

By Senator Bradley

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1                                   A bill to be entitled  
2       An act relating to notaries public; amending s.  
3       117.021, F.S.; authorizing an employer of a notary  
4       public to require the use of a particular technology  
5       and provider in performing a notarial act with respect  
6       to an electronic record; amending s. 117.05, F.S.;  
7       revising limitations on notary public fees; amending  
8       s. 117.201, F.S.; revising definitions; amending s.  
9       117.215, F.S.; clarifying application of online  
10      electronic witnessing standards when a witness is not  
11      in the physical presence of the principal; amending s.  
12      117.225, F.S.; revising certain registration  
13      requirements for online notaries public; amending s.  
14      117.245, F.S.; modifying requirements for entries in  
15      the electronic journal maintained by an online notary  
16      public; requiring a remote online notarization service  
17      provider, rather than an online notary public, to  
18      maintain audio-video communication recordings of  
19      online notarizations; conforming provisions to changes  
20      made by the act; amending s. 117.255, F.S.; revising  
21      provisions governing access to audio-video  
22      communication recordings to conform to changes made by  
23      the act; authorizing a remote online notarization  
24      service provider to charge a fee for access to such  
25      recordings, subject to specified limitations; amending  
26      s. 117.265, F.S.; clarifying that an online notary  
27      public is entitled to select his or her remote online  
28      notarization service provider; authorizing an employer  
29      of an online notary public to require the use of a

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30 particular remote online notarization service provider  
31 in performing online notarizations; requiring an  
32 online notary public to notify the Department of State  
33 of the effective date of a change in the remote online  
34 notarization service provider used; amending s.  
35 117.275, F.S.; clarifying limitations on fees charged  
36 for online notarizations; amending s. 117.295, F.S.;  
37 requiring the department to publish on its website a  
38 list containing certain information on online notaries  
39 public; requiring a remote online notarization service  
40 provider to file a self-certification with the  
41 department; specifying the duration of a self-  
42 certification; requiring the department to publish on  
43 its website a list of self-certified remote online  
44 notarization service providers; prohibiting a remote  
45 online notarization service provider from using,  
46 selling, or offering to sell or transfer personal  
47 information obtained in the course of performing  
48 online notarizations; providing exceptions; providing  
49 an effective date.

50  
51 Be It Enacted by the Legislature of the State of Florida:

52  
53 Section 1. Subsection (4) of section 117.021, Florida  
54 Statutes, is amended to read:

55 117.021 Electronic notarization.—

56 (4) A notary public performing a notarial act with respect  
57 to an electronic record shall select the technology and provider  
58 to be used for such notarial act. A person may not require the a

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59 notary public to use a particular ~~perform a notarial act with~~  
60 ~~respect to an electronic record with a form of technology or~~  
61 provider; however, if the notary public is required by his or  
62 her employer to perform notarial acts with respect to electronic  
63 records, the employer may require the use of a particular  
64 technology and provider for those notarial acts ~~that the notary~~  
65 ~~public has not selected to use.~~

66 Section 2. Paragraph (a) of subsection (2) of section  
67 117.05, Florida Statutes, is amended to read:

68 117.05 Use of notary commission; unlawful use; notary fee;  
69 seal; duties; employer liability; name change; advertising;  
70 photocopies; penalties.—

71 (2) (a) The fee of a notary public may not exceed \$10 per  
72 signature per document ~~for any one notarial act~~, except as  
73 provided in s. 117.045 or s. 117.275, for performing a  
74 notarization under this part.

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

77 117.201 Definitions.—As used in this part, the term:

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

80 117.05(5)(b)2. However, for an online notarization of a  
81 principal not located within the United States, a passport  
82 issued by a foreign government not including the stamp of the  
83 United States Bureau of Citizenship and Immigration Services may  
84 be used as a government-issued identification credential to  
85 verify the principal's identity.

86 (14) "Remote Online Notarization service provider" or "RON  
87 service provider" means a person that provides audio-video

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88 communication technology and related processes, services,  
89 software, data storage, or other services to online notaries  
90 public for the purpose of directly facilitating their  
91 performance of online notarizations, in compliance with the  
92 requirements of this chapter and any rules adopted by the  
93 Department of State pursuant to s. 117.295.

94 Section 4. Subsection (2) of section 117.215, Florida  
95 Statutes, is amended to read:

96 117.215 Relation to other laws.—

97 (2) If a provision of law requires a signature or an act of  
98 a principal to be witnessed and the witness is not in the  
99 physical presence of the principal at the time of the signature  
100 or act, ~~compliance with~~ the online electronic witnessing  
101 standards prescribed in s. 117.285 and any rules adopted  
102 thereunder must be complied with in order to satisfy ~~satisfies~~  
103 that requirement.

104 Section 5. Subsections (1) and (5) of section 117.225,  
105 Florida Statutes, are amended to read:

106 117.225 Registration; qualifications.—A notary public, a  
107 civil-law notary appointed under chapter 118, or a commissioner  
108 of deeds appointed under part IV of chapter 721 may complete  
109 registration as an online notary public with the Department of  
110 State by:

111 (1) Holding a current commission as a notary public under  
112 part I of this chapter, an appointment as a civil-law notary  
113 under chapter 118, or an appointment as a commissioner of deeds  
114 under part IV of chapter 721, and submitting ~~a copy of such~~  
115 ~~commission or~~ proof of such commission or appointment with his  
116 or her registration.

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117 (5) Identifying the RON service provider or providers whose  
118 audio-video communication technology and processes for  
119 credential analysis and identity-proofing technologies the  
120 registrant intends to use for online notarizations, ~~and~~  
121 ~~confirming that such technology and processes satisfy the~~  
122 ~~requirements of this chapter and any rules adopted by the~~  
123 ~~Department of State pursuant to s. 117.295.~~

124 Section 6. Subsections (1), (2), (4), and (5) of section  
125 117.245, Florida Statutes, are amended to read:

126 117.245 Electronic journal of online notarizations.—

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

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

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

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

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

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

140 1. A statement that the person is personally known to the  
141 online notary public; or—

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

144 b. An indication that the government-issued identification  
145 credential satisfied the credential analysis; and—

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146 c.~~(f)~~ An indication that the principal satisfactorily  
147 passed the identity proofing.

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

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

151 (2) The RON service provider ~~online notary public~~ shall  
152 retain an uninterrupted and unedited copy of the recording of  
153 the audio-video communication in which an online notarization is  
154 performed. The recording must include all of the following:

155 (a) Appearance by the principal and any witness before the  
156 online notary public.

157 (b) Confirmation of the identity of the principal and any  
158 witness.

159 (c) A general description or identification of the records  
160 to be signed.

161 (d) At the commencement of the recording, recitation by the  
162 online notary public of information sufficient to identify the  
163 notarial act.

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

166 (f) All of the actions and spoken words of the principal,  
167 notary public, and any required witness during the entire online  
168 notarization, including the signing of any records before the  
169 online notary public.

170 (4) The electronic journal required under subsection (1)  
171 and the recordings of audio-video communications required under  
172 subsection (2) shall be maintained for at least 10 years after  
173 the date of the notarial act. However, a full copy of the  
174 recording of the audio-video communication required under

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175 subsection (2) relating to an online notarization session that  
176 involves the signing of an electronic will must be maintained by  
177 a qualified custodian in accordance with chapters 731 and 732.  
178 The Department of State maintains jurisdiction over the  
179 electronic journal and audio-video communication recordings to  
180 investigate notarial misconduct for a period of 10 years after  
181 the date of the notarial act. The online notary public, a  
182 guardian of an incapacitated online notary public, or the  
183 personal representative of a deceased online notary public may,  
184 by contract with a secure repository in accordance with any  
185 rules established under this chapter, delegate to the repository  
186 the online notary public's duty to retain the electronic journal  
187 ~~and the required recordings of audio-video communications,~~  
188 provided that the Department of State is notified of such  
189 delegation of retention duties to the repository within 30 days  
190 thereafter, including the address and contact information for  
191 the repository. If an online notary public delegates to a secure  
192 repository under this section, the online notary public shall  
193 make an entry in his or her electronic journal identifying such  
194 repository, and provide notice to the Department of State as  
195 required in this subsection.

196 (5) An omitted or incomplete entry in the electronic  
197 journal does not impair the validity of the notarial act or of  
198 the electronic record which was notarized, but may be introduced  
199 as evidence to establish violations of this chapter; as evidence  
200 of possible fraud, forgery, impersonation, duress, incapacity,  
201 undue influence, minority, illegality, or unconscionability; or  
202 for other evidentiary purposes. However, if the recording of the  
203 audio-video communication required under subsection (2) relating

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204 to the online notarization of the execution of an electronic  
205 will cannot be produced by the RON service provider, the online  
206 notary public, or the qualified custodian, the electronic will  
207 shall be treated as a lost or destroyed will subject to s.  
208 733.207.

209 Section 7. Section 117.255, Florida Statutes, is amended to  
210 read:

211 117.255 Use of electronic journal, signature, and seal.—

212 (1) An online notary public shall:

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

217 (b)~~(2)~~ Keep the electronic journal and electronic seal  
218 secure and under his or her sole control, which includes access  
219 protection using passwords or codes under control of the online  
220 notary public. The online notary public may not allow another  
221 person to use the online notary public's electronic journal,  
222 electronic signature, or electronic seal, other than a RON  
223 service provider or other authorized person providing services  
224 to an online notary public to facilitate performance of online  
225 notarizations.

226 (c)~~(3)~~ Attach or logically associate the electronic  
227 signature and seal to the electronic notarial certificate of an  
228 electronic record in a manner that is capable of independent  
229 verification using tamper-evident technology that renders any  
230 subsequent change or modification to the electronic record  
231 evident.

232 (d)~~(4)~~ Notify an appropriate law enforcement agency and the



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233 Department of State of any unauthorized use of or compromise to  
234 the security of the electronic journal, official electronic  
235 signature, or electronic seal within 7 days after discovery of  
236 such unauthorized use or compromise to security.

