

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. 695.09, F.S.; conforming a provision to
 52 changes made by the act; amending s. 695.28, F.S.;
 53 providing for validity of recorded documents;
 54 conforming provisions to changes made by the act;
 55 providing an effective date.

56
 57 Be It Enacted by the Legislature of the State of Florida:
 58

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

63 Section 2. Subsection (1) of section 117.01, Florida
 64 Statutes, is amended to read:

65 117.01 Appointment, application, suspension, revocation,
 66 application fee, bond, and oath.—

67 (1) The Governor may appoint as many notaries public as he
 68 or she deems necessary, each of whom shall be at least 18 years
 69 of age and a legal resident of the state. A permanent resident
 70 alien may apply and be appointed and shall file with his or her
 71 application a recorded Declaration of Domicile. The residence
 72 required for appointment must be maintained throughout the term
 73 of appointment. Notaries public shall be appointed for 4 years
 74 and may only ~~shall~~ use and exercise the office of notary public
 75 if he or she is within the boundaries of this state. An

76 applicant must be able to read, write, and understand the
 77 English language.

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

83 117.021 Electronic notarization.—

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

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

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

92 (6)(5) The Department of State, in collaboration with the
 93 Agency for State Technology, may adopt rules to ensure the
 94 security, reliability, and uniformity of signatures and seals
 95 authorized in this section.

96 Section 4. Subsection (1), paragraph (a) of subsection
 97 (2), paragraphs (a) and (c) of subsection (4), subsection (5),
 98 paragraph (a) of subsection (12), subsection (13), and
 99 paragraphs (c) and (e) of subsection (14) of section 117.05,
 100 Florida Statutes, are amended, and paragraph (c) is added to

101 subsection (12) of that section, to read:

102 117.05 Use of notary commission; unlawful use; notary fee;
 103 seal; duties; employer liability; name change; advertising;
 104 photocopies; penalties.—

105 (1) No person shall obtain or use a notary public
 106 commission in other than his or her legal name, and it is
 107 unlawful for a notary public to notarize his or her own
 108 signature. Any person applying for a notary public commission
 109 must submit proof of identity to the Department of State if so
 110 requested. Any person who violates the provisions of this
 111 subsection is guilty of a felony of the third degree, punishable
 112 as provided in s. 775.082, s. 775.083, or s. 775.084.

113 (2) (a) The fee of a notary public may not exceed \$10 for
 114 any one notarial act, except as provided in ss. ~~s.~~ 117.045 and
 115 117.275.

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

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

124 (c) That the signer personally appeared before the notary
 125 public at the time of the notarization either by physical

126 | presence or by means of audio-video communication technology
 127 | pursuant to part II of this chapter.

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

138 | (12) (a) A notary public may supervise the making of a
 139 | photocopy of an original document or the duplication or printing
 140 | of an electronic record and attest to the trueness of the copy,
 141 | provided the document is neither a vital record in this state,
 142 | another state, a territory of the United States, or another
 143 | country, nor a public record, if a copy can be made by the
 144 | custodian of the public record.

145 | (c) A notary public must use a certificate in
 146 | substantially the following form in notarizing an attested copy
 147 | of an electronic document:

148 | STATE OF FLORIDA

149 | COUNTY OF

150 | On this day of, ... (year) ..., I attest that the

151 preceding or attached document is a true, exact, complete, and
 152 unaltered copy duplicated before me or printed by me from an
 153 electronic record presented to me by the document's custodian.
 154 At the time of duplication or printing, no security features, if
 155 any, present on the electronic record indicated that the record
 156 had been altered since execution.

157 ...(Signature of Notary Public - State of Florida)...
 158 ...(Print, Type, or Stamp Commissioned Name of Notary
 159 Public)...

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

164 (a) For an oath or affirmation:

165 STATE OF FLORIDA
 166 COUNTY OF

167 Sworn to (or affirmed) and subscribed before me by means of
 168 [] physical presence or [] online notarization, this day of
 169, ...(year)..., by ...(name of person making
 170 statement)....

171 ...(Signature of Notary Public - State of Florida)...
 172 ...(Print, Type, or Stamp Commissioned Name of Notary
 173 Public)...

174 Personally Known OR Produced Identification
 175

176 Type of Identification Produced.....

177 (b) For an acknowledgment in an individual capacity:

178 STATE OF FLORIDA

179 COUNTY OF

180 The foregoing instrument was acknowledged before me by means of

181 [] physical presence or [] online notarization, this day of

182, ... (year) ..., by ... (name of person acknowledging)

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

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

185 Personally Known OR Produced Identification

186

187 Type of Identification Produced.....

188 (c) For an acknowledgment in a representative capacity:

189 STATE OF FLORIDA

190 COUNTY OF

191 The foregoing instrument was acknowledged before me by means of

192 [] physical presence or [] online notarization, this day of

193, ... (year) ..., by ... (name of person) ... as ... (type of

194 authority, . . . e.g. officer, trustee, attorney in fact) ...

