

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 771 Notaries Public
SPONSOR(S): Civil Justice & Claims Subcommittee; Grant, J.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Transportation & Tourism Appropriations Subcommittee	14 Y, 0 N	Cobb	Davis
3) Judiciary Committee			

SUMMARY ANALYSIS

Certain documents or instruments require the presence and signature of a notary public. In order to become a notary, an individual must meet certain minimum requirements, submit a signed and sworn application, pay a fee, obtain a bond payable to any individual harmed as a result of a breach of duty by the notary, and take an oath as required by law. Among the many legal requirements of a notary, current law requires that a notary may not notarize a signature if the party executing the document or instrument is not in the physical presence of the notary at the time the signature is notarized.

The bill creates "Online Notarizations," allowing a notary public to notarize documents using audio-video communication and other technology as provided for in the bill. Specifically, the bill provides the following framework for online notarization:

- Definitions for online notarization and the required technology;
- Procedures, standards, requirements, and exemptions for online notarization;
- Minimum requirements technology must meet in order to be used for online notarization;
- Allows the Department of State and the Agency for State Technology to promulgate rules and create a list of approved technologies or minimum requirements for the technology;
- Registration requirements for online notaries;
- Requirements for an electronic journal, detailing information of online notary services performed;
- A certificate to be used by online notaries;
- Standards for supervising the witnessing of electronic records; and
- Allows an online notary to charge a fee of up to \$25 in addition to the regular notary fee.

In addition to authorizing online notarization, the bill makes the following changes to current law in order to recognize online notarization:

- Requires the clerk of court to record instruments executed using an electronic signature and certified as true and correct printouts by notaries using online notarization,
- Amends the definition of "before" as used in current law related to witnesses, records, and documents to allow for parties to appear before each other through audio-video communication technology, and
- Allows document execution and signatures related to a real estate conveyance to occur in accordance with the standards related to online notarization,

The bill may have an indeterminate, positive fiscal impact on state government revenues stemming from the \$25 online notary registration fee.

The bill does not appear to have a fiscal impact on local governments.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0771c.TTA

DATE: 2/13/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public

The law considers many instruments to be of such importance that they must be signed in the presence of a notary public. The notary's function is to authenticate signatures and administer oaths on these documents, and therefore prevent fraud. The notary public is directly responsible for determining that the person signing is who he or she states.¹ A notary is authorized by law to perform six basic duties:

- Administer oaths and affirmations
- Take acknowledgments
- Attest to photocopies of certain documents
- Solemnize marriage
- Verify vehicle identification numbers
- Certify the contents of a safe-deposit box.²

Section 117.01, F.S., sets forth the form of application for a notary public. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English. The application must be signed and sworn by the applicant and accompanied by the fee and proof of a bond required by law. The application for appointment must include a \$25 fee, a \$10 commission fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.³ The bond must be for at least \$7,500, payable to any individual harmed as a result of a breach of duty by the notary.⁴

Notaries must also take an oath following the application process. As part of the oath, the applicant must swear that he or she has read the statutes relating to notaries public and knows the responsibilities, limitations, and powers of a notary public.⁵ Once appointed, a notary may serve for four years. No person may be automatically reappointed as a notary; the application process must be completed regardless of whether an applicant has previously served as a notary.⁶

When notarizing a signature, a notary public must complete a jurat or notarial certificate for an oath, affirmation, or an acknowledgment.⁷ Current law provides notaries with a form certificate, in s. 117.05(12), F.S., that a notary public must use in substantially the same form as provided for under that section. The certificate of acknowledgment must contain the following items:

- The venue stating the location of the notarization;
- The type of notarial act performed;
- That the signer personally appeared before the notary public at the time of the notarization;
- The exact date of the notarial act;
- The name of the person whose signature is being notarized;

¹ Florida Notary Association, Inc., *Important Information*, <https://www.flnotary.com/become-a-notary/important-information/> (last visited January 17, 2018).

² Florida Governor's Office, *Duties of a Notary Public*, p. 2, https://www.flgov.com/wp-content/uploads/notary/ref_manual11-22.pdf (last visited January 17, 2018).

³ ss. 117.01(2), 117.01(7), F.S.; See also FN. 1, *Notary Package*

⁴ s. 117.01(1), F.S.

