

By the Committees on Rules; Judiciary; and 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.; clarifying that a notary public is
4 entitled to select particular technology in performing
5 a notarial act with respect to an electronic record;
6 authorizing a notary public's contract or employer to
7 require the use of a particular technology in
8 performing a notarial act with respect to an
9 electronic record; amending s. 117.05, F.S.; revising
10 limitations on notary public fees; amending s.
11 117.201, F.S.; revising definitions; amending s.
12 117.225, F.S.; revising certain registration
13 requirements for online notaries public; creating s.
14 117.231, F.S.; authorizing notaries public to remotely
15 swear in witnesses using audio-video communication
16 technology; authorizing notaries public to remotely
17 swear in new attorneys admitted to The Florida Bar
18 using audio-video communication technology; amending
19 s. 117.245, F.S.; modifying requirements for entries
20 in the electronic journal maintained by an online
21 notary public; requiring a remote online notarization
22 service provider, rather than an online notary public,
23 to retain audio-video communication recordings of
24 online notarizations; authorizing a RON service
25 provider to delegate this duty to a secure repository
26 under certain conditions; conforming provisions to
27 changes made by the act; amending s. 117.255, F.S.;
28 revising provisions governing access to audio-video
29 communication recordings to conform to changes made by

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30 the act; authorizing a remote online notarization
31 service provider to charge a fee for access to such
32 recordings, subject to specified limitations; amending
33 s. 117.265, F.S.; clarifying that an online notary
34 public is entitled to select his or her remote online
35 notarization service provider; authorizing a notary
36 public's contract or employer to require the use of a
37 particular remote online notarization service provider
38 in performing online notarizations; requiring an
39 online notary public to notify the Department of State
40 of the effective date of a change in the remote online
41 notarization service provider used; amending s.
42 117.275, F.S.; clarifying limitations on fees charged
43 for online notarizations; amending s. 117.295, F.S.;
44 requiring the department to publish on its website a
45 list containing certain information on online notaries
46 public; requiring a remote online notarization service
47 provider to file a self-certification with the
48 department; specifying the duration of a self-
49 certification; requiring the department to publish on
50 its website a list containing certain information on
51 self-certified remote online notarization service
52 providers; prohibiting a remote online notarization
53 service provider from using, selling, or offering to
54 sell or transfer personal information obtained in the
55 course of performing online notarizations; providing
56 exceptions; providing an effective date.

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58 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

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

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

117.05(5)(b)2. However, for an online notarization of a principal not located within the United States, a passport

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88 issued by a foreign government not including the stamp of the
89 United States Bureau of Citizenship and Immigration Services may
90 be used as a government-issued identification credential to
91 verify the principal's identity.

92 (14) "Remote Online Notarization service provider" or "RON
93 service provider" means a person that provides audio-video
94 communication technology and related processes, services,
95 software, data storage, or other services to online notaries
96 public for the purpose of directly facilitating their
97 performance of online notarizations, in compliance with the
98 requirements of this chapter and any rules adopted by the
99 Department of State pursuant to s. 117.295.

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

102 117.225 Registration; qualifications.—A notary public, a
103 civil-law notary appointed under chapter 118, or a commissioner
104 of deeds appointed under part IV of chapter 721 may complete
105 registration as an online notary public with the Department of
106 State by:

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

113 (5) Identifying the RON service provider or providers whose
114 audio-video communication technology and processes for
115 credential analysis and identity-proofing technologies the
116 registrant intends to use for online notarizations, ~~and~~

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117 ~~confirming that such technology and processes satisfy the~~
118 ~~requirements of this chapter and any rules adopted by the~~
119 ~~Department of State pursuant to s. 117.295.~~

120 Section 5. Section 117.231, Florida Statutes, is created to
121 read:

122 117.231 Remote administration of certain oaths.-

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

128 (2) When taking an oath of admission to The Florida Bar
129 from an individual who is outside of the physical presence of
130 the notary public, the notary public may fulfill the
131 requirements of s. 117.05 using audio-video communication
132 technology.

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

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

141 Section 6. Subsections (1), (2), (4), and (5) of section
142 117.245, Florida Statutes, are amended to read:

143 117.245 Electronic journal of online notarizations.-

144 (1) An online notary public shall keep one or more secure
145 electronic journals of online notarizations performed by the

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146 online notary public. For each online notarization, the
147 electronic journal entry must contain all of the following:

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

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

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

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

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

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

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

161 b. An indication that the government-issued identification
162 credential satisfied the credential analysis; and-

163 c.-(f) An indication that the principal satisfactorily
164 passed the identity proofing.

