

By: Parker

H.B. No. 1217

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,

1 Government Code, that subchapter controls with respect to an online
2 notarization as defined by Section 406.101, Government Code.

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

5 SUBCHAPTER C. ONLINE NOTARY PUBLIC

6 Sec. 406.101. DEFINITIONS. In this subchapter:

7 (1) "Credential analysis" means a process or service
8 operating according to criteria approved by the secretary of state
9 through which a third person affirms the validity of a
10 government-issued identification credential through review of
11 public and proprietary data sources.

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

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

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

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

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

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

27 (5) "Electronic seal" means information within a

1 notarized electronic document that confirms the online notary
2 public's name, jurisdiction, identifying number, and commission
3 expiration date and generally corresponds to information in notary
4 seals used on paper documents.

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

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

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

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

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

22 (11) "Principal" means an individual:

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

25 (B) taking an oath or affirmation from the online
26 notary public but not in the capacity of a witness for the online
27 notarization.

1 (12) "Remote presentation" means transmission to the
2 online notary public through communication technology of an image
3 of a government-issued identification credential that is of
4 sufficient quality to enable the online notary public to:

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

7 (B) perform credential analysis.

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

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

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

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

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

26 (b) A person qualifies to be appointed as an online notary
27 public by:

1 (1) satisfying the qualification requirements for
2 appointment as a notary public under Subchapter A;

3 (2) paying the application fee described by Subsection
4 (d); and

5 (3) electronically submitting to the secretary of
6 state an application in the form prescribed by the secretary of
7 state that satisfies the secretary of state that the applicant is
8 qualified.

9 (c) The application required by Subsection (b) must
10 include:

11 (1) the applicant's name to be used in acting as a
12 notary public;

13 (2) a certification that the applicant will comply
14 with the secretary of state's standards developed under Section
15 406.104; and

16 (3) an e-mail address of the applicant.

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

20 Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. An online
21 notary public:

22 (1) is a notary public for purposes of Subchapter A and
23 is subject to that subchapter to the same extent as a notary public
24 appointed and commissioned under that subchapter;

25 (2) may perform notarial acts as provided by
26 Subchapter A in addition to performing online notarizations; and

27 (3) may perform an online notarization authorized

1 under this subchapter.

2 Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS.

3 An online notary public has the authority to perform any of the
4 functions authorized under Section 406.016 as an online
5 notarization.

6 Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS.

7 (a) An online notary public shall keep a secure electronic record
8 of electronic documents notarized by the online notary public. The
9 electronic record must contain for each online notarization:

10 (1) the date and time of the notarization;

11 (2) the type of notarial act;

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

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

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

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

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

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

24 (D) the following:

25 (i) the printed name and address of each
26 credible witness swearing to or affirming the person's identity;

27 and

1 (ii) for each credible witness not
2 personally known to the online notary public, a description of the
3 type of identification documents provided to the online notary
4 public;

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

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

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

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

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

14 (3) protect the backup record from unauthorized use.

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

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

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

1 electronic seal.

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

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

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

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

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

1 Identity may be verified by:

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

4 (2) each of the following:

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

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

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

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

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

19 Sec. 406.111. FEES FOR ONLINE NOTARIZATION. An online
20 notary public or the online notary public's employer may charge a
21 fee in an amount not to exceed \$25 for performing an online
22 notarization in addition to any other fees authorized under Section
23 406.024.

24 Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S
25 COMMISSION. (a) Except as provided by Subsection (b), an online
26 notary public whose commission terminates shall destroy the coding,
27 disk, certificate, card, software, or password that enables

1 electronic affixation of the online notary public's official
2 electronic signature or seal. The online notary public shall
3 certify compliance with this subsection to the secretary of state.

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

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

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

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