

By Senator Avila

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1 A bill to be entitled
2 An act relating to notaries public; amending s.
3 117.05, F.S.; requiring that certain notarial
4 certificates contain the printed names of specified
5 individuals; amending s. 117.105, F.S.; prohibiting a
6 notary public from falsely notarizing the signature of
7 a person who is not in that notary public's presence,
8 either in person or online; defining terms; providing
9 criminal penalties; making technical changes; amending
10 s. 117.107, F.S.; deleting a provision that prohibits
11 a notary public from notarizing a signature on a
12 document of a person who is not, at the time of the
13 notarial act, physically present or present by means
14 of audio-video communication technology and that
15 provides civil penalties; providing criminal
16 penalties; creating s. 117.109, F.S.; requiring a
17 notary public to keep at least one electronic journal;
18 requiring a journal entry for each notarization;
19 providing requirements for such entries; requiring the
20 notary public to take reasonable steps to maintain a
21 backup record and to protect the journal, the backup
22 record, and other records from unauthorized access;
23 requiring the Department of State to retain
24 jurisdiction over the journal records for a specified
25 timeframe for a certain purpose; requiring the notary
26 public to maintain the journal for a specified
27 timeframe; authorizing the notary public or specified
28 individuals on his or her behalf to contract with a
29 secure repository to maintain the journal; providing

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30 that such repository must fulfill specified duties of
31 the notary public with respect to the journal;
32 requiring the notary public to send, within a
33 specified timeframe, a certain notification to the
34 department of such delegation of retention duties;
35 requiring the notary public to make an entry
36 identifying the repository and providing notice to the
37 department; requiring the secure repository to fulfill
38 certain responsibilities of the notary public during
39 any delegation; providing that an omitted or
40 incomplete entry in the journal does not invalidate
41 the notarial act, but may be used for specified
42 evidentiary purposes; creating s. 117.111, F.S.;
43 requiring a notary public to keep the electronic
44 journal secure and notify, within a specified
45 timeframe, the appropriate law enforcement agency and
46 the department of any unauthorized use of or
47 compromise to the security of the journal; prohibiting
48 the notary public from allowing another person to use
49 the notary public's electronic journal or from
50 allowing another person who is providing services to a
51 notary public to facilitate the performance of
52 notarizations; requiring the notary public to provide
53 electronic copies of pertinent entries upon the
54 request of specified entities; providing construction;
55 amending s. 28.47, F.S.; authorizing a property
56 appraiser to refuse to update an owner of record on
57 the county's tax rolls under specified circumstances;
58 requiring the property appraiser to make a certain

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59 notation in the records in the event such refusal is
60 made; providing an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Paragraph (e) of subsection (4) and subsection
65 (13) of section 117.05, Florida Statutes, are amended to read:

66 117.05 Use of notary commission; unlawful use; notary fee;
67 seal; duties; employer liability; name change; advertising;
68 photocopies; penalties.—

69 (4) When notarizing a signature, a notary public shall
70 complete a jurat or notarial certificate in substantially the
71 same form as those found in subsection (13). The jurat or
72 certificate of acknowledgment shall contain the following
73 elements:

74 (e) The printed name of the person whose signature is being
75 notarized. It is presumed, absent such specific notation by the
76 notary public, that notarization is to all signatures.

77 (13) The following notarial certificates are sufficient for
78 the purposes indicated, if completed with the information
79 required by this chapter. The specification of forms under this
80 subsection does not preclude the use of other forms. However,
81 the notarial certificate must contain the printed names of all
82 signatories, including principals and witnesses.

83 (a) For an oath or affirmation:

84
85 STATE OF FLORIDA
86 COUNTY OF

87

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88 Sworn to (or affirmed) and subscribed before me by means of
89 physical presence or online notarization, this day of
90, ...(year)..., by ...(name of person making
91 statement)....

92
93 ... (Signature of Notary Public - State of Florida)...
94 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...
95 Personally Known..... OR Produced Identification.....
96 Type of Identification Produced.....

