

1 A bill to be entitled
2 An act relating to notaries public; providing a
3 directive to the Division of Law Revision and
4 Information; amending s. 117.01, F.S.; revising
5 provisions relating to use of office of notary public;
6 amending s. 117.021, F.S.; requiring electronic
7 signatures to include access protection; prohibiting a
8 person from requiring a notary public to perform a
9 notarial act with certain technology; authorizing the
10 Department of State to adopt rules for certain
11 purposes; amending s. 117.05, F.S.; revising
12 limitations on notary fees; providing for inclusion of
13 certain information in a jurat or notarial
14 certificate; providing for compliance with online
15 notarization requirements; providing for notarial
16 certification of a printed electronic record; revising
17 statutory forms for jurats and notarial
18 certifications; amending s. 117.107, F.S.; providing
19 applicability; revising prohibited acts; creating part
20 II of ch. 117, F.S., entitled "Online Notarizations";
21 providing definitions; authorizing online
22 notarizations; providing exceptions; providing for
23 legal recognition; providing registration and
24 qualification requirements; authorizing the
25 performance of certain notarial acts; requiring a

26 | notary public to keep an electronic journal of online
27 | notarizations; providing requirements for electronic
28 | journals, signatures, and seals; providing online
29 | notarization procedures; providing fees for online
30 | notarizations; authorizing a notary public to
31 | supervise the witnessing of electronic records of
32 | online notarizations; providing standards for
33 | electronic and online notarizations; authorizing the
34 | Department of State and the Agency for State
35 | Technology to adopt rules; providing construction;
36 | amending s. 28.222, F.S.; requiring the clerk of the
37 | circuit court to record certain instruments; amending
38 | s. 92.50, F.S.; providing a definition; amending s.
39 | 95.231, F.S.; providing a limitation period for
40 | certain recorded instruments; amending s. 689.01,
41 | F.S.; providing for witnessing of documents in
42 | connection with real estate conveyances; providing for
43 | validation of certain recorded documents; amending s.
44 | 694.08, F.S.; providing for validation of certain
45 | recorded documents; amending s. 695.03, F.S.;
46 | providing and revising requirements for making
47 | acknowledgments, proofs, and other documents;
48 | providing a definition; amending s. 695.04, F.S.;
49 | conforming a provision to changes made by the act;
50 | amending s. 695.05, F.S.; making an editorial change;

51 | amending s. 695.28, F.S.; providing for validity of
 52 | recorded documents; conforming provisions to changes
 53 | made by the act; repealing exclusions to the authority
 54 | to perform a notarial act as an online notarization on
 55 | a certain date; repealing exclusions to required
 56 | compliance with specified laws on a certain date;
 57 | providing an effective date.
 58 |

59 | Be It Enacted by the Legislature of the State of Florida:
 60 |

61 | Section 1. The Division of Law Revision and Information is
 62 | directed to create part I of chapter 117, Florida Statutes,
 63 | consisting of ss. 117.01-117.108, Florida Statutes, to be
 64 | entitled "General Provisions."

65 | Section 2. Subsection (1) of section 117.01, Florida
 66 | Statutes, is amended to read:

67 | 117.01 Appointment, application, suspension, revocation,
 68 | application fee, bond, and oath.—

69 | (1) The Governor may appoint as many notaries public as he
 70 | or she deems necessary, each of whom shall be at least 18 years
 71 | of age and a legal resident of this ~~the~~ state. A permanent
 72 | resident alien may apply and be appointed and shall file with
 73 | his or her application a recorded Declaration of Domicile. The
 74 | residence required for appointment must be maintained throughout
 75 | the term of appointment. Notaries public shall be appointed for

76 | 4 years and may only ~~shall~~ use and exercise the office of notary
 77 | public if he or she is within the boundaries of this state. An
 78 | applicant must be able to read, write, and understand the
 79 | English language.

80 | Section 3. Subsections (4) and (5) of section 117.021,
 81 | Florida Statutes, are renumbered as subsections (5) and (6),
 82 | respectively, paragraph (c) of subsection (2) is amended, and
 83 | new subsections (4) and (7) are added to that section, to read:

84 | 117.021 Electronic notarization.—

85 | (2) In performing an electronic notarial act, a notary
 86 | public shall use an electronic signature that is:

87 | (c) Retained under the notary public's sole control and
 88 | includes access protection through the use of passwords or codes
 89 | under control of the notary public; and

90 | (4) A person may not require a notary public to perform a
 91 | notarial act with respect to an electronic record with a
 92 | technology that the notary public has not selected.

93 | (7) The Department of State, in collaboration with the
 94 | Agency for State Technology, shall adopt rules establishing
 95 | standards for tamper-evident technologies that will indicate any
 96 | alteration or change to an electronic record after completion of
 97 | an electronic notarial act and shall publish a list of
 98 | technologies that satisfy such standards and are approved for
 99 | use in electronic notarizations, effective January 1, 2019. All
 100 | electronic notarizations performed on or after January 1, 2019,

101 must comply with the adopted standards and use an approved
 102 technology.

103 Section 4. Paragraph (a) of subsection (2), paragraphs
 104 (a), (c), (g), (h), and (i) of subsection (4), subsection (5),
 105 paragraph (a) of subsection (12), and subsections (13) and (14)
 106 of section 117.05, Florida Statutes, are amended, and paragraph
 107 (c) is added to subsection (12) of that section, to read:

108 117.05 Use of notary commission; unlawful use; notary fee;
 109 seal; duties; employer liability; name change; advertising;
 110 photocopies; penalties.—

111 (2) (a) The fee of a notary public may not exceed \$10 for
 112 any one notarial act, except as provided in ss. ~~§~~ 117.045 and
 113 117.275.

114 (4) When notarizing a signature, a notary public shall
 115 complete a jurat or notarial certificate in substantially the
 116 same form as those found in subsection (13). The jurat or
 117 certificate of acknowledgment shall contain the following
 118 elements:

119 (a) The venue stating the location of the notary public at
 120 the time of the notarization in the format, "State of Florida,
 121 County of"

122 (c) That the signer personally appeared before the notary
 123 public at the time of the notarization either by physical
 124 presence or by means of audio-video communication technology
 125 pursuant to part II of this chapter.