⁵ s. 117.01(3), F.S.

⁶ s. 117.01(6), F.S.

⁷ s. 117.05(4), F.S.

- The type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence;
- The notary's official signature;
- The notary's name, typed, printed, or stamped below the signature; and
- The notary's official seal⁸ affixed below or to either side of the notary's signature.

A notary public may not notarize a signature on a document if the person whose signature is being notarized is not in the physical presence of the notary public at the time the signature is notarized. This prohibition applies to notary publics using a facsimile signature stamp, unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State.⁹

A violation of this provision is a civil infraction, punishable by penalty, and constitutes malfeasance and misfeasance in the conduct of official duties.¹⁰ A notary public who violates this provision with the intent to defraud is guilty of violating the statute pertaining to false or fraudulent acknowledgments, which is a third degree felony.¹¹

Electronic Notarization and Electronic Records

Under current law, any document requiring notarization may be notarized electronically. When notarizing a document electronically, a notary public is required to use an electronic signature:

- That is unique to the notary public,
- Capable of independent verification,
- Retained under the notary public's sole control, and
- Attached to or logically associated with the electronic document in such a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

When a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains the minimum information specified.¹²

The Uniform Electronic Transaction Act provides that if a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.¹³

The Florida Administrative Code defines various terms relating to electronic signatures by notaries.¹⁴ The code provides that, in performing an electronic notarial act, a notary is required to execute an electronic signature in a manner that attributes such signature to the notary public identified on the official commission. In addition, the notary must take reasonable steps to ensure the security, reliability, and uniformity of electronic notarizations, including, but not limited to, the use of an authentication procedure such as a password, token, card, or biometric to protect access to the notary's electronic signature or the means for affixing the signature.¹⁵

⁸ The notary seal must be of the rubber stamp type and include the words "Notary Public—State of Florida;" it must also include the name of the notary public, the date of expiration of the commission of the notary public, and the commission number.

⁹ s. 117.107(2), F.S.

¹⁰ s. 117.107(9), F.S.; See also Fla. AGO 92-95 (Notary may not administer an oath over the telephone to a person who is not in the presence of the notary, even where the attorneys for all parties stipulate as to the person's identity.).

¹¹ s. 117.107(9), F.S., referring to s. 117.105, F.S.

¹² s. 117.021, F.S.

¹³ s. 668.50(11)(a), F.S.

¹⁴ Fla. Admin. Code R. 1N-5.001.

¹⁵ Fla. Admin. Code R. 1N-5.002.

The Department of State developed the rules contained in the Florida Administrative Code concerning electronic notarization. The department's power and authority to adopt rules to ensure the security, reliability, and uniformity of signature and seals comes from s. 117.021(5), F.S.

Effect of Proposed Changes

The bill directs the Division of Law Revision and Information to create part I of ch. 117, F.S., consisting of ss. 117.01-117.108, F.S., to be entitled "General Provisions." Additionally, the bill creates part II of ch. 117, F.S., entitled "Online Notarizations." Lastly, the bill makes conforming changes to other provisions of state statutes to allow for the acceptance and recognition of online notarization.

Definitions, Registration and Authority for Online Notarization

In part II of ch. 117, F.S., the bill creates s. 117.201, F.S., providing definitions for online notarizations. The sections contains definitions¹⁶ for the following terms:

- Appear before, before, appear personally before, in the presence of: In the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person, or in a different physical location from another person but able to see, hear, and communicate with the person by means of audio-video communication technology. This term also applies to s. 92.50, F.S., related to oaths and acknowledgments for witnesses, records, and documents, as well as, s. 695.03, F.S., related to acknowledgments and proof of records of the conveyance of real estate.
- Audio-video communication technology: Technology approved by the Department of State or this part that enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.
- Credential analysis: A process or service approved by this part in which a third party confirms the validity of a government-issued identification credential or data thereon through review of public and proprietary data sources.
- Government-issued identity credential: Any approved credential for verifying identity in s. 117.05(5)(b)2, F.S., related to notary signatures.
- Identity proofing: A process or service approved by the Department of State or this part in which a third party confirms the identity of an individual through review of public and proprietary data sources.
- Knowledge-based authentication: 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 prior answer during the course of the identity proofing.
- Online notarization: The performance of an electronic notarization by means of audio-video communication technology and that meets standards in the bill.
- Online notary public: A notary public registered with the Executive Office of the Governor to perform online notarizations under this part or a civil law notary appointed under ch. 118, F.S.
- Principal: an individual whose electronic signature is acknowledged, witnessed, or attested in an online notarization or who takes an oath or affirmation from the online notary public.
- Remote presentation: Transmission of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary's services and to perform credential analysis through audio-video communication technology.