237 (2) ~~(5)~~ An online notary public shall provide ~~make~~  
238 electronic copies, upon request, of the pertinent entries in the  
239 electronic journal, and a RON service provider shall provide  
240 access to the related audio-video communication recordings, or a  
241 copy thereof, to the following persons upon request:

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

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

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

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

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

254 (e) ~~(f)~~ The Department of State pursuant to a notary  
255 misconduct investigation; ~~and~~

256 (f) ~~(g)~~ Any other persons pursuant to a subpoena, court  
257 order, law enforcement investigation, or other lawful inspection  
258 demand;

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

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

265 (3)-(6) The online notary public may charge a fee not to  
266 exceed \$20 per transaction record for making and delivering  
267 electronic copies of a given series of related electronic  
268 records, and a RON service provider may charge a fee not to  
269 exceed \$20 for providing access to, or a copy of, the related  
270 audio-video communication recordings, except if requested by:

271 (a) A party to the electronic record;

272 (b) In a real estate transaction, the title agent,  
273 settlement agent, or title insurer who insured the electronic  
274 record or engaged the online notary public with regard to such  
275 transaction; ~~or~~

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

278 (d) With respect to audio-video communication recordings of  
279 an online notarization, the online notary public performing that  
280 notarization; or

281 (e) With respect to electronic copies of a given series of  
282 related electronic records, the RON service provider used for  
283 the online notarization of those records.

284  
285 If the online notary public or RON service provider charges ~~does~~  
286 ~~charge~~ a fee, the online notary public or RON service provider  
287 must ~~shall~~ disclose the amount of such fee to the requester  
288 before making the electronic copies or providing access to, or  
289 making a copy of, the requested audio-video communication  
290 recordings.

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

293 117.265 Online notarization procedures.—

294 (5) (a) An online notary public shall select the RON service  
295 provider to be used to perform an online notarization, and a  
296 person may not require the online notary public to use a  
297 particular RON service provider; however, if the online notary  
298 public is required by his or her employer to perform online  
299 notarizations, the employer may require the use of a particular  
300 RON service provider for those online notarizations.

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

305 Section 9. Section 117.275, Florida Statutes, is amended to  
306 read:

307 117.275 Fees for online notarization.—An online notary  
308 public or the employer of such online notary public may charge a  
309 fee, not to exceed \$25 per signature per document, for  
310 performing an online notarization under this part. Fees for  
311 services other than notarial acts, including any fees charged by  
312 a RON service provider, are not governed by this section, and  
313 such services are not considered closing services, as defined in  
314 s. 627.7711.

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

318 117.295 Standards for electronic and online notarization;  
319 rulemaking authority.—

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

321 (a) Adopt forms, processes, and interim or emergency rules  
322 necessary to accept applications from and register online  
323 notaries public pursuant to s. 117.225.

324 (b) Publish on its website a list containing each online  
325 notary public, the online notary public's past and present RON  
326 service providers, and the effective dates during which the  
327 online notary public used each RON service provider, as  
328 identified pursuant to ss. 117.225(5) and 117.265(5)(b).

329 (4) (a) A RON service provider must file a self-  
330 certification with the Department of State, on a form adopted by  
331 department rule, confirming that its audio-video communication  
332 technology and related processes, services, software, data  
333 storage, or other services provided to online notaries public  
334 for the purpose of directly facilitating their performance of  
335 online notarizations satisfy the requirements of this chapter  
336 and any rules adopted by the Department of State pursuant to  
337 this section. Each certification shall remain active for a  
338 period of 2 years from the date of filing, and it must also be  
339 updated and refiled within 60 days after the effective date of  
340 any amendment to this chapter or to the rules adopted by the  
341 Department of State pursuant to this chapter. The Department of  
342 State must publish on its website a list of all RON service  
343 providers that are the subject of an active self-certification.

344 (b) A RON service provider is deemed to have satisfied  
345 tamper-evident technology requirements by use of technology that  
346 renders any subsequent change or modification to the electronic  
347 record evident.

348 (8) A RON service provider may not use, sell, or offer to

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349 sell or transfer to another person for use or sale any personal  
350 information obtained under this part which identifies a  
351 principal, a witness, or a person named in a record presented  
352 for online notarization, except:

353 (a) As necessary to facilitate performance of a notarial  
354 act;

355 (b) To effect, administer, enforce, service, or process a  
356 record provided by or on behalf of a principal or the  
357 transaction of which the record is a part;

358 (c) In accordance with this part and the rules adopted  
359 pursuant to this part or any other applicable federal, state, or  
360 local law, or to comply with a lawful subpoena or court order;  
361 or

362 (d) In connection with a proposed or actual sale, merger,  
363 transfer, or exchange of all or a portion of a business or  
364 operating unit of the RON service provider, if the personal  
365 information concerns only customers of the business or unit and  
366 the transferee agrees to comply with the restrictions set forth  
367 in this subsection.

368 Section 11. This act shall take effect October 1, 2021.