

BILL ANALYSIS

C.S.H.B. 1217
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that, although the practice of online notarization was authorized during a previous legislative session, the state legislature did not provide a clear regulatory framework for online notaries public. C.S.H.B. 1217 seeks to provide this framework.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 3 of this bill.

ANALYSIS

C.S.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.

C.S.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.

C.S.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.

C.S.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.

C.S.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.

C.S.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.

C.S.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.

C.S.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.

EFFECTIVE DATE

July 1, 2018.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1217 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

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.

No equivalent provision.

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 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

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

electronic notary public in the particular notarization.

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

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

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

(7) "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.

(8) "Online notarization" means the performance of an electronic notarization by means of two-way video and audio conference technology that meets the standards adopted under Section 406.103.

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.

(12) "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:

Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an electronic notarization relating to:

- (1) a document involving real estate located in this state;
- (2) an agreement performable wholly or partly in this state;
- (3) an agreement or instrument creating a debt that is payable at a location in this state;
- (4) an agreement that specifically requires the application of the laws of this state;
- (5) a document, including an affidavit, that is intended to be filed or used in a court located in this state; or
- (6) an acknowledgment or affirmation made by a person while the person is located in this state.

Sec. 406.103. STANDARDS FOR ELECTRONIC NOTARIZATION. The secretary of state by rule shall develop and maintain standards for electronic notarization in accordance with this subchapter.

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 electronic notarization standards.

Sec. 406.104. 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 electronic notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an electronic notary public by satisfying the qualification requirements for appointment as a notary public under Subchapter A, paying the application fee described by Subsection (c), and electronically submitting to the secretary of state an application in the form prescribed

(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.

(See Sec. 406.107 below.)

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

by the secretary of state that satisfies the secretary of state that the applicant is qualified.

The application must include:

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

(2) a certification of compliance with the secretary of state's standards developed under Section 406.103; and

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

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

Sec. 406.105. PERFORMANCE OF NOTARIAL ACTS. An electronic 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; and

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

(See Sec. 406.102 above.)

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.

(a) An online notary public may perform an online notarization relating only to:

(1) a document involving real estate located in this state;

(2) a document or agreement relating to a transaction in which at least one of the parties is a resident of this state or authorized to conduct business in this state;

(3) an agreement or instrument securing a debt that is payable at a location in this state;

(4) a document, including an affidavit, that is intended to be filed in the public records of this state, including a document, pleading, affidavit, or deposition to be filed in a proceeding in a local, state, or federal court located in this state;

(5) an acknowledgment or affirmation made by a person while the person is physically located in this state; or

(6) a document signed by a person who is a resident of this state at the time of signing as evidenced by a valid government-issued identification credential that includes a

Sec. 406.106. ELECTRONIC RECORD OF ELECTRONIC NOTARIZATIONS.

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

- (1) the date and time of the notarization;
- (2) the type of notarization;
- (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 electronic notary public;
 - (B) a notation of the type of identification document provided to the electronic notary public; or

(C) the following:

- (i) the printed name and address of each credible witness swearing to or affirming the person's identity;
- (ii) for each credible witness not personally known to the electronic notary public, a description of the type of identification documents provided to the electronic notary public; and
- (iii) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the

photograph and a current address in this state.

(b) Before performing an online notarization, an online notary public shall determine the basis for which the online notarization is authorized under Subsection (a) by requesting information from the person for which the notarization will be performed. The online notary public shall maintain a record of the information provided to the online notary public under this subsection in accordance with Section 406.108.

(c) An online notary public is not liable for a false statement made to the online notary public under this section unless the online notary public knows that the statement is false.

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

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

- (1) ensure the integrity, security, and
authenticity of electronic 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. 406.107. USE OF ELECTRONIC
RECORD, ELECTRONIC SIGNATURE,
AND SEAL. (a) An electronic 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 electronic notary public shall keep
the electronic notary public's electronic
record, electronic signature, and electronic
seal secure and under the electronic notary
public's exclusive control. The electronic
notary public may not allow another person
to use the electronic notary public's
electronic record, electronic signature, or
electronic seal.

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

(d) An electronic notary public shall attach
the electronic 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 electronic notary public shall
immediately notify an appropriate law
enforcement agency and the secretary of
state of the theft or vandalism of the
electronic notary public's electronic record,
electronic signature, or electronic seal. An

type of identification presented as evidence;
and
(7) the fee, if any, charged for the
notarization; and

(8) the basis for which the online
notarization was authorized under Section
406.107.

(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

electronic notary public shall immediately notify the secretary of state of the loss or use by another person of the electronic notary public's electronic record, electronic signature, or electronic seal.

Sec. 406.108. ONLINE NOTARIZATION REQUIREMENTS. (a) An electronic notary public may perform an online notarization that meets the requirements of this section and rules adopted under this subchapter.

(b) In performing an online notarization, an electronic 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 electronic notary public's personal knowledge of the person creating the electronic signature;

(2) using an in-person identity proofing process that meets the specifications of the Federal Bridge Certification Authority before the online notarization;

(3) using a valid digital certificate accessed by biometric data; or

(4) using an interoperable personal identity verification card that is designed, issued, and managed in accordance with the specifications in:

(A) Personal Identity Verification of Federal Employees and Contractors published by the National Institute of Standards and Technology;

(B) Personal Identity Verification Interoperability for Non-Federal Issuers published by the Federal Chief Information Officers Council; and

(C) any supplements or revisions to the publications described by Paragraphs (A) and (B).

(c) If an electronic notary public verifies an identity under Subsection (b)(3) or (4), the electronic notary public's electronic notarization system must ensure that the digital certificate or personal identity verification card is current and has not been revoked at the time the online notarization is performed.

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).

(d) The electronic 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.

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

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

Sec. 406.110. TERMINATION OF ELECTRONIC NOTARY PUBLIC'S COMMISSION. (a) Except as provided by Subsection (b), an electronic notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the electronic notary public's official electronic signature or seal. The electronic notary public shall certify compliance with this subsection to the secretary of state.

(b) A former electronic 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 electronic notary public is recommissioned as an electronic notary public with the same electronic signature and seal within three months after the former electronic notary public's former commission terminated.

Sec. 406.111. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE. A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an electronic notary public to affix an official electronic signature or seal commits an offense.

An offense under this section is a Class A misdemeanor.

(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.

Sec. 406.114. COUNTY CLERK RECORDING. An online notarization for a document accepted by a county clerk for purposes of the recording of real estate located in this state is considered to have been conducted in accordance with this

subchapter if the online notary public certifies, in accordance with rules adopted under this subchapter, that the online notarization was conducted in accordance with this subchapter.

SECTION 2. This Act takes effect **January 1, 2018.**

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