

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 771 Notaries Public

SPONSOR(S): Judiciary Committee, 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	15 Y, 0 N, As CS	MacNamara	Poche

SUMMARY ANALYSIS

Certain documents or instruments require the presence and signature of a notary public. 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. 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.

CS/CS/HB 771 creates "Online Notarizations," allowing a notary public to notarize documents using audio-video communication and other technology. The bill provides the following framework for online notarization:

- Definitions for online notarization and required technology;
- Procedures, standards, requirements, and exemptions for online notarization;
- Minimum technological requirements;
- Allows the Department of State and the Agency for State Technology to promulgate rules and create a list of approved technologies or minimum technological requirements;
- Registration requirements for online notaries;
- Requirements for an electronic journal, detailing information of online notary services performed;
- An online notary certificate;
- 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 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,
- Allows 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 according to online notarization standards.

The bill prohibits an online notary public from solemnizing rites of matrimony, or conducting notarial acts in connection with a testamentary instrument or where power of attorney has testamentary effect. These provisions are repealed effective July 1, 2020, thereby permitting such acts by an online notary public after that date.

The bill may have an indeterminate, positive fiscal impact on state government revenues, but does not appear to have a fiscal impact on local governments.

The bill has an effective date of January 1, 2019.

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

STORAGE NAME: h0771e.JDC

DATE: 2/22/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public

The law requires many instruments to 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., contains the form of a notary public application. A notary must be at least 18 years of age, maintain legal residence in the state throughout his or her commission, and be able to read, write, and understand English. The application must be signed and sworn by the applicant and accompanied by a \$25 fee and proof of the bond required by law. 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.³ The application must also include a \$10 commission fee as 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.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. A person may not 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 must be used in substantially the same form. The certificate of acknowledgement must contain:

- 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 notarized;
- The type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence;

¹ Florida Notary Association, Inc., *Important Information*, <https://www.flnotary.com/become-a-notary/important-information/> (last visited February 21, 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 February 21, 2018).

³ S. 117.01(1), F.S.

⁴ SS. 117.01(2) and 117.01(7), F.S.; See also FN. 1, *Notary Package*

⁵ S. 117.01(3), F.S.

⁶ S. 117.01(6), F.S.

⁷ S. 117.05(4), F.S.

- 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 if the person is not in the physical presence of the notary public at notarization. This prohibition extends 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 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 not exceeding \$5,000, and constitutes malfeasance and misfeasance in the conduct of official duties, which are grounds for suspension by the Governor.¹⁰ A notary public who violates this provision with the intent to defraud commits a third degree felony for false or fraudulent acknowledgment, punishable by up to 5 years in prison and a \$5,000 fine.¹¹

A commissioner of deeds is similar to a notary public. A commissioner of deeds takes acknowledgements, proofs of execution, and oaths outside the United States in connection with the execution of real estate transactions, power of attorney, or any other agreement in connection with a timeshare estate, personal property timeshare estate, timeshare license, or the operation of a timeshare plan located within Florida.¹² Section 721.97, F.S., provides for the appointment of a commissioner of deeds and sets forth their duties and responsibilities.

Electronic Notarization and Electronic Records

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 must be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains the minimum information specified.¹³

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 is attached to or logically associated with the signature or record.¹⁴

The Florida Administrative Code (Code) defines various terms relating to electronic signatures by notaries.¹⁵ The Code requires a notary performing an electronic notarial act to execute an electronic signature in a manner that attributes such signature to the notary public identified on the official commission. The notary must also take reasonable steps to ensure the security, reliability, and

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. 721.96, F.S.

¹³ S. 117.021, F.S.

¹⁴ S. 668.50(11)(a), F.S.

¹⁵ Fla. Admin. Code R. 1N-5.001.

uniformity of electronic notarizations, including, but not limited to, the use of an authentication procedure such as a password, token, card, or biometric.¹⁶

The Department of State developed the rules 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

CS/CS/HB 771 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," and 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 definitions¹⁷ 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 and data thereon through review of public and proprietary data sources.
- **Errors and Omissions Insurance:** A type of insurance that provides coverage for potential errors or omissions in or relating to a notarial act.
- **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.
- **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, a civil-law notary appointed under ch. 118, or a commissioner of deeds appointed under Part IV of ch. 721, who has registered with the Department of State to perform online notarizations.
- **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

¹⁶ Fla. Admin. Code R. 1N-5.002.

¹⁷ 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.

notary's services and to perform credential analysis through audio-video communication technology.

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

- Satisfying the qualification requirements for appointment as a notary public under part I of ch. 117, F.S., except that a proof of bond for an online notary must be at least \$25,000;
- Paying an online notary public application fee of \$25;
- Certifying that the registrant has completed a classroom or online course of at least three hours covering the duties, obligations, and technology requirements of an online notary public;
- Obtain errors and omissions insurance coverage of at least \$25,000;
- Submitting to the EOG a registration as an online notary public, signed and sworn to by the applicant; and
- Stating the audio-video communication and identity proofing technologies the online notary public intends to use in performing online notarizations.

The bill permits an online notary public to perform any 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;
- A contract, agreement, or waiver subject to ss. 732.701 and 732.702, F.S., relating to succession and spousal rights; or
- An act performed by an agent pursuant to a power of attorney where such power has testamentary effect.

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

The bill also allows an online notary public to perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, so long as 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 of this state is determined by Florida law, 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 DOS, does not apply to part II related to online notarizations. However, the bill permits an online notary to notarize the signature of a person who is blind or a person who is physically unable to sign or make a signature mark on a document.

The bill requires an online notary to use a certificate of acknowledgement, similar to those used in the course of a notaries regular work. This certificate requires the notary to state whether a party is appearing before them or appearing by means of audio-video communication technology, and attest whether the document is an electronic unaltered copy or printout. Moreover, the bill amends current certificates under s. 117.05, F.S., allowing 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 DOS and the Agency for State Technology (AST) 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 until such time that DOS adopts rules:

- *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. Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal. The 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 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 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 DOS and the AST to publish lists of technologies that satisfy these standards and are approved for use. If the DOS and AST establish standards for approval of technologies pursuant to this part, the technologies selected must conform to those standards. If the DOS or AST have not established standards, the online notary public must then select technologies that satisfy the bill requirements.

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.

The bill requires the DOS to work in collaboration with the AST when adopting rules pursuant to s. 117.021(5), F.S. The DOS and the AST, however, may not adopt rules relating to the amount of online notary public bond or errors and omissions insurance.

Procedures for Online Notarization

An online notary public is allowed to perform an online notarization regardless of whether the principal or any witnesses are physically located in the state at the time of the online notarization. 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.

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, 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 in accordance with ch. 117, F.S. 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 approved method of identity proofing.

If an online notary fails to satisfy the above 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.

Lastly, the bill prohibits a person from requiring a notary to perform a notarial act, using an electronic signature, with technology not personally selected by the notary.

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 allows any of the following to act as evidence of the identity of each principal:

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, 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 DOS of theft or vandalism of the electronic journal, electronic signature, or electronic seal. An online notary public must also immediately notify the DOS of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.

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 upon the request by a title agent, settlement agent, or title insurer which engaged the online notary in a real estate transaction. An online notary may charge a reasonable fee for making these copies.

The bill further permits an online notary to delegate, by contract, their duty to retain the electronic journal and copies of the recordings of audio-video communications to a secure repository. An online notary who delegates this responsibility is still held to the same retention requirements as online notaries retaining personal possession of the journal and recordings.

Effect of, and Relation to, Other Laws

Chapter 28, F.S., governs the clerks of circuit court. 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 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 submitted to the clerk of court or county recorded is deemed validly recorded and acts as notice to all persons. The bill extends this treatment to documents notarized electronically in accordance with the provisions of ch. 117 or the laws of another state regarding the notarization of documents. It may also act 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., including out-of-state notaries.
- The requirements are satisfied by an online notarization made in accordance with the online notarization provisions of this part.

The bill additionally amends s. 689.01, F.S., related to the conveyance of real estate. 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 or rules applicable to online notarization pursuant to ch. 117, F.S.

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 provision 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. Affixing an official seal or electronic signature conclusively establishes that the acknowledgement or proof was made in full compliance.

Part II of ch. 117, F.S., modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act.¹⁸ 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.¹⁹

The provisions of the bill prohibiting the use of online notarization for solemnizing marriages, as well as wills, trusts, and other testamentary instruments are repealed effective July 1, 2020.

The effective date of the bill is January 1, 2019.

B. SECTION DIRECTORY:

Section 1: Directs the Division of Law Revision and Information to create part I of Chapter 117, F.S., to be entitled “General Provisions.”

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

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; penalties.

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

Section 6: Creates part II of Chapter 117, F.S., relating to online notarizations.

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

Section 8: Amends s. 92.50, F.S., relating to oaths, 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 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.

Section 12: Amends s. 695.03, F.S., relating to acknowledgment and proof; validation of certain acknowledgments; 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. 695.28, F.S., relating to validity of recorded electronic documents.

Section 16: Amends s. 709.2202, F.S., relating to authority that requires separate signed enumeration.

¹⁸ 15 U.S.C. § 7001 et seq.

¹⁹ 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 17: Repealing subsection (5) of s. 117.209, F.S., effective July 1, 2020.

Section 18: Repealing subsection (3) of s. 117.215, F.S., effective July 1, 2020.

Section 19: Providing an effective date of January 1, 2019.

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.

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 DOS, together with the AST, 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:

- Removed the Executive Office of the Governor from the rulemaking process for rules related to online notarization; and
- Prohibited a notary from utilizing an online notarization in connection with the creation or execution of a testamentary instrument, including a succession agreement or waiver of a spouses rights.

On February 21, 2018, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Confirmed that civil law notaries are subject to the provisions of the bill and extended applicability to commissioners of deeds.
- Prohibited using online notarization where power of attorney has testamentary effect.
- Permitted an online notary to delegate the duty to retain an electronic journal and copies of audio-video communication recordings to a secure repository.
- Required an online notary public to obtain minimum errors and omissions insurance coverage of \$25,000, and increased the bond requirement for online notaries public from \$7,500 to \$25,000.
- Required an online notary to complete a course that is at least 3 hours long and covers duties, obligations, and technology requirements as part of the registration process.
- Established a procedural framework for online notaries public performing online notarization for persons with disabilities.
- Removed language permitting an online notary from another state to supervise the witnessing of electronic documents using audio-video communication technology.
- Authorized additional rulemaking topics for the Department of State and Agency for State Technology.
- Required the fee charged by the online notary public, if any, to appear in the electronic journal.
- Clarified that affixing the official seal or electronic signature conclusively proves the acknowledgment was made in compliance with applicable laws.
- Repealed the provisions of the bill prohibiting application to testamentary instruments effective July 1, 2020.
- Changed the effective date to January 1, 2019.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.