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

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

168 (2) The RON service provider ~~online notary public~~ shall
169 retain an uninterrupted and unedited copy of the recording of
170 the audio-video communication in which an online notarization is
171 performed. The online notary public shall ensure that the
172 recording includes ~~must include~~ all of the following:

173 (a) Appearance by the principal and any witness before the
174 online notary public.

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175 (b) Confirmation of the identity of the principal and any
176 witness.

177 (c) A general description or identification of the records
178 to be signed.

179 (d) At the commencement of the recording, recitation by the
180 online notary public of information sufficient to identify the
181 notarial act.

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

184 (f) All of the actions and spoken words of the principal,
185 notary public, and any required witness during the entire online
186 notarization, including the signing of any records before the
187 online notary public.

188 (4) The electronic journal required under subsection (1)
189 and the recordings of audio-video communications required under
190 subsection (2) shall be maintained for at least 10 years after
191 the date of the notarial act. However, a full copy of the
192 recording of the audio-video communication required under
193 subsection (2) relating to an online notarization session that
194 involves the signing of an electronic will must be maintained by
195 a qualified custodian in accordance with chapters 731 and 732.
196 The Department of State maintains jurisdiction over the
197 electronic journal and audio-video communication recordings to
198 investigate notarial misconduct for a period of 10 years after
199 the date of the notarial act. The online notary public, a
200 guardian of an incapacitated online notary public, or the
201 personal representative of a deceased online notary public may,
202 by contract with a secure repository in accordance with any
203 rules established under this chapter, delegate to the repository

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204 the online notary public's duty to retain the electronic journal
205 ~~and the required recordings of audio-video communications,~~
206 provided that the Department of State is notified of such
207 delegation of retention duties to the repository within 30 days
208 thereafter, including the effective date of the delegation and
209 the address and contact information for the repository. If an
210 online notary public delegates to a secure repository under this
211 section, the online notary public shall make an entry in his or
212 her electronic journal identifying such repository, and provide
213 notice to the Department of State as required in this
214 subsection. A RON service provider may, by contract with a
215 secure repository in accordance with any rules established under
216 this chapter, delegate to the repository the RON service
217 provider's duty to retain the required recordings of audio-video
218 communications, provided that the Department of State is
219 notified of such delegation of retention duties to the
220 repository within 30 days thereafter, including the effective
221 date of the delegation and the address and contact information
222 for the repository. During any delegation under this subsection,
223 the secure repository shall fulfill the responsibilities of the
224 online notary public or RON service provider to provide copies
225 or access under s. 117.255(2) and (3).

226 (5) An omitted or incomplete entry in the electronic
227 journal does not impair the validity of the notarial act or of
228 the electronic record which was notarized, but may be introduced
229 as evidence to establish violations of this chapter; as evidence
230 of possible fraud, forgery, impersonation, duress, incapacity,
231 undue influence, minority, illegality, or unconscionability; or
232 for other evidentiary purposes. However, if the recording of the

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233 audio-video communication required under subsection (2) relating
234 to the online notarization of the execution of an electronic
235 will cannot be produced by the RON service provider, the online
236 notary public, or the qualified custodian, the electronic will
237 shall be treated as a lost or destroyed will subject to s.
238 733.207.

239 Section 7. Section 117.255, Florida Statutes, is amended to
240 read:

241 117.255 Use of electronic journal, signature, and seal.—

242 (1) An online notary public shall:

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

247 (b)~~(2)~~ Keep the electronic journal and electronic seal
248 secure and under his or her sole control, which includes access
249 protection using passwords or codes under control of the online
250 notary public. The online notary public may not allow another
251 person to use the online notary public's electronic journal,
252 electronic signature, or electronic seal, other than a RON
253 service provider or other authorized person providing services
254 to an online notary public to facilitate performance of online
255 notarizations.

256 (c)~~(3)~~ Attach or logically associate the electronic
257 signature and seal to the electronic notarial certificate of an
258 electronic record in a manner that is capable of independent
259 verification using tamper-evident technology that renders any
260 subsequent change or modification to the electronic record
261 evident.

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262 (d)~~(4)~~ Notify an appropriate law enforcement agency and the
263 Department of State of any unauthorized use of or compromise to
264 the security of the electronic journal, official electronic
265 signature, or electronic seal within 7 days after discovery of
266 such unauthorized use or compromise to security.