126 (g) The notary public's ~~notary's~~ official signature.

127 (h) The notary public's ~~notary's~~ name, typed, printed, or
 128 stamped below the signature.

129 (i) The notary public's ~~notary's~~ official seal affixed
 130 below or to either side of the notary public's ~~notary's~~
 131 signature.

132 (5) A notary public may not notarize a signature on a
 133 document unless he or she personally knows, or has satisfactory
 134 evidence, that the person whose signature is to be notarized is
 135 the individual who is described in and who is executing the
 136 instrument. A notary public shall certify in the certificate of
 137 acknowledgment or jurat the type of identification, either based
 138 on personal knowledge or other form of identification, upon
 139 which the notary public is relying. In the case of an online
 140 notarization, the online notary public shall comply with the
 141 procedures set forth in part II of this chapter.

142 (12) (a) A notary public may supervise the making of a copy
 143 ~~photocopy~~ of a tangible or electronic record or the printing of
 144 an electronic record, ~~an original document~~ and attest to the
 145 trueness of the copy or of the printout, provided the document
 146 is neither a vital record in this state, another state, a
 147 territory of the United States, or another country, nor a public
 148 record, if a copy can be made by the custodian of the public
 149 record.

150 (c) A notary public must use a certificate in

151 substantially the following form in notarizing a copy of a
 152 tangible or electronic record or a printout of an electronic
 153 record:
 154 STATE OF FLORIDA
 155 COUNTY OF
 156 On this day of, ...(year)..., I attest that the
 157 preceding or attached document is a true, exact, complete, and
 158 unaltered copy of a tangible or electronic record presented to
 159 me by the document's custodian or a printout made by me from
 160 such record, if, at the time of printing, no security features,
 161 if present on the electronic record, indicated that the record
 162 had been altered since execution.

163 ...(Signature of Notary Public - State of Florida)...
 164 ...(Print, Type, or Stamp Commissioned Name of Notary
 165 Public)...

166 (13) The following notarial certificates are sufficient
 167 for the purposes indicated, if completed with the information
 168 required by this chapter. The specification of forms under this
 169 subsection does not preclude the use of other forms.

170 (a) For an oath or affirmation:

171 STATE OF FLORIDA
 172 COUNTY OF

173 Sworn to (or affirmed) and subscribed before me by means of
 174 [] physical presence or [] online notarization, this day of
 175, ...(year)..., by ...(name of person making

201 for ...(name of party on behalf of whom instrument was
 202 executed)....

203 ...(Signature of Notary Public - State of Florida)...
 204 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 205 Personally Known OR Produced Identification
 206

207 Type of Identification Produced.....

208 (14) A notary public must make reasonable accommodations
 209 to provide notarial services to persons with disabilities.

210 (a) A notary public may notarize the signature of a person
 211 who is blind after the notary public has read the entire
 212 instrument to that person.

213 (b) A notary public may notarize the signature of a person
 214 who signs with a mark if:

215 1. The document signing is witnessed by two disinterested
 216 persons;

217 2. The notary public prints the person's first name at the
 218 beginning of the designated signature line and the person's last
 219 name at the end of the designated signature line; and

220 3. The notary public prints the words "his (or her) mark"
 221 below the person's signature mark.

222 (c) The following notarial certificates are sufficient for
 223 the purpose of notarizing for a person who signs with a mark:

224 1. For an oath or affirmation:

225 ...(First Name)... ...(Last Name)...

226 ...His (or Her) Mark...

227 STATE OF FLORIDA

228 COUNTY OF

229 Sworn to and subscribed before me by means of [] physical
230 presence or [] online notarization, this day of,

231 ...(year)..., by ...(name of person making statement)..., who
232 signed with a mark in the presence of these witnesses:

233 ...(Signature of Notary Public - State of Florida)...

234 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

235 Personally Known OR Produced Identification

236

237 Type of Identification Produced.....

238 2. For an acknowledgment in an individual capacity:

239 ...(First Name)... ...(Last Name)...

240 ...His (or Her) Mark...

241 STATE OF FLORIDA

242 COUNTY OF

243 The foregoing instrument was acknowledged before me by means of
244 [] physical presence or [] online notarization, this day of

245, ...(year)..., by ...(name of person acknowledging)...,
246 who signed with a mark in the presence of these witnesses:

247 ...(Signature of Notary Public - State of Florida)...

248 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

249 Personally Known OR Produced Identification

250

251 Type of Identification Produced.....

252 (d) A notary public may sign the name of a person whose
 253 signature is to be notarized when that person is physically
 254 unable to sign or make a signature mark on a document if:

255 1. The person with a disability directs the notary public
 256 to sign in his or her presence;

257 2. The document signing is witnessed by two disinterested
 258 persons;

259 3. The notary public writes below the signature the
 260 following statement: "Signature affixed by notary public,
 261 pursuant to s. 117.05(14), Florida Statutes," and states the
 262 circumstances of the signing in the notarial certificate.

263 (e) The following notarial certificates are sufficient for
 264 the purpose of notarizing for a person with a disability who
 265 directs the notary public to sign his or her name:

266 1. For an oath or affirmation:

267 STATE OF FLORIDA

268 COUNTY OF

269 Sworn to (or affirmed) before me by means of [] physical
 270 presence or [] online notarization, this day of,
 271 ...(year)..., by ...(name of person making statement)..., and
 272 subscribed by ...(name of notary)... at the direction of ~~and in~~
 273 ~~the presence of~~ ...(name of person making statement)..., and in
 274 the presence of these witnesses:

275 ...(Signature of Notary Public - State of Florida)...

276 | ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

277 | Personally Known OR Produced Identification

278 |

279 | Type of Identification Produced.....