195 for ... (name of party on behalf of whom instrument was

196 executed)

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

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

199 Personally Known OR Produced Identification

200

201 Type of Identification Produced.....

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

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

206 1. For an oath or affirmation:

207 ... (First Name) ... (Last Name) ...

208 ... His (or Her) Mark ...

209 STATE OF FLORIDA

210 COUNTY OF

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

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

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

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

217 Personally Known OR Produced Identification

218

219 Type of Identification Produced.....

220 2. For an acknowledgment in an individual capacity:

221 ... (First Name) ... (Last Name) ...

222 ... His (or Her) Mark ...

223 STATE OF FLORIDA

224 COUNTY OF

225 The foregoing instrument was acknowledged before me by means of

226 [] physical presence or [] online notarization, this day of
227 , ... (year) ..., by ... (name of person acknowledging) ...,
228 who signed with a mark in the presence of these witnesses:

229 ... (Signature of Notary Public - State of Florida) ...
230 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
231 Personally Known OR Produced Identification

232
233 Type of Identification Produced.....

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

237 1. For an oath or affirmation:

238 STATE OF FLORIDA
239 COUNTY OF

240 Sworn to (or affirmed) before me by means of [] physical
241 presence or [] online notarization, this day of ,
242 ... (year) ..., by ... (name of person making statement) ..., and
243 subscribed by ... (name of notary) ... at the direction of ~~and in~~
244 ~~the presence of~~ ... (name of person making statement) ..., and in
245 the presence of these witnesses:

246 ... (Signature of Notary Public - State of Florida) ...
247 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
248 Personally Known OR Produced Identification

249
250 Type of Identification Produced.....

251 2. For an acknowledgment in an individual capacity:
252 STATE OF FLORIDA
253 COUNTY OF

254 The foregoing instrument was acknowledged before me by means of
255 [] physical presence or [] online notarization, this day of
256, ... (year) ..., by ... (name of person acknowledging) ...
257 and subscribed by ... (name of notary) ... at the direction of ~~and~~
258 ~~in the presence of~~ ... (name of person acknowledging) ..., and in
259 the presence of these witnesses:
260 ... (Signature of Notary Public - State of Florida) ...
261 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
262 Personally Known OR Produced Identification
263
264 Type of Identification Produced.....
265 Section 5. Subsections (2) and (9) of section 117.107,
266 Florida Statutes, are amended to read:
267 117.107 Prohibited acts.—
268 (2) A notary public may not sign notarial certificates
269 using a facsimile signature stamp unless the notary public has a
270 physical disability that limits or prohibits his or her ability
271 to make a written signature and unless the notary public has
272 first submitted written notice to the Department of State with
273 an exemplar of the facsimile signature stamp. This subsection
274 does not apply to or prohibit the use of an electronic signature
275 and seal by a notary public performing online notarization in

276 accordance with general law.

277 (9) A notary public may not notarize a signature on a
 278 document if the person whose signature is being notarized does
 279 not appear before the notary public either by means of physical
 280 presence or audio-video communication technology pursuant to
 281 part II of this chapter ~~is not in the presence of the notary~~
 282 ~~public~~ at the time the signature is notarized. Any notary public
 283 who violates this subsection is guilty of a civil infraction,
 284 punishable by penalty not exceeding \$5,000, and such violation
 285 constitutes malfeasance and misfeasance in the conduct of
 286 official duties. It is no defense to the civil infraction
 287 specified in this subsection that the notary public acted
 288 without intent to defraud. A notary public who violates this
 289 subsection with the intent to defraud is guilty of violating s.
 290 117.105.

291 Section 6. Part II of chapter 117, Florida Statutes,
 292 consisting of sections 117.201-117.305, Florida Statutes, is
 293 created to read:

294 PART II

295 ONLINE NOTARIZATIONS

296 117.201 Definitions.—As used in this part, the term:

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

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

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

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

306 (2) "Audio-video communication technology" means
307 technology approved by the Department of State or this part that
308 enables real-time, two-way communication using electronic means
309 in which participants are able to see, hear, and communicate
310 with one another.

311 (3) "Credential analysis" means a process or service
312 approved by this part in which a third party confirms the
313 validity of a government-issued identification credential or
314 data thereon through review of public and proprietary data
315 sources.

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

318 (5) "Identity proofing" means a process or service
319 approved by the Department of State or this part in which a
320 third party confirms the identity of an individual through
321 review of public and proprietary data sources.

322 (6) "Knowledge-based authentication" means a form of
323 identity proofing based on a set of questions formulated from

324 public and proprietary data sources for which the principal has
325 not provided a prior answer during the course of the identity
326 proofing.

327 (7) "Online notarization" means the performance of an
328 electronic notarization by means of audio-video communication
329 technology and that meets standards in this chapter.

330 (8) "Online notary public" means a notary public
331 registered with the Executive Office of the Governor to perform
332 online notarizations under this part or a civil law notary
333 appointed under chapter 118.

334 (9) "Principal" means an individual whose electronic
335 signature is acknowledged, witnessed, or attested in an online
336 notarization or who takes an oath or affirmation from the
337 online notary public.

338 (10) "Remote presentation" means transmission of an image
339 of a government-issued identification credential that is of
340 sufficient quality to enable the online notary public to
341 identify the individual seeking the notary's services and to
342 perform credential analysis through audio-video communication
343 technology.

344 (11) Except where the context otherwise requires, any term
345 defined in s. 668.50(2) shall have the same meaning when used in
346 this chapter.

347 117.209 Authority to perform online notarizations.—

348 (1) An online notary public may perform any of the

349 functions authorized under this chapter as an online
 350 notarization, excluding:

351 (a) Solemnizing the rites of matrimony.

352 (b) A notarial act in connection with the creation and
 353 execution of a testamentary instrument, including a will,
 354 codicil, or revocable trust.

355 (c) A contract, agreement, or waiver subject to ss.
 356 732.701 and 732.702.

357 (2) If a notarial act requires a principal to appear
 358 before or in the presence of the online notary public, the
 359 principal may appear before the online notary public by means of
 360 audio-video communication technology that meets the requirements
 361 of this chapter and any rules adopted by the Department of State
 362 under s. 117.295.

363 (3) An online notary public may perform an online
 364 notarization authorized under this chapter, regardless of the
 365 physical location of the principal at the time of the notarial
 366 act, provided the notary public is physically located in this
 367 state while performing the online notarization.

368 (4) The validity of an online notarization performed by an
 369 online notary public appointed in this state shall be determined
 370 by applicable laws of this state regardless of the physical
 371 location of the principal at the time of the notarial act.

372 117.215 Relation to other laws.—With the exception of laws
 373 governing the creation and execution of a testamentary

374 instrument, including a will, codicil, revocable trust, or a
375 contract, agreement, or waiver subject to ss. 732.701 and
376 732.702:

377 (1) If a provision of law requires a signature, statement,
378 or instrument to be acknowledged, sworn, affirmed, made under
379 oath, or subject to penalty of perjury:

380 (a) The acknowledgement or proof may be made by any of the
381 officials listed and in the manner described in s. 695.03.

382 (b) The requirement may be satisfied by an online
383 notarization if made in accordance with the online notarization
384 provisions of this part or in conformance with the laws of the
385 notary public's appointing state.

386 (2) If a provision of law requires a signature or act be
387 witnessed, compliance with the online electronic witnessing
388 standards under s. 117.285 satisfies that requirement.

389 117.225 Registration; qualifications.—A notary public may
390 complete a registration as an online notary public with the
391 Executive Office of the Governor by:

392 (1) Satisfying the qualification requirements for
393 appointment as a notary public under part I.

394 (2) Paying an online notary public application fee in the
395 amount of \$25.

396 (3) Submitting to the Executive Office of the Governor a
397 registration as an online notary public, signed and sworn to by
398 the applicant.

399 (4) Identifying the audio-video communication and identity
400 proofing technologies the online notary public intends to use in
401 performing online notarizations. If the Department of State and
402 Agency for State Technology have established standards for
403 approval of technologies pursuant to this part, the technologies
404 selected must conform to those standards. If the technologies
405 conform to the standards, the Department of State and Agency for
406 State Technology shall approve the use of the technologies. If
407 the Department of State and Agency for State Technology have not
408 yet established such standards, the online notary public shall
409 select technologies satisfying the provisions of this chapter.

410 117.235 Performance of notarial acts.—

411 (1) An online notary public is subject to part I to the
412 same extent as a notary public appointed and commissioned only
413 under that part, including the provisions of s. 117.021 relating
414 to electronic notarizations.

415 (2) An online notary public may perform notarial acts as
416 provided by part I in addition to performing online
417 notarizations as authorized and pursuant to the provisions of
418 this part.