¹⁶ The bill states that any term defined in s. 668.50(2), F.S., the "Uniform Electronic Transaction Act," has the same meaning when used in ch. 117, F.S.

The bill provides methods and requirements for the registration of an online notary. Specifically, a notary public can complete a registration as an online notary public with the Executive Office of the Governor by:

- Satisfying the qualification requirements for appointment as a notary public under part I of ch. 117, F.S.;
- Paying an online notary public application fee in the amount of \$25;
- Submitting to the Executive Office of the Governor a registration as an online notary public, signed and sworn to by the applicant; and
- Identifying the audio-video communication and identity proofing technologies the online notary public intends to use in performing online notarizations.

The bill allows an online notary public to perform any function as an online notarization authorized under ch. 117, F.S., excluding:

- Solemnizing the rites of matrimony;
- A notarial act in connection with the creation and execution of a testamentary instrument, including a will, codicil, or revocable trust; and
- A contract, agreement, or waiver subject to ss. 732.701 and 732.702, F.S., relating to succession and spousal rights.

If a notarization requires a principal to appear before or in the presence of the online notary public, the principal is allowed to appear before the online notary public by means of audio-video communication technology that meets the requirements of ch. 117, F.S., and any rules adopted by the Department of State.

The bill further provides that an online notary public can perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, provided the notary public is physically located in the state while performing the online notarization. The validity of an online notarization performed by an online notary public is to be determined by applicable laws of this state, regardless of the physical location of the principal at the time of the notarial act.

An online notary public is subject to part I to the same extent as a notary public appointed and commissioned only under that part, including the provisions relating to electronic notarizations. The prohibition under s. 117.107(2), F.S., forbidding the use of a facsimile signature unless the notary has a physical disability and receives approval by the Department of State, does not apply to part II related to online notarizations.

The bill provides a form certificate that a notary must use for electronic documents. This certificate requires the notary to state his or her location at the time of notarization. Moreover, the bill amends current certificates under s. 117.05, F.S., to allow the notary to attest that the party appeared before him or her by means of physical presence or online notarization. Lastly, the bill allows an online notary to charge up to \$25 for notarizing a document online, in addition to fees allowable under part I.

Technology Standards for Online Notarization

The bill requires that the standards applicable for electronic notarization under s. 117.021, F.S., and for the newly created online notarization reflect future improvements in technology to ensure the security of both processes. The bill grants the Department of State and the Agency for State Technology the authority to adopt rules and standards necessary to institute the requirements of the bill. Specifically, the bill allows for the adoption of the following standards, with some of these standards subjected to certain minimum requirements:

- *Identity proofing*: The security characteristics, at a minimum, must present the principal with five or more questions with a minimum of five possible answer choices per question. Moreover, each question must be drawn from a third-party provider of public and proprietary data sources

and be identifiable to the principal. Lastly, responses must be subjected to a two minute time constraint and the individual must answer at least 80% correct.

- *Credential analysis*: Must include 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 an alternative method as provided in s. 117.295(2)(b)2, F.S.
- *Tamper-evident technology*: Requirements are satisfied by the use of technology that renders any subsequent change or modification to the electronic record evident.
- *Audio-video communication technology*: The signal transmission must be secure from interception or access by anyone other than the participants communicating and 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 pursuant to s. 117.265, F.S.
- *Unauthorized interception*: No specific minimum requirements provided.
- *Remote presentation*: No specific minimum requirements provided.

