

1-1 By: Parker (Senate Sponsor - Creighton) H.B. No. 1217  
1-2 (In the Senate - Received from the House May 8, 2017;  
1-3 May 9, 2017, read first time and referred to Committee on State  
1-4 Affairs; May 15, 2017, reported favorably by the following vote:  
1-5 Yeas 8, Nays 0; May 15, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Huffman	X		
1-9	Hughes		X	
1-10	Birdwell	X		
1-11	Creighton	X		
1-12	Estes	X		
1-13	Lucio	X		
1-14	Nelson	X		
1-15	Schwertner	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to appointment of and performance of notarial acts by an  
1-20 online notary public and online acknowledgment and proof of written  
1-21 instruments; authorizing a fee and creating a criminal offense.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 121.006, Civil Practice and Remedies  
1-24 Code, is amended by adding Subsections (c) and (d) to read as  
1-25 follows:

1-26 (c) For purposes of Subsection (b), a person may personally  
1-27 appear before the officer taking the acknowledgment by:

1-28 (1) physically appearing before the officer; or

1-29 (2) appearing by an interactive two-way audio and  
1-30 video communication that meets the online notarization  
1-31 requirements under Subchapter C, Chapter 406, Government Code, and  
1-32 rules adopted under that subchapter.

1-33 (d) The acknowledgment form provided by this chapter must  
1-34 include a space for an online notarization as defined by Section  
1-35 406.101, Government Code, to indicate by which method described by  
1-36 Subsection (c) the acknowledging person appeared before the  
1-37 officer.

1-38 SECTION 2. Chapter 121, Civil Practice and Remedies Code,  
1-39 is amended by adding Section 121.016 to read as follows:

1-40 Sec. 121.016. EFFECT OF OTHER LAW. To the extent that a  
1-41 provision of this chapter conflicts with Subchapter C, Chapter 406,  
1-42 Government Code, that subchapter controls with respect to an online  
1-43 notarization as defined by Section 406.101, Government Code.

1-44 SECTION 3. Chapter 406, Government Code, is amended by  
1-45 adding Subchapter C to read as follows:

1-46 SUBCHAPTER C. ONLINE NOTARY PUBLIC

1-47 Sec. 406.101. DEFINITIONS. In this subchapter:

1-48 (1) "Credential analysis" means a process or service  
1-49 operating according to criteria approved by the secretary of state  
1-50 through which a third person affirms the validity of a  
1-51 government-issued identification credential through review of  
1-52 public and proprietary data sources.

1-53 (2) "Electronic" means relating to technology having  
1-54 electrical, digital, magnetic, wireless, optical, electromagnetic,  
1-55 or similar capabilities.

1-56 (3) "Electronic document" means information that is  
1-57 created, generated, sent, communicated, received, or stored by  
1-58 electronic means.

1-59 (4) "Electronic notarial certificate" means the  
1-60 portion of a notarized electronic document that is completed by an  
1-61 online notary public and contains the following:

2-1 (A) the online notary public's electronic  
2-2 signature, electronic seal, title, and commission expiration date;

2-3 (B) other required information concerning the  
2-4 date and place of the online notarization; and

2-5 (C) the facts attested to or certified by the  
2-6 online notary public in the particular notarization.

2-7 (5) "Electronic seal" means information within a  
2-8 notarized electronic document that confirms the online notary  
2-9 public's name, jurisdiction, identifying number, and commission  
2-10 expiration date and generally corresponds to information in notary  
2-11 seals used on paper documents.

2-12 (6) "Electronic signature" means an electronic sound,  
2-13 symbol, or process attached to or logically associated with an  
2-14 electronic document and executed or adopted by a person with the  
2-15 intent to sign the electronic document.

2-16 (7) "Identity proofing" means a process or service  
2-17 operating according to criteria approved by the secretary of state  
2-18 through which a third person affirms the identity of an individual  
2-19 through review of personal information from public and proprietary  
2-20 data sources.

2-21 (8) "Notarial act" means the performance by an online  
2-22 notary public of a function authorized under Section 406.016.

2-23 (9) "Online notarization" means a notarial act  
2-24 performed by means of two-way video and audio conference technology  
2-25 that meets the standards adopted under Section 406.104.

2-26 (10) "Online notary public" means a notary public who  
2-27 has been authorized by the secretary of state to perform online  
2-28 notarizations under this subchapter.

2-29 (11) "Principal" means an individual:

2-30 (A) whose electronic signature is notarized in an  
2-31 online notarization; or

2-32 (B) taking an oath or affirmation from the online  
2-33 notary public but not in the capacity of a witness for the online  
2-34 notarization.

2-35 (12) "Remote presentation" means transmission to the  
2-36 online notary public through communication technology of an image  
2-37 of a government-issued identification credential that is of  
2-38 sufficient quality to enable the online notary public to:

2-39 (A) identify the individual seeking the online  
2-40 notary public's services; and

2-41 (B) perform credential analysis.

2-42 Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter  
2-43 applies only to an online notarization.

2-44 Sec. 406.103. RULEMAKING. The secretary of state may adopt  
2-45 rules necessary to implement this subchapter, including rules to  
2-46 facilitate online notarizations.

2-47 Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION. (a) The  
2-48 secretary of state by rule shall develop and maintain standards for  
2-49 online notarization in accordance with this subchapter, including  
2-50 standards for credential analysis and identity proofing.

2-51 (b) The secretary of state may confer with the Department of  
2-52 Information Resources or other appropriate state agency on matters  
2-53 relating to equipment, security, and technological aspects of the  
2-54 online notarization standards.

2-55 Sec. 406.105. APPLICATION; QUALIFICATIONS. (a) A notary  
2-56 public or an applicant for appointment as a notary public under  
2-57 Subchapter A may apply to the secretary of state to be appointed and  
2-58 commissioned as an online notary public in the manner provided by  
2-59 this section.

2-60 (b) A person qualifies to be appointed as an online notary  
2-61 public by:

2-62 (1) satisfying the qualification requirements for  
2-63 appointment as a notary public under Subchapter A;

2-64 (2) paying the application fee described by Subsection  
2-65 (d); and

2-66 (3) electronically submitting to the secretary of  
2-67 state an application in the form prescribed by the secretary of  
2-68 state that satisfies the secretary of state that the applicant is  
2-69 qualified.

3-1           (c) The application required by Subsection (b) must  
3-2 include:  
3-3           (1) the applicant's name to be used in acting as a  
3-4 notary public;  
3-5           (2) a certification that the applicant will comply  
3-6 with the secretary of state's standards developed under Section  
3-7 406.104; and  
3-8           (3) an e-mail address of the applicant.  
3-9           (d) The secretary of state may charge a fee for an  
3-10 application submitted under this section in an amount necessary to  
3-11 administer this subchapter.

3-12 Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. An online  
3-13 notary public:  
3-14           (1) is a notary public for purposes of Subchapter A and  
3-15 is subject to that subchapter to the same extent as a notary public  
3-16 appointed and commissioned under that subchapter;  
3-17           (2) may perform notarial acts as provided by  
3-18 Subchapter A in addition to performing online notarizations; and  
3-19           (3) may perform an online notarization authorized  
3-20 under this subchapter.

3-21 Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS.  
3-22 An online notary public has the authority to perform any of the  
3-23 functions authorized under Section 406.016 as an online  
3-24 notarization.

3-25 Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS.  
3-26 (a) An online notary public shall keep a secure electronic record  
3-27 of electronic documents notarized by the online notary public. The  
3-28 electronic record must contain for each online notarization:  
3-29           (1) the date and time of the notarization;  
3-30           (2) the type of notarial act;  
3-31           (3) the type, the title, or a description of the  
3-32 electronic document or proceeding;  
3-33           (4) the printed name and address of each principal  
3-34 involved in the transaction or proceeding;  
3-35           (5) evidence of identity of each principal involved in  
3-36 the transaction or proceeding in the form of:  
3-37           (A) a statement that the person is personally  
3-38 known to the online notary public;  
3-39           (B) a notation of the type of identification  
3-40 document provided to the online notary public;  
3-41           (C) a record of the identity verification made  
3-42 under Section 406.110, if applicable; or  
3-43           (D) the following:  
3-44           (i) the printed name and address of each  
3-45 credible witness swearing to or affirming the person's identity;  
3-46 and  
3-47           (ii) for each credible witness not  
3-48 personally known to the online notary public, a description of the  
3-49 type of identification documents provided to the online notary  
3-50 public;  
3-51           (6) a recording of any video and audio conference that  
3-52 is the basis for satisfactory evidence of identity and a notation of  
3-53 the type of identification presented as evidence; and  
3-54           (7) the fee, if any, charged for the notarization.

3-55           (b) The online notary public shall take reasonable steps to:  
3-56           (1) ensure the integrity, security, and authenticity  
3-57 of online notarizations;  
3-58           (2) maintain a backup for the electronic record  
3-59 required by Subsection (a); and  
3-60           (3) protect the backup record from unauthorized use.