97
98 (b) For an acknowledgment in an individual capacity:
99

100 STATE OF FLORIDA
101 COUNTY OF

102
103 The foregoing instrument was acknowledged before me by means of
104 physical presence or online notarization, this day of
105, ...(year)..., by ...(name of person acknowledging)....

106
107 ... (Signature of Notary Public - State of Florida)...
108 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...
109 Personally Known..... OR Produced Identification.....
110 Type of Identification Produced.....

111
112 (c) For an acknowledgment in a representative capacity:
113

114 STATE OF FLORIDA
115 COUNTY OF

116

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117 The foregoing instrument was acknowledged before me by means of
 118 physical presence or online notarization, this day of
 119, ... (year) ..., by ... (name of person) ... as ... (type of
 120 authority, . . . e.g. officer, trustee, attorney in fact) ... for
 121 ... (name of party on behalf of whom instrument was executed) ...

122
 123 ... (Signature of Notary Public - State of Florida) ...
 124 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 125 Personally Known OR Produced Identification
 126 Type of Identification Produced

127
 128 Section 2. Section 117.105, Florida Statutes, is amended to
 129 read:

130 117.105 False or fraudulent acknowledgments; penalties for
 131 prohibited acts ~~penalty~~.-

132 (1) A notary public may not do any of the following: ~~who~~

133 (a) Falsely notarize a signature on a written or electronic
 134 document of a person who is not in the presence of the notary
 135 public, either in person or online, at the time the signature is
 136 notarized. For the purposes of this paragraph, the terms "in the
 137 presence of" and "electronic" have the same meaning as provided
 138 in s. 117.201.

139 (b) Falsely or fraudulently take ~~takes~~ an acknowledgment of
 140 an instrument as a notary public. ~~or~~

141 (c) ~~Who~~ Falsely or fraudulently make ~~makes~~ a certificate as
 142 a notary public. ~~or~~

143 (d) ~~Who~~ Falsely or fraudulently take or receive ~~takes or~~
 144 ~~receives~~ an acknowledgment of the signature on a written or
 145 electronic document ~~instrument is guilty of a felony of the~~

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146 ~~third degree, punishable as provided in s. 775.082, s. 775.083,~~
147 ~~or s. 775.084.~~

148 (2) A notary public who violates subsection (1) commits a
149 felony of the third degree, punishable as provided in s.
150 775.082, s. 775.083, or s. 775.084. If the document notarized
151 under these circumstances pertains to a real estate transaction
152 or any other transfer of real property, the notary public
153 commits a felony of the second degree, punishable as provided in
154 s. 775.082, s. 775.083, or s. 775.084.

155 Section 3. Section 117.107, Florida Statutes, is amended to
156 read:

157 117.107 Prohibited acts; penalty.—

158 (1) A notary public may not use a name or initial in
159 signing certificates other than that by which the notary public
160 is commissioned.

161 (2) A notary public may not sign notarial certificates
162 using a facsimile signature stamp unless the notary public has a
163 physical disability that limits or prohibits his or her ability
164 to make a written signature and unless the notary public has
165 first submitted written notice to the Department of State with
166 an exemplar of the facsimile signature stamp. This subsection
167 does not apply to or prohibit the use of an electronic signature
168 and seal by a notary public who is registered as an online
169 notary public to perform an electronic or online notarization in
170 accordance with this chapter.

171 (3) A notary public may not affix his or her signature to a
172 blank form of affidavit or certificate of acknowledgment and
173 deliver that form to another person with the intent that it be
174 used as an affidavit or acknowledgment.

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175 (4) A notary public may not take the acknowledgment of or
176 administer an oath to a person whom the notary public actually
177 knows to have been adjudicated mentally incapacitated by a court
178 of competent jurisdiction, where the acknowledgment or oath
179 necessitates the exercise of a right that has been removed
180 pursuant to s. 744.3215(2) or (3), and where the person has not
181 been restored to capacity as a matter of record.

182 (5) A notary public may not notarize a signature on a
183 document if it appears that the person is mentally incapable of
184 understanding the nature and effect of the document at the time
185 of notarization.

186 (6) A notary public may not take the acknowledgment of a
187 person who does not speak or understand the English language,
188 unless the nature and effect of the instrument to be notarized
189 is translated into a language which the person does understand.

190 (7) A notary public may not change anything in a written
191 instrument after it has been signed by anyone.

192 (8) A notary public may not amend a notarial certificate
193 after the notarization is complete.

194 ~~(9) A notary public may not notarize a signature on a~~
195 ~~document if the person whose signature is being notarized does~~
196 ~~not appear before the notary public either by means of physical~~
197 ~~presence or by means of audio-video communication technology as~~
198 ~~authorized under part II of this chapter at the time the~~
199 ~~signature is notarized. Any notary public who violates this~~
200 ~~subsection is guilty of a civil infraction, punishable by~~
201 ~~penalty not exceeding \$5,000, and such violation constitutes~~
202 ~~malfeasance and misfeasance in the conduct of official duties.~~
203 ~~It is no defense to the civil infraction specified in this~~

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204 ~~subsection that the notary public acted without intent to~~
205 ~~defraud. A notary public who violates this subsection with the~~
206 ~~intent to defraud is guilty of violating s. 117.105.~~

207 ~~(10)~~ A notary public may not notarize a signature on a
208 document if the document is incomplete or blank. However, an
209 endorsement or assignment in blank of a negotiable or
210 nonnegotiable note and the assignment in blank of any instrument
211 given as security for such note is not deemed incomplete.

212 (10)~~(11)~~ A notary public may not notarize a signature on a
213 document if the person whose signature is to be notarized is the
214 spouse, son, daughter, mother, or father of the notary public.

215 (11)~~(12)~~ A notary public may not notarize a signature on a
216 document if the notary public has a financial interest in or is
217 a party to the underlying transaction; however, a notary public
218 who is an employee may notarize a signature for his or her
219 employer, and this employment does not constitute a financial
220 interest in the transaction nor make the notary a party to the
221 transaction under this subsection as long as he or she does not
222 receive a benefit other than his or her salary and the fee for
223 services as a notary public authorized by law. For purposes of
224 this subsection, a notary public who is an attorney does not
225 have a financial interest in and is not a party to the
226 underlying transaction evidenced by a notarized document if he
227 or she notarizes a signature on that document for a client for
228 whom he or she serves as an attorney of record and he or she has
229 no interest in the document other than the fee paid to him or
230 her for legal services and the fee authorized by law for
231 services as a notary public.

232 (12) A notary public who commits a violation of this

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233 section commits a misdemeanor of the first degree, punishable as
234 provided in s. 775.082 or s. 775.083. A notary public who
235 commits a violation of this section with the intent to defraud
236 commits a felony of the third degree, punishable as provided in
237 s. 775.082, s. 775.083, or s. 775.084. If the violation of this
238 section pertains to a real estate transaction or any other
239 transfer of real property, the notary public commits a felony of
240 the second degree, punishable as provided in s. 775.082, s.
241 775.083, or s. 775.084.

242 Section 4. Section 117.109, Florida Statutes, is created to
243 read:

244 117.109 Electronic journal of notarizations.—

245 (1) A notary public shall keep one or more secure
246 electronic journals of all notarizations performed by the notary
247 public. For each notarization, the electronic journal entry must
248 contain all of the following:

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

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

252 (c) The type, the title, or a description of the electronic
253 recording or proceeding.

254 (d) The name and address of each principal or witness
255 involved in the transaction or proceeding.

256 (e) Evidence of identity of each principal involved in the
257 transaction or proceeding in either of the following forms:

258 1. A statement that the person is personally known to the
259 notary public; or

260 2.a. A notation of the type of government-issued
261 identification credential the person provided to the notary

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262 public;

263 b. An indication that the government-issued identification
264 credential satisfied the credential analysis; and

265 c. An indication that the principal satisfactorily passed
266 the identity proofing.

267 (f) The fee, if any, charged for the notarization.

268 (2) The notary public shall take reasonable steps to:

269 (a) Maintain a backup record of the electronic journal
270 required by subsection (1).

271 (b) Protect from unauthorized access the electronic
272 journal, the backup record, and any other records the notary
273 public receives.

274 (3) The Department of State shall retain jurisdiction over
275 the electronic journal records for a period of 10 years after
276 the date of the notarial acts for the purpose of investigating
277 possible notarial misconduct.

278 (a) A notary public shall maintain the electronic journal
279 required under subsection (1) for at least 10 years after the
280 date of the notarial act.

281 (b) A notary public, a guardian of an incapacitated notary
282 public, or the personal representative of a notary public may
283 contract with a secure repository, in accordance with any rules
284 established under this chapter, and delegate to the repository
285 the notary public's duty to maintain the electronic journal,
286 provided that the department is notified of such delegation of
287 retention duties within 30 days thereafter, including the
288 effective date of the delegation and the address and contact
289 information for the repository.

290 (c) If a notary public delegates to a secure repository his

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291 or her duty to maintain the electronic journal under this
292 section, the notary public must make an entry in his or her
293 electronic journal identifying such repository and notify the
294 department as required in this subsection. During any delegation
295 under this subsection, the secure repository shall fulfill the
296 responsibilities of the notary public to provide copies or
297 access under s. 117.111.

298 (4) An omitted or incomplete entry in the electronic
299 journal does not invalidate the notarial act performed, but may
300 be introduced as evidence to establish violations of this
301 chapter; as evidence of possible fraud, forgery, impersonation,
302 duress, incapacity, undue influence, minority, illegality, or
303 unconscionability; or for other evidentiary purposes.

304 Section 5. Section 117.111, Florida Statutes, is created to
305 read:

306 117.111 Use of electronic journal.—

307 (1) A notary public shall do all of the following:

308 (a) Keep the electronic journal secure and under his or her
309 sole control, which includes access protection using passwords
310 or codes under the control of the notary public. The notary
311 public may not allow another person to use the notary public's
312 electronic journal or allow another person who is providing
313 services to a notary public to facilitate the performance of
314 notarizations.

315 (b) Notify an appropriate law enforcement agency and the
316 Department of State of any unauthorized use of or compromise to
317 the security of the electronic journal within 7 days after the
318 discovery of the unauthorized use or compromise to security.

319 (2) A notary public shall provide electronic copies of

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320 pertinent entries in the electronic journal upon the request of
321 any of the following:

322 (a) The department, pursuant to a notary misconduct
323 investigation.

324 (b) Any other persons or entities, pursuant to a subpoena,
325 a court order, a law enforcement investigation, or any other
326 lawful inspection demand.

327 (3) This section may not be construed to prevent a notary
328 public from designating a secure repository under s. 117.109.

329 Section 6. Subsection (6) of section 28.47, Florida
330 Statutes, is amended to read:

331 28.47 Recording notification service.—

332 (6) This section also applies to county property appraisers
333 who have adopted an electronic land record notification service
334 before July 1, 2023.

335 (a)1. The property appraiser may use a verification process
336 for persons wishing to register for the electronic land record
337 notification service to ensure the integrity of the process.

338 2. If the property appraiser receives notice from the
339 property owner or clerk of the circuit court and reasonably
340 determines that the recorded deed is fraudulent, the property
341 appraiser may refuse to update the owner of record on the
342 county's tax rolls. However, the property appraiser shall make a
343 notation in his or her records that a possible conveyance has
344 been recorded.

345 (b) For purposes of this subsection only, and
346 notwithstanding paragraph (1) (a) and subsection (3):

347 1. "Land record" means a deed or other document purporting
348 to convey real property.

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349 2. When a land record is recorded for a monitored identity,
350 the property appraiser must send a recording notification to
351 each registrant who is subscribed to receive recording
352 notifications for that monitored identity within 24 hours after
353 the instrument being reflected on the county tax roll.

354 Section 7. This act shall take effect July 1, 2024.