

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.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1780 passed the Senate on May 1, 2023, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1780 passed the House on May 12, 2023, by the following vote: Yeas 139, Nays 1, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor