statement; take an acknowledgment of an instrument; or
357 administer an oath or affirmation so that a document may be
358 sworn, affirmed, made under oath, or subject to penalty of
359 perjury, an online notarization performed in accordance with the
360 provisions of this part and any rules adopted hereunder shall
361 satisfy such requirement.

362 (2) If a provision of law requires a signature or act be
363 witnessed, compliance with the online electronic witnessing
364 standards under s. 117.285 and any rules adopted hereunder
365 satisfies that requirement.

366 (3) Subsections (1) and (2) exclude and do not apply to
367 laws governing:

368 (a) Solemnizing the rites of matrimony.

369 (b) A notarial act in connection with the creation and
370 execution of a will, codicil, or revocable trust subject to the
371 execution formalities of s. 736.0403(2).

372 (c) A contract, agreement, or waiver subject to ss.
373 732.701 and 732.702.

374 117.225 Registration; qualifications.—A notary public, a
375 civil-law notary appointed under chapter 118, or a commissioner
376 of deeds appointed under part IV of chapter 721 may complete a
377 registration as an online notary public with the Department of
378 State by:

379 (1) Satisfying the requirements for appointment as a
380 notary public under part I of this chapter, as a civil-law

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381 notary under chapter 118, or as a commissioner of deeds under
382 part IV of chapter 721.

383 (2) Certifying that the registrant has completed a
384 classroom or online course of at least three hours covering the
385 duties, obligations, and technology requirements for serving as
386 an online notary public.

387 (3) Paying an online notary public application fee in the
388 amount of \$25.

389 (4) Submitting to the Department of State a registration
390 as an online notary public, signed and sworn to by the
391 registrant.

392 (5) Confirming in a statement that the audio-video
393 communication and identity proofing technologies the registrant
394 intends to use in performing online notarizations satisfy the
395 requirements of this chapter.

396 (6) Providing evidence satisfactory to the Executive
397 Office of the Governor that the registrant has obtained a bond,
398 payable to any individual harmed as a result of a breach of duty
399 by the registrant acting in his or her official capacity as an
400 online notary public, conditioned for the due discharge of the
401 office, in the minimum amount of \$25,000, and on such terms as
402 are specified by rule by the Department of State as reasonably
403 necessary to protect the public. The bond shall be approved and
404 filed with the Department of State and executed by a surety
405 company duly authorized to transact business in this state.

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406 Compliance by a notary public with this requirement shall
407 satisfy the requirement of obtaining a bond under s. 117.01(7).

408 (7) Providing evidence satisfactory to the Executive
409 Office of the Governor that the registrant acting in his or her
410 official capacity as an online notary public is covered by an
411 errors and omissions insurance policy from an insurer authorized
412 to transact business in this state, in the minimum amount of
413 \$25,000, and on such terms as are specified by rule by the
414 Department of State as reasonably necessary to protect the
415 public.

416 117.235 Performance of notarial acts.-

417 (1) An online notary public is subject to part I of this
418 chapter to the same extent as a notary public appointed and
419 commissioned only under that part, including the provisions of
420 s. 117.021 relating to electronic notarizations.

421 (2) An online notary public may perform notarial acts as
422 provided by part I of this chapter in addition to performing
423 online notarizations as authorized and pursuant to the
424 provisions of this part.

425 117.245 Electronic journal of online notarizations.-

426 (1) An online notary public shall keep a secure electronic
427 journal of electronic records notarized by the online notary
428 public. For each online notarization, the electronic journal
429 entry must contain all of the following:

430 (a) Date and time of the notarization.

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- 431 (b) Type of notarial act.
- 432 (c) Type, title, or description of the electronic record
433 or proceeding.
- 434 (d) Printed name and address of each principal involved in
435 the transaction or proceeding.
- 436 (e) Evidence of identity of each principal involved in the
437 transaction or proceeding in any of the following forms:
- 438 1. Statement that the person is personally known to the
439 online notary public.
- 440 2. Notation of the type of government-issued identity
441 credential provided to the online notary public.
- 442 3. Copy of the government-issued identity credential
443 provided.
- 444 4. Copy of any other identity credential or information
445 provided.
- 446 (f) Indication that the principal satisfactorily passed
447 the identity proofing.
- 448 (g) Indication that the government-issued identity
449 credential satisfied the credential analysis.
- 450 (h) The fee, if any, charged for the online notarization.
- 451 (2) The online notary public shall retain a copy of the
452 recording of the audio-video communication in which the:
- 453 (a) Principal and any witnesses appeared before the notary
454 public.
- 455 (b) Identity of each participant was confirmed.

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456 (c) Electronic records were signed by the principal and
457 any witnesses.

458 (d) Notarial act was performed.

459 (3) The online notary public shall take reasonable steps
460 to:

461 (a) Ensure the integrity, security, and authenticity of
462 online notarizations.

463 (b) Maintain a backup record for the electronic journal
464 required by subsection (1).

465 (c) Protect the electronic journal, the backup record, and
466 any other records received by the online notary public from
467 unauthorized use.

468 (4) The electronic journal required under subsection (1)
469 and the recording of the audio-video communication required
470 under subsection (2) shall be maintained for at least 10 years
471 after the date of the notarial act. The online notary public, a
472 guardian of an incapacitated online notary public, or the
473 personal representative of a deceased online notary public may,
474 by contract with a secure repository in accordance with any
475 rules established under this chapter, delegate to the repository
476 the online notary public's duty to retain the required
477 electronic journal and copies of the recordings of audio-video
478 communications.

479 (5) An omitted or incomplete entry in the electronic
480 journal does not impair the validity of the notarial act or the

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481 electronic record which was notarized, but may be introduced as
482 evidence to establish violations of this chapter or as an
483 indication of possible fraud, forgery, or impersonation or for
484 other evidentiary purposes.

485 117.255 Use of electronic journal, signature, and seal.—An
486 online notary public shall:

487 (1) Take reasonable steps to ensure that any registered
488 device used to create an electronic signature is current and has
489 not been revoked or terminated by the issuing or registering
490 authority of the device.

491 (2) Keep the electronic journal, electronic signature, and
492 electronic seal secure and under his or her sole control, which
493 shall include access protection through the use of passwords or
494 codes under control of the notary public. The online notary
495 public may not allow another person to use the online notary
496 public's electronic journal, electronic signature, or electronic
497 seal.

498 (3) Use only an electronic signature for performing online
499 notarization.

500 (4) Attach or logically associate the electronic signature
501 and seal to the electronic notarial certificate of an electronic
502 record in a manner capable of independent verification using
503 tamper-evident technology that renders any subsequent change or
504 modification to the electronic record evident.

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505 (5) Immediately notify an appropriate law enforcement
506 agency and the Department of State of theft or vandalism of the
507 electronic journal, electronic signature, or electronic seal. An
508 online notary public shall immediately notify the Department of
509 State of the loss or use by another person of the online notary
510 public's electronic journal, electronic signature, or electronic
511 seal.

512 (6) Make electronic copies, upon request, of the pertinent
513 entries in the electronic journal and provide access to the
514 related audio-video communication recordings to the parties to
515 the notarized electronic records, and to the title agent,
516 settlement agent, or title insurer which engaged the online
517 notary with regard to a real estate transaction. The online
518 notary public may charge a reasonable fee for making and
519 delivering electronic copies of a given series of related
520 electronic records. Such fee must be disclosed to the requestor
521 before copies are made.

522 117.265 Online notarization procedures.—

523 (1) An online notary public physically located in this
524 state may perform an online notarization that meets the
525 requirements of this part regardless of whether the principal or
526 any witnesses are physically located in this state at the time
527 of the online notarization. A civil-law notary or a commissioner
528 of deeds registered as an online notary public may perform an
529 online notarization while located outside of this state. An

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530 online notarial act performed in accordance with this chapter is
531 deemed to have been performed within this state and is governed
532 by applicable laws of this state.

533 (2) In performing an online notarization, an online notary
534 public shall confirm the identity of a principal and any witness
535 appearing online at the time that the signature is taken by
536 using audio-video communication technology and processes that
537 meet the requirements of this part and any rules adopted
538 hereunder and record the entire audio-video conference session
539 between the notary public and the principal and any subscribing
540 witnesses. A principal may not act in the capacity of a witness
541 for his or her own signature in an online notarization.

542 (3) In performing an online notarization of a principal
543 not located within this state, an online notary public shall
544 confirm that the principal desires for the notarial act to be
545 performed by a Florida online notary public and under the
546 general law of this state.

547 (4) An online notary public shall confirm the identity of
548 the principal or any witness by:

549 (a) Personal knowledge of each such individual; or

550 (b) All of the following, as the same may be refined or
551 supplemented in rules adopted pursuant to s. 117.295:

552 1. Remote presentation of a government-issued
553 identification credential by each individual.

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554 2. Credential analysis of each government-issued
555 identification credential.

556 3. Identity proofing of each individual in the form of
557 knowledge-based authentication or another method of identity
558 proofing that conforms to standards of this chapter.

559
560 If the online notary public does not satisfy subparagraphs
561 (b)1.-3., or if the databases consulted for identity proofing do
562 not contain sufficient information to permit authentication, the
563 online notary public may not perform the online notarization.

564 (5) An online notary public shall take reasonable steps to
565 ensure that the audio-video communication technology used in an
566 online notarization is secure from unauthorized interception.

567 (6) An electronic notarial certificate for an online
568 notarization shall include a notation that the notarization is
569 an online notarization.

570 (7) Except where otherwise expressly provided in this
571 part, the provisions of part I of this chapter apply to an
572 online notarization and an online notary public.

573 (8) Any failure to comply with the online notarization
574 procedures of this section does not impair the validity of the
575 notarial act or the electronic record which was notarized, but
576 may be introduced as evidence to establish violations of this
577 chapter or as an indication of possible fraud, forgery, or
578 impersonation or for other evidentiary purposes. This subsection

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579 in no way alters the duty of the online notary public to comply
580 with this chapter and any rules adopted hereunder.

581 117.275 Fees for online notarization.-An online notary
582 public or employer of such online notary public may charge a
583 fee, not to exceed \$25, for performing an online notarization in
584 addition to any other fees authorized under part I of this
585 chapter. Fees for services other than notarial acts are not
586 governed by this section.

587 117.285 Supervising the witnessing of electronic records.-
588 An online notary public may supervise the witnessing of
589 electronic records by the same audio-video communication
590 technology used for online notarization, as follows:

591 (1) The identity of the witness must be verified in the
592 same manner as the identity of the principal.

593 (2) The witness may be physically present with the
594 principal or remote from the principal provided the witness and
595 principal are using audio-video communication technology.

596 (3) The witness is present in either physical proximity to
597 the principal or through audio-video communication technology at
598 the time the principal affixes the electronic signature and
599 hears the principal make a statement to the effect that the
600 principal has signed the electronic record.

601 117.295 Standards for electronic and online notarization;
602 rulemaking authority.-

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603 (1) The Legislature intends for the standards applicable
604 to electronic notarization under s. 117.021 and for online
605 notarization under this part to reflect future improvements in
606 technology and methods of assuring the identity of principals
607 and the security of an electronic record. The Department of
608 State, in collaboration with the Agency for State Technology,
609 may adopt rules and standards necessary to implement the
610 requirements of this chapter and such other rules and standards
611 as may be required to facilitate the integrity, security, and
612 reliability of online notarization, including education
613 requirements for online notaries public, the required terms but
614 not the amount of online notary public bonds and errors and
615 omissions insurance, standards regarding identity proofing,
616 credential analysis, unauthorized interception, remote
617 presentation, tamper-evident technology, audio-video
618 communication technology, and retention of the electronic
619 journal and copies of recordings of audio-video communications
620 in a secure repository, and may publish lists of technologies
621 that satisfy the standards and are approved for use in online
622 notarizations.

623 (2) Until such time as the Department of State adopts
624 applicable rules, identity proofing, credential analysis,
625 unauthorized interception, remote presentation, tamper-evident
626 technology, and audio-video communication technology shall be
627 governed by the following minimum standards:

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628 (a) Identity proofing by means of knowledge-based
629 authentication shall have these or greater security
630 characteristics:

631 1. The principal must be presented with five or more
632 questions with a minimum of five possible answer choices per
633 question.

