

BILL ANALYSIS

Senate Research Center
88R20395 MZM-F

C.S.S.B. 1780
By: Parker
State Affairs
4/17/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2019, the 85th Texas Legislature enacted legislation to allow for remote online notarization (RON) with several safeguards in place including identity proofing and credential analysis. (Subchapter C, Chapter 406, Texas Government Code and Title 1, Chapter 87 of the Administrative Code) RON allows individuals to have their documents remotely notarized, avoiding many inconveniences and potential difficulties formerly caused by the requirement that acknowledgments be witnessed by the notary and the signer within each other's physical presence. Transactions utilizing RON have proven popular and a great benefit to consumers.

The current RON statute does not accommodate the use of a remote ink notary (RIN). A remote ink notarization allows a person to use a "wet ink" signature rather than an electronic signature.

During the COVID pandemic, Governor Abbott provided for a temporary accommodation in the form of a governor's proclamation allowing for RIN in real property transactions if certain conditions were met. This was a helpful accommodation allowing individuals to close real estate transactions without risking exposure to the COVID-19 virus. A straightforward means of providing for RIN transactions going forward is to amend the existing RON statute to allow for RIN while keeping the security framework for electronic notarizations in place.

S.B. 1780 provides for remote ink notarizations within the existing RON statutory framework.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1780 amends current law relating to online notarizations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 406.101, Government Code, by adding Subdivisions (1-a), (13), and (14) and amending Subdivision (11) to define "document," "sign," and "signature" and redefine "principal."

SECTION 2. Amends Section 406.108, Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(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 for each online notarization:

- (1) the date and time of the online notarization, rather than of the notarization;
- (2) makes no changes to this subdivision;

(3) the type, the title, or a description of the document, rather than electronic document, or proceeding; and

(4)-(7) makes no changes to these subdivisions.

(d) Requires an online notary public, for documents that are tangible instruments, to keep a record of documents notarized by the online notary public with a tangible symbol. Requires that the record for each online notarization with a tangible symbol contain the same elements required by Subsection (a) for an electronic record.

SECTION 3. Amends Section 406.109, Government Code, by adding Subsection (f), as follows:

(f) Requires an online notary public to authenticate all online notarizations with the online notary public's:

(1) electronic seal, if the online notarization was performed with respect to an electronic document; or

(2) seal of office as provided under Section 406.013 (Seal), if the online notarization was performed with respect to a tangible document.

SECTION 4. Amends the heading to Section 406.110, Government Code, to read as follows:

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES GENERALLY.

SECTION 5. Amends Sections 406.110(b) and (d), Government Code, as follows:

(b) Requires an online notary public, in performing an online notarization, to verify the identity of a person signing a document at the time of the online notarization by using two-way video and audio conference technology that meets the requirements of Subchapter C (Online Notary Public) and rules adopted under this subchapter. Requires, rather than authorizes, that identity be verified by:

(1) the online notary public's personal knowledge of the person signing a document, rather than creating the electronic signature; or

(2) makes a conforming change to this subdivision.

(d) Requires that the notarial certificate, rather than the electronic notarial certificate, for an online notarization include a notation that the notarization is an online notarization and to indicate if the signature was a tangible symbol or an electronic signature.

SECTION 6. Amends Subchapter C, Chapter 406, Government Code, by adding Sections 406.1103 and 406.1107, as follows:

Sec. 406.1103. ONLINE NOTARIZATION PROCEDURES FOR TANGIBLE DOCUMENTS. (a) Requires an online notary public, in performing an online notarization in which the principal signs with a tangible symbol and not an electronic signature, to reasonably confirm that a document before the online notary public is the same document in which the principal made a statement or on which the principal executed a signature.

(b) Provides that an online notary public satisfies the requirement of Subsection (a) to take an acknowledgment of a signature on a tangible document if:

(1) during a video and audio recording described by Section 406.108(a)(6) (relating to requiring the electronic record for each online notarization to have a recording that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence):

(A) the acknowledgment is displayed to and identified by the principal; and

(B) the principal signs the document and a declaration in substantially a certain form that is a part of or securely attached to the document. Sets forth the language to be included in the declaration;

(2) the principal sends the document and declaration to the online notary public not later than the third day after the date the online notarization was performed; and

(3) the online notary public:

(A) in the video and audio recording under Subdivision (1), records the principal signing the document and declaration;

(B) receives the document and declaration sent by the principal under Subdivision (2) not later than the 10th day after the date the online notarization was performed; and

(C) after receipt of the document and declaration from the principal, executes a notarial certificate that includes a statement in substantially a certain form. Sets forth the language to be included in the declaration.

(c) Provides that an online notarization performed in compliance with Subsection (b) complies with any requirement regarding the execution of a notarial certificate and is effective on the date the principal signed the declaration under Subsection (b)(1)(B).

(d) Authorizes a notarial certificate executed in the form described by Subsection (b)(3)(C) to be relied on as conclusive evidence of compliance with Subsections (b)(2) and (b)(3)(B).

(e) Provides that Subsection (b) does not preclude use of another procedure to satisfy Subsection (a) for an online notarization performed with respect to a tangible document.

Sec. 406.1107. ONLINE NOTARIZATION PROCEDURES FOR OATHS OR AFFIRMATIONS. Authorizes an online notary public to administer an oath or affirmation to a principal as an online notarization if, except as otherwise provided by other law of this state, the online notary public:

(1) identifies the principal under Section 406.110(b) (relating to requiring 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 certain video and audio conference technology);

(2) creates or causes the creation under Section 406.108 (Electronic Record of Online Notarizations) of a video and audio recording of the principal taking the oath or affirmation; and

(3) retains or causes the retention under Section 406.108 of the recording.

SECTION 7. Effective date: January 1, 2024.