267 (2)~~(5)~~ An online notary public shall provide ~~Make~~
268 electronic copies, ~~upon request,~~ of the pertinent entries in the
269 electronic journal, and a RON service provider shall provide
270 access to the related audio-video communication recordings, or a
271 copy thereof, to the following persons upon request:

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

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

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

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

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

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

286 (f)~~(g)~~ Any other persons pursuant to a subpoena, court
287 order, law enforcement investigation, or other lawful inspection
288 demand;

289 (g) With respect to audio-video communication recordings of
290 an online notarization, the online notary public performing that

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291 notarization; and

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

295 (3) ~~(6)~~ The online notary public may charge a fee not to
296 exceed \$20 per transaction record for making and delivering
297 electronic copies of a given series of related electronic
298 records, and a RON service provider may charge a fee not to
299 exceed \$20 for providing access to, or a copy of, the related
300 audio-video communication records, except such copies or access
301 must be provided without charge if requested by any of the
302 following within the 10-year period specified in s. 117.245(4):

303 (a) A party to the electronic record;

304 (b) In a real estate transaction, the title agent,
305 settlement agent, or title insurer who insured the electronic
306 record or engaged the online notary public with regard to such
307 transaction; ~~or~~

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

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

312 (e) With respect to audio-video communication recordings of
313 an online notarization, the online notary public performing that
314 notarization; or

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

318
319 If the online notary public or RON service provider charges ~~does~~

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320 ~~charge~~ a fee, the online notary public or RON service provider
321 must ~~shall~~ disclose the amount of such fee to the requester
322 before making the electronic copies or providing access to, or
323 making a copy of, the requested audio-video communication
324 recordings.

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

327 117.265 Online notarization procedures.—

328 (5) (a) An online notary public shall select the RON service
329 provider to be used to perform an online notarization, and a
330 person may not require the online notary public to use a
331 particular RON service provider; however, if the online notary
332 public is required by his or her contract or employer to perform
333 online notarizations, the contract or employer may require the
334 use of a particular RON service provider for those online
335 notarizations.

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

340 Section 9. Section 117.275, Florida Statutes, is amended to
341 read:

342 117.275 Fees for online notarization.—An online notary
343 public or the employer of such online notary public may charge a
344 fee, not to exceed \$25, for performing an online notarial act
345 ~~notarization~~ under this part. Fees for services other than
346 notarial acts, including the services of a RON service provider,
347 are not governed by this section. A RON service provider's
348 services are also not considered closing services, as defined in

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349 s. 627.7711, and a fee for those services may be separately
350 charged.

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

354 117.295 Standards for electronic and online notarization;
355 rulemaking authority.—

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

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

360 (b) Publish on its website a list containing each online
361 notary public, the online notary public's RON service providers
362 from January 1, 2022, and thereafter, the effective dates during
363 which the online notary public used each RON service provider,
364 as identified pursuant to ss. 117.225(5) and 117.265(5)(b), any
365 secure repositories to which the online notary public may have
366 delegated his or her duties pursuant to s. 117.245(4) from
367 January 1, 2022, and thereafter, and the effective dates of that
368 delegation.

369 (4) (a) A RON service provider must file a self-
370 certification with the Department of State, on a form adopted by
371 department rule, confirming that its audio-video communication
372 technology and related processes, services, software, data
373 storage, or other services provided to online notaries public
374 for the purpose of directly facilitating their performance of
375 online notarizations satisfy the requirements of this chapter
376 and any rules adopted by the Department of State pursuant to
377 this section. Each certification shall remain active for a

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378 period of 1 year from the date of filing. The Department of
379 State must publish on its website a list of each RON service
380 provider that has filed a self-certification, the date of filing
381 of the self-certification, any secure repositories to which the
382 RON service provider may have delegated its duties pursuant to
383 s. 117.245(4) from January 1, 2022, and thereafter, and the
384 effective dates of that delegation.

385 (b) A RON service provider is deemed to have satisfied
386 tamper-evident technology requirements by use of technology that
387 renders any subsequent change or modification to the electronic
388 record evident.

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

394 (a) As necessary to facilitate performance of a notarial
395 act;

396 (b) To administer or process a record provided by or on
397 behalf of a principal or the transaction of which the record is
398 a part;

399 (c) To detect fraud, identity theft, or other criminal
400 activities;

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

405 (e) To monitor and improve the audio-video communication
406 technology and related processes, services, software, data

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407 storage, or other services offered by the RON service provider
408 to online notaries public for the purpose of directly
409 facilitating their performance of online notarizations.

410 (f) In connection with a proposed or actual sale, merger,
411 transfer, or exchange of all or a portion of a business or
412 operating unit of a RON service provider, or the dissolution,
413 insolvency, or cessation of operations of a business or
414 operating unit, if limited to such personal information held by
415 that business or unit and any transferee agrees to comply with
416 the restrictions set forth in this subsection.

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