3-61           (c) The electronic record required by Subsection (a) shall  
3-62 be maintained for at least five years after the date of the  
3-63 transaction or proceeding.

3-64 Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND  
3-65 SEAL. (a) An online notary public shall take reasonable steps to  
3-66 ensure that any registered device used to create an electronic  
3-67 signature is current and has not been revoked or terminated by the  
3-68 device's issuing or registering authority.  
3-69           (b) An online notary public shall keep the online notary

4-1 public's electronic record, electronic signature, and electronic  
 4-2 seal secure and under the online notary public's exclusive control.  
 4-3 The online notary public may not allow another person to use the  
 4-4 online notary public's electronic record, electronic signature, or  
 4-5 electronic seal.

4-6 (c) An online notary public may use the online notary  
 4-7 public's electronic signature only for performing online  
 4-8 notarization.

4-9 (d) An online notary public shall attach the online notary  
 4-10 public's electronic signature and seal to the electronic notarial  
 4-11 certificate of an electronic document in a manner that is capable of  
 4-12 independent verification and renders any subsequent change or  
 4-13 modification to the electronic document evident.

4-14 (e) An online notary public shall immediately notify an  
 4-15 appropriate law enforcement agency and the secretary of state of  
 4-16 the theft or vandalism of the online notary public's electronic  
 4-17 record, electronic signature, or electronic seal. An online notary  
 4-18 public shall immediately notify the secretary of state of the loss  
 4-19 or use by another person of the online notary public's electronic  
 4-20 record, electronic signature, or electronic seal.

4-21 Sec. 406.110. ONLINE NOTARIZATION PROCEDURES. (a) An  
 4-22 online notary public may perform an online notarization authorized  
 4-23 under Section 406.107 that meets the requirements of this  
 4-24 subchapter and rules adopted under this subchapter regardless of  
 4-25 whether the principal is physically located in this state at the  
 4-26 time of the online notarization.

4-27 (b) In performing an online notarization, an online notary  
 4-28 public shall verify the identity of a person creating an electronic  
 4-29 signature at the time that the signature is taken by using two-way  
 4-30 video and audio conference technology that meets the requirements  
 4-31 of this subchapter and rules adopted under this subchapter.  
 4-32 Identity may be verified by:

4-33 (1) the online notary public's personal knowledge of  
 4-34 the person creating the electronic signature; or

4-35 (2) each of the following:

4-36 (A) remote presentation by the person creating  
 4-37 the electronic signature of a government-issued identification  
 4-38 credential, including a passport or driver's license, that contains  
 4-39 the signature and a photograph of the person;

4-40 (B) credential analysis of the credential  
 4-41 described by Paragraph (A); and

4-42 (C) identity proofing of the person described by  
 4-43 Paragraph (A).

4-44 (c) The online notary public shall take reasonable steps to  
 4-45 ensure that the two-way video and audio communication used in an  
 4-46 online notarization is secure from unauthorized interception.

4-47 (d) The electronic notarial certificate for an online  
 4-48 notarization must include a notation that the notarization is an  
 4-49 online notarization.

4-50 Sec. 406.111. FEES FOR ONLINE NOTARIZATION. An online  
 4-51 notary public or the online notary public's employer may charge a  
 4-52 fee in an amount not to exceed \$25 for performing an online  
 4-53 notarization in addition to any other fees authorized under Section  
 4-54 406.024.

4-55 Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S  
 4-56 COMMISSION. (a) Except as provided by Subsection (b), an online  
 4-57 notary public whose commission terminates shall destroy the coding,  
 4-58 disk, certificate, card, software, or password that enables  
 4-59 electronic affixation of the online notary public's official  
 4-60 electronic signature or seal. The online notary public shall  
 4-61 certify compliance with this subsection to the secretary of state.

4-62 (b) A former online notary public whose commission  
 4-63 terminated for a reason other than revocation or a denial of renewal  
 4-64 is not required to destroy the items described by Subsection (a) if  
 4-65 the former online notary public is recommissioned as an online  
 4-66 notary public with the same electronic signature and seal within  
 4-67 three months after the former online notary public's former  
 4-68 commission terminated.

4-69 Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE;

5-1 CRIMINAL OFFENSE. (a) A person who, without authorization,  
5-2 knowingly obtains, conceals, damages, or destroys the certificate,  
5-3 disk, coding, card, program, software, or hardware enabling an  
5-4 online notary public to affix an official electronic signature or  
5-5 seal commits an offense.

5-6 (b) An offense under this section is a Class A misdemeanor.

5-7 SECTION 4. This Act takes effect July 1, 2018.

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