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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
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The Committee on Judiciary (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (4) of section 117.021, Florida  
Statutes, is amended to read:

117.021 Electronic notarization.-

(4) A notary public performing a notarial act with respect  
to an electronic record shall select the technology to be used  
for such notarial act. A person may not require the a-notary  
public to use a particular perform a notarial act with respect



12 ~~to an electronic record with a form of technology; however, if~~  
13 ~~the notary public is required by his or her contract or employer~~  
14 ~~to perform notarial acts with respect to electronic records, the~~  
15 ~~contract or employer may require the use of a particular~~  
16 ~~technology for those notarial acts that the notary public has~~  
17 ~~not selected to use.~~

18 Section 2. Paragraph (a) of subsection (2) of section  
19 117.05, Florida Statutes, is amended to read:

20 117.05 Use of notary commission; unlawful use; notary fee;  
21 seal; duties; employer liability; name change; advertising;  
22 photocopies; penalties.-

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

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

28 117.201 Definitions.-As used in this part, the term:

29 (6) "Government-issued identification credential" means any  
30 approved credential for verifying identity under s.

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

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



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

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

47 117.225 Registration; qualifications.—A notary public, a  
48 civil-law notary appointed under chapter 118, or a commissioner  
49 of deeds appointed under part IV of chapter 721 may complete  
50 registration as an online notary public with the Department of  
51 State by:

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

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

65 Section 5. Section 117.231, Florida Statutes, is created to  
66 read:

67 117.231 Remote administration of certain oaths.—

68 (1) When taking the oath of an individual who is testifying  
69 at any court proceeding, deposition, arbitration, or public



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70 hearing and who is outside of the physical presence of the  
71 notary public, the notary public may fulfill the requirements of  
72 s. 117.05 using audio-video communication technology.

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

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

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

86 Section 6. Subsections (1), (2), (4), and (5) of section  
87 117.245, Florida Statutes, are amended to read:

88 117.245 Electronic journal of online notarizations.—

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

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

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

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

98 (d) The name and address of each principal involved in the



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99 transaction or proceeding.

100 (e) Evidence of identity of each principal involved in the  
101 transaction or proceeding in either ~~any~~ of the following forms:

102 1. A statement that the person is personally known to the  
103 online notary public; ~~or-~~

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

106 b. An indication that the government-issued identification  
107 credential satisfied the credential analysis; and-

108 c. ~~(f)~~ An indication that the principal satisfactorily  
109 passed the identity proofing.

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

112 (f) ~~(h)~~ The fee, if any, charged for the notarization.

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

118 (a) Appearance by the principal and any witness before the  
119 online notary public.

120 (b) Confirmation of the identity of the principal and any  
121 witness.

122 (c) A general description or identification of the records  
123 to be signed.

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

127 (e) A declaration by the principal that his or her



128 signature on the record is knowingly and voluntarily made.  
129 (f) All of the actions and spoken words of the principal,  
130 notary public, and any required witness during the entire online  
131 notarization, including the signing of any records before the  
132 online notary public.  
133 (4) The electronic journal required under subsection (1)  
134 and the recordings of audio-video communications required under  
135 subsection (2) shall be maintained for at least 10 years after  
136 the date of the notarial act. However, a full copy of the  
137 recording of the audio-video communication required under  
138 subsection (2) relating to an online notarization session that  
139 involves the signing of an electronic will must be maintained by  
140 a qualified custodian in accordance with chapters 731 and 732.  
141 The Department of State maintains jurisdiction over the  
142 electronic journal and audio-video communication recordings to  
143 investigate notarial misconduct for a period of 10 years after  
144 the date of the notarial act. The online notary public, a  
145 guardian of an incapacitated online notary public, or the  
146 personal representative of a deceased online notary public may,  
147 by contract with a secure repository in accordance with any  
148 rules established under this chapter, delegate to the repository  
149 the online notary public's duty to retain the electronic journal  
150 ~~and the required recordings of audio-video communications,~~  
151 provided that the Department of State is notified of such  
152 delegation of retention duties to the repository within 30 days  
153 thereafter, including the effective date of the delegation and  
154 the address and contact information for the repository. If an  
155 online notary public delegates to a secure repository under this  
156 section, the online notary public shall make an entry in his or