419 117.245 Electronic journal of online notarizations.—

420 (1) An online notary public shall keep a secure electronic
421 journal of electronic records notarized by the online notary
422 public. For each online notarization, the electronic journal
423 entry must contain all of the following:

- 424 (a) Date and time of the notarization.
- 425 (b) Type of notarial act.
- 426 (c) Type, title, or description of the electronic record
 427 or proceeding.
- 428 (d) Printed name and address of each principal involved in
 429 the transaction or proceeding.
- 430 (e) Evidence of identity of each principal involved in the
 431 transaction or proceeding in any of the following forms:
- 432 1. Statement that the person is personally known to the
 433 online notary public.
- 434 2. Notation of the type of identification document
 435 provided to the online notary public.
- 436 3. Copy of the government-issued identity credential
 437 provided.
- 438 4. Copy of any other identity credential or information
 439 provided.
- 440 (f) Indication that the principal satisfactorily passed
 441 the identity proofing.
- 442 (g) Indication that the government-issued identity
 443 credential satisfied the credential analysis.
- 444 (h) A recording of the audio-video communication in which
 445 the:
- 446 1. Principal and any witnesses appeared before the notary
 447 public.
- 448 2. Identity of each participant was confirmed.

449 3. Notarial act was performed.
 450 (i) The fee, if any, charged for the online notarization.
 451 (2) The online notary public shall take reasonable steps
 452 to:
 453 (a) Ensure the integrity, security, and authenticity of
 454 online notarizations.
 455 (b) Maintain a backup record for the electronic journal
 456 required by subsection (1).
 457 (c) Protect the backup record from unauthorized use.
 458 (3) The electronic journal required by subsection (1)
 459 shall be maintained for at least 10 years after the date of the
 460 notarial act.
 461 (4) An omitted or incomplete entry in the electronic
 462 journal does not impair the validity of the notarial act or the
 463 electronic record which was notarized, but may be introduced as
 464 evidence to establish violations of this chapter or as an
 465 indication of possible fraud, forgery, or impersonation or for
 466 other evidentiary purposes.
 467 117.255 Use of electronic journal, signature, and seal.—An
 468 online notary public shall:
 469 (1) Take reasonable steps to ensure that any registered
 470 device used to create an electronic signature is current and has
 471 not been revoked or terminated by the issuing or registering
 472 authority of the device.
 473 (2) Keep the electronic journal, electronic signature, and

474 electronic seal secure and under his or her sole control, which
475 shall include access protection through the use of passwords or
476 codes under control of the notary public. The online notary
477 public may not allow another person to use the online notary
478 public's electronic journal, electronic signature, or electronic
479 seal.

480 (3) Use electronic signatures only for performing online
481 notarization.

482 (4) Attach or logically associate the electronic signature
483 and seal to the electronic notarial certificate of an electronic
484 record in a manner capable of independent verification using
485 tamper-evident technology that renders any subsequent change or
486 modification to the electronic record evident.

487 (5) Immediately notify an appropriate law enforcement
488 agency and the Executive Office of the Governor of theft or
489 vandalism of the electronic journal, electronic signature, or
490 electronic seal. An online notary public shall immediately
491 notify the Executive Office of the Governor of the loss or use
492 by another person of the online notary public's electronic
493 journal, electronic signature, or electronic seal.

494 (6) Make electronic copies, upon request, of the pertinent
495 entries in the electronic journal and provide access to the
496 related audio-video communication recordings to the title agent,
497 settlement agent, or title insurer which engaged the online
498 notary with regard to a real estate transaction. The online

499 notary public may charge a reasonable fee for making and
 500 delivering electronic copies of a given series of related
 501 electronic records. Such fee must be disclosed to the requestor
 502 before copies are made.

503 117.265 Online notarization procedures.—

504 (1) An online notary public physically located in this
 505 state may perform an online notarization that meets the
 506 requirements of this part regardless of whether the principal or
 507 any witnesses are physically located in this state at the time
 508 of the online notarization. An online notarial act performed in
 509 accordance with this chapter is deemed to have been performed
 510 within the state and is governed by applicable laws of this
 511 state.

512 (2) In performing an online notarization, an online notary
 513 public shall verify the identity of a principal at the time that
 514 the signature is taken by using audio-video communication
 515 technology and processes that meet the requirements of this part
 516 and record the entire audio-video conference session between the
 517 notary public and the principal and any subscribing witnesses. A
 518 principal may not act in the capacity of a witness for the
 519 online notarization.

520 (3) In performing an online notarization of a principal
 521 not located within the state, an online notary public shall
 522 confirm that the principal desires for the notarial act to be
 523 performed by a Florida notary public and under the general law

524 of this state.

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

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

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

530 1. Remote presentation of a government-issued
531 identification credential by each individual.

532 2. Credential analysis of each government-issued
533 identification credential.

534 3. Identity proofing of each individual, in the form of
535 knowledge-based authentication or another method of identity
536 proofing that conforms to standards set by the Department of
537 State and the Agency for State Technology.

538

539 If the online notary public does not satisfy subparagraphs

540 (b)1.-3., or if the databases consulted for identity proofing do
541 not contain sufficient information to permit authentication, the
542 online notary public may not perform the online notarization.

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

546 (6) An electronic notarial certificate for an online
547 notarization shall include a notation that the notarization is
548 an online notarization.

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

552 (8) Any failure to comply with the online notarization
553 procedures of this section does not impair the validity of the
554 notarial act or the electronic record which was notarized, but
555 may be introduced as evidence to establish violations of this
556 chapter or as an indication of possible fraud, forgery, or
557 impersonation or for other evidentiary purposes.

558 117.275 Fees for online notarization.—An online notary
559 public or employer of such online notary public may charge a
560 fee, not to exceed \$25, for performing an online notarization in
561 addition to any other fees authorized under part I. Fees for
562 services other than notarial acts are not governed by this
563 section.

564 117.285 Supervising the witnessing of electronic records.—
565 An online notary public or an official of another state
566 authorized under the laws of that state to perform online
567 notarization of documents may supervise the witnessing of
568 electronic records by the same audio-video communication
569 technology used for online notarization, as follows:

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

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

574 principal are using audio-video communication technology.

575 (3) The witness is present in either physical proximity to
576 the principal or through audio-video communication technology at
577 the time the principal affixes the electronic signature and
578 hears the principal make a statement to the effect that the
579 principal has signed the electronic record.

580 117.295 Standards for electronic and online notarization;
581 rulemaking authority.-

582 (1) The Legislature intends for the standards applicable
583 to electronic notarization under s. 117.021 and for online
584 notarization under this part to reflect future improvements in
585 technology and methods of assuring the identity of principals
586 and the security of an electronic record. Further, the
587 Department of State, in collaboration with the Agency for State
588 Technology, may adopt rules and standards necessary to implement
589 the requirements of this chapter and such other rules and
590 standards as may be required to facilitate the integrity,
591 security, and reliability of online notarization, including
592 standards regarding identity proofing, credential analysis,
593 unauthorized interception, remote presentation, tamper-evident
594 technology, and audio-video communication technology, and may
595 publish lists of technologies that satisfy the standards and are
596 approved for use in online notarizations.

597 (2) Identity proofing, credential analysis, unauthorized
598 interception, remote presentation, tamper-evident technology,

599 and audio-video communication technology shall be governed by
600 the following minimum standards:

601 (a) Identity proofing by means of knowledge-based
602 authentication shall have these or greater security
603 characteristics:

604 1. The principal must be presented with five or more
605 questions with a minimum of five possible answer choices per
606 question.

607 2. Each question must be drawn from a third-party provider
608 of public and proprietary data sources and be identifiable to
609 the principal's social security number or other identification
610 information, or the principal's identity and historical events
611 records.

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

614 4. The principal must answer a minimum of 80 percent of
615 the questions correctly.

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

618 6. During the second attempt, the principal may not be
619 presented with questions from the prior attempt.

620 (b) Credential analysis must include:

621 1. A comparison of the presented government-issued
622 identity credential and data thereon against public or
623 proprietary data sources to confirm that one or more data

624 elements conform to the asserted identity; or

625 2.a. The inspection of one or more readable format
626 features to verify that they conform to those specified by the
627 issuing state or country.

628 b. The reading of any bar codes contained on the
629 credential to verify that they contain data corresponding to the
630 asserted identity information of the principal.

631 c. An attempt to verify any micro-printing contained on
632 the credential.

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

636 (d) Audio-video communication technology used in
637 completing online notarizations must meet the following
638 requirements:

639 1. The signal transmission must be secure from
640 interception or access by anyone other than the participants
641 communicating.

642 2. The technology must provide sufficient audio clarity
643 and video resolution to enable the notary to communicate with
644 the principal and to confirm the identity of the principal using
645 identification methods described in s. 117.265.