280 | 2. For an acknowledgment in an individual capacity:

281 | STATE OF FLORIDA

282 | COUNTY OF

283 | The foregoing instrument was acknowledged before me by means of

284 | [] physical presence or [] online notarization, this day of

285 |, ... (year) ..., by ... (name of person acknowledging) ...

286 | and subscribed by ... (name of notary) ... at the direction of ~~and~~

287 | ~~in the presence of~~ ... (name of person acknowledging) ..., and in

288 | the presence of these witnesses:

289 | ... (Signature of Notary Public - State of Florida) ...

290 | ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

291 | Personally Known OR Produced Identification

292 |

293 | Type of Identification Produced.....

294 | Section 5. Subsections (2) and (9) of section 117.107,

295 | Florida Statutes, are amended to read:

296 | 117.107 Prohibited acts.—

297 | (2) A notary public may not sign notarial certificates

298 | using a facsimile signature stamp unless the notary public has a

299 | physical disability that limits or prohibits his or her ability

300 | to make a written signature and unless the notary public has

301 first submitted written notice to the Department of State with
 302 an exemplar of the facsimile signature stamp. This subsection
 303 does not apply to or prohibit the use of an electronic signature
 304 and seal by a notary public performing an electronic or online
 305 notarization in accordance with this chapter.

306 (9) A notary public may not notarize a signature on a
 307 document if the person whose signature is being notarized does
 308 not appear before the notary public either by means of physical
 309 presence or audio-video communication technology pursuant to
 310 part II of this chapter ~~is not in the presence of the notary~~
 311 ~~public~~ at the time the signature is notarized. Any notary public
 312 who violates this subsection is guilty of a civil infraction,
 313 punishable by penalty not exceeding \$5,000, and such violation
 314 constitutes malfeasance and misfeasance in the conduct of
 315 official duties. It is no defense to the civil infraction
 316 specified in this subsection that the notary public acted
 317 without intent to defraud. A notary public who violates this
 318 subsection with the intent to defraud is guilty of violating s.
 319 117.105.

320 Section 6. Part II of chapter 117, Florida Statutes,
 321 consisting of sections 117.201-117.305, Florida Statutes, is
 322 created to read:

323 PART II

324 ONLINE NOTARIZATIONS

325 117.201 Definitions.—As used in this part, the term:

326 (1) (a) "Appear before," "before," "appear personally
327 before," or "in the presence of" means:

328 1. In the same physical location as another person and
329 close enough to see, hear, communicate with, and exchange
330 credentials with that person; or

331 2. In a different physical location from another person
332 but able to see, hear, and communicate with the person by means
333 of audio-video communication technology.

334 (b) This term also applies to ss. 92.50 and 695.03.

335 (2) "Audio-video communication technology" means
336 technology, in compliance with this chapter, that enables real-
337 time, two-way communication using electronic means in which
338 participants are able to see, hear, and communicate with one
339 another.

340 (3) "Credential analysis" means a process or service, in
341 compliance with this chapter, in which a third party affirms
342 the validity of a government-issued identification credential
343 and data thereon through review of public or proprietary data
344 sources.

345 (4) "Errors and omissions insurance" means a type of
346 insurance that provides coverage for potential errors or
347 omissions in or relating to a notarial act.

348 (5) "Government-issued identity credential" means any
349 approved credential for verifying identity in s. 117.05(5)(b)2.

350 (6) "Identity proofing" means a process or service in

351 compliance with this chapter in which a third party affirms the
352 identity of an individual through use of public or proprietary
353 data sources, which may include knowledge-based authentication
354 or biometric verification.

355 (7) "Knowledge-based authentication" means a form of
356 identity proofing based on a set of questions that pertains to
357 an individual and formulated from public or proprietary data
358 sources.

359 (8) "Online notarization" means the performance of an
360 electronic notarization by means of audio-video communication
361 technology in compliance with this chapter.

362 (9) "Online notary public" means a notary public, a
363 civil-law notary appointed under chapter 118, or a commissioner
364 of deeds appointed under part IV of chapter 721 that has
365 registered with the Department of State to perform online
366 notarizations under this part.

367 (10) "Principal" means an individual whose electronic
368 signature is acknowledged, witnessed, or attested in an online
369 notarization or who takes an oath or affirmation from the
370 online notary public.

371 (11) "Remote presentation" means transmission of an image
372 of a government-issued identification credential that is of
373 sufficient quality to enable the online notary public to
374 identify the individual seeking the notary's services and to
375 perform credential analysis through audio-video communication

376 technology.

377 (12) Except where the context otherwise requires, any term
378 defined in s. 668.50(2) shall have the same meaning when used in
379 this chapter.

380 117.209 Authority to perform online notarizations.—

381 (1) An online notary public may perform any of the
382 functions authorized under chapter 117 as an online
383 notarization.

384 (2) If a notarial act requires a principal to appear
385 before or in the presence of the online notary public, the
386 principal may appear before the online notary public by means of
387 audio-video communication technology that meets the requirements
388 of this chapter and any rules adopted by the Department of State
389 under s. 117.295.

390 (3) An online notary public may perform an online
391 notarization authorized under this chapter, regardless of the
392 physical location of the principal at the time of the notarial
393 act, provided the online notary public, other than a civil-law
394 notary or a commissioner of deeds, is physically located in this
395 state while performing the online notarization.

396 (4) The validity of an online notarization performed by an
397 online notary public registered in this state shall be
398 determined by applicable laws of this state regardless of the
399 physical location of the principal at the time of the notarial
400 act.

401 (5) The authority in subsection (1) to perform a notarial
 402 act as an online notarization excludes:

403 (a) Solemnizing the rites of matrimony.

404 (b) A notarial act in connection with the creation and
 405 execution of a will, codicil, or revocable trust subject to the
 406 execution formalities of s. 736.0403(2).

407 (c) A contract, agreement, or waiver subject to ss.
 408 732.701 and 732.702.

409 117.215 Relation to other laws.

410 (1) If a provision of law requires a notary public or
 411 other authorized state official to notarize a signature or
 412 statement; take an acknowledgment of an instrument; or
 413 administer an oath or affirmation so that a document may be
 414 sworn, affirmed, made under oath, or subject to penalty of
 415 perjury, an online notarization performed in accordance with the
 416 provisions of this part and any rules adopted hereunder shall
 417 satisfy such requirement.

418 (2) If a provision of law requires a signature or act be
 419 witnessed, compliance with the online electronic witnessing
 420 standards under s. 117.285 and any rules adopted hereunder
 421 satisfies that requirement.

422 (3) Subsections (1) and (2) exclude and do not apply to
 423 laws governing:

424 (a) Solemnizing the rites of matrimony.

425 (b) A notarial act in connection with the creation and

426 execution of a will, codicil, or revocable trust subject to the
427 execution formalities of s. 736.0403(2).

428 (c) A contract, agreement, or waiver subject to ss.
429 732.701 and 732.702.

430 117.225 Registration; qualifications.—A notary public, a
431 civil-law notary appointed under chapter 118, or a commissioner
432 of deeds appointed under part IV of chapter 721 may complete a
433 registration as an online notary public with the Department of
434 State by:

435 (1) Satisfying the requirements for appointment as a
436 notary public under part I of this chapter, as a civil-law
437 notary under chapter 118, or as a commissioner of deeds under
438 part IV of chapter 721.

439 (2) Certifying that the registrant has completed a
440 classroom or online course of at least three hours covering the
441 duties, obligations, and technology requirements for serving as
442 an online notary public.

443 (3) Paying an online notary public application fee in the
444 amount of \$25.

445 (4) Submitting to the Department of State a registration
446 as an online notary public, signed and sworn to by the
447 registrant.

448 (5) Confirming in a statement that the audio-video
449 communication and identity proofing technologies the registrant
450 intends to use in performing online notarizations satisfy the

451 requirements of this chapter.

452 (6) Providing evidence satisfactory to the Executive
453 Office of the Governor that the registrant has obtained a bond,
454 payable to any individual harmed as a result of a breach of duty
455 by the registrant acting in his or her official capacity as an
456 online notary public, conditioned for the due discharge of the
457 office, in the minimum amount of \$25,000, and on such terms as
458 are specified by rule by the Department of State as reasonably
459 necessary to protect the public. The bond shall be approved and
460 filed with the Department of State and executed by a surety
461 company duly authorized to transact business in this state.
462 Compliance by a notary public with this requirement shall
463 satisfy the requirement of obtaining a bond under s. 117.01(7).

464 (7) Providing evidence satisfactory to the Executive
465 Office of the Governor that the registrant acting in his or her
466 official capacity as an online notary public is covered by an
467 errors and omissions insurance policy from an insurer authorized
468 to transact business in this state, in the minimum amount of
469 \$25,000, and on such terms as are specified by rule by the
470 Department of State as reasonably necessary to protect the
471 public.

472 117.235 Performance of notarial acts.—

473 (1) An online notary public is subject to part I of this
474 chapter to the same extent as a notary public appointed and
475 commissioned only under that part, including the provisions of

476 s. 117.021 relating to electronic notarizations.

477 (2) An online notary public may perform notarial acts as
 478 provided by part I of this chapter in addition to performing
 479 online notarizations as authorized and pursuant to the
 480 provisions of this part.

481 117.245 Electronic journal of online notarizations.-

482 (1) An online notary public shall keep a secure electronic
 483 journal of electronic records notarized by the online notary
 484 public. For each online notarization, the electronic journal
 485 entry must contain all of the following:

486 (a) Date and time of the notarization.

487 (b) Type of notarial act.

488 (c) Type, title, or description of the electronic record
 489 or proceeding.

490 (d) Printed name and address of each principal involved in
 491 the transaction or proceeding.

492 (e) Evidence of identity of each principal involved in the
 493 transaction or proceeding in any of the following forms:

494 1. Statement that the person is personally known to the
 495 online notary public.

496 2. Notation of the type of government-issued identity
 497 credential provided to the online notary public.

498 3. Copy of the government-issued identity credential
 499 provided.

500 4. Copy of any other identity credential or information

501 provided.

502 (f) Indication that the principal satisfactorily passed
503 the identity proofing.

504 (g) Indication that the government-issued identity
505 credential satisfied the credential analysis.

506 (h) The fee, if any, charged for the online notarization.

507 (2) The online notary public shall retain a copy of the
508 recording of the audio-video communication in which the:

509 (a) Principal and any witnesses appeared before the notary
510 public.

511 (b) Identity of each participant was confirmed.

512 (c) Electronic records were signed by the principal and
513 any witnesses.

514 (d) Notarial act was performed.

515 (3) The online notary public shall take reasonable steps
516 to:

517 (a) Ensure the integrity, security, and authenticity of
518 online notarizations.

519 (b) Maintain a backup record for the electronic journal
520 required by subsection (1).

521 (c) Protect the electronic journal, the backup record, and
522 any other records received by the online notary public from
523 unauthorized use.

524 (4) The electronic journal required under subsection (1)
525 and the recording of the audio-video communication required

526 under subsection (2) shall be maintained for at least 10 years
 527 after the date of the notarial act. The online notary public, a
 528 guardian of an incapacitated online notary public, or the
 529 personal representative of a deceased online notary public may,
 530 by contract with a secure repository in accordance with any
 531 rules established under this chapter, delegate to the repository
 532 the online notary public's duty to retain the required
 533 electronic journal and copies of the recordings of audio-video
 534 communications.

535 (5) An omitted or incomplete entry in the electronic
 536 journal does not impair the validity of the notarial act or the
 537 electronic record which was notarized, but may be introduced as
 538 evidence to establish violations of this chapter or as an
 539 indication of possible fraud, forgery, or impersonation or for
 540 other evidentiary purposes.

541 117.255 Use of electronic journal, signature, and seal.—An
 542 online notary public shall:

543 (1) Take reasonable steps to ensure that any registered
 544 device used to create an electronic signature is current and has
 545 not been revoked or terminated by the issuing or registering
 546 authority of the device.

