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1
 2 An act relating to notaries public; amending s.
 3 117.021, F.S.; providing that a notary public is
 4 entitled to select particular technology in performing
 5 a notarial act with respect to an electronic record;
 6 authorizing a notary public's contract or employer to
 7 require the use of a particular technology in
 8 performing a notarial act with respect to an
 9 electronic record; amending s. 117.05, F.S.; revising
 10 the limitations on notary public fees; amending s.
 11 117.201, F.S.; revising definitions; amending s.
 12 117.225, F.S.; revising certain registration
 13 requirements for online notaries public; creating s.
 14 117.231, F.S.; authorizing notaries public to use
 15 audio-video communication technology to remotely swear
 16 in individuals who testify under certain
 17 circumstances; authorizing notaries public to use
 18 audio-video communication technology to remotely swear
 19 in new attorneys admitted to The Florida Bar;
 20 requiring consent from individuals being sworn in if
 21 audio-video communication technology is used under
 22 certain circumstances; providing that notaries public
 23 who use audio-video communication technology under
 24 certain circumstances are not required to meet
 25 specified requirements; amending s. 117.245, F.S.;

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26 | modifying requirements for entries in the electronic
27 | journal maintained by an online notary public;
28 | requiring a remote online notarization service
29 | provider, rather than an online notary public, to
30 | retain audio-video communication recordings of online
31 | notarizations; authorizing a RON service provider to
32 | delegate this duty to a secure repository under
33 | certain conditions; conforming provisions to changes
34 | made by the act; amending s. 117.255, F.S.; revising
35 | provisions governing access to audio-video
36 | communication recordings to conform to changes made by
37 | the act; authorizing a remote online notarization
38 | service provider to charge a fee for access to such
39 | recordings, subject to specified limitations; amending
40 | s. 117.265, F.S.; providing that an online notary
41 | public is entitled to select his or her remote online
42 | notarization service provider; authorizing a notary
43 | public's contract or employer to require the use of a
44 | particular remote online notarization service provider
45 | in performing online notarizations; requiring an
46 | online notary public to notify the Department of State
47 | of the effective date of a change in the remote online
48 | notarization service provider used; amending s.
49 | 117.275, F.S.; providing limitations on fees charged
50 | for online notarizations; amending s. 117.295, F.S.;

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51 requiring the department to publish on its website a
 52 list containing certain information on online notaries
 53 public; requiring a remote online notarization service
 54 provider to file a self-certification with the
 55 department; specifying the duration of a self-
 56 certification; requiring the department to publish on
 57 its website a list containing certain information on
 58 self-certified remote online notarization service
 59 providers; prohibiting a remote online notarization
 60 service provider from using, selling, or offering to
 61 sell or transfer personal information obtained in the
 62 course of performing online notarizations; providing
 63 exceptions; providing an effective date.

64
 65 Be It Enacted by the Legislature of the State of Florida:

66
 67 Section 1. Subsection (4) of section 117.021, Florida
 68 Statutes, is amended to read:

69 117.021 Electronic notarization.—

70 (4) A notary public performing a notarial act with respect
 71 to an electronic record shall select the technology to be used
 72 for such notarial act. A person may not require the ~~a~~ notary
 73 public to use a particular ~~perform a notarial act with respect~~
 74 ~~to an electronic record with a form of~~ technology; however, if
 75 the notary public is required by his or her contract or employer

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76 | to perform notarial acts with respect to electronic records, the
 77 | contract or employer may require the use of a particular
 78 | technology for those notarial acts ~~that the notary public has~~
 79 | ~~not selected to use.~~

80 | Section 2. Paragraph (a) of subsection (2) of section
 81 | 117.05, Florida Statutes, is amended to read:

82 | 117.05 Use of notary commission; unlawful use; notary fee;
 83 | seal; duties; employer liability; name change; advertising;
 84 | photocopies; penalties.—

85 | (2) (a) The fee of a notary public may not exceed \$10 for
 86 | any one notarial act under this part, except as provided in s.
 87 | 117.045 or s. 117.275.