634 2. Each question must be drawn from a third-party provider
635 of public and proprietary data sources and be identifiable to
636 the principal's social security number or other identification
637 information, or the principal's identity and historical events
638 records.

639 3. Responses to all questions must be made within a 2-
640 minute time constraint.

641 4. The principal must answer a minimum of 80 percent of
642 the questions correctly.

643 5. The principal may be offered one additional attempt in
644 the event of a failed attempt.

645 6. During the second attempt, the principal may not be
646 presented with more than three questions from the prior attempt.

647 (b) Credential analysis must confirm that the credential
648 is valid and matches the signer's claimed identity using one or
649 more automated software or hardware processes which scan the
650 credential, including its format features, data, barcodes, or
651 other security elements.

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652 (c) Tamper-evident technology requirements are deemed
653 satisfied by use of technology that renders any subsequent
654 change or modification to the electronic record evident.

655 (d) Audio-video communication technology used in
656 completing online notarizations must meet the following
657 requirements:

658 1. The signal transmission must be reasonably secure from
659 interception, access, or viewing by anyone other than the
660 participants communicating.

661 2. The technology must provide sufficient audio clarity
662 and video resolution to enable the notary public to communicate
663 with the principal and to confirm the identity of the principal
664 using identification methods described in s. 117.265.

665 (e) An online notary public is not responsible for the
666 security of the systems used by the principal or others to
667 access the online notarization session.

668 117.305 Relation to Electronic Signatures in Global and
669 National Commerce Act.—This part modifies, limits, and
670 supersedes the Electronic Signatures in Global and National
671 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
672 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
673 or authorize electronic delivery of any of the notices described
674 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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675 Section 7. Paragraph (h) of subsection (3) of section
676 28.222, Florida Statutes, is redesignated as paragraph (i), and
677 a new paragraph (h) is added to that subsection to read:

678 28.222 Clerk to be county recorder.—

679 (3) The clerk of the circuit court shall record the
680 following kinds of instruments presented to him or her for
681 recording, upon payment of the service charges prescribed by
682 law:

683 (h) Copies of any instruments originally created and
684 executed using an electronic signature, as defined in s. 695.27,
685 and certified to be a true and correct paper printout by a
686 notary public in accordance with chapter 117, if the county
687 recorder is not prepared to accept electronic documents for
688 recording electronically.

689 Section 8. Subsection (4) is added to section 92.50,
690 Florida Statutes, to read:

691 92.50 Oaths, affidavits, and acknowledgments; who may take
692 or administer; requirements.—

693 (4) DEFINITION.—As used in this section, the term "before"
694 has the same meaning as provided in s. 117.201(1).

695 Section 9. Subsection (1) of section 95.231, Florida
696 Statutes, is amended to read:

697 95.231 Limitations where deed or will on record.—

698 (1) Five years after the recording of an instrument
699 required to be executed in accordance with s. 689.01; 5 years

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700 after the recording of a power of attorney accompanying and used
701 for an instrument required to be executed in accordance with s.
702 689.01; or 5 years after the probate of a will purporting to
703 convey real property, from which it appears that the person
704 owning the property attempted to convey, affect, or devise it,
705 the instrument, power of attorney, or will shall be held to have
706 its purported effect to convey, affect, or devise, the title to
707 the real property of the person signing the instrument, as if
708 there had been no lack of seal or seals, witness or witnesses,
709 defect in, failure of, or absence of acknowledgment or
710 relinquishment of dower, in the absence of fraud, adverse
711 possession, or pending litigation. The instrument is admissible
712 in evidence. A power of attorney validated under this subsection
713 shall be valid only for the purpose of effectuating the
714 instrument with which it was recorded.