547 (2) Keep the electronic journal, electronic signature, and
 548 electronic seal secure and under his or her sole control, which
 549 shall include access protection through the use of passwords or
 550 codes under control of the notary public. The online notary

551 public may not allow another person to use the online notary
552 public's electronic journal, electronic signature, or electronic
553 seal.

554 (3) Use only an electronic signature for performing online
555 notarization.

556 (4) Attach or logically associate the electronic signature
557 and seal to the electronic notarial certificate of an electronic
558 record in a manner capable of independent verification using
559 tamper-evident technology that renders any subsequent change or
560 modification to the electronic record evident.

561 (5) Immediately notify an appropriate law enforcement
562 agency and the Department of State of theft or vandalism of the
563 electronic journal, electronic signature, or electronic seal. An
564 online notary public shall immediately notify the Department of
565 State of the loss or use by another person of the online notary
566 public's electronic journal, electronic signature, or electronic
567 seal.

568 (6) Make electronic copies, upon request, of the pertinent
569 entries in the electronic journal and provide access to the
570 related audio-video communication recordings to the parties to
571 the notarized electronic records, and to the title agent,
572 settlement agent, or title insurer which engaged the online
573 notary with regard to a real estate transaction. The online
574 notary public may charge a reasonable fee for making and
575 delivering electronic copies of a given series of related

576 electronic records. Such fee must be disclosed to the requestor
577 before copies are made.

578 117.265 Online notarization procedures.-

579 (1) An online notary public physically located in this
580 state may perform an online notarization that meets the
581 requirements of this part regardless of whether the principal or
582 any witnesses are physically located in this state at the time
583 of the online notarization. A civil-law notary or a commissioner
584 of deeds registered as an online notary public may perform an
585 online notarization while located outside of this state. An
586 online notarial act performed in accordance with this chapter is
587 deemed to have been performed within this state and is governed
588 by applicable laws of this state.

589 (2) In performing an online notarization, an online notary
590 public shall confirm the identity of a principal and any witness
591 appearing online at the time that the signature is taken by
592 using audio-video communication technology and processes that
593 meet the requirements of this part and any rules adopted
594 hereunder and record the entire audio-video conference session
595 between the notary public and the principal and any subscribing
596 witnesses. A principal may not act in the capacity of a witness
597 for his or her own signature in an online notarization.

598 (3) In performing an online notarization of a principal
599 not located within this state, an online notary public shall
600 confirm that the principal desires for the notarial act to be

601 performed by a Florida online notary public and under the
602 general law of this state.

603 (4) An online notary public shall confirm the identity of
604 the principal or any witness by:

605 (a) Personal knowledge of each such individual; or

606 (b) All of the following, as the same may be refined or
607 supplemented in rules adopted pursuant to s. 117.295:

608 1. Remote presentation of a government-issued
609 identification credential by each individual.

610 2. Credential analysis of each government-issued
611 identification credential.

612 3. Identity proofing of each individual in the form of
613 knowledge-based authentication or another method of identity
614 proofing that conforms to standards of this chapter.

615

616 If the online notary public does not satisfy subparagraphs
617 (b)1.-3., or if the databases consulted for identity proofing do
618 not contain sufficient information to permit authentication, the
619 online notary public may not perform the online notarization.

620 (5) An online notary public shall take reasonable steps to
621 ensure that the audio-video communication technology used in an
622 online notarization is secure from unauthorized interception.

623 (6) An electronic notarial certificate for an online
624 notarization shall include a notation that the notarization is
625 an online notarization.

626 (7) Except where otherwise expressly provided in this
627 part, the provisions of part I of this chapter apply to an
628 online notarization and an online notary public.

629 (8) Any failure to comply with the online notarization
630 procedures of this section does not impair the validity of the
631 notarial act or the electronic record which was notarized, but
632 may be introduced as evidence to establish violations of this
633 chapter or as an indication of possible fraud, forgery, or
634 impersonation or for other evidentiary purposes. This subsection
635 in no way alters the duty of the online notary public to comply
636 with this chapter and any rules adopted hereunder.

637 117.275 Fees for online notarization.—An online notary
638 public or employer of such online notary public may charge a
639 fee, not to exceed \$25, for performing an online notarization in
640 addition to any other fees authorized under part I of this
641 chapter. Fees for services other than notarial acts are not
642 governed by this section.

643 117.285 Supervising the witnessing of electronic records.—
644 An online notary public may supervise the witnessing of
645 electronic records by the same audio-video communication
646 technology used for online notarization, as follows:

647 (1) The identity of the witness must be verified in the
648 same manner as the identity of the principal.

649 (2) The witness may be physically present with the
650 principal or remote from the principal provided the witness and

651 principal are using audio-video communication technology.

652 (3) The witness is present in either physical proximity to
653 the principal or through audio-video communication technology at
654 the time the principal affixes the electronic signature and
655 hears the principal make a statement to the effect that the
656 principal has signed the electronic record.

657 117.295 Standards for electronic and online notarization;
658 rulemaking authority.-

659 (1) The Legislature intends for the standards applicable
660 to electronic notarization under s. 117.021 and for online
661 notarization under this part to reflect future improvements in
662 technology and methods of assuring the identity of principals
663 and the security of an electronic record. The Department of
664 State, in collaboration with the Agency for State Technology,
665 may adopt rules and standards necessary to implement the
666 requirements of this chapter and such other rules and standards
667 as may be required to facilitate the integrity, security, and
668 reliability of online notarization, including education
669 requirements for online notaries public, the required terms but
670 not the amount of online notary public bonds and errors and
671 omissions insurance, standards regarding identity proofing,
672 credential analysis, unauthorized interception, remote
673 presentation, tamper-evident technology, audio-video
674 communication technology, and retention of the electronic
675 journal and copies of recordings of audio-video communications

676 in a secure repository, and may publish lists of technologies
677 that satisfy the standards and are approved for use in online
678 notarizations.