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

649 117.305 Relation to Electronic Signatures in Global and
 650 National Commerce Act.—This part modifies, limits and supersedes
 651 the Electronic Signatures in Global and National Commerce Act,
 652 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
 653 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
 654 authorize electronic delivery of any of the notices described in
 655 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

656 Section 7. Paragraph (h) of subsection (3) of section
 657 28.222, Florida Statutes, is redesignated as paragraph (i), and
 658 a new paragraph (h) is added to that subsection to read:

659 28.222 Clerk to be county recorder.—

660 (3) The clerk of the circuit court shall record the
 661 following kinds of instruments presented to him or her for
 662 recording, upon payment of the service charges prescribed by
 663 law:

664 (h) Copies of any instruments originally created and
 665 executed using an electronic signature, as defined in s. 695.27,
 666 and certified to be a true and correct paper printout by a
 667 notary public in accordance with chapter 117 or by a title
 668 agency, authorized intermediary, or other approved party, if the
 669 county recorder is not prepared to accept electronic documents
 670 for recording electronically.

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

673 92.50 Oaths, affidavits, and acknowledgments; who may take

674 or administer; requirements.—

675 (4) DEFINITION.—As used in this section, the term "before"
 676 means:

677 (a) In the same physical location as another person and
 678 close enough to see, hear, communicate with, and exchange
 679 credentials with that person; or

680 (b) In a different physical location from another person
 681 but able to see, hear, and communicate with the person by means
 682 of audio-video communication technology.

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

685 95.231 Limitations where deed or will on record.—

686 (1) Five years after the recording of an instrument
 687 required to be executed in accordance with s. 689.01; 5 years
 688 after the recording of a power of attorney accompanying and used
 689 for an instrument required to be executed in accordance with s.
 690 689.01; or 5 years after the probate of a will purporting to
 691 convey real property, from which it appears that the person
 692 owning the property attempted to convey, affect, or devise it,
 693 the instrument, power of attorney, or will shall be held to have
 694 its purported effect to convey, affect, or devise, the title to
 695 the real property of the person signing the instrument, as if
 696 there had been no lack of seal or seals, witness or witnesses,
 697 defect in, failure of, or absence of acknowledgment or
 698 relinquishment of dower, in the absence of fraud, adverse

699 possession, or pending litigation. The instrument is admissible
700 in evidence. A power of attorney validated under this subsection
701 shall be valid only for the purpose of effectuating the
702 instrument with which it was recorded.

703 Section 10. Section 689.01, Florida Statutes, is amended
704 to read:

705 689.01 How real estate conveyed.—

706 (1) No estate or interest of freehold, or for a term of
707 more than 1 year, or any uncertain interest of, in or out of any
708 messuages, lands, tenements or hereditaments shall be created,
709 made, granted, transferred or released in any other manner than
710 by instrument in writing, signed in the presence of two
711 subscribing witnesses by the party creating, making, granting,
712 conveying, transferring or releasing such estate, interest, or
713 term of more than 1 year, or by the party's lawfully authorized
714 agent, unless by will and testament, or other testamentary
715 appointment, duly made according to law; and no estate or
716 interest, either of freehold, or of term of more than 1 year, or
717 any uncertain interest of, in, to, or out of any messuages,
718 lands, tenements or hereditaments, shall be assigned or
719 surrendered unless it be by instrument signed in the presence of
720 two subscribing witnesses by the party so assigning or
721 surrendering, or by the party's lawfully authorized agent, or by
722 the act and operation of law. No seal shall be necessary to give
723 validity to any instrument executed in conformity with this

724 section. Corporations may execute any and all conveyances in
725 accordance with the provisions of this section or ss. 692.01 and
726 692.02.

727 (2) For purposes of this chapter:

728 (a) Any requirement that an instrument be signed in the
729 presence of two subscribing witnesses may be satisfied by
730 witnesses being present and electronically signing by means of
731 audio-video communication technology as defined in s. 117.201
732 under standards applicable to online notarization pursuant to
733 chapter 117 or in conformance with laws in other states that
734 authorize online notarization of instruments.

735 (b) The act of witnessing an electronic signature is
736 satisfied if a witness is present either in physical proximity
737 to the principal or by audio-video communication technology at
738 the time the principal affixes the electronic signature and
739 hears the principal make a statement acknowledging that the
740 principal has signed the electronic record.

741 (3) All witnesses heretofore made or taken pursuant to
742 subsection (2) are hereby validated and, upon recording, may not
743 be denied to have provided constructive notice based on any
744 alleged failure to have strictly complied with this section, as
745 currently or previously in effect, or the laws governing
746 notarization of instruments, including online notarization, in
747 this or any other state.

