

1 A bill to be entitled
2 An act relating to notaries public; providing a
3 directive to the Division of Law Revision and
4 Information; amending s. 117.01, F.S.; revising
5 provisions relating to use of office of notary public;
6 amending s. 117.021, F.S.; requiring electronic
7 signatures to include access protection; prohibiting a
8 person from requiring a notary public to perform a
9 notarial act with certain technology; authorizing the
10 Department of State to adopt rules for certain
11 purposes; amending s. 117.05, F.S.; revising
12 limitations on notary fees; providing for inclusion of
13 certain information in a jurat or notarial
14 certificate; providing for compliance with online
15 notarization requirements; providing for notarial
16 certification of a printed electronic record; revising
17 statutory forms for jurats and notarial
18 certifications; amending s. 117.107, F.S.; providing
19 applicability; revising prohibited acts; creating part
20 II of ch. 117, F.S., entitled "Online Notarizations";
21 providing definitions; authorizing online
22 notarizations; providing an exception; providing for
23 legal recognition; providing registration and
24 qualification requirements; authorizing the
25 performance of certain notarial acts; requiring a

26 | notary public to keep an electronic journal of online
27 | notarizations; providing requirements for electronic
28 | journals, signatures, and seals; providing online
29 | notarization procedures; providing fees for online
30 | notarizations; authorizing a notary public to
31 | supervise the witnessing of electronic records of
32 | online notarizations; providing standards for
33 | electronic and online notarizations; authorizing the
34 | Executive Office of the Governor to adopt rules;
35 | providing construction; amending s. 28.222, F.S.;
36 | requiring the clerk of the circuit court to record
37 | certain instruments; amending s. 92.50, F.S.;
38 | providing a definition; amending s. 95.231, F.S.;
39 | providing a limitation period for certain recorded
40 | instruments; amending s. 689.01, F.S.; providing for
41 | witnessing of documents in connection with real estate
42 | conveyances; providing for validation of certain
43 | recorded documents; amending s. 694.08, F.S.;
44 | providing for validation of certain recorded
45 | documents; amending s. 695.03, F.S.; providing and
46 | revising requirements for making acknowledgments,
47 | proofs, and other documents; providing a definition;
48 | amending s. 695.04, F.S.; conforming a provision to
49 | changes made by the act; amending s. 695.05, F.S.;
50 | making an editorial change; amending s. 695.09, F.S.;

51 conforming a provision to changes made by the act;
 52 amending s. 695.28, F.S.; providing for validity of
 53 recorded documents; conforming provisions to changes
 54 made by the act; providing an effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. The Division of Law Revision and Information is
 59 directed to create part I of chapter 117, Florida Statutes,
 60 consisting of ss. 117.01-117.108, Florida Statutes, to be
 61 entitled "General Provisions."

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

64 117.01 Appointment, application, suspension, revocation,
 65 application fee, bond, and oath.—

66 (1) The Governor may appoint as many notaries public as he
 67 or she deems necessary, each of whom shall be at least 18 years
 68 of age and a legal resident of the state. A permanent resident
 69 alien may apply and be appointed and shall file with his or her
 70 application a recorded Declaration of Domicile. The residence
 71 required for appointment must be maintained throughout the term
 72 of appointment. Notaries public shall be appointed for 4 years
 73 and may only ~~shall~~ use and exercise the office of notary public
 74 if he or she is within the boundaries of this state. An
 75 applicant must be able to read, write, and understand the

76 English language.

77 Section 3. Subsections (4) and (5) of section 117.021,
 78 Florida Statutes, are renumbered as subsections (5) and (6),
 79 respectively, paragraph (c) of subsection (2) and present
 80 subsection (5) are amended, and a new subsection (4) is added to
 81 that section, to read:

82 117.021 Electronic notarization.—

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

85 (c) Retained under the notary public's sole control and
 86 includes access protection through the use of passwords or codes
 87 under control of the notary public; and

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

91 (6) ~~(5)~~ The Department of State, in collaboration with the
 92 Agency for State Technology, may adopt rules to ensure the
 93 security, reliability, and uniformity of signatures and seals
 94 authorized in this section.

95 Section 4. Subsection (1), paragraph (a) of subsection
 96 (2), paragraphs (a) and (c) of subsection (4), subsection (5),
 97 paragraph (a) of subsection (12), subsection (13), and
 98 paragraphs (c) and (e) of subsection (14) of section 117.05,
 99 Florida Statutes, are amended, and paragraph (c) is added to
 100 subsection (12) of that section, to read:

101 117.05 Use of notary commission; unlawful use; notary fee;
 102 seal; duties; employer liability; name change; advertising;
 103 photocopies; penalties.-

104 (1) No person shall obtain or use a notary public
 105 commission in other than his or her legal name, and it is
 106 unlawful for a notary public to notarize his or her own
 107 signature. Any person applying for a notary public commission
 108 must submit proof of identity to the Department of State if so
 109 requested. Any person who violates the provisions of this
 110 subsection is guilty of a felony of the third degree, punishable
 111 as provided in s. 775.082, s. 775.083, or s. 775.084.