679 (2) Until such time as the Department of State adopts
680 applicable rules, identity proofing, credential analysis,
681 unauthorized interception, remote presentation, tamper-evident
682 technology, and audio-video communication technology shall be
683 governed by the following minimum standards:

684 (a) Identity proofing by means of knowledge-based
685 authentication shall have these or greater security
686 characteristics:

687 1. The principal must be presented with five or more
688 questions with a minimum of five possible answer choices per
689 question.

690 2. Each question must be drawn from a third-party provider
691 of public and proprietary data sources and be identifiable to
692 the principal's social security number or other identification
693 information, or the principal's identity and historical events
694 records.

695 3. Responses to all questions must be made within a 2-
696 minute time constraint.

697 4. The principal must answer a minimum of 80 percent of
698 the questions correctly.

699 5. The principal may be offered one additional attempt in
700 the event of a failed attempt.

701 6. During the second attempt, the principal may not be
702 presented with more than three questions from the prior attempt.

703 (b) Credential analysis must confirm that the credential
704 is valid and matches the signer's claimed identity using one or
705 more automated software or hardware processes which scan the
706 credential, including its format features, data, barcodes, or
707 other security elements.

708 (c) Tamper-evident technology requirements are deemed
709 satisfied by use of technology that renders any subsequent
710 change or modification to the electronic record evident.

711 (d) Audio-video communication technology used in
712 completing online notarizations must meet the following
713 requirements:

714 1. The signal transmission must be reasonably secure from
715 interception, access, or viewing by anyone other than the
716 participants communicating.

717 2. The technology must provide sufficient audio clarity
718 and video resolution to enable the notary public to communicate
719 with the principal and to confirm the identity of the principal
720 using identification methods described in s. 117.265.

721 (e) An online notary public is not responsible for the
722 security of the systems used by the principal or others to
723 access the online notarization session.

724 117.305 Relation to Electronic Signatures in Global and
725 National Commerce Act.—This part modifies, limits, and

726 supersedes the Electronic Signatures in Global and National
727 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
728 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
729 or authorize electronic delivery of any of the notices described
730 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

731 Section 7. Paragraph (h) of subsection (3) of section
732 28.222, Florida Statutes, is redesignated as paragraph (i), and
733 a new paragraph (h) is added to that subsection to read:

734 28.222 Clerk to be county recorder.—

735 (3) The clerk of the circuit court shall record the
736 following kinds of instruments presented to him or her for
737 recording, upon payment of the service charges prescribed by
738 law:

739 (h) Copies of any instruments originally created and
740 executed using an electronic signature, as defined in s. 695.27,
741 and certified to be a true and correct paper printout by a
742 notary public in accordance with chapter 117, if the county
743 recorder is not prepared to accept electronic documents for
744 recording electronically.

745 Section 8. Subsection (4) is added to section 92.50,
746 Florida Statutes, to read:

747 92.50 Oaths, affidavits, and acknowledgments; who may take
748 or administer; requirements.—

749 (4) DEFINITION.—As used in this section, the term "before"
750 has the same meaning as provided in s. 117.201(1).

751 Section 9. Subsection (1) of section 95.231, Florida
 752 Statutes, is amended to read:

753 95.231 Limitations where deed or will on record.—

754 (1) Five years after the recording of an instrument
 755 required to be executed in accordance with s. 689.01; 5 years
 756 after the recording of a power of attorney accompanying and used
 757 for an instrument required to be executed in accordance with s.
 758 689.01; or 5 years after the probate of a will purporting to
 759 convey real property, from which it appears that the person
 760 owning the property attempted to convey, affect, or devise it,
 761 the instrument, power of attorney, or will shall be held to have
 762 its purported effect to convey, affect, or devise, the title to
 763 the real property of the person signing the instrument, as if
 764 there had been no lack of seal or seals, witness or witnesses,
 765 defect in, failure of, or absence of acknowledgment or
 766 relinquishment of dower, in the absence of fraud, adverse
 767 possession, or pending litigation. The instrument is admissible
 768 in evidence. A power of attorney validated under this subsection
 769 shall be valid only for the purpose of effectuating the
 770 instrument with which it was recorded.

771 Section 10. Section 689.01, Florida Statutes, is amended
 772 to read:

773 689.01 How real estate conveyed.—

774 (1) No estate or interest of freehold, or for a term of
 775 more than 1 year, or any uncertain interest of, in or out of any

776 | messages, lands, tenements or hereditaments shall be created,
777 | made, granted, transferred or released in any other manner than
778 | by instrument in writing, signed in the presence of two
779 | subscribing witnesses by the party creating, making, granting,
780 | conveying, transferring or releasing such estate, interest, or
781 | term of more than 1 year, or by the party's lawfully authorized
782 | agent, unless by will and testament, or other testamentary
783 | appointment, duly made according to law; and no estate or
784 | interest, either of freehold, or of term of more than 1 year, or
785 | any uncertain interest of, in, to, or out of any messuages,
786 | lands, tenements or hereditaments, shall be assigned or
787 | surrendered unless it be by instrument signed in the presence of
788 | two subscribing witnesses by the party so assigning or
789 | surrendering, or by the party's lawfully authorized agent, or by
790 | the act and operation of law. No seal shall be necessary to give
791 | validity to any instrument executed in conformity with this
792 | section. Corporations may execute any and all conveyances in
793 | accordance with the provisions of this section or ss. 692.01 and
794 | 692.02.

795 | (2) For purposes of this chapter:

796 | (a) Any requirement that an instrument be signed in the
797 | presence of two subscribing witnesses may be satisfied by
798 | witnesses being present and electronically signing by means of
799 | audio-video communication technology that meets the requirements
800 | of part II of chapter 117 and any rules adopted thereunder.

801 (b) The act of witnessing an electronic signature is
 802 satisfied if a witness is present either in physical proximity
 803 to the principal or by audio-video communication technology at
 804 the time the principal affixes the electronic signature and
 805 hears the principal make a statement acknowledging that the
 806 principal has signed the electronic record.

