A BILL TO BE ENTITLED

AN ACT

relating to appointment of and performance of notarial acts by an
online notary public and online acknowledgment and proof of written
instruments; authorizing a fee and creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 121.006, Civil Practice and Remedies
Code, is amended by adding Subsections (c) and (d) to read as
follows:

(c) For purposes of Subsection (b), a person may personally
appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or
(2) appearing by an interactive two-way audio and
video communication that meets the online notarization
requirements under Subchapter C, Chapter 406, Government Code, and
rules adopted under that subchapter.

(d) The acknowledgment form provided by this chapter must
include a space for an online notarization as defined by Section
406.101, Government Code, to indicate by which method described by
Subsection (c) the acknowledging person appeared before the
officer.

SECTION 2. Chapter 121, Civil Practice and Remedies Code,
is amended by adding Section 121.016 to read as follows:

Sec. 121.016. EFFECT OF OTHER LAW. To the extent that a
provision of this chapter conflicts with Subchapter C, Chapter 406,
Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

SECTION 3. Chapter 406, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. In this subchapter:
(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an online notary public and contains the following:

(A) the online notary public's electronic signature, electronic seal, title, and commission expiration date;

(B) other required information concerning the date and place of the online notarization; and

(C) the facts attested to or certified by the online notary public in the particular notarization.

(5) "Electronic seal" means information within a
notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

(6) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(7) "Identity proofing" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section 406.016.

(9) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.

(10) "Online notary public" means a notary public who has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) "Principal" means an individual:

(A) whose electronic signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.
"Remote presentation" means transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(A) identify the individual seeking the online notary public's services; and

(B) perform credential analysis.

Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an online notarization.

Sec. 406.103. RULEMAKING. The secretary of state may adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION. (a) The secretary of state by rule shall develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

Sec. 406.105. APPLICATION; QUALIFICATIONS. (a) A notary public or an applicant for appointment as a notary public under Subchapter A may apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an online notary public by:
(1) satisfying the qualification requirements for
appointment as a notary public under Subchapter A;
(2) paying the application fee described by Subsection
(d); and
(3) electronically submitting to the secretary of
state an application in the form prescribed by the secretary of
state that satisfies the secretary of state that the applicant is
qualified.

(c) The application required by Subsection (b) must
include:
(1) the applicant's name to be used in acting as a
notary public;
(2) a certification that the applicant will comply
with the secretary of state's standards developed under Section
406.104; and
(3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an
application submitted under this section in an amount necessary to
administer this subchapter.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. An online
notary public:
(1) is a notary public for purposes of Subchapter A and
is subject to that subchapter to the same extent as a notary public
appointed and commissioned under that subchapter;
(2) may perform notarial acts as provided by
Subchapter A in addition to performing online notarizations; and
(3) may perform an online notarization authorized
under this subchapter.

Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS. An online notary public has the authority to perform any of the functions authorized under Section 406.016 as an online notarization.

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS. (a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The electronic record must contain for each online notarization:

(1) the date and time of the notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the electronic document or proceeding;

(4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

(A) a statement that the person is personally known to the online notary public;

(B) a notation of the type of identification document provided to the online notary public;

(C) a record of the identity verification made under Section 406.110, if applicable; or

(D) the following:

(i) the printed name and address of each credible witness swearing to or affirming the person's identity; and
(ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

(7) the fee, if any, charged for the notarization.

(b) The online notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of online notarizations;

(2) maintain a backup for the electronic record required by Subsection (a); and

(3) protect the backup record from unauthorized use.

(c) The electronic record required by Subsection (a) shall be maintained for at least five years after the date of the transaction or proceeding.

Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL. (a) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) An online notary public shall keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control. The online notary public may not allow another person to use the online notary public's electronic record, electronic signature, or
electronic seal.

(c) An online notary public may use the online notary public's electronic signature only for performing online notarization.

(d) An online notary public shall attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) An online notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal. An online notary public shall immediately notify the secretary of state of the loss or use by another person of the online notary public's electronic record, electronic signature, or electronic seal.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES. (a) An online notary public may perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter.
Identity may be verified by:

(1) the online notary public's personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;

(B) credential analysis of the credential described by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) The online notary public shall take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

(d) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

Sec. 406.111. FEES FOR ONLINE NOTARIZATION. An online notary public or the online notary public's employer may charge a fee in an amount not to exceed $25 for performing an online notarization in addition to any other fees authorized under Section 406.024.

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION. (a) Except as provided by Subsection (b), an online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables
electronic affixation of the online notary public's official
electronic signature or seal. The online notary public shall
certify compliance with this subsection to the secretary of state.

(b) A former online notary public whose commission
terminated for a reason other than revocation or a denial of renewal
is not required to destroy the items described by Subsection (a) if
the former online notary public is recommissioned as an online
notary public with the same electronic signature and seal within
three months after the former online notary public's former
commission terminated.

Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE;
CRIMINAL OFFENSE. (a) A person who, without authorization,
knowingly obtains, conceals, damages, or destroys the certificate,
disk, coding, card, program, software, or hardware enabling an
online notary public to affix an official electronic signature or
seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.

SECTION 4. This Act takes effect July 1, 2018.