

By: Sanford

H.B. No. 3309

A BILL TO BE ENTITLED

AN ACT

relating to appointment of and performance of notarial acts by an electronic notary public; authorizing a fee and creating a criminal offense.

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

SECTION 1. Chapter 406, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ELECTRONIC NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

1 (4) "Electronic notarization" means an official act by
2 an electronic notary public under this subchapter or as otherwise
3 authorized by law that involves an electronic document.

4 (5) "Electronic notary public" means a notary public
5 who has been authorized by the secretary of state to notarize
6 electronic documents.

7 (6) "Electronic seal" means information within a
8 notarized electronic document that confirms the electronic notary
9 public's name, jurisdiction, and commission expiration date and
10 generally corresponds to information in notary seals used on paper
11 documents.

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

16 Sec. 406.102. STANDARDS FOR ELECTRONIC NOTARIZATION. The
17 secretary of state by rule shall develop and maintain standards for
18 electronic notarization in accordance with this subchapter. The
19 secretary of state may confer with the Department of Information
20 Resources or other appropriate state agency on matters relating to
21 equipment, security, and technological aspects of the electronic
22 notarization standards.

23 Sec. 406.103. APPLICATION; QUALIFICATIONS. (a) A notary
24 public or an applicant for appointment as a notary public under
25 Subchapter A may apply to the secretary of state to be appointed and
26 commissioned as an electronic notary public in the manner provided
27 by this section.

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

9 (1) the applicant's full legal and official notary
10 names;

11 (2) a general description of the technology that the
12 applicant will use to create an electronic signature in performing
13 official acts;

14 (3) a certification of compliance with the secretary
15 of state's standards developed under Section 406.102;

16 (4) an e-mail address of the applicant; and

17 (5) a decrypting instruction, code, or key or
18 decrypting software that allows the electronic information in the
19 application to be read.

20 (c) The application described by Subsection (b) must be
21 signed by the applicant using the electronic signature described in
22 the application.

23 (d) The secretary of state may charge a fee of \$10 for an
24 application submitted under this section.

25 Sec. 406.104. UPDATED TECHNOLOGY. If an electronic notary
26 public begins using technology to perform the electronic notary
27 public's duties other than the technology described by the

1 electronic notary public's application under Section 406.103, the
2 electronic notary public shall notify the secretary of state of the
3 use of the updated technology and provide a description of the
4 updated technology not later than the 90th day after the date the
5 electronic notary public begins to use the updated technology.

6 Sec. 406.105. PERFORMANCE OF NOTARIAL ACTS. An electronic
7 notary public:

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

11 (2) may perform notarial acts as provided by
12 Subchapter A in addition to performing electronic notarizations.

13 Sec. 406.106. ELECTRONIC RECORD OF ELECTRONIC
14 NOTARIZATIONS. (a) An electronic notary public shall keep a secure
15 electronic record of electronic documents notarized by the
16 electronic notary public. The electronic record must contain for
17 each electronic notarization:

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

19 (2) the type of notarization;

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

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

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

26 (A) a statement that the person is personally
27 known to the electronic notary public;

1 (B) a notation of the type of identification
2 document provided to the electronic notary public;

3 (C) the printed name and address of each credible
4 witness swearing to or affirming the person's identity and for each
5 credible witness not personally known to the electronic notary
6 public, a description of the type of identification documents
7 provided to the electronic notary public; or

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

11 (6) the fee, if any, charged for the notarization.

12 (b) The electronic notary public shall take reasonable
13 steps to:

14 (1) ensure the integrity, security, and authenticity
15 of electronic notarizations;

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

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

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

22 Sec. 406.107. USE OF ELECTRONIC RECORD, ELECTRONIC
23 SIGNATURE, AND SEAL. (a) An electronic notary public shall take
24 reasonable steps to ensure that any registered device used to
25 create an electronic signature is current and has not been revoked
26 or terminated by the device's issuing or registering authority.

27 (b) An electronic notary public shall keep the electronic

1 notary public's electronic record, electronic signature, and
2 electronic seal secure and under the electronic notary public's
3 exclusive control. The electronic notary public may not allow
4 another person to use the electronic notary public's electronic
5 record, electronic signature, or electronic seal.

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

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

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

21 Sec. 406.108. NOTARIZED ELECTRONIC DOCUMENTS TRANSMITTED
22 OUTSIDE OF THIS STATE. (a) If electronic evidence of the
23 authenticity of an electronic notary public's official signature
24 and seal is required for a notarized electronic document
25 transmitted to another state or a foreign country, an electronic
26 notary public shall attach or logically associate that evidence in
27 the form of an electronic certificate of authenticity provided

1 under Subsection (b).

2 (b) The secretary of state shall provide an electronic
3 certificate of authenticity for purposes of Subsection (a) by
4 providing an independently verifiable document in a form
5 substantially similar to the following:

6 Certificate of Authenticity for an Electronic Notarization

7 I, _____ (name and title), certify that
8 _____ (name of electronic notary public), the person
9 named as an electronic notary public in the attached or associated
10 electronic document, was commissioned as an electronic notary
11 public for the State of Texas and authorized to act as an electronic
12 notary public at the time of the document's electronic
13 notarization.

14 To verify this certificate, I have included my electronic
15 signature this _____ day of _____ 20_____

16 (Electronic signature and seal of commissioning official)

17 (c) The secretary of state may charge a fee for providing a
18 certificate of authenticity under this section.

19 Sec. 406.109. FEES FOR ELECTRONIC NOTARIZATION. An
20 electronic notary public may charge a fee in an amount not to exceed
21 \$25 for performing an electronic notarization.

22 Sec. 406.110. TERMINATION OF ELECTRONIC NOTARY PUBLIC'S
23 COMMISSION. (a) Except as provided by Subsection (b), an
24 electronic notary public whose commission terminates shall destroy
25 the coding, disk, certificate, card, software, or password that
26 enables electronic affixation of the electronic notary public's
27 official electronic signature or seal. The electronic notary

1 public shall certify compliance with this subsection to the
2 secretary of state.

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

10 Sec. 406.111. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE;
11 CRIMINAL OFFENSE. A person who, without authorization, knowingly
12 obtains, conceals, damages, or destroys the certificate, disk,
13 coding, card, program, software, or hardware enabling an electronic
14 notary public to affix an official electronic signature or seal
15 commits an offense. An offense under this section is a Class A
16 misdemeanor.

17 SECTION 2. This Act takes effect September 1, 2015.