748 Section 11. Subsection (1) of section 694.08, Florida

749 Statutes, is amended to read:

750 694.08 Certain instruments validated, notwithstanding lack
751 of seals or witnesses, or defect in acknowledgment, etc.—

752 (1) Whenever any power of attorney has been executed and
753 delivered, or any conveyance has been executed and delivered to
754 any grantee by the person owning the land therein described, or
755 conveying the same in an official or representative capacity,
756 and has, for a period of 7 years or more been spread upon the
757 records of the county wherein the land therein described has
758 been or was at the time situated, and one or more subsequent
759 conveyances of said land or parts thereof have been made,
760 executed, delivered and recorded by parties claiming under such
761 instrument or instruments, and such power of attorney or
762 conveyance, or the public record thereof, shows upon its face a
763 clear purpose and intent of the person executing the same to
764 authorize the conveyance of said land or to convey the said
765 land, the same shall be taken and held by all the courts of this
766 state, in the absence of any showing of fraud, adverse
767 possession, or pending litigation, to have authorized the
768 conveyance of, or to have conveyed, the fee simple title, or any
769 interest therein, of the person signing such instruments, or the
770 person in behalf of whom the same was conveyed by a person in an
771 official or representative capacity, to the land therein
772 described as effectively as if there had been no defect in,
773 failure of, or absence of the acknowledgment or the certificate

774 of acknowledgment, if acknowledged, or the relinquishment of
 775 dower, and as if there had been no lack of the word "as"
 776 preceding the title of the person conveying in an official or
 777 representative capacity, of any seal or seals, or of any witness
 778 or witnesses, and shall likewise be taken and held by all the
 779 courts of this state to have been duly recorded so as to be
 780 admissible in evidence;

781 Section 12. Section 695.03, Florida Statutes, is amended
 782 to read:

783 695.03 Acknowledgment and proof; validation of certain
 784 acknowledgments; legalization or authentication before foreign
 785 officials.—

786 (1) To entitle any instrument concerning real property to
 787 be recorded, the execution must be acknowledged by the party
 788 executing it, proved by a subscribing witness to it, or
 789 legalized or authenticated by a civil-law notary or notary
 790 public who affixes her or his official seal, before the officers
 791 and in the form and manner following:

792 (a) ~~(1)~~ WITHIN THIS STATE.—An acknowledgment or proof made
 793 within this state may be made before a judge, clerk, or deputy
 794 clerk of any court; a United States commissioner or magistrate;
 795 or a notary public or civil-law notary of this state, and the
 796 certificate of acknowledgment or proof must be under the seal of
 797 the court or officer, as the case may be. ~~All affidavits and~~
 798 ~~acknowledgments heretofore made or taken in this manner are~~

799 ~~hereby validated.~~

800 (b)~~(2)~~ WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An
 801 acknowledgment or proof of a person located outside ~~made out~~ of
 802 this state but within the United States may be made before a
 803 notary public or a civil-law notary ~~of this state~~ or by a
 804 commissioner of deeds appointed by the Governor of this state; a
 805 judge or clerk of any court of the United States or of any
 806 state, territory, or district; a United States commissioner or
 807 magistrate; or a notary public, justice of the peace, master in
 808 chancery, or registrar or recorder of deeds of any state,
 809 territory, or district having a seal, and the certificate of
 810 acknowledgment or proof must be under the seal of the court or
 811 officer, as the case may be. If the acknowledgment or proof is
 812 made before a notary public who does not affix a seal, it is
 813 sufficient for the notary public to type, print, or write by
 814 hand on the instrument, "I am a Notary Public of the State of
 815 ... (state) ..., and my commission expires on ... (date)"

816 (c)~~(3)~~ WITHIN FOREIGN COUNTRIES.—If the acknowledgment,
 817 affidavit, oath, legalization, authentication, or proof of a
 818 person is made in a foreign country, it may be made before a
 819 commissioner of deeds appointed by the Governor of this state to
 820 act in such country; before a notary public of such foreign
 821 country or a civil-law notary of this state or of such foreign
 822 country who has an official seal; before an ambassador, envoy
 823 extraordinary, minister plenipotentiary, minister, commissioner,

824 charge d'affaires, consul general, consul, vice consul, consular
825 agent, or other diplomatic or consular officer of the United
826 States appointed to reside in such country; or before a military
827 or naval officer authorized by the Laws or Articles of War of
828 the United States to perform the duties of notary public, and
829 the certificate of acknowledgment, legalization, authentication,
830 or proof must be under the seal of the officer. A certificate
831 legalizing or authenticating the signature of a person executing
832 an instrument concerning real property and to which a civil-law
833 notary or notary public of that country has affixed her or his
834 official seal is sufficient as an acknowledgment. For the
835 purposes of this section, the term "civil-law notary" means a
836 civil-law notary as defined in chapter 118 or an official of a
837 foreign country who has an official seal and who is authorized
838 to make legal or lawful the execution of any document in that
839 jurisdiction, in which jurisdiction the affixing of her or his
840 official seal is deemed proof of the execution of the document
841 or deed in full compliance with the laws of that jurisdiction.