715 Section 10. Section 689.01, Florida Statutes, is amended
716 to read:

717 689.01 How real estate conveyed.—

718 (1) No estate or interest of freehold, or for a term of
719 more than 1 year, or any uncertain interest of, in or out of any
720 messuages, lands, tenements or hereditaments shall be created,
721 made, granted, transferred or released in any other manner than
722 by instrument in writing, signed in the presence of two
723 subscribing witnesses by the party creating, making, granting,
724 conveying, transferring or releasing such estate, interest, or

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725 term of more than 1 year, or by the party's lawfully authorized
726 agent, unless by will and testament, or other testamentary
727 appointment, duly made according to law; and no estate or
728 interest, either of freehold, or of term of more than 1 year, or
729 any uncertain interest of, in, to, or out of any messuages,
730 lands, tenements or hereditaments, shall be assigned or
731 surrendered unless it be by instrument signed in the presence of
732 two subscribing witnesses by the party so assigning or
733 surrendering, or by the party's lawfully authorized agent, or by
734 the act and operation of law. No seal shall be necessary to give
735 validity to any instrument executed in conformity with this
736 section. Corporations may execute any and all conveyances in
737 accordance with the provisions of this section or ss. 692.01 and
738 692.02.

739 (2) For purposes of this chapter:

740 (a) Any requirement that an instrument be signed in the
741 presence of two subscribing witnesses may be satisfied by
742 witnesses being present and electronically signing by means of
743 audio-video communication technology that meets the requirements
744 of part II of chapter 117 and any rules adopted thereunder.

745 (b) The act of witnessing an electronic signature is
746 satisfied if a witness is present either in physical proximity
747 to the principal or by audio-video communication technology at
748 the time the principal affixes the electronic signature and

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749 hears the principal make a statement acknowledging that the
750 principal has signed the electronic record.

751 (3) All acts of witnessing heretofore made or taken
752 pursuant to subsection (2) are hereby validated and, upon
753 recording, may not be denied to have provided constructive
754 notice based on any alleged failure to have strictly complied
755 with this section, as currently or previously in effect, or the
756 laws governing notarization of instruments, including online
757 notarization in this state.

758 Section 11. Subsection (1) of section 694.08, Florida
759 Statutes, is amended to read:

760 694.08 Certain instruments validated, notwithstanding lack
761 of seals or witnesses, or defect in acknowledgment, etc.—

762 (1) Whenever any power of attorney has been executed and
763 delivered, or any conveyance has been executed and delivered to
764 any grantee by the person owning the land therein described, or
765 conveying the same in an official or representative capacity,
766 and has, for a period of 7 years or more been spread upon the
767 records of the county wherein the land therein described has
768 been or was at the time situated, and one or more subsequent
769 conveyances of said land or parts thereof have been made,
770 executed, delivered and recorded by parties claiming under such
771 instrument or instruments, and such power of attorney or
772 conveyance, or the public record thereof, shows upon its face a
773 clear purpose and intent of the person executing the same to

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774 authorize the conveyance of said land or to convey the said
775 land, the same shall be taken and held by all the courts of this
776 state, in the absence of any showing of fraud, adverse
777 possession, or pending litigation, to have authorized the
778 conveyance of, or to have conveyed, the fee simple title, or any
779 interest therein, of the person signing such instruments, or the
780 person in behalf of whom the same was conveyed by a person in an
781 official or representative capacity, to the land therein
782 described as effectively as if there had been no defect in,
783 failure of, or absence of the acknowledgment or the certificate
784 of acknowledgment, if acknowledged, or the relinquishment of
785 dower, and as if there had been no lack of the word "as"
786 preceding the title of the person conveying in an official or
787 representative capacity, of any seal or seals, or of any witness
788 or witnesses, and shall likewise be taken and held by all the
789 courts of this state to have been duly recorded so as to be
790 admissible in evidence;

791 Section 12. Section 695.03, Florida Statutes, is amended
792 to read:

793 695.03 Acknowledgment and proof; validation of certain
794 acknowledgments; legalization or authentication before foreign
795 officials.—To entitle any instrument concerning real property to
796 be recorded, the execution must be acknowledged by the party
797 executing it, proved by a subscribing witness to it, or
798 legalized or authenticated by a civil-law notary or notary

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799 public who affixes her or his official seal, before the officers
800 and in the form and manner following:

801 (1) WITHIN THIS STATE.—An acknowledgment or proof made by
802 a person located within this state may be made before a judge,
803 clerk, or deputy clerk of any court; a United States
804 commissioner or magistrate; any ~~or a~~ notary public or civil-law
805 notary of this state; or any notary public of another state
806 located in such other state and authorized to perform remote
807 notarial acts by audio-video communication under the laws of
808 that state; and the certificate of acknowledgment or proof must
809 be under the seal of the court or officer, as the case may be.
810 If the acknowledgment or proof is made before a notary public
811 who does not affix a seal, the notary public may type, print, or
812 write by hand on the instrument, "I am a Notary Public of the
813 State of ...(state)..., and my commission expires on
814 ...(date)...." ~~All affidavits and acknowledgments heretofore~~
815 ~~made or taken in this manner are hereby validated.~~

816 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED
817 STATES.—An acknowledgment or proof made by a person located
818 outside ~~out~~ of this state but within the United States may be
819 made before an online notary public of this state who is located
820 within this state, in compliance with part II of chapter 117; a
821 civil-law notary of this state or a commissioner of deeds
822 appointed by the Governor of this state; a judge or clerk of any
823 court of the United States or of any state, territory, or

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824 district; a United States commissioner or magistrate; or any a
825 notary public, justice of the peace, master in chancery, or
826 registrar or recorder of deeds of any state, territory, or
827 district having a seal, and the certificate of acknowledgment or
828 proof must be under the seal of the court or officer, as the
829 case may be. If the acknowledgment or proof is made before a
830 notary public who does not affix a seal, it is sufficient for
831 the notary public to type, print, or write by hand on the
832 instrument, "I am a Notary Public of the State of ...(state)...,
833 and my commission expires on ...(date)...."

834 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
835 COUNTRIES.~~An If the~~ acknowledgment, affidavit, oath,
836 legalization, authentication, or proof is made by a person
837 located outside of the United States or in a foreign country, it
838 may be made before an online notary public of this state who is
839 located within this state, in compliance with part II of chapter
840 117, or a commissioner of deeds appointed by the Governor of
841 this state to act in such country; before any notary public of
842 another state located in such other state and authorized to
843 perform remote notarial acts by audio-video communication under
844 the laws of that other state; before any a notary public of such
845 foreign country or a civil-law notary of this state or of such
846 foreign country who has an official seal; before an ambassador,
847 envoy extraordinary, minister plenipotentiary, minister,
848 commissioner, charge d'affaires, consul general, consul, vice

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849 consul, consular agent, or other diplomatic or consular officer
850 of the United States appointed to reside in such country; or
851 before a military or naval officer authorized by 10 U.S.C. s.
852 1044(a) the Laws or Articles of War of the United States to
853 perform the duties of notary public, and the certificate of
854 acknowledgment, legalization, authentication, or proof must be
855 under the seal of the officer. A certificate legalizing or
856 authenticating the signature of a person executing an instrument
857 concerning real property and to which a civil-law notary or
858 notary public of that country has affixed her or his official
859 seal is sufficient as an acknowledgment. For the purposes of
860 this section, the term "civil-law notary" means a civil-law
861 notary as defined in chapter 118 or an official of a foreign
862 country who has an official seal and who is authorized to make
863 legal or lawful the execution of any document in that
864 jurisdiction, in which jurisdiction the affixing of her or his
865 official seal is deemed proof of the execution of the document
866 or deed in full compliance with the laws of that jurisdiction.

867 (4) The affixing of the official seal or the electronic
868 equivalent thereof under s. 117.021 or other applicable law,
869 including part II of chapter 117, conclusively establishes that
870 the acknowledgment or proof was made in full compliance with the
871 laws of this state or, as applicable, the laws of the other
872 state, or of the foreign country governing remote notarial acts.
873 All affidavits, oaths, acknowledgments, legalizations,

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874 authentications, or proofs made or taken in any of the manners
875 in subsections (1), (2), or (3) are validated and upon recording
876 shall not be denied to have provided constructive notice based
877 on any alleged failure to have strictly complied with this
878 section, as currently or previously in effect, or the laws
879 governing notarization of instruments.

