

By: Capriglione

H.B. No. 5004

Substitute the following for H.B. No. 5004:

By: Schofield

C.S.H.B. No. 5004

A BILL TO BE ENTITLED

AN ACT

relating to online notarizations.

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

SECTION 1. Section 406.101, Government Code, is amended by adding Subdivisions (1-a), (13), and (14) and amending Subdivision (11) to read as follows:

(1-a) "Document" means a tangible instrument or electronic document.

(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.

(13) "Sign" means, with the present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) execute an electronic signature, as defined by Section 322.002, Business & Commerce Code.

(14) "Signature" means a tangible symbol or electronic signature that evidences the signing of a record executed or adopted by a person with the intent to sign the document.

SECTION 2. Section 406.108, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as

1 follows:

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

6 (1) the date and time of the online notarization;

7 (2) the type of notarial act;

8 (3) the type, the title, or a description of the
9 [~~electronic~~] document or proceeding;

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

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

14 (A) a statement that the person is personally
15 known to the online notary public;

16 (B) a notation of the type of identification
17 document provided to the online notary public;

18 (C) a record of the identity verification made
19 under Section [406.110](#), if applicable; or

20 (D) the following:

21 (i) the printed name and address of each
22 credible witness swearing to or affirming the person's identity;
23 and

24 (ii) for each credible witness not
25 personally known to the online notary public, a description of the
26 type of identification documents provided to the online notary
27 public;

1 (6) a recording of any video and audio conference that
2 is the basis for satisfactory evidence of identity and a notation of
3 the type of identification presented as evidence; and

4 (7) the fee, if any, charged for the notarization.

5 (d) For documents that are tangible instruments, an online
6 notary public shall keep a record of the documents notarized by the
7 online notary public with a tangible symbol. The record for each
8 online notarization with a tangible symbol must contain the same
9 elements required by Subsection (a) for an electronic record.

10 SECTION 3. Section 406.109, Government Code, is amended by
11 adding Subsection (f) to read as follows:

12 (f) An online notary public shall authenticate all online
13 notarizations with the online notary public's:

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

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

19 SECTION 4. The heading to Section 406.110, Government Code,
20 is amended to read as follows:

21 Sec. 406.110. ONLINE NOTARIZATION PROCEDURES GENERALLY.

22 SECTION 5. Sections 406.110(b) and (d), Government Code,
23 are amended to read as follows:

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

1 and audio conference technology that meets the requirements of this
2 subchapter and rules adopted under this subchapter. Identity shall
3 ~~may~~ be verified by:

4 (1) the online notary public's personal knowledge of
5 the person signing a document ~~[creating the electronic signature]~~;
6 or

7 (2) each of the following:

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

13 (B) credential analysis of the credential
14 described by Paragraph (A); and

15 (C) identity proofing of the person described by
16 Paragraph (A).

17 (d) The ~~[electronic]~~ notarial certificate for an online
18 notarization must include a notation that the notarization is an
19 online notarization and must indicate if the signature was a
20 tangible symbol or an electronic signature.

21 SECTION 6. Subchapter C, Chapter 406, Government Code, is
22 amended by adding Sections 406.1103 and 406.1107 to read as
23 follows:

24 Sec. 406.1103. ONLINE NOTARIZATION PROCEDURES FOR TANGIBLE
25 DOCUMENTS. (a) In performing an online notarization in which the
26 principal signs with a tangible symbol and not an electronic
27 signature, an online notary public shall reasonably confirm that a

1 document before the online notary public is the same document in
2 which the principal made a statement or on which the principal
3 executed a signature.

4 (b) An online notary public satisfies the requirement of
5 Subsection (a) to take an acknowledgment of a signature on a
6 tangible document if:

7 (1) during a video and audio recording described by
8 Section 406.108(a)(6):

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

11 (B) the principal signs the document and a
12 declaration in substantially the following form that is a part of or
13 securely attached to the document:

14 "I declare under penalty of perjury that the
15 document of which this declaration is a part or to which it is
16 attached is the same document on which (name of online notary
17 public), an online notary public, performed an online notarization
18 and before whom I appeared by means of two-way video and audio
19 conference technology on (date).

20 _____

21 (Signature of principal)

22 _____

23 (Printed name of principal)";

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

27 (3) the online notary public:

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

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

7 (C) after receipt of the document and declaration
8 from the principal, executes a notarial certificate that includes a
9 statement in substantially the following form:

10 "I, (name of online notary public),
11 witnessed, by means of video and audio conference technology, (name
12 of principal) sign the attached document and declaration on
13 (date)."

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

18 (d) A notarial certificate executed in the form described by
19 Subsection (b)(3)(C) may be relied on as conclusive evidence of
20 compliance with Subsections (b)(2) and (b)(3)(B).

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

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

1 public:

2 (1) identifies the principal under Section
3 406.110(b);

4 (2) creates or causes the creation under Section
5 406.108 of a video and audio recording of the principal taking the
6 oath or affirmation; and

7 (3) retains or causes the retention under Section
8 406.108 of the recording.

9 SECTION 7. This Act takes effect January 1, 2024.