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157 her electronic journal identifying such repository, and provide  
158 notice to the Department of State as required in this  
159 subsection. A RON service provider may, by contract with a  
160 secure repository in accordance with any rules established under  
161 this chapter, delegate to the repository the RON service  
162 provider's duty to retain the required recordings of audio-video  
163 communications, provided that the Department of State is  
164 notified of such delegation of retention duties to the  
165 repository within 30 days thereafter, including the effective  
166 date of the delegation and the address and contact information  
167 for the repository. During any delegation under this subsection,  
168 the secure repository shall fulfill the responsibilities of the  
169 online notary public or RON service provider to provide copies  
170 or access under s. 117.255(2) and (3).

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

184 Section 7. Section 117.255, Florida Statutes, is amended to  
185 read:



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186 117.255 Use of electronic journal, signature, and seal.-

187 (1) An online notary public shall:

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

192 (b)~~(2)~~ Keep the electronic journal and electronic seal  
193 secure and under his or her sole control, which includes access  
194 protection using passwords or codes under control of the online  
195 notary public. The online notary public may not allow another  
196 person to use the online notary public's electronic journal,  
197 electronic signature, or electronic seal, other than a RON  
198 service provider or other authorized person providing services  
199 to an online notary public to facilitate performance of online  
200 notarizations.

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

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

212 (2)~~(5)~~ An online notary public shall provide ~~Make~~  
213 ~~electronic copies, upon request, of the pertinent entries in the~~  
214 ~~electronic journal,~~ and a RON service provider shall provide





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215 access to the related audio-video communication recordings, or a  
216 copy thereof, to the following persons upon request:

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

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

221 (c) The title agent, settlement agent, or title insurer who  
222 insured the electronic record or engaged the online notary  
223 public with regard to a real estate transaction;

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

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

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

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

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

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

240 ~~(3)-(6) The online notary public may charge a fee not to~~  
241 ~~exceed \$20 per transaction record for making and delivering~~  
242 ~~electronic copies of a given series of related electronic~~  
243 ~~records, and a RON service provider may charge a fee not to~~



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244 exceed \$20 for providing access to, or a copy of, the related  
245 audio-video communication records, except such copies or access  
246 must be provided without charge if requested by any of the  
247 following within the 10-year period specified in s. 117.245(4):

248 (a) A party to the electronic record;

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

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

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

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

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

263  
264 If the online notary public or RON service provider charges ~~does~~  
265 ~~charge~~ a fee, the online notary public or RON service provider  
266 must shall disclose the amount of such fee to the requester  
267 before making the electronic copies or providing access to, or  
268 making a copy of, the requested audio-video communication  
269 recordings.

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

272 117.265 Online notarization procedures.—



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273           (5) (a) An online notary public shall select the RON service  
274 provider to be used to perform an online notarization, and a  
275 person may not require the online notary public to use a  
276 particular RON service provider; however, if the online notary  
277 public is required by his or her contract or employer to perform  
278 online notarizations, the contract or employer may require the  
279 use of a particular RON service provider for those online  
280 notarizations.

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

285           Section 9. Section 117.275, Florida Statutes, is amended to  
286 read:

287           117.275 Fees for online notarization.—An online notary  
288 public or the employer of such online notary public may charge a  
289 fee, not to exceed \$25, for performing an online notarial act  
290 ~~notarization~~ under this part. Fees for services other than  
291 notarial acts, including the services of a RON service provider,  
292 are not governed by this section. A RON service provider's  
293 services are also not considered closing services, as defined in  
294 s. 627.7711, and a fee for those services may be separately  
295 charged.