880 (5) For purposes of this section, the term "before" has
881 the meaning as provided in s. 117.201(1).

882

883 ~~All affidavits, legalizations, authentications, and~~
884 ~~acknowledgments heretofore made or taken in the manner set forth~~
885 ~~above are hereby validated.~~

886 Section 13. Section 695.04, Florida Statutes, is amended
887 to read:

888 695.04 Requirements of certificate.—The certificate of the
889 officer before whom the acknowledgment or proof is taken, except
890 for a certificate legalizing or authenticating the signature of
891 a person executing an instrument concerning real property
892 pursuant to s. 695.03(3), shall contain and set forth
893 substantially the matter required to be done or proved to make
894 such acknowledgment or proof effectual as set forth in s.
895 117.05.

896 Section 14. Section 695.05, Florida Statutes, is amended
897 to read:

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898 695.05 Certain defects cured as to acknowledgments and
899 witnesses.—All deeds, conveyances, bills of sale, mortgages or
900 other transfers of real or personal property within the limits
901 of this state, heretofore or hereafter made and received bona
902 fide and upon good consideration by any corporation, and
903 acknowledged for record by ~~before~~ some officer, stockholder or
904 other person interested in the corporation, grantee, or
905 mortgagee as a notary public or other officer authorized to take
906 acknowledgments of instruments for record within this state,
907 shall be held, deemed and taken as valid as if acknowledged by
908 the proper notary public or other officer authorized to take
909 acknowledgments of instruments for record in this state not so
910 interested in said corporation, grantee or mortgagee; and said
911 instrument whenever recorded shall be deemed notice to all
912 persons; provided, however, that this section shall not apply to
913 any instrument heretofore made, the validity of which shall be
914 contested by suit commenced within 1 year of the effective date
915 of this law.

916 Section 15. Section 695.28, Florida Statutes, is amended
917 to read:

918 695.28 Validity of recorded electronic documents.—

919 (1) A document that is otherwise entitled to be recorded
920 and that was or is submitted to the clerk of the court or county
921 recorder by electronic or other means and accepted for

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922 recordation is deemed validly recorded and provides notice to
923 all persons notwithstanding:

924 (a) That the document was received and accepted for
925 recordation before the Department of State adopted standards
926 implementing s. 695.27; ~~or~~

927 (b) Any defects in, deviations from, or the inability to
928 demonstrate strict compliance with any statute, rule, or
929 procedure relating to electronic signatures, electronic
930 witnesses, electronic notarization, online notarization, or for
931 submitting or recording to submit or record an electronic
932 document in effect at the time the electronic document was
933 executed or was submitted for recording;

934 (c) That the document was signed, witnessed, or notarized
935 electronically or that witnessing or notarization may have been
936 done outside the physical presence of the notary public or
937 principal; or

938 (d) That the document recorded was a certified printout of
939 a document to which one or more electronic signatures have been
940 affixed.

941 (2) This section does not alter the duty of the clerk or
942 recorder to comply with s. 28.222 or s. 695.27 or rules adopted
943 pursuant to those sections ~~that section~~.

944 (3) This section does not preclude a challenge to the
945 validity or enforceability of an instrument or electronic record
946 based upon fraud, forgery, impersonation, duress, undue

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947 influence, minority, illegality, unconscionability, or any other
948 basis not in the nature of those matters described in subsection
949 (1).

950 Section 16. Subsection (1) of section 709.2202, Florida
951 Statutes, is amended to read:

952 709.2202 Authority that requires separate signed
953 enumeration.—

954 (1) Notwithstanding s. 709.2201, an agent may exercise the
955 following authority in this subsection only if the principal
956 signed or initialed next to each specific enumeration of the
957 authority, the exercise of the authority is consistent with the
958 agent's duties under s. 709.2114, the power of attorney was
959 witnessed and notarized in person without the use of online
960 witnessing of electronic records pursuant to s. 117.285 or
961 online notarization under part II of chapter 117, and the
962 exercise is not otherwise prohibited by another agreement or
963 instrument. A power of attorney or any authority granted therein
964 to an agent, including where such authority is witnessed and
965 notarized online through the use of online witnessing of
966 electronic records pursuant to s. 117.285 or online notarization
967 under part II of chapter 117, is not affected by this section
968 except that a power of attorney or other authority notarized and
969 witnessed is not effective to grant powers pursuant to the
970 following:

971 (a) Create an inter vivos trust;

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972 (b) With respect to a trust created by or on behalf of the
973 principal, amend, modify, revoke, or terminate the trust, but
974 only if the trust instrument explicitly provides for amendment,
975 modification, revocation, or termination by the settlor's agent;

976 (c) Make a gift, subject to subsection (4);

977 (d) Create or change rights of survivorship;

978 (e) Create or change a beneficiary designation;

979 (f) Waive the principal's right to be a beneficiary of a
980 joint and survivor annuity, including a survivor benefit under a
981 retirement plan; or

982 (g) Disclaim property and powers of appointment.

983 Section 17. Subsection (5) of section 117.209, Florida
984 Statutes, is repealed effective July 1, 2020.

985 Section 18. Subsection (3) of section 117.215, Florida
986 Statutes, is repealed effective July 1, 2020.

987 Section 19. This act shall take effect January 1, 2019.

988
989 -----

T I T L E A M E N D M E N T

991 Remove everything before the enacting clause and insert:

992 A bill to be entitled

993 An act relating to notaries public; providing a
994 directive to the Division of Law Revision and
995 Information; amending s. 117.01, F.S.; revising
996 provisions relating to use of office of notary public;

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997 amending s. 117.021, F.S.; requiring electronic
998 signatures to include access protection; prohibiting a
999 person from requiring a notary public to perform a
1000 notarial act with certain technology; authorizing the
1001 Department of State to adopt rules for certain
1002 purposes; amending s. 117.05, F.S.; revising
1003 limitations on notary fees; providing for inclusion of
1004 certain information in a jurat or notarial
1005 certificate; providing for compliance with online
1006 notarization requirements; providing for notarial
1007 certification of a printed electronic record; revising
1008 statutory forms for jurats and notarial
1009 certifications; amending s. 117.107, F.S.; providing
1010 applicability; revising prohibited acts; creating part
1011 II of ch. 117, F.S., entitled "Online Notarizations";
1012 providing definitions; authorizing online
1013 notarizations; providing exceptions; providing for
1014 legal recognition; providing registration and
1015 qualification requirements; authorizing the
1016 performance of certain notarial acts; requiring a
1017 notary public to keep an electronic journal of online
1018 notarizations; providing requirements for electronic
1019 journals, signatures, and seals; providing online
1020 notarization procedures; providing fees for online
1021 notarizations; authorizing a notary public to

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1022 supervise the witnessing of electronic records of
1023 online notarizations; providing standards for
1024 electronic and online notarizations; authorizing the
1025 Department of State and the Agency for State
1026 Technology to adopt rules; providing construction;
1027 amending s. 28.222, F.S.; requiring the clerk of the
1028 circuit court to record certain instruments; amending
1029 s. 92.50, F.S.; providing a definition; amending s.
1030 95.231, F.S.; providing a limitation period for
1031 certain recorded instruments; amending s. 689.01,
1032 F.S.; providing for witnessing of documents in
1033 connection with real estate conveyances; providing for
1034 validation of certain recorded documents; amending s.
1035 694.08, F.S.; providing for validation of certain
1036 recorded documents; amending s. 695.03, F.S.;

1037 providing and revising requirements for making
1038 acknowledgments, proofs, and other documents;
1039 providing a definition; amending s. 695.04, F.S.;

1040 conforming a provision to changes made by the act;
1041 amending s. 695.05, F.S.; making an editorial change;
1042 amending s. 695.28, F.S.; providing for validity of
1043 recorded documents; conforming provisions to changes
1044 made by the act; repealing exclusions to the authority
1045 to perform a notarial act as an online notarization on
1046 a certain date; repealing exclusions to required

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1047 | compliance with specified laws on a certain date;
1048 | providing an effective date.

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