

## CHAPTER 2021-137

### Committee Substitute for House Bill No. 121

An act relating to notaries public; amending s. 117.021, F.S.; providing that a notary public is entitled to select particular technology in performing a notarial act with respect to an electronic record; authorizing a notary public's contract or employer to require the use of a particular technology in performing a notarial act with respect to an electronic record; amending s. 117.05, F.S.; revising the limitations on notary public fees; amending s. 117.201, F.S.; revising definitions; amending s. 117.225, F.S.; revising certain registration requirements for online notaries public; creating s. 117.231, F.S.; authorizing notaries public to use audio-video communication technology to remotely swear in individuals who testify under certain circumstances; authorizing notaries public to use audio-video communication technology to remotely swear in new attorneys admitted to The Florida Bar; requiring consent from individuals being sworn in if audio-video communication technology is used under certain circumstances; providing that notaries public who use audio-video communication technology under certain circumstances are not required to meet specified requirements; amending s. 117.245, F.S.; modifying requirements for entries in the electronic journal maintained by an online notary public; requiring a remote online notarization service provider, rather than an online notary public, to retain audio-video communication recordings of online notarizations; authorizing a RON service provider to delegate this duty to a secure repository under certain conditions; conforming provisions to changes made by the act; amending s. 117.255, F.S.; revising provisions governing access to audio-video communication recordings to conform to changes made by the act; authorizing a remote online notarization service provider to charge a fee for access to such recordings, subject to specified limitations; amending s. 117.265, F.S.; providing that an online notary public is entitled to select his or her remote online notarization service provider; authorizing a notary public's contract or employer to require the use of a particular remote online notarization service provider in performing online notarizations; requiring an online notary public to notify the Department of State of the effective date of a change in the remote online notarization service provider used; amending s. 117.275, F.S.; providing limitations on fees charged for online notarizations; amending s. 117.295, F.S.; requiring the department to publish on its website a list containing certain information on online notaries public; requiring a remote online notarization service provider to file a self-certification with the department; specifying the duration of a self-certification; requiring the department to publish on its website a list containing certain information on self-certified remote online notarization service providers; prohibiting a remote online notarization service provider from using, selling, or offering to sell or transfer personal information obtained in the course of performing online notarizations; providing exceptions; providing an effective date.

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

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

117.021 Electronic notarization.—

(4) A notary public performing a notarial act with respect to an electronic record shall select the technology to be used for such notarial act. A person may not require the a notary public to use a particular perform a notarial act with respect to an electronic record with a form of technology; however, if the notary public is required by his or her contract or employer to perform notarial acts with respect to electronic records, the contract or employer may require the use of a particular technology for those notarial acts that the notary public has not selected to use.

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

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

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

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

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

(6) “Government-issued identification credential” means any approved credential for verifying identity under s. 117.05(5)(b)2. However, for an online notarization of a principal not located within the United States, a passport issued by a foreign government not including the stamp of the United States Bureau of Citizenship and Immigration Services may be used as a government-issued identification credential to verify the principal’s identity.

(14) “Remote Online Notarization service provider” or “RON service provider” means a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations, in compliance with the requirements of this chapter and any rules adopted by the Department of State pursuant to s. 117.295.

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

117.225 Registration; qualifications.—A notary public, a civil-law notary appointed under chapter 118, or a commissioner of deeds appointed under

part IV of chapter 721 may complete registration as an online notary public with the Department of State by:

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

(5) Identifying the RON service provider or providers whose audio-video communication technology and processes for credential analysis and identity-proofing technologies the registrant intends to use for online notarizations, ~~and confirming that such technology and processes satisfy the requirements of this chapter and any rules adopted by the Department of State pursuant to s. 117.295.~~

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

117.231 Remote administration of certain oaths.—

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

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

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

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

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

117.245 Electronic journal of online notarizations.—

(1) An online notary public shall keep one or more secure electronic journals of online notarizations performed by the online notary public. For each online notarization, the electronic journal entry must contain all of the following:

(a) The date and time of the notarization.

(b) The type of notarial act performed, whether an oath or acknowledgment.

(c) The type, the title, or a description of the electronic record or proceeding.

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

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

1. A statement that the person is personally known to the online notary public; ~~or-~~

2.a. A notation of the type of government-issued identification credential provided to the online notary public;

b. An indication that the government-issued identification credential satisfied the credential analysis; and-

~~c.(f)~~ An indication that the principal satisfactorily passed the identity proofing.

~~(g) An indication that the government-issued identification credential satisfied the credential analysis.~~

~~(f)(h)~~ The fee, if any, charged for the notarization.

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

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

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

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

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

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

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

(4) The electronic journal required under subsection (1) and the recordings of audio-video communications required under subsection (2) shall be maintained for at least 10 years after the date of the notarial act. However, a full copy of the recording of the audio-video communication required under subsection (2) relating to an online notarization session that involves the signing of an electronic will must be maintained by a qualified custodian in accordance with chapters 731 and 732. The Department of State maintains jurisdiction over the electronic journal and audio-video communication recordings to investigate notarial misconduct for a period of 10 years after the date of the notarial act. The online notary public, a guardian of an incapacitated online notary public, or the personal representative of a deceased online notary public may, by contract with a secure repository in accordance with any rules established under this chapter, delegate to the repository the online notary public's duty to retain the electronic journal ~~and the required recordings of audio-video communications~~, provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository. If an online notary public delegates to a secure repository under this section, the online notary public shall make an entry in his or her electronic journal identifying such repository, and provide notice to the Department of State as required in this subsection. A RON service provider may, by contract with a secure repository in accordance with any rules established under this chapter, delegate to the repository the RON service provider's duty to retain the required recordings of audio-video communications, provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository. During any delegation under this subsection, the secure repository shall fulfill the responsibilities of the online notary public or RON service provider to provide copies or access under s. 117.255(2) and (3).

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

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

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

(1) An online notary public shall:

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

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

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

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

(2)(5) An online notary public shall provide ~~Make~~ electronic copies, ~~upon request,~~ of the pertinent entries in the electronic journal, and a RON service provider shall provide access to the related audio-video communication recordings, or a copy thereof, to the following persons upon request:

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

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

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

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

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

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

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

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

(h) With respect to electronic copies of pertinent entries in the electronic journal, the RON service provider used for the online notarizations associated with those entries.

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

(a) A party to the electronic record;

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

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

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

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

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

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

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

117.265 Online notarization procedures.—

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Approved by the Governor June 21, 2021.

Filed in Office Secretary of State June 21, 2021.