807 (3) All acts of witnessing heretofore made or taken
 808 pursuant to subsection (2) are hereby validated and, upon
 809 recording, may not be denied to have provided constructive
 810 notice based on any alleged failure to have strictly complied
 811 with this section, as currently or previously in effect, or the
 812 laws governing notarization of instruments, including online
 813 notarization in this state.

814 Section 11. Subsection (1) of section 694.08, Florida
 815 Statutes, is amended to read:

816 694.08 Certain instruments validated, notwithstanding lack
 817 of seals or witnesses, or defect in acknowledgment, etc.—

818 (1) Whenever any power of attorney has been executed and
 819 delivered, or any conveyance has been executed and delivered to
 820 any grantee by the person owning the land therein described, or
 821 conveying the same in an official or representative capacity,
 822 and has, for a period of 7 years or more been spread upon the
 823 records of the county wherein the land therein described has
 824 been or was at the time situated, and one or more subsequent
 825 conveyances of said land or parts thereof have been made,

826 | executed, delivered and recorded by parties claiming under such
827 | instrument or instruments, and such power of attorney or
828 | conveyance, or the public record thereof, shows upon its face a
829 | clear purpose and intent of the person executing the same to
830 | authorize the conveyance of said land or to convey the said
831 | land, the same shall be taken and held by all the courts of this
832 | state, in the absence of any showing of fraud, adverse
833 | possession, or pending litigation, to have authorized the
834 | conveyance of, or to have conveyed, the fee simple title, or any
835 | interest therein, of the person signing such instruments, or the
836 | person in behalf of whom the same was conveyed by a person in an
837 | official or representative capacity, to the land therein
838 | described as effectively as if there had been no defect in,
839 | failure of, or absence of the acknowledgment or the certificate
840 | of acknowledgment, if acknowledged, or the relinquishment of
841 | dower, and as if there had been no lack of the word "as"
842 | preceding the title of the person conveying in an official or
843 | representative capacity, of any seal or seals, or of any witness
844 | or witnesses, and shall likewise be taken and held by all the
845 | courts of this state to have been duly recorded so as to be
846 | admissible in evidence;

847 | Section 12. Section 695.03, Florida Statutes, is amended
848 | to read:

849 | 695.03 Acknowledgment and proof; validation of certain
850 | acknowledgments; legalization or authentication before foreign

851 officials.—To entitle any instrument concerning real property to
 852 be recorded, the execution must be acknowledged by the party
 853 executing it, proved by a subscribing witness to it, or
 854 legalized or authenticated by a civil-law notary or notary
 855 public who affixes her or his official seal, before the officers
 856 and in the form and manner following:

857 (1) WITHIN THIS STATE.—An acknowledgment or proof made by
 858 a person located within this state may be made before a judge,
 859 clerk, or deputy clerk of any court; a United States
 860 commissioner or magistrate; any ~~or a~~ notary public or civil-law
 861 notary of this state; or any notary public of another state
 862 located in such other state and authorized to perform remote
 863 notarial acts by audio-video communication under the laws of
 864 that state;~~7~~ and the certificate of acknowledgment or proof must
 865 be under the seal of the court or officer, as the case may be.
 866 If the acknowledgment or proof is made before a notary public
 867 who does not affix a seal, the notary public may type, print, or
 868 write by hand on the instrument, "I am a Notary Public of the
 869 State of ...(state)..., and my commission expires on
 870 ...(date)...." ~~All affidavits and acknowledgments heretofore~~
 871 ~~made or taken in this manner are hereby validated.~~

872 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED
 873 STATES.—An acknowledgment or proof made by a person located
 874 outside ~~out~~ of this state but within the United States may be
 875 made before an online notary public of this state who is located

876 within this state, in compliance with part II of chapter 117; a
877 civil-law notary of this state or a commissioner of deeds
878 appointed by the Governor of this state; a judge or clerk of any
879 court of the United States or of any state, territory, or
880 district; a United States commissioner or magistrate; or any a
881 notary public, justice of the peace, master in chancery, or
882 registrar or recorder of deeds of any state, territory, or
883 district having a seal, and the certificate of acknowledgment or
884 proof must be under the seal of the court or officer, as the
885 case may be. If the acknowledgment or proof is made before a
886 notary public who does not affix a seal, it is sufficient for
887 the notary public to type, print, or write by hand on the
888 instrument, "I am a Notary Public of the State of ...(state)...,
889 and my commission expires on ...(date)...."

890 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
891 COUNTRIES.~~An If the~~ acknowledgment, affidavit, oath,
892 legalization, authentication, or proof is made by a person
893 located outside of the United States or in a foreign country, it
894 may be made before an online notary public of this state who is
895 located within this state, in compliance with part II of chapter
896 117, or a commissioner of deeds appointed by the Governor of
897 this state to act in such country; before any notary public of
898 another state located in such other state and authorized to
899 perform remote notarial acts by audio-video communication under
900 the laws of that other state; before any a notary public of such

901 foreign country or a civil-law notary of this state or of such
902 foreign country who has an official seal; before an ambassador,
903 envoy extraordinary, minister plenipotentiary, minister,
904 commissioner, charge d'affaires, consul general, consul, vice
905 consul, consular agent, or other diplomatic or consular officer
906 of the United States appointed to reside in such country; or
907 before a military or naval officer authorized by 10 U.S.C. s.
908 1044(a) ~~the Laws or Articles of War of the United States~~ to
909 perform the duties of notary public, and the certificate of
910 acknowledgment, legalization, authentication, or proof must be
911 under the seal of the officer. A certificate legalizing or
912 authenticating the signature of a person executing an instrument
913 concerning real property and to which a civil-law notary or
914 notary public of that country has affixed her or his official
915 seal is sufficient as an acknowledgment. For the purposes of
916 this section, the term "civil-law notary" means a civil-law
917 notary as defined in chapter 118 or an official of a foreign
918 country who has an official seal and who is authorized to make
919 legal or lawful the execution of any document in that
920 jurisdiction, in which jurisdiction the affixing of her or his
921 official seal is deemed proof of the execution of the document
922 or deed in full compliance with the laws of that jurisdiction.