88 | Section 3. Subsections (6) and (14) of section 117.201,
 89 | Florida Statutes, are amended to read:

90 | 117.201 Definitions.—As used in this part, the term:

91 | (6) "Government-issued identification credential" means
 92 | any approved credential for verifying identity under s.
 93 | 117.05(5)(b)2. However, for an online notarization of a
 94 | principal not located within the United States, a passport
 95 | issued by a foreign government not including the stamp of the
 96 | United States Bureau of Citizenship and Immigration Services may
 97 | be used as a government-issued identification credential to
 98 | verify the principal's identity.

99 | (14) "Remote Online Notarization service provider" or "RON
 100 | service provider" means a person that provides audio-video

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101 communication technology and related processes, services,
 102 software, data storage, or other services to online notaries
 103 public for the purpose of directly facilitating their
 104 performance of online notarizations, in compliance with the
 105 requirements of this chapter and any rules adopted by the
 106 Department of State pursuant to s. 117.295.

107 Section 4. Subsections (1) and (5) of section 117.225,
 108 Florida Statutes, are amended to read:

109 117.225 Registration; qualifications.—A notary public, a
 110 civil-law notary appointed under chapter 118, or a commissioner
 111 of deeds appointed under part IV of chapter 721 may complete
 112 registration as an online notary public with the Department of
 113 State by:

114 (1) Holding a current commission as a notary public under
 115 part I of this chapter, an appointment as a civil-law notary
 116 under chapter 118, or an appointment as a commissioner of deeds
 117 under part IV of chapter 721, and submitting his or her ~~a copy~~
 118 ~~of such~~ commission or ~~proof of such~~ number ~~with his~~
 119 ~~or her~~ registration.

120 (5) Identifying the RON service provider or providers
 121 whose audio-video communication technology and processes for
 122 credential analysis and identity-proofing technologies the
 123 registrant intends to use for online notarizations, ~~and~~
 124 ~~confirming that such technology and processes satisfy the~~
 125 ~~requirements of this chapter and any rules adopted by the~~

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126 ~~Department of State pursuant to s. 117.295.~~

127 Section 5. Section 117.231, Florida Statutes, is created
128 to read:

129 117.231 Remote administration of certain oaths.—

130 (1) When taking the oath of an individual who is
131 testifying at any court proceeding, deposition, arbitration, or
132 public hearing and who is outside of the physical presence of
133 the notary public, the notary public may fulfill the
134 requirements of s. 117.05 using audio-video communication
135 technology.

136 (2) When taking an oath of admission to The Florida Bar
137 from an individual who is outside of the physical presence of
138 the notary public, the notary public may fulfill the
139 requirements of s. 117.05 using audio-video communication
140 technology.

141 (3) If an individual is located outside of this state at
142 the time the notary public is to take the individual's oath
143 under this section, consent from the individual must be obtained
144 to take his or her oath using audio-video communication
145 technology pursuant to this section.

146 (4) When taking an oath under this section, the notary
147 public is not required to be an online notary public or to use a
148 RON service provider.

149 Section 6. Subsections (1), (2), (4), and (5) of section
150 117.245, Florida Statutes, are amended to read:

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151 117.245 Electronic journal of online notarizations.—
 152 (1) An online notary public shall keep one or more secure
 153 electronic journals of online notarizations performed by the
 154 online notary public. For each online notarization, the
 155 electronic journal entry must contain all of the following:
 156 (a) The date and time of the notarization.
 157 (b) The type of notarial act performed, whether an oath or
 158 acknowledgment.
 159 (c) The type, the title, or a description of the
 160 electronic record or proceeding.
 161 (d) The name and address of each principal involved in the
 162 transaction or proceeding.
 163 (e) Evidence of identity of each principal involved in the
 164 transaction or proceeding in either ~~any~~ of the following forms:
 165 1. A statement that the person is personally known to the
 166 online notary public; or—
 167 2.a. A notation of the type of government-issued
 168 identification credential provided to the online notary public;
 169 b. An indication that the government-issued identification
 170 credential satisfied the credential analysis; and—
 171 c.(f) An indication that the principal satisfactorily
 172 passed the identity proofing.
 173 ~~(g) An indication that the government-issued~~
 174 ~~identification credential satisfied the credential analysis.~~
 175 (f)(h) The fee, if any, charged for the notarization.

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176 (2) The RON service provider ~~online notary public~~ shall
 177 retain an uninterrupted and unedited copy of the recording of
 178 the audio-video communication in which an online notarization is
 179 performed. The online notary public shall ensure that the
 180 recording includes ~~must include~~ all of the following:

181 (a) Appearance by the principal and any witness before the
 182 online notary public.

183 (b) Confirmation of the identity of the principal and any
 184 witness.

185 (c) A general description or identification of the records
 186 to be signed.

187 (d) At the commencement of the recording, recitation by
 188 the online notary public of information sufficient to identify
 189 the notarial act.

190 (e) A declaration by the principal that his or her
 191 signature on the record is knowingly and voluntarily made.

192 (f) All of the actions and spoken words of the principal,
 193 notary public, and any required witness during the entire online
 194 notarization, including the signing of any records before the
 195 online notary public.

196 (4) The electronic journal required under subsection (1)
 197 and the recordings of audio-video communications required under
 198 subsection (2) shall be maintained for at least 10 years after
 199 the date of the notarial act. However, a full copy of the
 200 recording of the audio-video communication required under

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201 subsection (2) relating to an online notarization session that
202 involves the signing of an electronic will must be maintained by
203 a qualified custodian in accordance with chapters 731 and 732.
204 The Department of State maintains jurisdiction over the
205 electronic journal and audio-video communication recordings to
206 investigate notarial misconduct for a period of 10 years after
207 the date of the notarial act. The online notary public, a
208 guardian of an incapacitated online notary public, or the
209 personal representative of a deceased online notary public may,
210 by contract with a secure repository in accordance with any
211 rules established under this chapter, delegate to the repository
212 the online notary public's duty to retain the electronic journal
213 ~~and the required recordings of audio-video communications,~~
214 provided that the Department of State is notified of such
215 delegation of retention duties to the repository within 30 days
216 thereafter, including the effective date of the delegation and
217 the address and contact information for the repository. If an
218 online notary public delegates to a secure repository under this
219 section, the online notary public shall make an entry in his or
220 her electronic journal identifying such repository, and provide
221 notice to the Department of State as required in this
222 subsection. A RON service provider may, by contract with a
223 secure repository in accordance with any rules established under
224 this chapter, delegate to the repository the RON service
225 provider's duty to retain the required recordings of audio-video

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226 | communications, provided that the Department of State is
 227 | notified of such delegation of retention duties to the
 228 | repository within 30 days thereafter, including the effective
 229 | date of the delegation and the address and contact information
 230 | for the repository. During any delegation under this subsection,
 231 | the secure repository shall fulfill the responsibilities of the
 232 | online notary public or RON service provider to provide copies
 233 | or access under s. 117.255(2) and (3).

234 | (5) An omitted or incomplete entry in the electronic
 235 | journal does not impair the validity of the notarial act or of
 236 | the electronic record which was notarized, but may be introduced
 237 | as evidence to establish violations of this chapter; as evidence
 238 | of possible fraud, forgery, impersonation, duress, incapacity,
 239 | undue influence, minority, illegality, or unconscionability; or
 240 | for other evidentiary purposes. However, if the recording of the
 241 | audio-video communication required under subsection (2) relating
 242 | to the online notarization of the execution of an electronic
 243 | will cannot be produced by the RON service provider, the online
 244 | notary public, or the qualified custodian, the electronic will
 245 | shall be treated as a lost or destroyed will subject to s.
 246 | 733.207.

247 | Section 7. Section 117.255, Florida Statutes, is amended
 248 | to read:

249 | 117.255 Use of electronic journal, signature, and seal.—

250 | (1) An online notary public shall:

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251 (a)~~(1)~~ Take reasonable steps to ensure that any registered
252 device used to create an electronic seal is current and has not
253 been revoked or terminated by the issuing or registering
254 authority of the device.