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

299           117.295 Standards for electronic and online notarization;  
300 rulemaking authority.—

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



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

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

314        (4) (a) A RON service provider must file a self-  
315 certification with the Department of State, on a form adopted by  
316 department rule, confirming that its audio-video communication  
317 technology and related processes, services, software, data  
318 storage, or other services provided to online notaries public  
319 for the purpose of directly facilitating their performance of  
320 online notarizations satisfy the requirements of this chapter  
321 and any rules adopted by the Department of State pursuant to  
322 this section. Each certification shall remain active for a  
323 period of 1 year from the date of filing. The Department of  
324 State must publish on its website a list of each RON service  
325 provider that has filed a self-certification, the date of filing  
326 of the self-certification, any secure repositories to which the  
327 RON service provider may have delegated its duties pursuant to  
328 s. 117.225(4) from January 1, 2022, and thereafter, and the  
329 effective dates of that delegation.

330        (b) A RON service provider is deemed to have satisfied



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331 tamper-evident technology requirements by use of technology that  
332 renders any subsequent change or modification to the electronic  
333 record evident.

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

339 (a) As necessary to facilitate performance of a notarial  
340 act;

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

344 (c) To detect fraud, identity theft, or other criminal  
345 activities;

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

350 (e) To monitor and improve the audio-video communication  
351 technology and related processes, services, software, data  
352 storage, or other services offered by the RON service provider  
353 to online notaries public for the purpose of directly  
354 facilitating their performance of online notarizations.

355 (f) In connection with a proposed or actual sale, merger,  
356 transfer, or exchange of all or a portion of a business or  
357 operating unit of a RON service provider, or the dissolution,  
358 insolvency, or cessation of operations of a business or  
359 operating unit, if limited to such personal information held by



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360 that business or unit and any transferee agrees to comply with  
361 the restrictions set forth in this subsection.

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

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

364 And the title is amended as follows:

365 Delete everything before the enacting clause  
366 and insert:

367 A bill to be entitled  
368 An act relating to notaries public; amending s.  
369 117.021, F.S.; clarifying that a notary public is  
370 entitled to select particular technology in performing  
371 a notarial act with respect to an electronic record;  
372 authorizing a notary public's contract or employer to  
373 require the use of a particular technology in  
374 performing a notarial act with respect to an  
375 electronic record; amending s. 117.05, F.S.; revising  
376 limitations on notary public fees; amending s.  
377 117.201, F.S.; revising definitions; amending s.  
378 117.225, F.S.; revising certain registration  
379 requirements for online notaries public; creating s.  
380 117.231, F.S.; authorizing notaries public to remotely  
381 swear in witnesses using audio-video communication  
382 technology; authorizing notaries public to remotely  
383 swear in new attorneys admitted to The Florida Bar  
384 using audio-video communication technology; amending  
385 s. 117.245, F.S.; modifying requirements for entries  
386 in the electronic journal maintained by an online  
387 notary public; requiring a remote online notarization  
388 service provider, rather than an online notary public,



389 to retain audio-video communication recordings of  
390 online notarizations; authorizing a RON service  
391 provider to delegate this duty to a secure repository  
392 under certain conditions; conforming provisions to  
393 changes made by the act; amending s. 117.255, F.S.;  
394 revising provisions governing access to audio-video  
395 communication recordings to conform to changes made by  
396 the act; authorizing a remote online notarization  
397 service provider to charge a fee for access to such  
398 recordings, subject to specified limitations; amending  
399 s. 117.265, F.S.; clarifying that an online notary  
400 public is entitled to select his or her remote online  
401 notarization service provider; authorizing a notary  
402 public's contract or employer to require the use of a  
403 particular remote online notarization service provider  
404 in performing online notarizations; requiring an  
405 online notary public to notify the Department of State  
406 of the effective date of a change in the remote online  
407 notarization service provider used; amending s.  
408 117.275, F.S.; clarifying limitations on fees charged  
409 for online notarizations; amending s. 117.295, F.S.;  
410 requiring the department to publish on its website a  
411 list containing certain information on online notaries  
412 public; requiring a remote online notarization service  
413 provider to file a self-certification with the  
414 department; specifying the duration of a self-  
415 certification; requiring the department to publish on  
416 its website a list containing certain information on  
417 self-certified remote online notarization service



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418 providers; prohibiting a remote online notarization  
419 service provider from using, selling, or offering to  
420 sell or transfer personal information obtained in the  
421 course of performing online notarizations; providing  
422 exceptions; providing an effective date.