923 (4) The affixing of the official seal or the electronic
924 equivalent thereof under s. 117.021 or other applicable law,
925 including part II of chapter 117, conclusively establishes that

926 the acknowledgment or proof was made in full compliance with the
927 laws of this state or, as applicable, the laws of the other
928 state, or of the foreign country governing remote notarial acts.
929 All affidavits, oaths, acknowledgments, legalizations,
930 authentications, or proofs made or taken in any of the manners
931 in subsections (1), (2), or (3) are validated and upon recording
932 shall not be denied to have provided constructive notice based
933 on any alleged failure to have strictly complied with this
934 section, as currently or previously in effect, or the laws
935 governing notarization of instruments.

936 (5) For purposes of this section, the term "before" has
937 the meaning as provided in s. 117.201(1).

938
939 ~~All affidavits, legalizations, authentications, and~~
940 ~~acknowledgments heretofore made or taken in the manner set forth~~
941 ~~above are hereby validated.~~

942 Section 13. Section 695.04, Florida Statutes, is amended
943 to read:

944 695.04 Requirements of certificate.—The certificate of the
945 officer before whom the acknowledgment or proof is taken, except
946 for a certificate legalizing or authenticating the signature of
947 a person executing an instrument concerning real property
948 pursuant to s. 695.03(3), shall contain and set forth
949 substantially the matter required to be done or proved to make
950 such acknowledgment or proof effectual as set forth in s.

951 117.05.

952 Section 14. Section 695.05, Florida Statutes, is amended
953 to read:

954 695.05 Certain defects cured as to acknowledgments and
955 witnesses.—All deeds, conveyances, bills of sale, mortgages or
956 other transfers of real or personal property within the limits
957 of this state, heretofore or hereafter made and received bona
958 fide and upon good consideration by any corporation, and
959 acknowledged for record by ~~before~~ some officer, stockholder or
960 other person interested in the corporation, grantee, or
961 mortgagee as a notary public or other officer authorized to take
962 acknowledgments of instruments for record within this state,
963 shall be held, deemed and taken as valid as if acknowledged by
964 the proper notary public or other officer authorized to take
965 acknowledgments of instruments for record in this state not so
966 interested in said corporation, grantee or mortgagee; and said
967 instrument whenever recorded shall be deemed notice to all
968 persons; provided, however, that this section shall not apply to
969 any instrument heretofore made, the validity of which shall be
970 contested by suit commenced within 1 year of the effective date
971 of this law.

972 Section 15. Section 695.28, Florida Statutes, is amended
973 to read:

974 695.28 Validity of recorded electronic documents.—

975 (1) A document that is otherwise entitled to be recorded

976 and that was or is submitted to the clerk of the court or county
977 recorder by electronic or other means and accepted for
978 recordation is deemed validly recorded and provides notice to
979 all persons notwithstanding:

980 (a) That the document was received and accepted for
981 recordation before the Department of State adopted standards
982 implementing s. 695.27; ~~or~~

983 (b) Any defects in, deviations from, or the inability to
984 demonstrate strict compliance with any statute, rule, or
985 procedure relating to electronic signatures, electronic
986 witnesses, electronic notarization, online notarization, or for
987 submitting or recording to submit or record an electronic
988 document in effect at the time the electronic document was
989 executed or was submitted for recording;

990 (c) That the document was signed, witnessed, or notarized
991 electronically or that witnessing or notarization may have been
992 done outside the physical presence of the notary public or
993 principal; or

994 (d) That the document recorded was a certified printout of
995 a document to which one or more electronic signatures have been
996 affixed.

997 (2) This section does not alter the duty of the clerk or
998 recorder to comply with s. 28.222 or s. 695.27 or rules adopted
999 pursuant to those sections ~~that section~~.

1000 (3) This section does not preclude a challenge to the

1001 validity or enforceability of an instrument or electronic record
1002 based upon fraud, forgery, impersonation, duress, undue
1003 influence, minority, illegality, unconscionability, or any other
1004 basis not in the nature of those matters described in subsection
1005 (1).

1006 Section 16. Subsection (1) of section 709.2202, Florida
1007 Statutes, is amended to read:

1008 709.2202 Authority that requires separate signed
1009 enumeration.—

1010 (1) Notwithstanding s. 709.2201, an agent may exercise the
1011 following authority in this subsection only if the principal
1012 signed or initialed next to each specific enumeration of the
1013 authority, the exercise of the authority is consistent with the
1014 agent's duties under s. 709.2114, the power of attorney was
1015 witnessed and notarized in person without the use of online
1016 witnessing of electronic records pursuant to s. 117.285 or
1017 online notarization under part II of chapter 117, and the
1018 exercise is not otherwise prohibited by another agreement or
1019 instrument. A power of attorney or any authority granted therein
1020 to an agent, including where such authority is witnessed and
1021 notarized online through the use of online witnessing of
1022 electronic records pursuant to s. 117.285 or online notarization
1023 under part II of chapter 117, is not affected by this section
1024 except that a power of attorney or other authority notarized and
1025 witnessed is not effective to grant powers pursuant to the

1026 following:

1027 (a) Create an inter vivos trust;

1028 (b) With respect to a trust created by or on behalf of the
 1029 principal, amend, modify, revoke, or terminate the trust, but
 1030 only if the trust instrument explicitly provides for amendment,
 1031 modification, revocation, or termination by the settlor's agent;

1032 (c) Make a gift, subject to subsection (4);

1033 (d) Create or change rights of survivorship;

1034 (e) Create or change a beneficiary designation;

1035 (f) Waive the principal's right to be a beneficiary of a
 1036 joint and survivor annuity, including a survivor benefit under a
 1037 retirement plan; or

1038 (g) Disclaim property and powers of appointment.

1039 Section 17. Subsection (5) of section 117.209, Florida
 1040 Statutes, is repealed effective July 1, 2020.

1041 Section 18. Subsection (3) of section 117.215, Florida
 1042 Statutes, is repealed effective July 1, 2020.

1043 Section 19. This act shall take effect January 1, 2019.