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

Moreover, the bill allows the Department of State and the Agency for State Technology to publish lists of technologies that satisfy the standards and are approved for use in online notarization. If the Department of State and Agency for State Technology establish standards for approval of technologies pursuant to this part, the technologies selected must conform to those standards. If the technologies conform to the standards, the Department of State and Agency for State Technology are required to approve the use of the technologies. If the Department of State and Agency for State Technology have not established standards, the online notary public must then select technologies satisfying the provisions of the bill.

With respect to electronic notarization, the bill amends s. 117.255, F.S., to require a notary, retaining sole control over their electronic signature, to include access protection to that signature through use of passwords or codes under the notaries control and forbids the notary from allowing another person to use the notary's electronic journal, seal, or signature. The use of an electronic signature is limited to instances where the notary is performing an online notarization. Notaries must also take reasonable steps to ensure that any device used to create their electronic signature is current and secure.

Lastly, the bill provides that a person may not require a notary to perform a notarial act, using an electronic signature, with technology not personally selected by the notary. The bill requires the Department of State to work in collaboration with the Agency for State Technology when adopting rules pursuant to s. 117.021(5), F.S.

Procedures for Online Notarization

An online notary public is allowed to perform an online notarization that meets the requirements of part II regardless of whether the principal or any witnesses are physically located in the state at the time of the online notarization. When an online notarial act performed in accordance with ch. 117, F.S., it is deemed to have been performed within the state and is therefore governed by applicable laws of the state.

In performing an online notarization, an online notary public must verify the identity of a principal at the time that the signature is taken by using audio-video communication technology and processes and must record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses. A principal is not allowed to act in the capacity of a witness for an online notarization.

In performing an online notarization for a principal not located in the state, an online notary must confirm that the principal desires for the notarial act to be performed by a Florida notary public and

under the general law of the state. An online notary public is required to confirm the identity of the principal or any witness by personal knowledge, or by:

- Remote presentation of a government-issued identification credential by each individual;
- Credential analysis of each government-issued identification credential; and
- Identity proofing of each individual, in the form of knowledge-based authentication or another method of identity proofing that conforms to standards set by the Department of State.

If an online notary fails to satisfy the above three requirements, or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary may not perform the online notarization.

An online notary public must take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception. An electronic notarial certificate for an online notarization is required to include a notation that the notarization is an online notarization. Except as expressly provided otherwise, the provisions of part I of ch. 117, F.S. apply to an online notarization and an online notary public. The failure to comply with the online notarization procedures does not impair the validity of the notarial act or the electronic record, but it may be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

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

- The identity of the witness must be verified in the same manner as the identity of the principal;
- The witness may be physically present with the principal or remote from the principal provided the witness and principal are 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.

Electronic Journal and Electronic Records

The bill requires an online notary to keep a secure electronic journal of electronic records he or she has notarized. For each online notarization, the electronic journal entry must contain all of the following:

- Date and time of the notarization;
- Type of notarial act;
- Type, title, or description of the electronic record or proceeding;
- Printed name and address of each principal involved in the transaction or proceeding;
- Indication that the principal satisfactorily passed the identity proofing;
- Indication that the government-issued identity credential satisfied the credential analysis;
- A recording of the audio-video communication in which the principal and any witness appeared before the notary public, identity of each participant was confirmed, and the notarial act was performed;
- The fee, if any, charged for the online notarization; and
- Copy of the identity of each principal involved in the transaction or proceeding.

For purposes of evidence of the identity of each principal, the bill provides that this may take any of the following forms:

1. Statement that the person is personally known to the online notary public,
2. Notation of the type of identification document provided to the online notary public,
3. Copy of the government-issued identity credential provided, or
4. Copy of any other identity credential or information provided.

The bill further requires that the notary attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident. A notary may only use an electronic signature when performing online notarization.

The electronic journal is required to be maintained for at least 10 years after the date of the notarial act. A backup record of the electronic journal must also be maintained. Moreover, the bill provides that an omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or the electronic record which was notarized. However, this fact may be introduced as evidence to establish violations of ch. 117, F.S., or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

A notary must immediately notify an appropriate law enforcement agency and the Executive Office of the Governor of theft or vandalism of the electronic journal, electronic signature, or electronic seal. An online notary public must also immediately notify the Executive Office of the Governor of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.

Upon the request by a title agent, settlement agent, or title insurer which engaged the online notary in a real estate transaction, the bill requires a notary to make electronic copies of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings. An online notary may charge a reasonable fee for making these copies.

