

BILL ANALYSIS

Senate Research Center

H.B. 1217
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1217 amends the Government Code to authorize a notary public or an applicant for appointment as a notary public to apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by the bill. The bill establishes qualifications for appointment as an online notary public, including the electronic submission of an application to the secretary of state, sets out the requirements for that application, and authorizes the secretary of state to charge an application fee in an amount necessary to administer the bill's provisions governing online notaries public. Those bill provisions apply only to an online notarization, defined by the bill as a notarial act performed by means of two-way video and audio conference technology that meets the standards for online notarization adopted under the bill's provisions.

H.B. 1217 authorizes the secretary of state to adopt rules necessary to implement the bill's provisions governing online notaries public, including rules to facilitate online notarizations, and requires the secretary of state by rule to develop and maintain standards for online notarization in accordance with the bill's provisions, including standards for credential analysis and identity proofing. The bill authorizes the secretary of state to 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. The bill establishes that an online notary public is a notary public for purposes of statutory provisions governing notaries public and is subject to those provisions to the same extent as a notary public appointed and commissioned under those provisions, authorizes an online notary public to perform notarial acts as provided by those provisions in addition to performing online notarizations, and authorizes an online notary public to perform an online notarization authorized under the bill.

H.B. 1217 limits the types of online notarizations that an online notary public may perform to those relating to a document involving real estate located in Texas, a document or agreement relating to a transaction in which at least one of the parties is a Texas resident or authorized to conduct business in Texas, an agreement or instrument securing a debt that is payable at a location in Texas, a document that is intended to be filed in state public records, an acknowledgement or affirmation made by a person while the person is physically located in Texas, or a document signed by a person who is a Texas resident at the time of signing as evidenced by a valid government-issued identification credential that includes a photograph and current Texas address. The bill requires an online notary public, before performing an online notarization, to determine the basis for which the online notarization is authorized by requesting information from the person for which the notarization will be performed. The bill requires an online notary public to maintain a record of such information in accordance with the bill's provisions. The bill exempts an online notary public from liability for a false statement made to the online notary public under the bill unless the online notary public knows that the statement is false.

H.B. 1217 requires an online notary public to keep a secure electronic record of electronic documents notarized by the online notary public and sets out the required contents for that electronic record. The bill requires the electronic record to be maintained for at least five years after the date of the transaction or proceeding and requires the online notary public to take reasonable steps to ensure the integrity, security, and authenticity of online notarizations, maintain a backup for the electronic record, and protect the backup record from unauthorized use.

H.B. 1217 requires an online notary public to 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. The bill requires an online notary public to keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control and prohibits the online notary public from allowing another person to use that electronic record, electronic signature, or electronic seal. The bill restricts the use of an online notary public's electronic signature to the performance of online notarization. The bill requires an online notary public to 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. The bill requires an online notary public to 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 and requires the online notary public to immediately notify the secretary of state of the loss or use by another person of that electronic record, electronic signature, or electronic seal.

H.B. 1217 authorizes an online notary public to perform an online notarization authorized by the bill that meets the requirements of the applicable bill provisions and rules adopted under those provisions regardless of whether the principal is physically located in Texas at the time of the online notarization. The bill requires an online notary public, in performing an online notarization, to 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 such requirements and sets out the manner in which identity may be verified. The bill requires an online notary public to take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception and requires the electronic notarial certificate for an online notarization to include a notation that the notarization is an online notarization. The bill authorizes an online notary public or the online notary public's employer to charge a fee in an amount not to exceed \$25 for performing an online notarization in addition to any other fees that a notary public or its employer is authorized to charge.

H.B. 1217 requires an online notary public whose commission terminates to destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the online notary public's official electronic signature or seal and requires the online notary public to certify compliance with such requirements to the secretary of state. A former online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy those items 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. The bill creates the Class A misdemeanor offense of wrongful possession of software or hardware for 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. The bill establishes that an online notarization for a document accepted by a county clerk for purposes of the recording of real estate located in Texas is considered to have been conducted in accordance with the bill's provisions if the online notary public certifies, in accordance with rules adopted under the bill, that the online notarization was so conducted.

H.B. 1217 amends the Civil Practice and Remedies Code to authorize a person, for purposes of the conditions that constitute acknowledgement in relation to an acknowledgement form provided under statutory provisions relating to acknowledgments and proofs of written instruments, to personally appear before the officer taking the acknowledgement by physically appearing before the officer or by appearing by an interactive two-way audio and video communication that meets the online notarization requirements and rules adopted under the bill's provisions. The bill requires such an acknowledgment form to include a space for an online notarization to indicate by which method the acknowledging person appeared before the officer. The bill establishes that, to the extent that statutory provisions relating to acknowledgments and proofs of written instruments conflict with the bill's provisions governing online notaries public, those bill provisions control with respect to an online notarization.

H.B. 1217 amends current law relating to appointment of and performance of notarial acts by an online notary public and online acknowledgment and proof of written instruments, authorizes a fee, and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas secretary of state in SECTION 3 (Sections 406.103 and 406.104, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(c) Authorizes a person, for purposes of Subsection (b) (relating to the definition of "acknowledged" in an acknowledgment form), to 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 (Notary Public; Commissioner of Deeds), Government Code, and rules adopted under that subchapter.

(d) Requires that the acknowledgment form provided by this chapter (Acknowledgments and Proofs of Written Instruments) 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. Amends Chapter 121, Civil Practice and Remedies Code, by adding Section 121.016, as follows:

Sec. 121.016. EFFECT OF OTHER LAW. Provides that, 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. Amends Chapter 406, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. Defines "credential analysis," "electronic," "electronic document," "electronic notarial certificate," "electronic seal," "electronic signature," "identity proofing," "notarial act," "online notarization," "online notary public," "principal," and "remote presentation."

Sec. 406.102. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to an online notarization.

Sec. 406.103. RULEMAKING. Authorizes the Texas secretary of state (SOS) to adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION. (a) Requires the SOS, by rule, to develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) Authorizes the SOS to 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) Authorizes a notary public or an applicant for appointment as a notary public under Subchapter A (Notary Public) to apply to the SOS to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) Provides that a person qualifies to be appointed as an online notary public by meeting certain requirements.

(c) Requires that the application required by Subsection (b) include certain information.

(d) Authorizes the SOS to charge a fee for a submitted application in an amount necessary to administer this subchapter.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. Provides that 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) is authorized to perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and

(3) is authorized to perform an online notarization authorized under this subchapter.

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

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS. (a) Requires an online notary public to keep a secure electronic record of electronic documents notarized by the online notary public. Requires that the electronic record contain certain information for each online notarization.

(b) Requires the online notary public to take reasonable steps to ensure the integrity, security, and authenticity of online notarizations, maintain a backup for the electronic record required by Subsection (a), and protect the backup record from unauthorized use.

(c) Requires that the electronic record required by Subsection (a) 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) Requires an online notary public to 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) Requires an online notary public to keep the online notary public's electronic record, electronic signature, and electronic seal secure under the online notary public's exclusive control. Prohibits the online notary public from allowing another person to use the online notary public's electronic record, electronic signature, or electronic seal.

(c) Authorizes an online notary public to use the online notary public's electronic signature only for performing online notarization.

(d) Requires an online notary public to 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) Requires an online notary public to immediately notify an appropriate law enforcement agency and the SOS of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal. Requires an online notary public to immediately notify the SOS 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) Authorizes an online notary public to 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) Requires an online notary public, in performing an online notarization, to verify the identity of a person creating an electronic signature at the time that the signature is taken by using a two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Authorizes identity to be verified by certain methods.

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

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

Sec. 406.111. FEES FOR ONLINE NOTARIZATION. Authorizes an online notary public or the online notary public's employer to 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 (Fees Charged by Notary Public).

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

(b) Provides that 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) Provides that 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) Provides that an offense under this section is a Class A misdemeanor.

SECTION 4. Effective date: July 1, 2018.