

By: Parker

H.B. No. 1217

Substitute the following for H.B. No. 1217:

By: Holland

C.S.H.B. No. 1217

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to appointment of and performance of notarial acts by an  
3 online notary public and online acknowledgment and proof of written  
4 instruments; authorizing a fee and creating a criminal offense.

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

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

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

11 (1) physically appearing before the officer; or

12 (2) appearing by an interactive two-way audio and  
13 video communication that meets the online notarization  
14 requirements under Subchapter C, Chapter 406, Government Code, and  
15 rules adopted under that subchapter.

16 (d) The acknowledgment form provided by this chapter must  
17 include a space for an online notarization as defined by Section  
18 406.101, Government Code, to indicate by which method described by  
19 Subsection (c) the acknowledging person appeared before the  
20 officer.

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

23 Sec. 121.016. EFFECT OF OTHER LAW. To the extent that a  
24 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 (a) An online notary public may perform an online notarization  
4 relating only to:

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

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

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

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

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

19 (6) a document signed by a person who is a resident of  
20 this state at the time of signing as evidenced by a valid  
21 government-issued identification credential that includes a  
22 photograph and a current address in this state.

23 (b) Before performing an online notarization, an online  
24 notary public shall determine the basis for which the online  
25 notarization is authorized under Subsection (a) by requesting  
26 information from the person for which the notarization will be  
27 performed. The online notary public shall maintain a record of the

1 information provided to the online notary public under this  
2 subsection in accordance with Section 406.108.

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

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;

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

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

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

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

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

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

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

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

25               (b) An online notary public shall keep the online notary  
26 public's electronic record, electronic signature, and electronic  
27 seal secure and under the online notary public's exclusive control.



1 The online notary public may not allow another person to use the  
2 online notary public's electronic record, electronic signature, or  
3 electronic seal.

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

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

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

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

25 (b) In performing an online notarization, an online notary  
26 public shall verify the identity of a person creating an electronic  
27 signature at the time that the signature is taken by using two-way

1 video and audio conference technology that meets the requirements  
2 of this subchapter and rules adopted under this subchapter.

3 Identity may be verified by:

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

6 (2) each of the following:

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

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

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

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

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

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

26 Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S  
27 COMMISSION. (a) Except as provided by Subsection (b), an online

1 notary public whose commission terminates shall destroy the coding,  
2 disk, certificate, card, software, or password that enables  
3 electronic affixation of the online notary public's official  
4 electronic signature or seal. The online notary public shall  
5 certify compliance with this subsection to the secretary of state.

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

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

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

20 Sec. 406.114. COUNTY CLERK RECORDING. An online  
21 notarization for a document accepted by a county clerk for purposes  
22 of the recording of real estate located in this state is considered  
23 to have been conducted in accordance with this subchapter if the  
24 online notary public certifies, in accordance with rules adopted  
25 under this subchapter, that the online notarization was conducted  
26 in accordance with this subchapter.

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