Effect of, and Relation to, Other Laws

Chapter 28, F.S., governs the clerks of circuit courts. As part of their duties, clerks are required to record certain instruments presented to him or her, upon payment of the service charges. The bill amends s. 28.222(3), 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.

The bill also amends s. 695.28, F.S., related to the validity of recorded electronic documents. Under s. 695.28, F.S., a document that is submitted to the clerk of court or county recorded 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 recorded 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 in accordance with the provisions of ch. 117 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.

If a provision of law requires a signature or act to be witnessed, compliance with the witnessing standards under s. 117.285, F.S., satisfies this requirement. Moreover, 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 this part or in conformance with the laws of the notary public's appointing state.

The bill additionally 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 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.

Lastly, the bill provides that part II modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act.¹⁷ However, the bill does not modify, limit, or supersede s. 7001(c), related to consumer disclosures and consent to electronic records or the electronic delivery of any of the notices described in s. 7003(b), F.S.¹⁸

B. SECTION DIRECTORY:

Section 1: Directs the Division of Law Revision and Information to create part I of Chapter 117, Florida Statutes.

Section 2: Amends s. 117.01, F.S., relating to appointment, application, suspension, revocation, application fee, bond, and oath of notary public.

Section 3: Amends s. 117.021, F.S., relating to electronic notarization.

Section 4: Amends s. 117.05, F.S., relating to use of notary commission, unlawful use, notary fee, seal, duties, employer liability, name change, advertising, photocopies, and penalties.

Section 5: Amends s. 117.107, F.S., relating to prohibited acts.

Section 6: Creates part II of chapter 117, relating to online notarizations.

Section 7: Amends s. 28.222, F.S., relating to the clerk to be county recorder.

Section 8: Amends s. 92.50, F.S., relating to oath, affidavits, and acknowledgments; who may take or administer; requirements.

Section 9: Amends s. 95.231, F.S., relating to limitations where deed or will on record.

Section 10: Amends s. 689.01, F.S., relating to how real estate is conveyed.

Section 11: Amends s. 694.08, F.S., relating to certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgement, etc.

¹⁷ 15 U.S.C. ss. 7001 et seq.

¹⁸ These notices include: (1) Court orders or documents required to be executed in connection with a court proceeding; (2) The cancellation or termination of utility services; (3) Any notice of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; (4) The cancellation or termination of health insurance or benefits or life insurance benefits; (5) The recall of a product, or material failure of a product, that risks endangering health or safety; or (6) Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

Section 12: Amends s. 695.03, F.S., relating to acknowledgment and proof, validation of certain acknowledgments, and legalization or authentication before foreign officials.

Section 13: Amends s. 695.04, F.S., relating to requirements of certificate.

Section 14: Amends s. 695.05, F.S., relating to certain defects cured as to acknowledgments and witnesses.

Section 15: Amends s. 695.09, F.S., relating to identity of grantor.

Section 16: Amends s. 695.28, F.S., relating to validity of recorded electronic documents.

Section 17: Providing an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact to state revenues from the \$25 application fee to become an online notary.

2. Expenditures:

The bill allows, but does not require the Department of State (DOS) and the Agency for State Technology (AST) to publish lists of technologies that satisfy the standards and are approved for use in online notarization. DOS has not provided an estimated fiscal impact or agency bill analysis as requested therefore it is assumed that any impacts can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows the act of notarization to be performed remotely, as opposed to in person. In some instances, this new method will allow businesses and professions that must use notary publics in their day-to-day work to do so without all of the parties coming together in one location. As such, these businesses and professions may see a reduction in expenditures as a result of allowing this alternative, more convenient method of notarization.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill allows the Department of State, together with the Agency of State Technology, to adopt rules and standards for the technology used by online notaries. The bill provides sufficient direction for the agency with respect to the scope of the rules and the areas of focus.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2018, the Civil Justice & Claims Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Remove the Executive Office of the Governor from the rulemaking process for rules related to online notarization; and
- Provides that a notary may not utilize an online notarization in connection with the creation or execution of a testamentary instrument, including a succession agreement or waiver of a spouses rights.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee