

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1042

INTRODUCER: Senators Brandes and Passidomo

SUBJECT: Notaries Public

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1042 permits a notary public to register to provide online notarizations to people both in and out-of-state using audio/video technology. A notary public seeking to provide online notarizations must still qualify, be appointed and commissioned by the Governor, and be governed by the traditional provisions set forth in chapter 117, F.S. However, the bill divides chapter 117, F.S., into two parts and creates Part II, which sets forth the requirements for those notaries who also want to register with the Governor to provide online notarizations.

The bill requires that any notary public registered for and offering online notarizations carry a one million dollar insurance policy to protect against errors and omissions in addition to being bonded. The bill also gives rule-making authority to the Governor, in collaboration with the Agency for State Technology, to refine the types of “identity proofing” technology notary publics are required to use to verify a person’s identity remotely. Additionally, notaries offering online services must take the upmost care in maintaining online security, particularly over their electronic journal, electronic signature, and electronic seal.

The bill takes effect on July 1, 2018.

II. Present Situation:

Notary Publics in Florida

A notary public is a public officer under the Florida Constitution,¹ and “and an impartial agent of the State.”² “[I]n the performance of his or her duties, [a notary public] exercises a delegation of the State’s sovereign power as in attesting the genuineness of any deeds or writings in order to

¹ FLA. CONST., Art. II, s. 5(c).

² 58 AM. JUR. 2D Notaries Public § 1.

render them available as evidence of the facts therein contained and in administering oaths and attesting to the authenticity of signatures.”³

As a public officer, notary publics are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the United States and Florida.⁴ Notary publics are appointed and commissioned by the Governor to four-year terms,⁵ and are authorized under Florida law to perform six basic duties:⁶

- Administer oaths or affirmations;⁷
- Take acknowledgments;⁸
- Solemnize marriages;⁹
- Attest to photocopies;¹⁰
- Verify vehicle identification numbers (VINs);¹¹ and
- Certify the contents of a safe-deposit box.¹²

Importantly, a notary may only exercise the foregoing duties within the physical boundaries of the State of Florida.¹³ Generally, a notary may not charge more than \$10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.¹⁴

A notary public may provide an electronic signature that is unique, verifiable, under the notary’s sole control, and attached to a document in a way revealing any subsequent alteration.¹⁵ When an electronic signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full name as provided in the notary’s application for commission, the words “Notary Public State of Florida,” the expiration date of the notary’s commission, and the notary’s commission number.¹⁶ The seal must also be applied to all

³ *Id.* (footnotes omitted). See also BLACK’S LAW DICTIONARY (10th ed. 2014) (“The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin. In Rome, during the republic, it existed, the title being *tabelliones forenses*, or *personae publicae*; and there are records of the appointment of notaries by the Frankish kings and the Popes as early as the ninth century. They were chiefly employed in drawing up legal documents; as scribes or scriveners they took minutes and made short drafts of writings, either of a public or a private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained.”) (quoting Benjamin F. Rex, *The Notaries’ Manual* § 1, at 1–2 (J.H. McMillan ed., 6th ed. 1913)).

⁴ See *supra* note 1, *supra*. See s. 117.01(3) & (7), F.S. ((3) requiring that, as part of oath, the applicant must swear he or she has read ch. 117, and knows the duties, responsibilities, limitations, and powers of a notary; (7) requiring that notary give a bond in the amount of \$7,500 in the event the notary breaches duties, both a physical and electronic copy of which is to be kept on file with the Department of State). Section 117.01(1), F.S., requires a notary to be able to read, write, and understand the English language.

⁵ Section 117.01(1), F.S.

⁶ Executive Office of the Governor, State of Florida, *Governor’s Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016).

⁷ Section 117.03, F.S.

⁸ Section 117.04, F.S.

⁹ Section 117.045, F.S.

¹⁰ Section 117.05(12)(a), F.S.

¹¹ Section 319.23(3)(a)2., F.S.

¹² Section 655.94(1), F.S.

¹³ See *supra* note 5.

¹⁴ Section 117.05(2), F.S.

¹⁵ Section 117.021(2), F.S.

¹⁶ Section 117.021(3), F.S.

notarized paper documents using a rubber stamp containing the foregoing information.¹⁷ The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary must print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned.

Additionally, as a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.¹⁸ A notary public is also subject to criminal penalties for certain unlawful uses of the notary commission (such as notarizing his or her own signature),¹⁹ and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary's presence).²⁰

Becoming a Notary Public in Florida

In order to be eligible to become a notary public in Florida, a person must:

- Be at least 18 years of age;
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile;
- Maintain Florida residence throughout the appointment; and
- Be able to read, write, and understand the English language.²¹

To apply to be a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.²² Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.²³ The oath of office and notary bond must accompany the notary's application when filed with the Department of State.²⁴ Applicants must also provide the following as part of the application:

- Personal identification information;
- Affidavit of good character from a reference who has known the applicant for at least one year and is not a relative;
- Ten-year history of any licenses and discipline;
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored; and
- Any other information requested by the Governor's office to confirm eligibility.²⁵

¹⁷ Section 117.05(3), F.S.

¹⁸ FLA. CONST., Art. IV, s. 7.

¹⁹ Section 117.05(1), F.S. (providing violation is a third degree felony). *See also* s. 117.05(3)(d), (7), and (8), F.S.; s.117.105, F.S.; s. 117.107(9), F.S.

²⁰ Section 117.107(9), F.S. (providing violation is a civil infraction punishable by a fine of up to \$5,000).

²¹ *See supra* note 5.

²² Section 117.01(2), F.S. (requiring \$25 application fee, \$10 commission fee, and \$4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).

²³ *See supra* note 6 at p. 7.

²⁴ Section 117.01(2), F.S.

²⁵ *Id.*

Notary's Duty to Confirm Identity and Physical Presence for Signing

One of the notary public's primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides "satisfactory evidence" by producing valid identification or witnesses or both verifying that the person is who he or she claims to be, the notary may notarize the document.²⁶

Additionally, generally the person signing the document, as well as any witness, must be in the notary's physical presence at the time of presenting identification and signing.²⁷ It is the physical presence requirement that the proposed bill seeks to redefine.

Online Notarization

Because of new audio/video technologies, such as FaceTime and Skype, two or more people may be able to both see and hear one another in real time using a computer or mobile device, even though they are in different states. This means a notary public can view a person's face, using audio/video technology, while simultaneously reviewing the person's identification and other credentials.

One article explains how online notarization works:

The process is pretty straightforward: You upload a document to an app or website and get connected with a notary by video, on a split screen; you verify your identity by showing a government-issued photo ID, and the notary witnesses you signing your name on screen using your finger or mouse. Then, the notary adds their electronic signature and a digital version of a stamp or seal. The whole transaction is recorded and secured on the cloud in compliance with retention rules; both the signer and the notary can get copies.

Right now, even though notarization apps and sites are accessible by everyone, the participating notaries themselves are certified and based only in Virginia and Texas. Nevada will also join those states; it enacted a remote notarization law on June 9.²⁸

Virginia was the first to pass a remote notarization law in 2012.²⁹

²⁶ Section 117.05(5), F.S.

²⁷ Section 117.05(4), F.S. See also Effect of the Bill, Part I, *infra*, amending multiple provisions in chapter 117, F.S., to clarify that "physical presence" can include an appearance by audio/video technology.

²⁸ Lauren Silverman, *Notaries are Starting to Put Down The Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Jan. 29, 2018).

²⁹ *Id.* See Office of the Secretary of the Commonwealth of Virginia, Notary Commissions, *A Handbook For Virginia Notaries Publics*, <https://commonwealth.virginia.gov/media/9760/2017-december-15-revised-handbook.pdf> (last visited Feb. 5, 2018). See also <https://notarize.com/>, a Virginia-based online platform offering online notary services. The video on the homepage also explains how the process works. *Id.* (last visited January 29, 2018).

Uniform Electronic Transaction Act

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act (act). The act applies to electronic records and signatures relating to a transaction.³⁰ The act does not apply to transactions to the extent they are governed by:³¹

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code (UCC);³² or
- The Uniform Computer Information Transaction Act.

III. Effect of Proposed Changes:

Section 1 divides ch. 117, F.S. into two parts: Part I entitled “General Provisions,” and Part II entitled “Online Notarizations.”

With the exception of the effective date,³³ the remaining sections of the bill can be grouped as follows: Sections 2 through 5; Sections 6 through 19; and Sections 18 through 27.

Sections 2 through 5 amend current provisions of ch. 117, F.S., which will now be Part I that contains the general provisions governing how to become a notary public and the duties and responsibilities of a notary. The bill adds language to three of the existing provisions in Part I in order to set out some of the additional requirements a notary must follow in order to register to do online notarizations.

Most significantly, the bill adds that notary publics who wish to register with the Governor’s office to do online notarizations must maintain an insurance policy of at least \$1 million to protect against errors and omissions (s. 117.01, F.S.).

The bill also provides that a notary must use a password or code protected electronic signature, and, presumably for security reasons, the notary cannot be required to use technology the notary has not selected (s. 117.021, F.S.). For adoption of rules, the bill requires the Department of State to collaborate with the Agency for State Technology (s. 117.021, F.S.).

The bill also sets out the criteria for a form certificate a notary must use when notarizing an attested copy of an electronic document (s. 117.05, F.S.), and provides that the prohibitions in s. 117.107, F.S., do not apply to electronic signatures and seals necessary to perform online notarizations.

Additionally, the bill provides that a notary must submit proof of identity to the Governor’s office rather than the Secretary of State (s. 117.05, F.S.).

Other changes to Part I primarily clarify that a signer of document may “personally appear” before a notary either in person or by “audio-video communication technology,” and that an

³⁰ Section 668.50(3)(a), F.S.

³¹ Section 668.50(3)(b), F.S.

³² Other than s. 671.107, F.S., and chapters 672 and 680, F.S. The UCC consists of chapters 670 - 680, F.S.

³³ See Section 28, *infra*.

online notary must comply with Part II, *infra* (s. 117.05, F.S.). The bill also amends the various notarial form certificates in s. 117.05, F.S., to add an option for the notary to select: “The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization[.]”

Sections 6 through 19 create new provisions of ch. 117, F.S., specifically governing online notary services.

The bill provides definitions of the following terms (s. 117.201, F.S.):

- “Appear before,” “before,” “appear personally before,” or “in the presence of,” as used in this chapter and in ss. 92.50 and 695.03, F.S., means in:
 - The same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person; or
 - A different physical location from another person, but able to see, hear, and communicate with the person by means of audio-video communication technology;
- “Audio-video communication technology” means technology approved by the Governor’s office or authorized in this part which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another;
- “Credential analysis” means a process or service operating according to criteria approved by the Governor’s office or by this part through which a third party confirms the validity of a government-issued identity credential or data thereon through review of public and proprietary data sources;
- “Government-issued identity credential” means any approved credential for verifying identity set forth in s. 117.05(5)(b)2, F.S.;
- “Identity proofing” means a process or service operating according to criteria approved by the Governor’s office or by this part, through which a third party confirms the identity of an individual through review of public and proprietary data sources;
- “Knowledge-based authentication” means a form of identity proofing based on a set of questions formulated from public and proprietary data sources for which the principal has not provided a previous answer during the course of the identity proofing;
- “Online notarization” means the performance of an electronic notarization by means of audio-video communication technology and which meets standards provided in this chapter;
- “Online notary public” means a notary public who has registered with the Governor’s office to perform online notarizations under this part or a civil-law notary appointed under chapter 118, F.S.;
- “Principal” means an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public; and
- “Remote presentation” means transmission of an image of a government-issued identity credential that is of sufficient quality to enable the online notary public through communication technology to identify the individual seeking the notary’s services and to perform credential analysis through audio-video communication technology.

Except where the context requires otherwise, any term defined in the Uniform Electronic Transaction Act³⁴ has the same meaning when used in this part of the bill (s. 117.201, F.S.).

The bill clarifies in ss. 117.209, 117.225, 117.235, and 117.265, F.S., that an online notary: must satisfy all the traditional notary requirements of Part I; is still subject to Part I; and may perform any of the notarial acts listed in Part I online *except* online marriage rites. An online notary may also charge a fee not to exceed \$25 *in addition to* the fees authorized by Part I (s. 117.275, F.S.). The online notary must be physically located in Florida while performing the online notarization (s. 117.209, F.S.).

Additionally, s. 117.225, F.S., sets out the registration requirements for online notaries. Online notaries must:

- Satisfy qualification requirements of Part I;
- Pay the online notarization application fee of \$25;
- Provide proof of professional liability insurance (the bill adds that it must be \$1 million under Part I);
- Submit a signed and sworn registration to the Governor's office; and
- Identify the audio/video communication technology and identity proofing methods to be used online, which must:
 - Comply with the standards promulgated by the Governor's office in collaboration with the Agency for State Technology; or
 - Be consistent with the requirements of s. 117.295(2), F.S., if the Governor's Office and the Agency for State Technology have not yet established standards.

Section 117.215, F.S., provides that if a provision of law requires a signature or act to be witnessed, compliance with the online electronic witnessing standards under s. 117.285, F.S., satisfies this requirement. If a provision of law requires a signature, statement, or instrument to be acknowledged, sworn, affirmed, made under oath, or subject to penalty of perjury:

- The acknowledgment or proof may be made by any of the officials listed and in the manner described in s. 695.03, F.S.
- The requirement may be satisfied by an online notarization if made in accordance with the online notarization provisions of Part II or in conformance with the laws of the notary public's appointing state.

The bill requires an online notary to keep extensive records of each online notarization in a secure electronic journal, which must include all of the following (s. 117.245, F.S.):

- The date and time of the notarization;
- The type of notarial act;
- The type, the title, or a description of the electronic record or proceeding;
- The printed name and address of each principal involved in the transaction or proceeding;
- Evidence of identity of each principal involved in the transaction or proceeding in the form of:
 - A statement that the person is personally known to the online notary public;
 - A notation of the type of identification document provided to the online notary public;

³⁴ Section 668.50, F.S.

- A copy of the government-issued identity credential provided; and
- A copy of any other identity credential or information provided;
- An indication that the principal satisfactorily passed the identity proofing;
- An indication that the government-issued identity credential satisfied the credential analysis; and
- A recording of the audio-video communication that includes:
 - The principal and any witnesses who appeared before the notary public.
 - Confirmation of the identity of each.
 - The notarial act was performed.
- The fee, if any, charged for the notarization.

The online notary public must take reasonable steps to (s. 117.245, F.S.):

- Ensure the integrity, security, and authenticity of online notarizations;
- Maintain a backup record of the electronic journal; and
- Protect the backup record from unauthorized access or use.

The electronic journal must be maintained for at least 10 years after the date of the notarial act. (s. 117.245, F.S.). An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record notarized, but may be introduced as evidence to establish violations of this chapter; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes.

For use of electronic journal, signature, and seal, the bill requires an online notary to (s. 117.255, F.S.):

- Take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.
- Keep his or her electronic journal, electronic signature, and electronic seal secure and under his or her sole control, which includes control in the form of access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use or access his or her electronic journal, electronic signature, or electronic seal.
- Use his or her electronic signature only for performing online notarization.
- Attach or logically associate the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.
- Immediately notify an appropriate law enforcement agency and the Governor's office of theft or vandalism of his or her electronic journal, electronic signature, or electronic seal. An online notary public shall immediately notify the Governor's office of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.
- Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the title agent, settlement agent, or title insurer who engaged the online notary with regard to a real estate transaction. The online notary public may charge a reasonable fee for making and delivering

electronic copies of a given series of related electronic records. The online notary public shall disclose the amount of such fee to the requester before making the electronic copies.

Procedurally, the bill provides that a notary may notarize documents online for people in Florida and in other states so long as the notary verifies the identities of the principle signer and witnesses at the time of signing by using audio-video communication technology and processes and records the entire two-way audio-video conference session; and, if out-of-state, confirms that the principle signer consents to a Florida-based notary public and consents to be governed by applicable Florida law (s. 117.265, F.S.). A principal may not act in the capacity of a witness for an online notarization. An online notary may verify identification of a principle signer or a witness as follows (s. 117.265, F.S.):

- The notary's personal knowledge of the person;
- The remote presentation of a government-issued identity credential by each individual;
- Credential analysis of each government-issued identity credential; and
- "Identity proofing" of each individual, in the form of knowledge-based authentication (similar to personal questions a credit card company asks to verify identity (mother's maiden name, father's middle name, etc.)) or another method of identity proofing that conforms to standards established by the Governor's Office.

If the notary is not satisfied that a person's identity has been verified or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the notary is not authorized to perform the online notarization (s. 117.265, F.S.).

The online notary must take reasonable steps to ensure the audio-video communication technology used in the online notarization is secure from unauthorized interception (s. 117.265, F.S.).

The electronic notarial certificate must include a notation that the notarization is an online notarization. Any failure to comply with procedures set forth in s. 117.265, F.S., does not impair the validity of the notarial act or the electronic record that was notarized, but may be introduced as evidence to establish violations of ch. 117, F.S.; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes (s. 117.265, F.S.).

The bill allows for the witnessing of an online notarization (s. 117.285, F.S.). An online notary public or an official of another state authorized under the laws of that state to perform online notarization of documents may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization, as follows:

- The identity of each witness must be verified in the same manner as the identity of the principal;
- A witness may physically be present with the principal or remote from the principal so long as the witness and the principal may see and hear one another in real time using audio-video communication technology; and
- The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

Additionally, the bill provides that the Governor's office, in collaboration with the Agency for State Technology may adopt rules and standards necessary to implement the requirements of ch. 117, F.S., and such other rules and standards as may be required to facilitate the integrity, security, and reliability of online notarization, including standards regarding identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology, and may publish lists of technologies that satisfy the standards and are approved for use in online notarizations (s. 117.295, F.S.).

The bill requires identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology to be governed by the following minimum standards (s. 117.295, F.S.):

- Identity proofing by means of knowledge-based authentication is required to have, at a minimum, the following security characteristics:
 - The principal must be presented with five or more questions with a minimum of five possible answer choices per question.
 - Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.
 - Responses to all questions must be made within a 2-minute time constraint.
 - The principal must answer a minimum of 80 percent of the questions correctly.
 - The principal may be offered one additional attempt in the event of a failed attempt.
 - During the second attempt, the principal may not be presented with questions from the prior attempt.
- Credential analysis must include the following:
 - A comparison of the presented government-issued identity credential and data thereon against public or proprietary data sources to confirm that one or more data elements conform to the asserted identity; or
 - The inspection of one or more readable format features to verify that they conform to those specified by the issuing state or country;
 - The reading of any bar codes contained on the credential to verify that they contain data corresponding to the asserted identity information of the principal; and
 - An attempt to verify any micro-printing contained on the credential.
- Tamper-evident technology requirements are deemed satisfied by use of technology that renders any subsequent change or modification to the electronic record evident
- Audio-video communication technology used in completing online notarizations must meet the following requirements:
 - The signal transmission must be secure from interception or access by anyone other than the participants communicating.
 - The technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal using identification methods described in s. 117.265, F.S.

The bill provides that an online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.

