

By the Committee on Commerce and Tourism; and Senators Bradley and Burgess

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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 1 year from the date of filing. The Department of
339 State must publish on its website a list of all RON service
340 providers that are the subject of an active self-certification.

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

345 (8) A RON service provider may not use, sell, or offer to
346 sell or transfer to another person for use or sale any personal
347 information obtained under this part which identifies a
348 principal, a witness, or a person named in a record presented

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349 for online notarization, except:

350 (a) As necessary to facilitate performance of a notarial
351 act;

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

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

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

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