112 (2) (a) The fee of a notary public may not exceed \$10 for
 113 any one notarial act, except as provided in ss. ~~ss.~~ 117.045 and
 114 117.275.

115 (4) When notarizing a signature, a notary public shall
 116 complete a jurat or notarial certificate in substantially the
 117 same form as those found in subsection (13). The jurat or
 118 certificate of acknowledgment shall contain the following
 119 elements:

120 (a) The venue stating the location of the notary at the
 121 time of the notarization in the format, "State of Florida,
 122 County of"

123 (c) That the signer personally appeared before the notary
 124 public at the time of the notarization either by physical
 125 presence or by means of audio-video communication technology

126 | pursuant to part II of this chapter.

127 | (5) A notary public may not notarize a signature on a
 128 | document unless he or she personally knows, or has satisfactory
 129 | evidence, that the person whose signature is to be notarized is
 130 | the individual who is described in and who is executing the
 131 | instrument. A notary public shall certify in the certificate of
 132 | acknowledgment or jurat the type of identification, either based
 133 | on personal knowledge or other form of identification, upon
 134 | which the notary public is relying. In the case of an online
 135 | notarization, the online notary public shall comply with the
 136 | procedures set forth in part II of this chapter.

137 | (12) (a) A notary public may supervise the making of a
 138 | photocopy of an original document or the duplication or printing
 139 | of an electronic record and attest to the trueness of the copy,
 140 | provided the document is neither a vital record in this state,
 141 | another state, a territory of the United States, or another
 142 | country, nor a public record, if a copy can be made by the
 143 | custodian of the public record.

144 | (c) A notary public must use a certificate in
 145 | substantially the following form in notarizing an attested copy
 146 | of an electronic document:

147 | STATE OF FLORIDA

148 | COUNTY OF

149 | On this day of, ...(year)..., I attest that the
 150 | preceding or attached document is a true, exact, complete, and

151 unaltered copy duplicated before me or printed by me from an
 152 electronic record presented to me by the document's custodian.
 153 At the time of duplication or printing, no security features, if
 154 any, present on the electronic record indicated that the record
 155 had been altered since execution.

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

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

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

163 (a) For an oath or affirmation:

164 STATE OF FLORIDA

165 COUNTY OF

166 Sworn to (or affirmed) and subscribed before me by means of
 167 [] physical presence or [] online notarization, this day of
 168, ... (year) ..., by ... (name of person making
 169 statement)....

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

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

173 Personally Known OR Produced Identification

174

175 Type of Identification Produced.....

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176 (b) For an acknowledgment in an individual capacity:
177 STATE OF FLORIDA
178 COUNTY OF

179 The foregoing instrument was acknowledged before me by means of
180 [] physical presence or [] online notarization, this day of
181, ... (year) ..., by ... (name of person acknowledging) ...
182 ... (Signature of Notary Public - State of Florida) ...
183 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
184 Personally Known OR Produced Identification
185

186 Type of Identification Produced.....

187 (c) For an acknowledgment in a representative capacity:
188 STATE OF FLORIDA
189 COUNTY OF

190 The foregoing instrument was acknowledged before me by means of
191 [] physical presence or [] online notarization, this day of
192, ... (year) ..., by ... (name of person) ... as ... (type of
193 authority, . . . e.g. officer, trustee, attorney in fact) ...
194 for ... (name of party on behalf of whom instrument was
195 executed)

196 ... (Signature of Notary Public - State of Florida) ...
197 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
198 Personally Known OR Produced Identification
199

200 Type of Identification Produced.....

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

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

205 1. For an oath or affirmation:

206 ... (First Name) ... (Last Name) ...
207 ... His (or Her) Mark ...

208 STATE OF FLORIDA

209 COUNTY OF

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

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

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

216 Personally Known OR Produced Identification

217

218 Type of Identification Produced.....

219 2. For an acknowledgment in an individual capacity:

220 ... (First Name) ... (Last Name) ...

221 ... His (or Her) Mark ...

222 STATE OF FLORIDA

223 COUNTY OF

224 The foregoing instrument was acknowledged before me by means of
225 [] physical presence or [] online notarization, this day of

226 , ... (year) ... , by ... (name of person acknowledging) ... ,
227 who signed with a mark in the presence of these witnesses:

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

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

230 Personally Known OR Produced Identification

231

232 Type of Identification Produced.....

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

236 1. For an oath or affirmation:

237 STATE OF FLORIDA

238 COUNTY OF

239 Sworn to (or affirmed) before me by means of [] physical
240 presence or [] online notarization, this day of,

241 ... (year) ... , by ... (name of person making statement) ... , and
242 subscribed by ... (name of notary) ... at the direction of ~~and in~~
243 ~~the presence of~~ ... (name of person making statement) ... , and in
244 the presence of these witnesses:

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

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

247 Personally Known OR Produced Identification

248

249 Type of Identification Produced.....

250 2. For an acknowledgment in an individual capacity:

251 STATE OF FLORIDA
 252 COUNTY OF

253 The foregoing instrument was acknowledged before me by means of
 254 [] physical presence or [] online notarization, this day of
 255, ... (year) ..., by ... (name of person acknowledging) ...
 256 and subscribed by ... (name of notary) ... at the direction of ~~and~~
 257 ~~in the presence of~~ ... (name of person acknowledging) ..., and in
 258 the presence of these witnesses:

259 ... (Signature of Notary Public - State of Florida) ...
 260 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 261 Personally Known OR Produced Identification
 262

263 Type of Identification Produced.....

264 Section 5. Subsections (2) and (9) of section 117.107,
 265 Florida Statutes, are amended to read:

266 117.107 Prohibited acts.—

267 (2) A notary public may not sign notarial certificates
 268 using a facsimile signature stamp unless the notary public has a
 269 physical disability that limits or prohibits his or her ability
 270 to make a written signature and unless the notary public has
 271 first submitted written notice to the Department of State with
 272 an exemplar of the facsimile signature stamp. This subsection
 273 does not apply to or prohibit the use of an electronic signature
 274 and seal by a notary public performing online notarization in
 275 accordance with general law.

276 (9) A notary public may not notarize a signature on a
 277 document if the person whose signature is being notarized does
 278 not appear before the notary public either by means of physical
 279 presence or audio-video communication technology pursuant to
 280 part II of this chapter ~~is not in the presence of the notary~~
 281 ~~public~~ at the time the signature is notarized. Any notary public
 282 who violates this subsection is guilty of a civil infraction,
 283 punishable by penalty not exceeding \$5,000, and such violation
 284 constitutes malfeasance and misfeasance in the conduct of
 285 official duties. It is no defense to the civil infraction
 286 specified in this subsection that the notary public acted
 287 without intent to defraud. A notary public who violates this
 288 subsection with the intent to defraud is guilty of violating s.
 289 117.105.

290 Section 6. Part II of chapter 117, Florida Statutes,
 291 consisting of sections 117.201-117.305, Florida Statutes, is
 292 created to read:

293 PART II

294 ONLINE NOTARIZATIONS

295 117.201 Definitions.—As used in this part, the term:

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

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

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

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

305 (2) "Audio-video communication technology" means
306 technology approved by the Department of State or this part that
307 enables real-time, two-way communication using electronic means
308 in which participants are able to see, hear, and communicate
309 with one another.

310 (3) "Credential analysis" means a process or service
311 approved by this part in which a third party confirms the
312 validity of a government-issued identification credential or
313 data thereon through review of public and proprietary data
314 sources.

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

317 (5) "Identity proofing" means a process or service
318 approved by the Department of State or this part in which a
319 third party confirms the identity of an individual through
320 review of public and proprietary data sources.

321 (6) "Knowledge-based authentication" means a form of
322 identity proofing based on a set of questions formulated from
323 public and proprietary data sources for which the principal has
324 not provided a prior answer during the course of the identity
325 proofing.

326 (7) "Online notarization" means the performance of an
 327 electronic notarization by means of audio-video communication
 328 technology and that meets standards in this chapter.

329 (8) "Online notary public" means a notary public
 330 registered with the Executive Office of the Governor to perform
 331 online notarizations under this part or a civil law notary
 332 appointed under chapter 118.

333 (9) "Principal" means an individual whose electronic
 334 signature is acknowledged, witnessed, or attested in an online
 335 notarization or who takes an oath or affirmation from the
 336 online notary public.

337 (10) "Remote presentation" means transmission of an image
 338 of a government-issued identification credential that is of
 339 sufficient quality to enable the online notary public to
 340 identify the individual seeking the notary's services and to
 341 perform credential analysis through audio-video communication
 342 technology.

343 (11) Except where the context otherwise requires, any term
 344 defined in s. 668.50(2) shall have the same meaning when used in
 345 this chapter.

346 117.209 Authority to perform online notarizations.-

347 (1) An online notary public may perform any of the
 348 functions authorized under this chapter as an online
 349 notarization excluding solemnizing the rites of matrimony.

350 (2) If a notarial act requires a principal to appear

351 before or in the presence of the online notary public, the
352 principal may appear before the online notary public by means of
353 audio-video communication technology that meets the requirements
354 of this chapter and any rules adopted by the Executive Office of
355 the Governor under s. 117.295.

356 (3) An online notary public may perform an online
357 notarization authorized under this chapter, regardless of the
358 physical location of the principal at the time of the notarial
359 act, provided the notary public is physically located in this
360 state while performing the online notarization.

361 (4) The validity of an online notarization performed by an
362 online notary public appointed in this state shall be determined
363 by applicable laws of this state regardless of the physical
364 location of the principal at the time of the notarial act.

