

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice & Property
 2 Rights Subcommittee
 3 Representative Garrison offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (4) of section 117.021, Florida
 8 Statutes, is amended to read:

9 117.021 Electronic notarization.-

10 (4) A notary public performing a notarial act with respect
 11 to an electronic record shall select the technology to be used
 12 for such notarial act. A person may not require the a-notary
 13 public to use a particular perform a notarial act with respect
 14 to an electronic record with a form of technology; however, if
 15 the notary public is required by his or her contract or employer
 16 to perform notarial acts with respect to electronic records, the

Amendment No.1

17 contract or employer may require the use of a particular
18 technology for those notarial acts ~~that the notary public has~~
19 ~~not selected to use.~~

20 Section 2. Paragraph (a) of subsection (2) of section
21 117.05, Florida Statutes, is amended to read:

22 117.05 Use of notary commission; unlawful use; notary fee;
23 seal; duties; employer liability; name change; advertising;
24 photocopies; penalties.—

25 (2) (a) The fee of a notary public may not exceed \$10 for
26 any one notarial act under this part, except as provided in s.
27 117.045 or s. 117.275.

28 Section 3. Subsections (6) and (14) of section 117.201,
29 Florida Statutes, are amended to read:

30 117.201 Definitions.—As used in this part, the term:

31 (6) "Government-issued identification credential" means
32 any approved credential for verifying identity under s.
33 117.05(5)(b)2. However, for an online notarization of a
34 principal not located within the United States, a passport
35 issued by a foreign government not including the stamp of the
36 United States Bureau of Citizenship and Immigration Services may
37 be used as a government-issued identification credential to
38 verify the principal's identity.

39 (14) "Remote Online Notarization service provider" or "RON
40 service provider" means a person that provides audio-video
41 communication technology and related processes, services,
42 software, data storage, or other services to online notaries

655843 - h0121-strikeall.docx

Published On: 2/16/2021 6:46:45 PM

Amendment No.1

43 public for the purpose of directly facilitating their
44 performance of online notarizations, in compliance with the
45 requirements of this chapter and any rules adopted by the
46 Department of State pursuant to s. 117.295.

47 Section 4. Subsections (1) and (5) of section 117.225,
48 Florida Statutes, are amended to read:

49 117.225 Registration; qualifications.—A notary public, a
50 civil-law notary appointed under chapter 118, or a commissioner
51 of deeds appointed under part IV of chapter 721 may complete
52 registration as an online notary public with the Department of
53 State by:

54 (1) Holding a current commission as a notary public under
55 part I of this chapter, an appointment as a civil-law notary
56 under chapter 118, or an appointment as a commissioner of deeds
57 under part IV of chapter 721, and submitting his or her ~~a copy~~
58 ~~of such commission or proof of such~~ commission or appointment
59 number ~~with his or her registration.~~

60 (5) Identifying the RON service provider or providers whose
61 audio-video communication technology and processes for
62 credential analysis and identity-proofing technologies the
63 registrant intends to use for online notarizations, ~~and~~
64 ~~confirming that such technology and processes satisfy the~~
65 ~~requirements of this chapter and any rules adopted by the~~
66 ~~Department of State pursuant to s. 117.295.~~

67 Section 5. Section 117.231, Florida Statutes, is created to
68 read:

655843 - h0121-strikeall.docx

Published On: 2/16/2021 6:46:45 PM

Amendment No.1

69 117.231 Remote administration of certain oaths.-

70 (1) When taking the oath of an individual who is testifying
71 at any court proceeding, deposition, arbitration, or public
72 hearing and who is outside of the physical presence of the
73 notary public, the notary public may fulfill the requirements of
74 s. 117.05 using audio-video communication technology.

75 (2) When taking an oath of admission to The Florida Bar
76 from an individual who is outside of the physical presence of
77 the notary public, the notary public may fulfill the
78 requirements of s. 117.05 using audio-video communication
79 technology.

80 (3) If an individual is located outside of this state at
81 the time the notary public is to take the individual's oath
82 under this section, consent from the individual must be obtained
83 to take his or her oath using audio-video communication
84 technology pursuant to this section.

85 (4) When taking an oath under this section, the notary
86 public is not required to be an online notary public or to use a
87 RON service provider.

88 Section 6. Subsections (1), (2), (4), and (5) of section
89 117.245, Florida Statutes, are amended to read:

90 117.245 Electronic journal of online notarizations.-

91 (1) An online notary public shall keep one or more secure
92 electronic journals of online notarizations performed by the
93 online notary public. For each online notarization, the
94 electronic journal entry must contain all of the following:

Amendment No.1

95 (a) The date and time of the notarization.

96 (b) The type of notarial act performed, whether an oath or
97 acknowledgment.

98 (c) The type, the title, or a description of the electronic
99 record or proceeding.

100 (d) The name and address of each principal involved in the
101 transaction or proceeding.

102 (e) Evidence of identity of each principal involved in the
103 transaction or proceeding in either any of the following forms:

104 1. A statement that the person is personally known to the
105 online notary public; or-

106 2.a. A notation of the type of government-issued
107 identification credential provided to the online notary public;

108 b. An indication that the government-issued identification
109 credential satisfied the credential analysis; and-

110 c.-(f) An indication that the principal satisfactorily
111 passed the identity proofing.

112 ~~(g) An indication that the government-issued identification~~
113 ~~credential satisfied the credential analysis.~~

114 (f)-(h) The fee, if any, charged for the notarization.

115 (2) The RON service provider ~~online notary public~~ shall
116 retain an uninterrupted and unedited copy of the recording of
117 the audio-video communication in which an online notarization is
118 performed. The online notary public shall ensure that the
119 recording includes ~~must include~~ all of the following:

120 (a) Appearance by the principal and any witness before the

Amendment No.1

121 online notary public.

122 (b) Confirmation of the identity of the principal and any
123 witness.

124 (c) A general description or identification of the records
125 to be signed.

126 (d) At the commencement of the recording, recitation by the
127 online notary public of information sufficient to identify the
128 notarial act.

129 (e) A declaration by the principal that his or her
130 signature on the record is knowingly and voluntarily made.

131 (f) All of the actions and spoken words of the principal,
132 notary public, and any required witness during the entire online
133 notarization, including the signing of any records before the
134 online notary public.

135 (4) The electronic journal required under subsection (1)
136 and the recordings of audio-video communications required under
137 subsection (2) shall be maintained for at least 10 years after
138 the date of the notarial act. However, a full copy of the
139 recording of the audio-video communication required under
140 subsection (2) relating to an online notarization session that
141 involves the signing of an electronic will must be maintained by
142 a qualified custodian in accordance with chapters 731 and 732.
143 The Department of State maintains jurisdiction over the
144 electronic journal and audio-video communication recordings to
145 investigate notarial misconduct for a period of 10 years after
146 the date of the notarial act. The online notary public, a

Amendment No.1

147 guardian of an incapacitated online notary public, or the
148 personal representative of a deceased online notary public may,
149 by contract with a secure repository in accordance with any
150 rules established under this chapter, delegate to the repository
151 the online notary public's duty to retain the electronic journal
152 ~~and the required recordings of audio-video communications,~~
153 provided that the Department of State is notified of such
154 delegation of retention duties to the repository within 30 days
155 thereafter, including the effective date of the delegation and
156 the address and contact information for the repository. If an
157 online notary public delegates to a secure repository under this
158 section, the online notary public shall make an entry in his or
159 her electronic journal identifying such repository, and provide
160 notice to the Department of State as required in this
161 subsection. A RON service provider may, by contract with a
162 secure repository in accordance with any rules established under
163 this chapter, delegate to the repository the RON service
164 provider's duty to retain the required recordings of audio-video
165 communications, provided that the Department of State is
166 notified of such delegation of retention duties to the
167 repository within 30 days thereafter, including the effective
168 date of the delegation and the address and contact information
169 for the repository. During any delegation under this subsection,
170 the secure repository shall fulfill the responsibilities of the
171 online notary public or RON service provider to provide copies
172 or access under s. 117.255(2) and (3).

655843 - h0121-strikeall.docx

Published On: 2/16/2021 6:46:45 PM

Amendment No.1

173 (5) An omitted or incomplete entry in the electronic
174 journal does not impair the validity of the notarial act or of
175 the electronic record which was notarized, but may be introduced
176 as evidence to establish violations of this chapter; as evidence
177 of possible fraud, forgery, impersonation, duress, incapacity,
178 undue influence, minority, illegality, or unconscionability; or
179 for other evidentiary purposes. However, if the recording of the
180 audio-video communication required under subsection (2) relating
181 to the online notarization of the execution of an electronic
182 will cannot be produced by the RON service provider, the online
183 notary public, or the qualified custodian, the electronic will
184 shall be treated as a lost or destroyed will subject to s.
185 733.207.

186 Section 7. Section 117.255, Florida Statutes, is amended to
187 read:

188 117.255 Use of electronic journal, signature, and seal.—

189 (1) An online notary public shall:

190 (a)~~(1)~~ Take reasonable steps to ensure that any registered
191 device used to create an electronic seal is current and has not
192 been revoked or terminated by the issuing or registering
193 authority of the device.

194 (b)~~(2)~~ Keep the electronic journal and electronic seal
195 secure and under his or her sole control, which includes access
196 protection using passwords or codes under control of the online
197 notary public. The online notary public may not allow another
198 person to use the online notary public's electronic journal,

Amendment No.1

199 electronic signature, or electronic seal, other than a RON
200 service provider or other authorized person providing services
201 to an online notary public to facilitate performance of online
202 notarizations.

203 (c)~~(3)~~ Attach or logically associate the electronic
204 signature and seal to the electronic notarial certificate of an
205 electronic record in a manner that is capable of independent
206 verification using tamper-evident technology that renders any
207 subsequent change or modification to the electronic record
208 evident.

209 (d)~~(4)~~ Notify an appropriate law enforcement agency and the
210 Department of State of any unauthorized use of or compromise to
211 the security of the electronic journal, official electronic
212 signature, or electronic seal within 7 days after discovery of
213 such unauthorized use or compromise to security.

214 (2)~~(5)~~ An online notary public shall provide ~~Make~~
215 ~~electronic copies, upon request, of the pertinent entries in the~~
216 ~~electronic journal, and a RON service provider shall provide~~
217 ~~access to the related audio-video communication recordings, or a~~
218 ~~copy thereof, to the following persons upon request:~~

219 (a) The parties to an electronic record notarized by the
220 online notary public;

221 (b) The qualified custodian of an electronic will notarized
222 by the online notary public;

223 (c) The title agent, settlement agent, or title insurer who
224 insured the electronic record or engaged the online notary

Amendment No.1

225 public with regard to a real estate transaction;

226 (d) ~~The online notary public's RON service provider whose~~
227 ~~services were used by the online notary public to notarize the~~
228 ~~electronic record;~~

229 ~~(e)~~ Any person who is asked to accept a power of attorney
230 that was notarized by the online notary public;

231 ~~(e)-(f)~~ The Department of State pursuant to a notary
232 misconduct investigation; ~~and~~

233 ~~(f)-(g)~~ Any other persons pursuant to a subpoena, court
234 order, law enforcement investigation, or other lawful inspection
235 demand;

236 (g) With respect to audio-video communication recordings of
237 an online notarization, the online notary public performing that
238 notarization; and

239 (h) With respect to electronic copies of pertinent entries
240 in the electronic journal, the RON service provider used for the
241 online notarizations associated with those entries.

242 ~~(3)-(6)~~ The online notary public may charge a fee not to
243 exceed \$20 per transaction record for making and delivering
244 electronic copies of a given series of related electronic
245 records, and a RON service provider may charge a fee not to
246 exceed \$20 for providing access to, or a copy of, the related
247 audio-video communication records, except such copies or access
248 must be provided without charge if requested by any of the
249 following within the 10-year period specified in s. 117.245(4):

250 (a) A party to the electronic record;

Amendment No.1

251 (b) In a real estate transaction, the title agent,
252 settlement agent, or title insurer who insured the electronic
253 record or engaged the online notary public with regard to such
254 transaction; ~~or~~

255 (c) The Department of State pursuant to an investigation
256 relating to the official misconduct of an online notary public;

257 (d) The qualified custodian of an electronic will notarized
258 by the online notary public;

259 (e) With respect to audio-video communication recordings of
260 an online notarization, the online notary public performing that
261 notarization; or

262 (f) With respect to electronic copies of a given series of
263 related electronic records, the RON service provider used for
264 the online notarization of those records.

265
266 If the online notary public or RON service provider charges ~~does~~
267 ~~charge~~ a fee, the online notary public or RON service provider
268 must shall disclose the amount of such fee to the requester
269 before making the electronic copies or providing access to, or
270 making a copy of, the requested audio-video communication
271 recordings.

272 Section 8. Subsection (5) of section 117.265, Florida
273 Statutes, is amended to read:

274 117.265 Online notarization procedures.—

275 (5) (a) An online notary public shall select the RON service
276 provider to be used to perform an online notarization, and a

Amendment No.1

277 person may not require the online notary public to use a
278 particular RON service provider; however, if the online notary
279 public is required by his or her contract or employer to perform
280 online notarizations, the contract or employer may require the
281 use of a particular RON service provider for those online
282 notarizations.

283 (b) An online notary public may change his or her RON
284 service provider or providers from time to time, but shall
285 notify the Department of State of such change, and its effective
286 date, within 30 days thereafter.

287 Section 9. Section 117.275, Florida Statutes, is amended to
288 read:

289 117.275 Fees for online notarization.—An online notary
290 public or the employer of such online notary public may charge a
291 fee, not to exceed \$25, for performing an online notarial act
292 notarization under this part. Fees for services other than
293 notarial acts, including the services of a RON service provider,
294 are not governed by this section. A RON service provider's
295 services are also not considered closing services, as defined in
296 s. 627.7711, and a fee for those services may be separately
297 charged.

298 Section 10. Subsections (2) and (4) of section 117.295,
299 Florida Statutes, are amended, and subsection (8) is added to
300 that section, to read:

301 117.295 Standards for electronic and online notarization;
302 rulemaking authority.—

Amendment No.1

303 (2) ~~By January 1, 2020,~~ The Department of State shall:

304 (a) Adopt forms, processes, and ~~interim or emergency~~ rules
305 necessary to accept applications from and register online
306 notaries public pursuant to s. 117.225.

307 (b) Publish on its website a list containing each online
308 notary public, the online notary public's RON service providers
309 from January 1, 2022, and thereafter, the effective dates during
310 which the online notary public used each RON service provider,
311 as identified pursuant to ss. 117.225(5) and 117.265(5) (b), any
312 secure repositories to which the online notary public may have
313 delegated his or her duties pursuant to s. 117.225(4) from
314 January 1, 2022, and thereafter, and the effective dates of that
315 delegation.

316 (4) (a) A RON service provider must file a self-
317 certification with the Department of State, on a form adopted by
318 department rule, confirming that its audio-video communication
319 technology and related processes, services, software, data
320 storage, or other services provided to online notaries public
321 for the purpose of directly facilitating their performance of
322 online notarizations satisfy the requirements of this chapter
323 and any rules adopted by the Department of State pursuant to
324 this section. Each certification shall remain active for a
325 period of 1 year from the date of filing. The Department of
326 State must publish on its website a list of each RON service
327 provider that has filed a self-certification, the date of filing
328 of the self-certification, any secure repositories to which the

Amendment No.1

329 RON service provider may have delegated its duties pursuant to
330 s. 117.225(4) from January 1, 2022, and thereafter, and the
331 effective dates of that delegation.

332 (b) A RON service provider is deemed to have satisfied
333 tamper-evident technology requirements by use of technology that
334 renders any subsequent change or modification to the electronic
335 record evident.