842 (d) All affidavits, oaths, acknowledgments, legalizations,
843 authentications, or proofs made or taken in any of the manners
844 in paragraphs (a)-(c) are validated and upon recording shall not
845 be denied to have provided constructive notice based on any
846 alleged failure to have strictly complied with this section, as
847 currently or previously in effect, or the laws governing
848 notarization of instruments in chapter 117 or in the place where

849 such notary public or other authorized person is commissioned or
850 authorized to act.

851
852 ~~All affidavits, legalizations, authentications, and~~
853 ~~acknowledgments heretofore made or taken in the manner set forth~~
854 ~~above are hereby validated.~~

855 (2) As used in this section, the term "before" means:

856 (a) In the same physical location as another person and
857 close enough to see, hear, communicate with, and exchange
858 credentials with that person; or

859 (b) In a different physical location from another person
860 but able to see, hear, and communicate with the person by means
861 of audio-video communication technology.

862 Section 13. Section 695.04, Florida Statutes, is amended
863 to read:

864 695.04 Requirements of certificate.—The certificate of the
865 officer before whom the acknowledgment or proof is taken, except
866 for a certificate legalizing or authenticating the signature of
867 a person executing an instrument concerning real property
868 pursuant to s. 695.03(1)(c) ~~s. 695.03(3)~~, shall contain and set
869 forth substantially the matter required to be done or proved to
870 make such acknowledgment or proof effectual as set forth in s.
871 117.05.

872 Section 14. Section 695.05, Florida Statutes, is amended
873 to read:

874 695.05 Certain defects cured as to acknowledgments and
875 witnesses.—All deeds, conveyances, bills of sale, mortgages or
876 other transfers of real or personal property within the limits
877 of this state, heretofore or hereafter made and received bona
878 fide and upon good consideration by any corporation, and
879 acknowledged for record by ~~before~~ some officer, stockholder or
880 other person interested in the corporation, grantee, or
881 mortgagee as a notary public or other officer authorized to take
882 acknowledgments of instruments for record within this state,
883 shall be held, deemed and taken as valid as if acknowledged by
884 the proper notary public or other officer authorized to take
885 acknowledgments of instruments for record in this state not so
886 interested in said corporation, grantee or mortgagee; and said
887 instrument whenever recorded shall be deemed notice to all
888 persons; provided, however, that this section shall not apply to
889 any instrument heretofore made, the validity of which shall be
890 contested by suit commenced within 1 year of the effective date
891 of this law.

892 Section 15. Section 695.09, Florida Statutes, is amended
893 to read:

894 695.09 Identity of grantor.—No acknowledgment or proof
895 shall be taken, except as set forth in s. 695.03(1)(c) ~~s.~~
896 ~~695.03(3)~~, by any officer within or without the United States
897 unless the officer knows, or has satisfactory proof, that the
898 person making the acknowledgment is the individual described in,

899 and who executed, such instrument or that the person offering to
 900 make proof is one of the subscribing witnesses to such
 901 instrument.

902 Section 16. Section 695.28, Florida Statutes, is amended
 903 to read:

904 695.28 Validity of recorded electronic documents.—

905 (1) A document that is otherwise entitled to be recorded
 906 and that was or is submitted to the clerk of the court or county
 907 recorder by electronic or other means and accepted for
 908 recordation is deemed validly recorded and provides notice to
 909 all persons notwithstanding:

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

913 (b) Any defects in, deviations from, or the inability to
 914 demonstrate strict compliance with any statute, rule, or
 915 procedure relating to electronic signatures, electronic
 916 witnesses, electronic notarization, online notarization, or for
 917 submitting or recording ~~to submit or record~~ an electronic
 918 document in effect at the time the electronic document was
 919 executed or was submitted for recording;

920 (c) That the document was signed, witnessed, or notarized
 921 electronically or that witnessing or notarization may have been
 922 done outside the physical presence of the notary public or
 923 principal in accordance with the provisions of chapter 117 or

924 | the laws of another state regarding the notarization of
 925 | documents; or

926 | (d) That the document recorded was a certified printout of
 927 | a document to which one or more electronic signatures have been
 928 | affixed.

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

932 | (3) This section does not preclude a challenge to the
 933 | validity or enforceability of an instrument or electronic record
 934 | based upon fraud, forgery, impersonation, duress, undue
 935 | influence, minority, illegality, unconscionability, or any other
 936 | basis not in the nature of those matters described in subsection
 937 | (1).

938 | Section 17. This act shall take effect July 1, 2018.