255 (b)~~(2)~~ Keep the electronic journal and electronic seal
256 secure and under his or her sole control, which includes access
257 protection using passwords or codes under control of the online
258 notary public. The online notary public may not allow another
259 person to use the online notary public's electronic journal,
260 electronic signature, or electronic seal, other than a RON
261 service provider or other authorized person providing services
262 to an online notary public to facilitate performance of online
263 notarizations.

264 (c)~~(3)~~ Attach or logically associate the electronic
265 signature and seal to the electronic notarial certificate of an
266 electronic record in a manner that is capable of independent
267 verification using tamper-evident technology that renders any
268 subsequent change or modification to the electronic record
269 evident.

270 (d)~~(4)~~ Notify an appropriate law enforcement agency and
271 the Department of State of any unauthorized use of or compromise
272 to the security of the electronic journal, official electronic
273 signature, or electronic seal within 7 days after discovery of
274 such unauthorized use or compromise to security.

275 (2)~~(5)~~ An online notary public shall provide Make

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276 | electronic copies, ~~upon request,~~ of the pertinent entries in the
 277 | electronic journal, and a RON service provider shall provide
 278 | access to the related audio-video communication recordings, or a
 279 | copy thereof, to the following persons upon request:

280 | (a) The parties to an electronic record notarized by the
 281 | online notary public;

282 | (b) The qualified custodian of an electronic will
 283 | notarized by the online notary public;

284 | (c) The title agent, settlement agent, or title insurer
 285 | who insured the electronic record or engaged the online notary
 286 | public with regard to a real estate transaction;

287 | ~~(d) The online notary public's RON service provider whose~~
 288 | ~~services were used by the online notary public to notarize the~~
 289 | ~~electronic record;~~

290 | ~~(e)~~ Any person who is asked to accept a power of attorney
 291 | that was notarized by the online notary public;

292 | (e) ~~(f)~~ The Department of State pursuant to a notary
 293 | misconduct investigation; ~~and~~

294 | (f) ~~(g)~~ Any other persons pursuant to a subpoena, court
 295 | order, law enforcement investigation, or other lawful inspection
 296 | demand;

297 | (g) With respect to audio-video communication recordings
 298 | of an online notarization, the online notary public performing
 299 | that notarization; and

300 | (h) With respect to electronic copies of pertinent entries

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301 in the electronic journal, the RON service provider used for the
 302 online notarizations associated with those entries.

303 (3)~~(6)~~ The online notary public may charge a fee not to
 304 exceed \$20 per transaction record for making and delivering
 305 electronic copies of a given series of related electronic
 306 records, and a RON service provider may charge a fee not to
 307 exceed \$20 for providing access to, or a copy of, the related
 308 audio-video communication records, except such copies or access
 309 must be provided without charge if requested by any of the
 310 following within the 10-year period specified in s. 117.245(4):

311 (a) A party to the electronic record;

312 (b) In a real estate transaction, the title agent,
 313 settlement agent, or title insurer who insured the electronic
 314 record or engaged the online notary public with regard to such
 315 transaction; ~~or~~

316 (c) The Department of State pursuant to an investigation
 317 relating to the official misconduct of an online notary public;

318 (d) The qualified custodian of an electronic will
 319 notarized by the online notary public;

320 (e) With respect to audio-video communication recordings
 321 of an online notarization, the online notary public performing
 322 that notarization; or

323 (f) With respect to electronic copies of a given series of
 324 related electronic records, the RON service provider used for
 325 the online notarization of those records.

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 327 If the online notary public or RON service provider charges ~~does~~
 328 ~~charge~~ a fee, the online notary public or RON service provider
 329 must shall disclose the amount of such fee to the requester
 330 before making the electronic copies or providing access to, or
 331 making a copy of, the requested audio-video communication
 332 recordings.

333 Section 8. Subsection (5) of section 117.265, Florida
 334 Statutes, is amended to read:

335 117.265 Online notarization procedures.—

336 (5) (a) An online notary public shall select the RON
 337 service provider to be used to perform an online notarization,
 338 and a person may not require the online notary public to use a
 339 particular RON service provider; however, if the online notary
 340 public is required by his or her contract or employer to perform
 341 online notarizations, the contract or employer may require the
 342 use of a particular RON service provider for those online
 343 notarizations.

344 (b) An online notary public may change his or her RON
 345 service provider or providers from time to time, but shall
 346 notify the Department of State of such change, and its effective
 347 date, within 30 days thereafter.

348 Section 9. Section 117.275, Florida Statutes, is amended
 349 to read:

350 117.275 Fees for online notarization.—An online notary

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351 public or the employer of such online notary public may charge a
352 fee, not to exceed \$25, for performing an online notarial act
353 ~~notarization~~ under this part. Fees for services other than
354 notarial acts, including the services of a RON service provider,
355 are not governed by this section. A RON service provider's
356 services are also not considered closing services, as defined in
357 s. 627.7711, and a fee for those services may be separately
358 charged.

359 Section 10. Subsections (2) and (4) of section 117.295,
360 Florida Statutes, are amended, and subsection (8) is added to
361 that section, to read:

362 117.295 Standards for electronic and online notarization;
363 rulemaking authority.—

364 (2) ~~By January 1, 2020,~~ The Department of State shall:

365 (a) Adopt forms, processes, and ~~interim or emergency~~ rules
366 necessary to accept applications from and register online
367 notaries public pursuant to s. 117.225.

368 (b) Publish on its website a list containing each online
369 notary public, the online notary public's RON service providers
370 from January 1, 2022, and thereafter, the effective dates during
371 which the online notary public used each RON service provider,
372 as identified pursuant to ss. 117.225(5) and 117.265(5)(b), any
373 secure repositories to which the online notary public may have
374 delegated his or her duties pursuant to s. 117.245(4) from
375 January 1, 2022, and thereafter, and the effective dates of that

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376 | delegation.

377 | (4) (a) A RON service provider must file a self-
378 | certification with the Department of State, on a form adopted by
379 | department rule, confirming that its audio-video communication
380 | technology and related processes, services, software, data
381 | storage, or other services provided to online notaries public
382 | for the purpose of directly facilitating their performance of
383 | online notarizations satisfy the requirements of this chapter
384 | and any rules adopted by the Department of State pursuant to
385 | this section. Each certification shall remain active for a
386 | period of 1 year after the date of filing. The Department of
387 | State must publish on its website a list of each RON service
388 | provider that has filed a self-certification, the date of filing
389 | of the self-certification, any secure repositories to which the
390 | RON service provider may have delegated its duties pursuant to
391 | s. 117.245(4) from January 1, 2022, and thereafter, and the
392 | effective dates of that delegation.

393 | (b) A RON service provider is deemed to have satisfied
394 | tamper-evident technology requirements by use of technology that
395 | renders any subsequent change or modification to the electronic
396 | record evident.

397 | (8) A RON service provider may not use, sell, or offer to
398 | sell or transfer to another person for use or sale any personal
399 | information obtained under this part which identifies a
400 | principal, a witness, or a person named in a record presented

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401 for online notarization, except:

402 (a) As necessary to facilitate performance of a notarial
403 act;

404 (b) To administer or process a record provided by or on
405 behalf of a principal or the transaction of which the record is
406 a part;

407 (c) To detect fraud, identity theft, or other criminal
408 activities;

409 (d) In accordance with this part and the rules adopted
410 pursuant to this part or any other applicable federal, state, or
411 local law, or to comply with a lawful subpoena or court order or
412 a lawful request from a law enforcement or regulatory agency;

413 (e) To monitor and improve the audio-video communication
414 technology and related processes, services, software, data
415 storage, or other services offered by the RON service provider
416 to online notaries public for the purpose of directly
417 facilitating their performance of online notarizations; or

418 (f) In connection with a proposed or actual sale, merger,
419 transfer, or exchange of all or a portion of a business or
420 operating unit of a RON service provider, or the dissolution,
421 insolvency, or cessation of operations of a business or
422 operating unit, if limited to such personal information held by
423 that business or unit and any transferee agrees to comply with
424 the restrictions set forth in this subsection.

425 Section 11. This act shall take effect January 1, 2022.