336 (8) A RON service provider may not use, sell, or offer to
337 sell or transfer to another person for use or sale any personal
338 information obtained under this part which identifies a
339 principal, a witness, or a person named in a record presented
340 for online notarization, except:

341 (a) As necessary to facilitate performance of a notarial
342 act;

343 (b) To administer or process a record provided by or on
344 behalf of a principal or the transaction of which the record is
345 a part;

346 (c) To detect fraud, identity theft, or other criminal
347 activities;

348 (d) In accordance with this part and the rules adopted
349 pursuant to this part or any other applicable federal, state, or
350 local law, or to comply with a lawful subpoena or court order or
351 a lawful request from a law enforcement or regulatory agency;

352 (e) To monitor and improve the audio-video communication
353 technology and related processes, services, software, data
354 storage, or other services offered by the RON service provider

Amendment No.1

355 to online notaries public for the purpose of directly
356 facilitating their performance of online notarizations.

357 (f) In connection with a proposed or actual sale, merger,
358 transfer, or exchange of all or a portion of a business or
359 operating unit of a RON service provider, or the dissolution,
360 insolvency, or cessation of operations of a business or
361 operating unit, if limited to such personal information held by
362 that business or unit and any transferee agrees to comply with
363 the restrictions set forth in this subsection.

364 Section 11. This act shall take effect January 1, 2022.

365 -----
366
367 **T I T L E A M E N D M E N T**

368 Remove everything before the enacting clause and insert:
369 An act relating to notaries public; amending s. 117.021, F.S.;
370 clarifying that a notary public is entitled to select particular
371 technology in performing a notarial act with respect to an
372 electronic record; authorizing a notary public's contract or
373 employer to require the use of a particular technology in
374 performing a notarial act with respect to an electronic record;
375 amending s. 117.05, F.S.; revising limitations on notary public
376 fees; amending s. 117.201, F.S.; revising definitions; amending
377 s. 117.225, F.S.; revising certain registration requirements for
378 online notaries public; creating s. 117.231, F.S.; authorizing
379 notaries public to remotely swear in witnesses using audio-video
380 communication technology; authorizing notaries public to

655843 - h0121-strikeall.docx

Published On: 2/16/2021 6:46:45 PM

Amendment No.1

381 remotely swear in new attorneys admitted to The Florida Bar
382 using audio-video communication technology; amending s. 117.245,
383 F.S.; modifying requirements for entries in the electronic
384 journal maintained by an online notary public; requiring a
385 remote online notarization service provider, rather than an
386 online notary public, to retain audio-video communication
387 recordings of online notarizations; authorizing a RON service
388 provider to delegate this duty to a secure repository under
389 certain conditions; conforming provisions to changes made by the
390 act; amending s. 117.255, F.S.; revising provisions governing
391 access to audio-video communication recordings to conform to
392 changes made by the act; authorizing a remote online
393 notarization service provider to charge a fee for access to such
394 recordings, subject to specified limitations; amending s.
395 117.265, F.S.; clarifying that an online notary public is
396 entitled to select his or her remote online notarization service
397 provider; authorizing a notary public's contract or employer to
398 require the use of a particular remote online notarization
399 service provider in performing online notarizations; requiring
400 an online notary public to notify the Department of State of the
401 effective date of a change in the remote online notarization
402 service provider used; amending s. 117.275, F.S.; clarifying
403 limitations on fees charged for online notarizations; amending
404 s. 117.295, F.S.; requiring the department to publish on its
405 website a list containing certain information on online notaries

655843 - h0121-strikeall.docx

Published On: 2/16/2021 6:46:45 PM

Amendment No.1

406 public; requiring a remote online notarization service provider
407 to file a self-certification with the department; specifying the
408 duration of a self-certification; requiring the department to
409 publish on its website a list containing certain information on
410 self-certified remote online notarization service providers;
411 prohibiting a remote online notarization service provider from
412 using, selling, or offering to sell or transfer personal
413 information obtained in the course of performing online
414 notarizations; providing exceptions; providing an effective
415 date.