365 117.215 Relation to other laws.—

366 (1) If a provision of law requires a signature, statement,
367 or instrument to be acknowledged, sworn, affirmed, made under
368 oath, or subject to penalty of perjury:

369 (a) The acknowledgement or proof may be made by any of the
370 officials listed and in the manner described in s. 695.03.

371 (b) The requirement may be satisfied by an online
372 notarization if made in accordance with the online notarization
373 provisions of this part or in conformance with the laws of the
374 notary public's appointing state.

375 (2) If a provision of law requires a signature or act be

376 witnessed, compliance with the online electronic witnessing
377 standards under s. 117.285 satisfies that requirement.

378 117.225 Registration; qualifications.—A notary public may
379 complete a registration as an online notary public with the
380 Executive Office of the Governor by:

381 (1) Satisfying the qualification requirements for
382 appointment as a notary public under part I.

383 (2) Paying an online notary public application fee in the
384 amount of \$25.

385 (3) Submitting to the Executive Office of the Governor a
386 registration as an online notary public, signed and sworn to by
387 the applicant.

388 (4) Identifying the audio-video communication and identity
389 proofing technologies the online notary public intends to use in
390 performing online notarizations. If the Department of State and
391 Agency for State Technology have established standards for
392 approval of technologies pursuant to this part, the technologies
393 selected must conform to those standards. If the technologies
394 conform to the standards, the Department of State and Agency for
395 State Technology shall approve the use of the technologies. If
396 the Department of State and Agency for State Technology have not
397 yet established such standards, the online notary public shall
398 select technologies satisfying the provisions of this chapter.

399 117.235 Performance of notarial acts.—

400 (1) An online notary public is subject to part I to the

401 same extent as a notary public appointed and commissioned only
 402 under that part, including the provisions of s. 117.021 relating
 403 to electronic notarizations.

404 (2) An online notary public may perform notarial acts as
 405 provided by part I in addition to performing online
 406 notarizations as authorized and pursuant to the provisions of
 407 this part.

408 117.245 Electronic journal of online notarizations.-

409 (1) An online notary public shall keep a secure electronic
 410 journal of electronic records notarized by the online notary
 411 public. For each online notarization, the electronic journal
 412 entry must contain all of the following:

413 (a) Date and time of the notarization.

414 (b) Type of notarial act.

415 (c) Type, title, or description of the electronic record
 416 or proceeding.

417 (d) Printed name and address of each principal involved in
 418 the transaction or proceeding.

419 (e) Evidence of identity of each principal involved in the
 420 transaction or proceeding in any of the following forms:

421 1. Statement that the person is personally known to the
 422 online notary public.

423 2. Notation of the type of identification document
 424 provided to the online notary public.

425 3. Copy of the government-issued identity credential

426 provided.

427 4. Copy of any other identity credential or information

428 provided.

429 (f) Indication that the principal satisfactorily passed

430 the identity proofing.

431 (g) Indication that the government-issued identity

432 credential satisfied the credential analysis.

433 (h) A recording of the audio-video communication in which

434 the:

435 1. Principal and any witnesses appeared before the notary

436 public.

437 2. Identity of each participant was confirmed.

438 3. Notarial act was performed.

439 (i) The fee, if any, charged for the online notarization.

440 (2) The online notary public shall take reasonable steps

441 to:

442 (a) Ensure the integrity, security, and authenticity of

443 online notarizations.

444 (b) Maintain a backup record for the electronic journal

445 required by subsection (1).

446 (c) Protect the backup record from unauthorized use.

447 (3) The electronic journal required by subsection (1)

448 shall be maintained for at least 10 years after the date of the

449 notarial act.

450 (4) An omitted or incomplete entry in the electronic

451 journal does not impair the validity of the notarial act or the
452 electronic record which was notarized, but may be introduced as
453 evidence to establish violations of this chapter or as an
454 indication of possible fraud, forgery, or impersonation or for
455 other evidentiary purposes.

456 117.255 Use of electronic journal, signature, and seal.—An
457 online notary public shall:

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

462 (2) Keep the electronic journal, electronic signature, and
463 electronic seal secure and under his or her sole control, which
464 shall include access protection through the use of passwords or
465 codes under control of the notary public. The online notary
466 public may not allow another person to use the online notary
467 public's electronic journal, electronic signature, or electronic
468 seal.

469 (3) Use electronic signatures only for performing online
470 notarization.

471 (4) Attach or logically associate the electronic signature
472 and seal to the electronic notarial certificate of an electronic
473 record in a manner capable of independent verification using
474 tamper-evident technology that renders any subsequent change or
475 modification to the electronic record evident.

476 (5) Immediately notify an appropriate law enforcement
477 agency and the Executive Office of the Governor of theft or
478 vandalism of the electronic journal, electronic signature, or
479 electronic seal. An online notary public shall immediately
480 notify the Executive Office of the Governor of the loss or use
481 by another person of the online notary public's electronic
482 journal, electronic signature, or electronic seal.

483 (6) Make electronic copies, upon request, of the pertinent
484 entries in the electronic journal and provide access to the
485 related audio-video communication recordings to the title agent,
486 settlement agent, or title insurer which engaged the online
487 notary with regard to a real estate transaction. The online
488 notary public may charge a reasonable fee for making and
489 delivering electronic copies of a given series of related
490 electronic records. Such fee must be disclosed to the requestor
491 before copies are made.

492 117.265 Online notarization procedures.-

493 (1) An online notary public physically located in this
494 state may perform an online notarization that meets the
495 requirements of this part regardless of whether the principal or
496 any witnesses are physically located in this state at the time
497 of the online notarization. An online notarial act performed in
498 accordance with this chapter is deemed to have been performed
499 within the state and is governed by applicable laws of this
500 state.

501 (2) In performing an online notarization, an online notary
 502 public shall verify the identity of a principal at the time that
 503 the signature is taken by using audio-video communication
 504 technology and processes that meet the requirements of this part
 505 and record the entire audio-video conference session between the
 506 notary public and the principal and any subscribing witnesses. A
 507 principal may not act in the capacity of a witness for the
 508 online notarization.

509 (3) In performing an online notarization of a principal
 510 not located within the state, an online notary public shall
 511 confirm that the principal desires for the notarial act to be
 512 performed by a Florida notary public and under the general law
 513 of this state.

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

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

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

519 1. Remote presentation of a government-issued
 520 identification credential by each individual.

521 2. Credential analysis of each government-issued
 522 identification credential.

523 3. Identity proofing of each individual, in the form of
 524 knowledge-based authentication or another method of identity
 525 proofing that conforms to standards set by the Executive Office

526 of the Governor.

527

528 If the online notary public does not satisfy subparagraphs
529 (b)1.-3., or if the databases consulted for identity proofing do
530 not contain sufficient information to permit authentication, the
531 online notary public may not perform the online notarization.

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

535 (6) An electronic notarial certificate for an online
536 notarization shall include a notation that the notarization is
537 an online notarization.

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

541 (8) Any failure to comply with the online notarization
542 procedures of this section does not impair the validity of the
543 notarial act or the electronic record which was notarized, but
544 may be introduced as evidence to establish violations of this
545 chapter or as an indication of possible fraud, forgery, or
546 impersonation or for other evidentiary purposes.

547 117.275 Fees for online notarization.—An online notary
548 public or employer of such online notary public may charge a
549 fee, not to exceed \$25, for performing an online notarization in
550 addition to any other fees authorized under part I. Fees for

551 services other than notarial acts are not governed by this
552 section.

553 117.285 Supervising the witnessing of electronic records.-

554 An online notary public or an official of another state
555 authorized under the laws of that state to perform online
556 notarization of documents may supervise the witnessing of
557 electronic records by the same audio-video communication
558 technology used for online notarization, as follows:

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

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

564 (3) The witness is present in either physical proximity to
565 the principal or through audio-video communication technology at
566 the time the principal affixes the electronic signature and
567 hears the principal make a statement to the effect that the
568 principal has signed the electronic record.

569 117.295 Standards for electronic and online notarization;
570 rulemaking authority.-

571 (1) The Legislature intends for the standards applicable
572 to electronic notarization under s. 117.021 and for online
573 notarization under this part to reflect future improvements in
574 technology and methods of assuring the identity of principals
575 and the security of an electronic record. Further, the Executive

576 Office of the Governor, in collaboration with the Agency for
577 State Technology, may adopt rules and standards necessary to
578 implement the requirements of this chapter and such other rules
579 and standards as may be required to facilitate the integrity,
580 security, and reliability of online notarization, including
581 standards regarding identity proofing, credential analysis,
582 unauthorized interception, remote presentation, tamper-evident
583 technology, and audio-video communication technology, and may
584 publish lists of technologies that satisfy the standards and are
585 approved for use in online notarizations.

586 (2) Identity proofing, credential analysis, unauthorized
587 interception, remote presentation, tamper-evident technology,
588 and audio-video communication technology shall be governed by
589 the following minimum standards:

590 (a) Identity proofing by means of knowledge-based
591 authentication shall have these or greater security
592 characteristics:

593 1. The principal must be presented with five or more
594 questions with a minimum of five possible answer choices per
595 question.

596 2. Each question must be drawn from a third-party provider
597 of public and proprietary data sources and be identifiable to
598 the principal's social security number or other identification
599 information, or the principal's identity and historical events
600 records.

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

603 4. The principal must answer a minimum of 80 percent of
604 the questions correctly.

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

607 6. During the second attempt, the principal may not be
608 presented with questions from the prior attempt.

609 (b) Credential analysis must include:

610 1. A comparison of the presented government-issued
611 identity credential and data thereon against public or
612 proprietary data sources to confirm that one or more data
613 elements conform to the asserted identity; or

614 2.a. The inspection of one or more readable format
615 features to verify that they conform to those specified by the
616 issuing state or country.

617 b. The reading of any bar codes contained on the
618 credential to verify that they contain data corresponding to the
619 asserted identity information of the principal.

620 c. An attempt to verify any micro-printing contained on
621 the credential.

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

625 (d) Audio-video communication technology used in

626 completing online notarizations must meet the following
627 requirements:

628 1. The signal transmission must be secure from
629 interception or access by anyone other than the participants
630 communicating.

631 2. The technology must provide sufficient audio clarity
632 and video resolution to enable the notary to communicate with
633 the principal and to confirm the identity of the principal using
634 identification methods described in s. 117.265.

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

638 117.305 Relation to Electronic Signatures in Global and
639 National Commerce Act.—This part modifies, limits and supersedes
640 the Electronic Signatures in Global and National Commerce Act,
641 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
642 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
643 authorize electronic delivery of any of the notices described in
644 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

645 Section 7. Paragraph (h) of subsection (3) of section
646 28.222, Florida Statutes, is redesignated as paragraph (i), and
647 a new paragraph (h) is added to that subsection to read:

648 28.222 Clerk to be county recorder.—

649 (3) The clerk of the circuit court shall record the
650 following kinds of instruments presented to him or her for

651 recording, upon payment of the service charges prescribed by
 652 law:

653 (h) Copies of any instruments originally created and
 654 executed using an electronic signature, as defined in s. 695.27,
 655 and certified to be a true and correct paper printout by a
 656 notary public in accordance with chapter 117 or by a title
 657 agency, authorized intermediary, or other approved party, if the
 658 county recorder is not prepared to accept electronic documents
 659 for recording electronically.

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

662 92.50 Oaths, affidavits, and acknowledgments; who may take
 663 or administer; requirements.—

664 (4) DEFINITION.—As used in this section, the term "before"
 665 means:

666 (a) In the same physical location as another person and
 667 close enough to see, hear, communicate with, and exchange
 668 credentials with that person; or

669 (b) In a different physical location from another person
 670 but able to see, hear, and communicate with the person by means
 671 of audio-video communication technology.

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

674 95.231 Limitations where deed or will on record.—

675 (1) Five years after the recording of an instrument

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676 required to be executed in accordance with s. 689.01; 5 years
677 after the recording of a power of attorney accompanying and used
678 for an instrument required to be executed in accordance with s.
679 689.01; or 5 years after the probate of a will purporting to
680 convey real property, from which it appears that the person
681 owning the property attempted to convey, affect, or devise it,
682 the instrument, power of attorney, or will shall be held to have
683 its purported effect to convey, affect, or devise, the title to
684 the real property of the person signing the instrument, as if
685 there had been no lack of seal or seals, witness or witnesses,
686 defect in, failure of, or absence of acknowledgment or
687 relinquishment of dower, in the absence of fraud, adverse
688 possession, or pending litigation. The instrument is admissible
689 in evidence. A power of attorney validated under this subsection
690 shall be valid only for the purpose of effectuating the
691 instrument with which it was recorded.

692 Section 10. Section 689.01, Florida Statutes, is amended
693 to read:

694 689.01 How real estate conveyed.—

695 (1) No estate or interest of freehold, or for a term of
696 more than 1 year, or any uncertain interest of, in or out of any
697 messuages, lands, tenements or hereditaments shall be created,
698 made, granted, transferred or released in any other manner than
699 by instrument in writing, signed in the presence of two
700 subscribing witnesses by the party creating, making, granting,

701 conveying, transferring or releasing such estate, interest, or
702 term of more than 1 year, or by the party's lawfully authorized
703 agent, unless by will and testament, or other testamentary
704 appointment, duly made according to law; and no estate or
705 interest, either of freehold, or of term of more than 1 year, or
706 any uncertain interest of, in, to, or out of any messuages,
707 lands, tenements or hereditaments, shall be assigned or
708 surrendered unless it be by instrument signed in the presence of
709 two subscribing witnesses by the party so assigning or
710 surrendering, or by the party's lawfully authorized agent, or by
711 the act and operation of law. No seal shall be necessary to give
712 validity to any instrument executed in conformity with this
713 section. Corporations may execute any and all conveyances in
714 accordance with the provisions of this section or ss. 692.01 and
715 692.02.

716 (2) For purposes of this chapter:

717 (a) Any requirement that an instrument be signed in the
718 presence of two subscribing witnesses may be satisfied by
719 witnesses being present and electronically signing by means of
720 audio-video communication technology as defined in s. 117.201
721 under standards applicable to online notarization pursuant to
722 chapter 117 or in conformance with laws in other states that
723 authorize online notarization of instruments.

724 (b) The act of witnessing an electronic signature is
725 satisfied if a witness is present either in physical proximity

726 to the principal or by audio-video communication technology at
727 the time the principal affixes the electronic signature and
728 hears the principal make a statement acknowledging that the
729 principal has signed the electronic record.

730 (3) All witnesses heretofore made or taken pursuant to
731 subsection (2) are hereby validated and, upon recording, may not
732 be denied to have provided constructive notice based on any
733 alleged failure to have strictly complied with this section, as
734 currently or previously in effect, or the laws governing
735 notarization of instruments, including online notarization, in
736 this or any other state.

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

739 694.08 Certain instruments validated, notwithstanding lack
740 of seals or witnesses, or defect in acknowledgment, etc.—

741 (1) Whenever any power of attorney has been executed and
742 delivered, or any conveyance has been executed and delivered to
743 any grantee by the person owning the land therein described, or
744 conveying the same in an official or representative capacity,
745 and has, for a period of 7 years or more been spread upon the
746 records of the county wherein the land therein described has
747 been or was at the time situated, and one or more subsequent
748 conveyances of said land or parts thereof have been made,
749 executed, delivered and recorded by parties claiming under such
750 instrument or instruments, and such power of attorney or

751 conveyance, or the public record thereof, shows upon its face a
 752 clear purpose and intent of the person executing the same to
 753 authorize the conveyance of said land or to convey the said
 754 land, the same shall be taken and held by all the courts of this
 755 state, in the absence of any showing of fraud, adverse
 756 possession, or pending litigation, to have authorized the
 757 conveyance of, or to have conveyed, the fee simple title, or any
 758 interest therein, of the person signing such instruments, or the
 759 person in behalf of whom the same was conveyed by a person in an
 760 official or representative capacity, to the land therein
 761 described as effectively as if there had been no defect in,
 762 failure of, or absence of the acknowledgment or the certificate
 763 of acknowledgment, if acknowledged, or the relinquishment of
 764 dower, and as if there had been no lack of the word "as"
 765 preceding the title of the person conveying in an official or
 766 representative capacity, of any seal or seals, or of any witness
 767 or witnesses, and shall likewise be taken and held by all the
 768 courts of this state to have been duly recorded so as to be
 769 admissible in evidence;

770 Section 12. Section 695.03, Florida Statutes, is amended
 771 to read:

772 695.03 Acknowledgment and proof; validation of certain
 773 acknowledgments; legalization or authentication before foreign
 774 officials.—

775 (1) To entitle any instrument concerning real property to

776 | be recorded, the execution must be acknowledged by the party
 777 | executing it, proved by a subscribing witness to it, or
 778 | legalized or authenticated by a civil-law notary or notary
 779 | public who affixes her or his official seal, before the officers
 780 | and in the form and manner following:

781 | (a)~~(1)~~ WITHIN THIS STATE.—An acknowledgment or proof made
 782 | within this state may be made before a judge, clerk, or deputy
 783 | clerk of any court; a United States commissioner or magistrate;
 784 | or a notary public or civil-law notary of this state, and the
 785 | certificate of acknowledgment or proof must be under the seal of
 786 | the court or officer, as the case may be. ~~All affidavits and~~
 787 | ~~acknowledgments heretofore made or taken in this manner are~~
 788 | ~~hereby validated.~~

789 | (b)~~(2)~~ WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An
 790 | acknowledgment or proof of a person located outside ~~made out~~ of
 791 | this state but within the United States may be made before a
 792 | notary public or a civil-law notary ~~of this state~~ or by a
 793 | commissioner of deeds appointed by the Governor of this state; a
 794 | judge or clerk of any court of the United States or of any
 795 | state, territory, or district; a United States commissioner or
 796 | magistrate; or a notary public, justice of the peace, master in
 797 | chancery, or registrar or recorder of deeds of any state,
 798 | territory, or district having a seal, and the certificate of
 799 | acknowledgment or proof must be under the seal of the court or
 800 | officer, as the case may be. If the acknowledgment or proof is

801 made before a notary public who does not affix a seal, it is
802 sufficient for the notary public to type, print, or write by
803 hand on the instrument, "I am a Notary Public of the State of
804 ...(state)..., and my commission expires on ...(date)...."

805 (c)~~(3)~~ WITHIN FOREIGN COUNTRIES.—If the acknowledgment,
806 affidavit, oath, legalization, authentication, or proof of a
807 person is made in a foreign country, it may be made before a
808 commissioner of deeds appointed by the Governor of this state to
809 act in such country; before a notary public of such foreign
810 country or a civil-law notary of this state or of such foreign
811 country who has an official seal; before an ambassador, envoy
812 extraordinary, minister plenipotentiary, minister, commissioner,
813 charge d'affaires, consul general, consul, vice consul, consular
814 agent, or other diplomatic or consular officer of the United
815 States appointed to reside in such country; or before a military
816 or naval officer authorized by the Laws or Articles of War of
817 the United States to perform the duties of notary public, and
818 the certificate of acknowledgment, legalization, authentication,
819 or proof must be under the seal of the officer. A certificate
820 legalizing or authenticating the signature of a person executing
821 an instrument concerning real property and to which a civil-law
822 notary or notary public of that country has affixed her or his
823 official seal is sufficient as an acknowledgment. For the
824 purposes of this section, the term "civil-law notary" means a
825 civil-law notary as defined in chapter 118 or an official of a

826 foreign country who has an official seal and who is authorized
827 to make legal or lawful the execution of any document in that
828 jurisdiction, in which jurisdiction the affixing of her or his
829 official seal is deemed proof of the execution of the document
830 or deed in full compliance with the laws of that jurisdiction.

831 (d) All affidavits, oaths, acknowledgments, legalizations,
832 authentications, or proofs made or taken in any of the manners
833 in paragraphs (a)-(c) are validated and upon recording shall not
834 be denied to have provided constructive notice based on any
835 alleged failure to have strictly complied with this section, as
836 currently or previously in effect, or the laws governing
837 notarization of instruments in chapter 117 or in the place where
838 such notary public or other authorized person is commissioned or
839 authorized to act.

840
841 ~~All affidavits, legalizations, authentications, and~~
842 ~~acknowledgments heretofore made or taken in the manner set forth~~
843 ~~above are hereby validated.~~

844 (2) As used in this section, the term "before" means:

845 (a) In the same physical location as another person and
846 close enough to see, hear, communicate with, and exchange
847 credentials with that person; or

848 (b) In a different physical location from another person
849 but able to see, hear, and communicate with the person by means
850 of audio-video communication technology.

851 Section 13. Section 695.04, Florida Statutes, is amended
 852 to read:

853 695.04 Requirements of certificate.—The certificate of the
 854 officer before whom the acknowledgment or proof is taken, except
 855 for a certificate legalizing or authenticating the signature of
 856 a person executing an instrument concerning real property
 857 pursuant to s. 695.03(1)(c) ~~s. 695.03(3)~~, shall contain and set
 858 forth substantially the matter required to be done or proved to
 859 make such acknowledgment or proof effectual as set forth in s.
 860 117.05.

861 Section 14. Section 695.05, Florida Statutes, is amended
 862 to read:

863 695.05 Certain defects cured as to acknowledgments and
 864 witnesses.—All deeds, conveyances, bills of sale, mortgages or
 865 other transfers of real or personal property within the limits
 866 of this state, heretofore or hereafter made and received bona
 867 fide and upon good consideration by any corporation, and
 868 acknowledged for record by ~~before~~ some officer, stockholder or
 869 other person interested in the corporation, grantee, or
 870 mortgagee as a notary public or other officer authorized to take
 871 acknowledgments of instruments for record within this state,
 872 shall be held, deemed and taken as valid as if acknowledged by
 873 the proper notary public or other officer authorized to take
 874 acknowledgments of instruments for record in this state not so
 875 interested in said corporation, grantee or mortgagee; and said

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876 instrument whenever recorded shall be deemed notice to all
877 persons; provided, however, that this section shall not apply to
878 any instrument heretofore made, the validity of which shall be
879 contested by suit commenced within 1 year of the effective date
880 of this law.

881 Section 15. Section 695.09, Florida Statutes, is amended
882 to read:

883 695.09 Identity of grantor.—No acknowledgment or proof
884 shall be taken, except as set forth in s. 695.03(1)(c) ~~s.~~
885 ~~695.03(3)~~, by any officer within or without the United States
886 unless the officer knows, or has satisfactory proof, that the
887 person making the acknowledgment is the individual described in,
888 and who executed, such instrument or that the person offering to
889 make proof is one of the subscribing witnesses to such
890 instrument.

891 Section 16. Section 695.28, Florida Statutes, is amended
892 to read:

893 695.28 Validity of recorded electronic documents.—

894 (1) A document that is otherwise entitled to be recorded
895 and that was or is submitted to the clerk of the court or county
896 recorder by electronic or other means and accepted for
897 recordation is deemed validly recorded and provides notice to
898 all persons notwithstanding:

899 (a) That the document was received and accepted for
900 recordation before the Department of State adopted standards

901 implementing s. 695.27; ~~or~~

902 (b) Any defects in, deviations from, or the inability to
903 demonstrate strict compliance with any statute, rule, or
904 procedure relating to electronic signatures, electronic
905 witnesses, electronic notarization, online notarization, or for
906 submitting or recording ~~to submit or record~~ an electronic
907 document in effect at the time the electronic document was
908 executed or was submitted for recording;

909 (c) That the document was signed, witnessed, or notarized
910 electronically or that witnessing or notarization may have been
911 done outside the physical presence of the notary public or
912 principal in accordance with the provisions of chapter 117 or
913 the laws of another state regarding the notarization of
914 documents; or

915 (d) That the document recorded was a certified printout of
916 a document to which one or more electronic signatures have been
917 affixed.

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

921 (3) This section does not preclude a challenge to the
922 validity or enforceability of an instrument or electronic record
923 based upon fraud, forgery, impersonation, duress, undue
924 influence, minority, illegality, unconscionability, or any other
925 basis not in the nature of those matters described in subsection

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926 | (1).

927 | Section 17. This act shall take effect July 1, 2018.