Section 117.305, F.S., provides that Part II supersedes 15 U.S.C. s. 7002, the federal Electronic Signatures in Global and National Commerce Act. This is expressly permitted by 15 U.S.C. s. 7002 when a state has adopted the Uniform Electronic Transactions Act,³⁵ which Florida did in 2000.³⁶ Section 117.305, F.S., also provides that the requirements in 15 U.S.C. s. 7001(c) concerning consumer disclosures, and the requirement of 15 U.S.C. s. 7003(b) concerning the delivery of certain legal documents are not superseded or limited.

Sections 18 through 27 make conforming or necessary collateral changes to several provisions outside of chapter 117, F.S.

Section 18 amends s. 28.222, F.S., requiring that a clerk of a circuit court to record copies of any instrument originally created and executed using an electronic signature and is certified as a true and correct paper printout by a notary public in accordance with ch. 117, F.S.

Section 19 amends s. 92.50, F.S., and adds a definition of the term “before” to allow oaths, affidavits, and acknowledgements presented by means of audio-video communication technology.

Section 20 amends s. 95.231, F.S., concerning acknowledgment relating to limitations for deed or will on record for conveyance of real property.

Section 21 amends s. 689.01, F.S., related to how real estate is conveyed. The bill provides that any requirement that an instrument be signed in the presence of two subscribing witnesses is satisfied by witnesses being present and electronically signing by means of audio-video communication technology and under standards applicable to online notarization pursuant to ch. 117, F.S., or in conformance with laws in other states that authorize online notarization of instruments.

The bill provides that the act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record. All witnesses made or taken pursuant to this subsection are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with these requirements, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this or any other state.

³⁵ See Uniform Law Commission, Acts, *Why States Should Adopt UETA*, <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UETA> (last visited Jan. 29, 2018) (“The **Uniform Electronic Transactions Act (UETA)** allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce. The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.”).

³⁶ Section 668.50, F.S.

Section 22 amends s. 694.08, F.S., to add failure of, or absence of the acknowledgment or the certificate of acknowledgment language relating to certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.

Section 23 amends s. 695.03, F.S., relating to acknowledgements and proof, validation of certain acknowledgments, and legalization of authentication before foreign officials in the recording of real estate conveyances. The bill includes a definition of the term “before” allowing validation of affidavits, oaths, acknowledgments, legalizations, authentications, or proofs made or taken by means of audio-video communication technology.

Section 24 amends s. 695.04, F.S., relating to a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property to allow acknowledgment via means of audio-video communication technology as set forth in s. 117.05, F.S.

Section 25 amends s. 695.05, F.S., relating to certain defects cured as to acknowledgments and witnesses in real estate conveyances. The bill makes conforming change concerning acknowledgment.

Section 26 amends s. 695.09, F.S., to allow acknowledgment by means of audio-video communication technology relating to the identity of a grantor in real estate conveyances.

Section 27 amends s. 695.28, F.S., relating to validity of recorded electronic documents. Under s. 695.28, F.S., a document that is submitted to the clerk of court or county recorder is deemed validly recorded and acts as notice to persons for certain purposes. The bill provides that submission to the clerk of court or county recorder provides notice to all persons that the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence of the notary or principal in accordance with the provisions of ch. 117, F.S., or the laws of another state regarding the notarization of documents. Alternatively, it acts as notice that the document recorded was a certified printout of a document which one or more electronic signatures have been affixed.

The bill states that s. 695.28, F.S., does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue influence, minority, illegality, unconscionability, or any other basis.

Section 28: The bill has an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Notaries who wish to provide online services must pay an additional \$25 registration fee.

B. Private Sector Impact:

The availability of online notarial services may be more convenient for those who need the services. Fees for notary services are capped by the statute.

C. Government Sector Impact:

The bill will likely add to the regulatory and record-keeping responsibilities of the Department of State and the Office of the Governor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 117.01, 117.021, 117.05, 117.107, 28.222, 92.50, 95.231, 689.01, 694.08, 695.03, 695.04, 695.05, 695.09, and 695.28 of the Florida Statutes.

This bill creates sections 117.201, 117.209, 117.215, 117.225, 117.235, 117.245, 117.255, 117.265, 117.275, 117.285, 117.295, and 117.305 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.