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CS/CS/HB 409

2019 Legislature

1  
2 An act relating to electronic legal documents;  
3 providing directives to the Division of Law Revision;  
4 amending s. 117.01, F.S.; revising provisions relating  
5 to use of the office of notary public; amending s.  
6 117.021, F.S.; requiring electronic signatures to  
7 include access protection; prohibiting a person from  
8 requiring a notary public to perform a notarial act  
9 with certain technology; requiring the Department of  
10 State, in collaboration with the Agency for State  
11 Technology, to adopt rules for certain purposes;  
12 amending s. 117.05, F.S.; revising limitations on  
13 notary fees to conform to changes made by the act;  
14 providing for inclusion of certain information in a  
15 jurat or notarial certificate; providing for  
16 compliance with online notarization requirements;  
17 providing for notarial certification of a printed  
18 electronic record; revising statutory forms for jurats  
19 and notarial certificates; amending s. 117.107, F.S.;  
20 providing applicability; revising prohibited acts;  
21 creating s. 117.201, F.S.; providing definitions;  
22 creating s. 117.209, F.S.; authorizing online  
23 notarizations; providing an exception; creating s.  
24 117.215, F.S.; specifying the application of other  
25 laws in relation to online notarizations; creating s.

ENROLLED

CS/CS/HB 409

2019 Legislature

26 | 117.225, F.S.; specifying registration and  
27 | qualification requirements for online notaries public;  
28 | creating s. 117.235, F.S.; authorizing the performance  
29 | of certain notarial acts; creating s. 117.245, F.S.;  
30 | requiring an online notary public to keep electronic  
31 | journals of online notarizations and certain audio-  
32 | video communication recordings; specifying the  
33 | information that must be included for each online  
34 | notarization; requiring that an online notary public  
35 | retain a copy of the recording of an audio-video  
36 | communication; specifying requirements for such  
37 | recording; requiring an online notary public to take  
38 | certain steps regarding the maintenance and security  
39 | of the electronic journal; specifying that the  
40 | Department of State maintains jurisdiction for a  
41 | specified period of time for purposes of investigating  
42 | notarial misconduct; authorizing the use of specified  
43 | information for evidentiary purposes; creating s.  
44 | 117.255, F.S.; specifying requirements for the use of  
45 | electronic journals, signatures, and seals; requiring  
46 | an online notary public to provide notification of the  
47 | theft, vandalism, or loss of an electronic journal,  
48 | signature, or seal; authorizing an online notary  
49 | public to make copies of electronic journal entries  
50 | and to provide access to related recordings under

ENROLLED

CS/CS/HB 409

2019 Legislature

51 certain circumstances; authorizing an online notary  
52 public to charge a fee for making and delivering such  
53 copies; providing an exception; creating s. 117.265,  
54 F.S.; prescribing online notarization procedures;  
55 specifying the manner by which an online notary public  
56 must verify the identity of a principal; requiring an  
57 online notary public to take certain measures as to  
58 the security of technology used; specifying that an  
59 electronic notarial certificate must identify the  
60 performance of an online notarization; specifying that  
61 noncompliance does not impair the validity of a  
62 notarial act or the notarized electronic record;  
63 authorizing the use of specified information for  
64 evidentiary purposes; providing for construction;  
65 creating s. 117.275, F.S.; providing fees for online  
66 notarizations; creating s. 117.285, F.S.; specifying  
67 the manner by which an online notary public may  
68 supervise the witnessing of electronic records of  
69 online notarizations; specifying the circumstances  
70 under which an instrument is voidable; specifying the  
71 duties of Remote Online Notarization service providers  
72 and online notaries public; providing applicability  
73 and jurisdiction; creating s. 117.295, F.S.;

74 authorizing the department to adopt rules and  
75 standards for online notarizations; providing minimum

ENROLLED

CS/CS/HB 409

2019 Legislature

76 standards for online notarizations until such rules  
 77 are adopted; requiring certain entities to provide a  
 78 course for online notaries public; creating s.  
 79 117.305, F.S.; superseding certain provisions of  
 80 federal law regulating electronic signatures; amending  
 81 s. 28.222, F.S.; requiring the clerk of the circuit  
 82 court to record certain instruments; amending s.  
 83 92.50, F.S.; revising requirements for oaths,  
 84 affidavits, and acknowledgments; amending s. 95.231,  
 85 F.S.; providing a limitation period for certain  
 86 recorded instruments; amending s. 689.01, F.S.;  
 87 providing for witnessing of documents in connection  
 88 with real estate conveyances; providing for validation  
 89 of certain recorded documents; amending s. 694.08,  
 90 F.S.; providing for validation of certain recorded  
 91 documents; amending s. 695.03, F.S.; providing and  
 92 revising requirements for making acknowledgments,  
 93 proofs, and other documents; amending s. 695.04, F.S.;  
 94 conforming provisions to changes made by the act;  
 95 amending s. 695.25, F.S.; revising the statutory short  
 96 form of acknowledgments to include acknowledgment by  
 97 online notarization; amending s. 695.28, F.S.;  
 98 providing for validity of recorded documents;  
 99 conforming provisions to changes made by the act;  
 100 amending s. 709.2119, F.S.; authorizing the acceptance

ENROLLED

CS/CS/HB 409

2019 Legislature

101 of a power of attorney based upon an electronic  
 102 journal or electronic record made by a notary public;  
 103 amending s. 709.2120, F.S.; prohibiting acceptance of  
 104 a power of attorney if witnessed or notarized  
 105 remotely; amending s. 709.2202, F.S.; prohibiting  
 106 certain authority granted through a power of attorney  
 107 if witnessed or notarized remotely; amending s.  
 108 731.201, F.S.; redefining the term "will" to conform  
 109 to changes made by the act; amending s. 732.506, F.S.;  
 110 exempting electronic wills from provisions governing  
 111 the revocation of wills and codicils; prescribing the  
 112 manner by which an electronic will or codicil may be  
 113 revoked; creating s. 732.521, F.S.; providing  
 114 definitions; creating s. 732.522, F.S.; prescribing  
 115 the manner by which an electronic will must be  
 116 executed; creating s. 732.523, F.S.; specifying  
 117 requirements for the self-proof of an electronic will;  
 118 creating s. 732.524, F.S.; specifying requirements  
 119 necessary to serve as a qualified custodian of an  
 120 electronic will; providing the duties of such  
 121 qualified custodian; creating s. 732.525, F.S.;  
 122 requiring a qualified custodian to post and maintain a  
 123 blanket surety bond of a specified amount and maintain  
 124 liability insurance; authorizing the Attorney General  
 125 to petition a court to appoint a receiver to manage

ENROLLED

CS/CS/HB 409

2019 Legislature

126 | electronic records of a qualified custodian; creating  
 127 | s. 732.526, F.S.; specifying conditions by which an  
 128 | electronic will is deemed to be an original will;  
 129 | amending s. 733.201, F.S.; requiring that self-proved  
 130 | electronic wills meet certain requirements for  
 131 | admission to probate; creating s. 740.11, F.S.;  
 132 | specifying that any act taken pursuant to ch. 740,  
 133 | F.S., does not affect the requirement that a will be  
 134 | deposited within a certain timeframe; providing  
 135 | effective dates.

137 | Be It Enacted by the Legislature of the State of Florida:

139 | Section 1. The Division of Law Revision is directed to:

140 | (1) Create part I of chapter 117, Florida Statutes,  
 141 | consisting of ss. 117.01-117.108, Florida Statutes, to be  
 142 | entitled "General Provisions."

143 | (2) Create part II of chapter 117, Florida Statutes,  
 144 | consisting of ss. 117.201-117.305, Florida Statutes, to be  
 145 | entitled "Online Notarizations."

146 | Section 2. Subsection (1) of section 117.01, Florida  
 147 | Statutes, is amended to read:

148 | 117.01 Appointment, application, suspension, revocation,  
 149 | application fee, bond, and oath.—

150 | (1) The Governor may appoint as many notaries public as he

ENROLLED

CS/CS/HB 409

2019 Legislature

151 or she deems necessary, each of whom must ~~shall~~ be at least 18  
 152 years of age and a legal resident of this ~~the~~ state. A permanent  
 153 resident alien may apply and be appointed and shall file with  
 154 his or her application a recorded Declaration of Domicile. The  
 155 residence required for appointment must be maintained throughout  
 156 the term of appointment. A notary public ~~Notaries public~~ shall  
 157 be appointed for 4 years and may only ~~shall~~ use and exercise the  
 158 office of notary public if he or she is within the boundaries of  
 159 this state. An applicant must be able to read, write, and  
 160 understand the English language.

161 Section 3. Subsections (4) and (5) of section 117.021,  
 162 Florida Statutes, are renumbered as subsections (5) and (6),  
 163 respectively, subsection (2) of that section is amended, and new  
 164 subsections (4) and (7) are added to that section, to read:

165 117.021 Electronic notarization.—

166 (2) In performing an electronic notarial act, a notary  
 167 public shall use an electronic signature that is:

168 (a) Unique to the notary public;

169 (b) Capable of independent verification;

170 (c) Retained under the notary public's sole control and  
 171 includes access protection through the use of passwords or codes  
 172 under control of the notary public; and

173 (d) Attached to or logically associated with the  
 174 electronic document in a manner that any subsequent alteration  
 175 to the electronic document displays evidence of the alteration.

ENROLLED

CS/CS/HB 409

2019 Legislature

176       (4) A person may not require a notary public to perform a  
 177 notarial act with respect to an electronic record with a form of  
 178 technology that the notary public has not selected to use.

179       (7) The Department of State, in collaboration with the  
 180 Agency for State Technology, shall adopt rules establishing  
 181 standards for tamper-evident technologies that will indicate any  
 182 alteration or change to an electronic record after completion of  
 183 an electronic notarial act. All electronic notarizations  
 184 performed on or after January 1, 2020, must comply with the  
 185 adopted standards.

186       Section 4. Subsection (1), paragraph (a) of subsection  
 187 (2), subsections (4) and (5), paragraph (a) of subsection (12),  
 188 and subsections (13) and (14) of section 117.05, Florida  
 189 Statutes, are amended, and paragraph (c) is added to subsection  
 190 (12) of that section, to read:

191       117.05 Use of notary commission; unlawful use; notary fee;  
 192 seal; duties; employer liability; name change; advertising;  
 193 photocopies; penalties.—

194       (1) A ~~No~~ person may not ~~shall~~ obtain or use a notary  
 195 public commission in other than his or her legal name, and it is  
 196 unlawful for a notary public to notarize his or her own  
 197 signature. Any person applying for a notary public commission  
 198 must submit proof of identity to the Department of State ~~if so~~  
 199 ~~requested~~. Any person who violates ~~the provisions of~~ this  
 200 subsection commits ~~is guilty of~~ a felony of the third degree,



ENROLLED

CS/CS/HB 409

2019 Legislature

201 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

202 (2) (a) The fee of a notary public may not exceed \$10 for  
 203 any one notarial act, except as provided in s. 117.045 or s.  
 204 117.275.

205 (4) When notarizing a signature, a notary public shall  
 206 complete a jurat or notarial certificate in substantially the  
 207 same form as those found in subsection (13). The jurat or  
 208 certificate of acknowledgment shall contain the following  
 209 elements:

210 (a) The venue stating the location of the notary public at  
 211 the time of the notarization in the format, "State of Florida,  
 212 County of ....."

213 (b) The type of notarial act performed, an oath or an  
 214 acknowledgment, evidenced by the words "sworn" or  
 215 "acknowledged."

216 (c) Whether ~~That~~ the signer personally appeared before the  
 217 notary public at the time of the notarization by physical  
 218 presence or by means of audio-video communication technology as  
 219 authorized under part II of this chapter.

220 (d) The exact date of the notarial act.

221 (e) The name of the person whose signature is being  
 222 notarized. It is presumed, absent such specific notation by the  
 223 notary public, that notarization is to all signatures.

224 (f) The specific type of identification the notary public  
 225 is relying upon in identifying the signer, either based on

ENROLLED

CS/CS/HB 409

2019 Legislature

226 | personal knowledge or satisfactory evidence specified in  
 227 | subsection (5).

228 |       (g) The notary public's ~~notary's~~ official signature.

229 |       (h) The notary public's ~~notary's~~ name, which must be  
 230 | typed, printed, or stamped below the signature.

231 |       (i) The notary public's ~~notary's~~ official seal affixed  
 232 | below or to either side of the notary public's ~~notary's~~  
 233 | signature.

234 |       (5) A notary public may not notarize a signature on a  
 235 | document unless he or she personally knows, or has satisfactory  
 236 | evidence, that the person whose signature is to be notarized is  
 237 | the individual who is described in and who is executing the  
 238 | instrument. A notary public shall certify in the certificate of  
 239 | acknowledgment or jurat the type of identification, either based  
 240 | on personal knowledge or other form of identification, upon  
 241 | which the notary public is relying. In the case of an online  
 242 | notarization, the online notary public shall comply with the  
 243 | requirements set forth in part II of this chapter.

244 |       (a) For purposes of this subsection, the term "personally  
 245 | knows" means having an acquaintance, derived from association  
 246 | with the individual, which establishes the individual's identity  
 247 | with at least a reasonable certainty.

248 |       (b) For the purposes of this subsection, the term  
 249 | "satisfactory evidence" means the absence of any information,  
 250 | evidence, or other circumstances which would lead a reasonable

ENROLLED

CS/CS/HB 409

2019 Legislature

251 person to believe that the person whose signature is to be  
 252 notarized is not the person he or she claims to be and any one  
 253 of the following:

254 1. The sworn written statement of one credible witness  
 255 personally known to the notary public or the sworn written  
 256 statement of two credible witnesses whose identities are proven  
 257 to the notary public upon the presentation of satisfactory  
 258 evidence that each of the following is true:

259 a. That the person whose signature is to be notarized is  
 260 the person named in the document;

261 b. That the person whose signature is to be notarized is  
 262 personally known to the witnesses;

263 c. That it is the reasonable belief of the witnesses that  
 264 the circumstances of the person whose signature is to be  
 265 notarized are such that it would be very difficult or impossible  
 266 for that person to obtain another acceptable form of  
 267 identification;

268 d. That it is the reasonable belief of the witnesses that  
 269 the person whose signature is to be notarized does not possess  
 270 any of the identification documents specified in subparagraph  
 271 2.; and

272 e. That the witnesses do not have a financial interest in  
 273 nor are parties to the underlying transaction; or

274 2. Reasonable reliance on the presentation to the notary  
 275 public of any one of the following forms of identification, if

ENROLLED

CS/CS/HB 409

2019 Legislature

276 | the document is current or has been issued within the past 5  
 277 | years and bears a serial or other identifying number:  
 278 |       a. A Florida identification card or driver license issued  
 279 | by the public agency authorized to issue driver licenses;  
 280 |       b. A passport issued by the Department of State of the  
 281 | United States;  
 282 |       c. A passport issued by a foreign government if the  
 283 | document is stamped by the United States Bureau of Citizenship  
 284 | and Immigration Services;  
 285 |       d. A driver license or an identification card issued by a  
 286 | public agency authorized to issue driver licenses in a state  
 287 | other than Florida or in ~~a~~ territory of the United States, or  
 288 | Canada or Mexico;  
 289 |       e. An identification card issued by any branch of the  
 290 | armed forces of the United States;  
 291 |       f. A veteran health identification card issued by the  
 292 | United States Department of Veterans Affairs;  
 293 |       g. An inmate identification card issued on or after  
 294 | January 1, 1991, by the Florida Department of Corrections for an  
 295 | inmate who is in the custody of the department;  
 296 |       h. An inmate identification card issued by the United  
 297 | States Department of Justice, Bureau of Prisons, for an inmate  
 298 | who is in the custody of the department;  
 299 |       i. A sworn, written statement from a sworn law enforcement  
 300 | officer that the forms of identification for an inmate in an

ENROLLED

CS/CS/HB 409

2019 Legislature

301 institution of confinement were confiscated upon confinement and  
 302 that the person named in the document is the person whose  
 303 signature is to be notarized; or

304 j. An identification card issued by the United States  
 305 Bureau of Citizenship and Immigration Services.

306 (12) (a) A notary public may supervise the making of a copy  
 307 of a tangible or an electronic record or the printing of an  
 308 electronic record ~~photocopy of an original document~~ and attest  
 309 to the trueness of the copy or of the printout, provided the  
 310 document is neither a vital record in this state, another state,  
 311 a territory of the United States, or another country, nor a  
 312 public record, if a copy can be made by the custodian of the  
 313 public record.

314 (c) A notary public must use a certificate in  
 315 substantially the following form in notarizing a copy of a  
 316 tangible or an electronic record or a printout of an electronic  
 317 record:

318  
 319 STATE OF FLORIDA

320 COUNTY OF .....

321  
 322 On this .... day of ....., ...(year)..., I attest that the  
 323 preceding or attached document is a true, exact, complete, and  
 324 unaltered ...(copy of a tangible or an electronic record  
 325 presented to me by the document's custodian)... or a

ENROLLED  
 CS/CS/HB 409

2019 Legislature

326 ...(printout made by me from such record).... If a printout, I  
 327 further attest that, at the time of printing, no security  
 328 features, if any, present on the electronic record, indicated  
 329 that the record had been altered since execution.

330  
 331 ...(Signature of Notary Public – State of Florida)...  
 332 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

333  
 334 (13) The following notarial certificates are sufficient  
 335 for the purposes indicated, if completed with the information  
 336 required by this chapter. The specification of forms under this  
 337 subsection does not preclude the use of other forms.

338 (a) For an oath or affirmation:

339  
 340 STATE OF FLORIDA  
 341 COUNTY OF .....

342  
 343 Sworn to (or affirmed) and subscribed before me by means of  
 344 [] physical presence or [] online notarization, this .... day of  
 345 ....., ... (year) ..., by ... (name of person making  
 346 statement)....

347  
 348 ...(Signature of Notary Public – State of Florida)...  
 349 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...  
 350 Personally Known ..... OR Produced Identification

ENROLLED

CS/CS/HB 409

2019 Legislature

351 .....  
352 Type of Identification Produced.....  
353

354 (b) For an acknowledgment in an individual capacity:  
355

356 STATE OF FLORIDA  
357 COUNTY OF .....

358  
359 The foregoing instrument was acknowledged before me by means of  
360 [] physical presence or [] online notarization, this .... day of  
361 ....., ... (year) ..., by ... (name of person acknowledging) ....  
362

363 ... (Signature of Notary Public - State of Florida) ...  
364 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

365 Personally Known ..... OR Produced Identification  
366

367 .....  
368 Type of Identification Produced.....

369 (c) For an acknowledgment in a representative capacity:  
370

371 STATE OF FLORIDA  
372 COUNTY OF .....

373  
374 The foregoing instrument was acknowledged before me by means of  
375 [] physical presence or [] online notarization, this .... day of

ENROLLED  
 CS/CS/HB 409

2019 Legislature

376 ..... , ... (year) ... , by ... (name of person) ... as ... (type of  
 377 authority, . . . e.g. officer, trustee, attorney in fact) ...  
 378 for ... (name of party on behalf of whom instrument was  
 379 executed) ....

380  
 381                   ... (Signature of Notary Public - State of Florida) ...  
 382                   ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...  
 383                   Personally Known ..... OR Produced Identification  
 384 .....  
 385                   Type of Identification Produced.....

386  
 387                   (14) A notary public must make reasonable accommodations  
 388 to provide notarial services to persons with disabilities.

389                   (a) A notary public may notarize the signature of a person  
 390 who is blind after the notary public has read the entire  
 391 instrument to that person.

392                   (b) A notary public may notarize the signature of a person  
 393 who signs with a mark if:

394                   1. The document signing is witnessed by two disinterested  
 395 persons;

396                   2. The notary public prints the person's first name at the  
 397 beginning of the designated signature line and the person's last  
 398 name at the end of the designated signature line; and

399                   3. The notary public prints the words "his (or her) mark"  
 400 below the person's signature mark.



ENROLLED

CS/CS/HB 409

2019 Legislature

401 (c) The following notarial certificates are sufficient for  
402 the purpose of notarizing for a person who signs with a mark:

403 1. For an oath or affirmation:

404  
405 ... (First Name) ... (Last Name) ...  
406 ... His (or Her) Mark ...  
407

408 STATE OF FLORIDA  
409 COUNTY OF .....

410  
411 Sworn to and subscribed before me by means of [] physical  
412 presence or [] online notarization, this .... day of .....,  
413 ... (year) ..., by ... (name of person making statement) ..., who  
414 signed with a mark in the presence of these witnesses:

415  
416 ... (Signature of Notary Public - State of Florida) ...  
417 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...  
418 Personally Known ..... OR Produced Identification  
419 .....  
420 Type of Identification Produced.....  
421

422 2. For an acknowledgment in an individual capacity:

423  
424 ... (First Name) ... (Last Name) ...  
425 ... His (or Her) Mark ...

ENROLLED  
 CS/CS/HB 409

2019 Legislature

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STATE OF FLORIDA  
 COUNTY OF .....

The foregoing instrument was acknowledged before me by means of  
[] physical presence or [] online notarization, this .... day of  
 ....., ... (year) ..., by ... (name of person acknowledging) ...,  
 who signed with a mark in the presence of these witnesses:

... (Signature of Notary Public - State of Florida) ...  
 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...  
 Personally Known ..... OR Produced Identification  
 .....  
 Type of Identification Produced.....

(d) A notary public may sign the name of a person whose  
 signature is to be notarized when that person is physically  
 unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary public  
 to sign in his or her presence by verbal, written, or other  
means;
2. The document signing is witnessed by two disinterested  
 persons; and
3. The notary public writes below the signature the  
 following statement: "Signature affixed by notary, pursuant to

ENROLLED

CS/CS/HB 409

2019 Legislature

451 s. 117.05(14), Florida Statutes," and states the circumstances  
 452 and the means by which the notary public was directed to sign ~~of~~  
 453 ~~the signing in~~ the notarial certificate.

454  
 455 The notary public must maintain the proof of direction and  
 456 authorization to sign on behalf of the person with a disability  
 457 for 10 years from the date of the notarial act.

458 (e) The following notarial certificates are sufficient for  
 459 the purpose of notarizing for a person with a disability who  
 460 directs the notary public to sign his or her name:

461 1. For an oath or affirmation:

462  
 463 STATE OF FLORIDA  
 464 COUNTY OF .....

465  
 466 Sworn to (or affirmed) before me by means of [] physical  
 467 presence or [] online notarization, this .... day of .....,  
 468 ...(year)..., by ...(name of person making statement)..., and  
 469 subscribed by ...(name of notary)... at the direction of ~~and in~~  
 470 ~~the presence of~~ ...(name of person making statement)... by  
 471 ...(written, verbal, or other means)..., and in the presence of  
 472 these witnesses:

473  
 474 ...(Signature of Notary Public - State of Florida)...  
 475 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

ENROLLED

CS/CS/HB 409

2019 Legislature

476 Personally Known ..... OR Produced Identification  
 477 .....  
 478 Type of Identification Produced.....  
 479

480 2. For an acknowledgment in an individual capacity:

481  
 482 STATE OF FLORIDA  
 483 COUNTY OF .....  
 484

485 The foregoing instrument was acknowledged before me by means of  
 486 [] physical presence or [] online notarization, this .... day of  
 487 ....., ... (year) ..., by ... (name of person acknowledging) ...  
 488 and subscribed by ... (name of notary) ... at the direction of ~~and~~  
 489 ~~in the presence of~~ ... (name of person acknowledging) ..., and in  
 490 the presence of these witnesses:  
 491

492 ... (Signature of Notary Public - State of Florida) ...  
 493 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

494 Personally Known ..... OR Produced Identification  
 495 .....  
 496 Type of Identification Produced.....  
 497

498 Section 5. Subsections (2) and (9) of section 117.107,  
 499 Florida Statutes, are amended to read:  
 500 117.107 Prohibited acts.—

ENROLLED  
 CS/CS/HB 409

2019 Legislature

501           (2) A notary public may not sign notarial certificates  
 502 using a facsimile signature stamp unless the notary public has a  
 503 physical disability that limits or prohibits his or her ability  
 504 to make a written signature and unless the notary public has  
 505 first submitted written notice to the Department of State with  
 506 an exemplar of the facsimile signature stamp. This subsection  
 507 does not apply to or prohibit the use of an electronic signature  
 508 and seal by a notary public who is registered as an online  
 509 notary public to perform an electronic or online notarization in  
 510 accordance with this chapter.

511           (9) A notary public may not notarize a signature on a  
 512 document if the person whose signature is being notarized does  
 513 not appear before the notary public either by means of physical  
 514 presence or by means of audio-video communication technology as  
 515 authorized under part II of this chapter ~~is not in the presence~~  
 516 ~~of the notary public~~ at the time the signature is notarized. Any  
 517 notary public who violates this subsection is guilty of a civil  
 518 infraction, punishable by penalty not exceeding \$5,000, and such  
 519 violation constitutes malfeasance and misfeasance in the conduct  
 520 of official duties. It is no defense to the civil infraction  
 521 specified in this subsection that the notary public acted  
 522 without intent to defraud. A notary public who violates this  
 523 subsection with the intent to defraud is guilty of violating s.  
 524 117.105.

525           Section 6. Section 117.201, Florida Statutes, is created

ENROLLED

CS/CS/HB 409

2019 Legislature

526 | to read:

527 | 117.201 Definitions.—As used in this part, the term:

528 | (1) "Appear before," "before," or "in the presence of"

529 | mean:

530 | (a) In the physical presence of another person; or

531 | (b) Outside of the physical presence of another person,

532 | but able to see, hear, and communicate with the person by means

533 | of audio-video communication technology.

534 | (2) "Audio-video communication technology" means

535 | technology in compliance with applicable law which enables real-

536 | time, two-way communication using electronic means in which

537 | participants are able to see, hear, and communicate with one

538 | another.

539 | (3) "Credential analysis" means a process or service, in

540 | compliance with applicable law, in which a third party aids a

541 | public notary in affirming the validity of a government-issued

542 | identification credential and data thereon through review of

543 | public or proprietary data sources.

544 | (4) "Electronic," "electronic record," or "electronic

545 | signature" has the same meaning as provided in s. 668.50.

546 | (5) "Errors and omissions insurance" means a type of

547 | insurance that provides coverage for potential errors or

548 | omissions in or relating to the notarial act and is maintained,

549 | as applicable, by the online notary public or his or her

550 | employer, or a Remote Online Notarization service provider.

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CS/CS/HB 409

2019 Legislature

551       (6) "Government-issued identification credential" means  
 552 any approved credential for verifying identity under s.  
 553 117.05(5)(b)2.

554       (7) "Identity proofing" means a process or service in  
 555 compliance with applicable law in which a third party affirms  
 556 the identity of an individual through use of public or  
 557 proprietary data sources, which may include by means of  
 558 knowledge-based authentication or biometric verification.

559       (8) "Knowledge-based authentication" means a form of  
 560 identity proofing based on a set of questions which pertain to  
 561 an individual and are formulated from public or proprietary data  
 562 sources.

563       (9) "Online notarization" means the performance of a  
 564 notarial act using electronic means in which the principal  
 565 appears before the notary public by means of audio-video  
 566 communication technology.

567       (10) "Online notary public" means a notary public  
 568 commissioned under part I of this chapter, a civil-law notary  
 569 appointed under chapter 118, or a commissioner of deeds  
 570 appointed under part IV of chapter 721, who has registered with  
 571 the Department of State to perform online notarizations under  
 572 this part.

573       (11) "Physical presence" means being in the same physical  
 574 location as another person and close enough to see, hear,  
 575 communicate with, and exchange credentials with that person.

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CS/CS/HB 409

2019 Legislature

576       (12) "Principal" means an individual whose electronic  
 577 signature is acknowledged, witnessed, or attested to in an  
 578 online notarization or who takes an oath or affirmation  
 579 administered by the online notary public.

580       (13) "Record" means information that is inscribed on a  
 581 tangible medium or that is stored in an electronic or other  
 582 medium and is retrievable in perceivable form, including public  
 583 records as defined in s. 119.011.

584       (14) "Remote Online Notarization service provider" or "RON  
 585 service provider" means a person that provides audio-video  
 586 communication technology and related processes, services,  
 587 software, data storage, or other services to online notaries  
 588 public for the purpose of directly facilitating their  
 589 performance of online notarizations in compliance with this  
 590 chapter and any rules adopted by the Department of State  
 591 pursuant to s. 117.295.

592       (15) "Remote presentation" means transmission of an image  
 593 of a government-issued identification credential that is of  
 594 sufficient quality to enable the online notary public to  
 595 identify the individual seeking the notary's services and to  
 596 perform credential analysis through audio-video communication  
 597 technology.

598       Section 7. Section 117.209, Florida Statutes, is created  
 599 to read:

600       117.209 Authority to perform online notarizations.—



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CS/CS/HB 409

2019 Legislature

601       (1) An online notary public may perform any of the  
602 functions authorized under part I of this chapter as an online  
603 notarization by complying with the requirements of this part and  
604 any rules adopted by the Department of State pursuant to s.  
605 117.295, excluding solemnizing the rites of matrimony.

606       (2) If a notarial act requires a principal to appear  
607 before or in the presence of the online notary public, the  
608 principal may appear before the online notary public by means of  
609 audio-video communication technology that meets the requirements  
610 of this part and any rules adopted by the Department of State  
611 pursuant to s. 117.295.

612       (3) An online notary public physically located in this  
613 state may perform an online notarization as authorized under  
614 this part, regardless of whether the principal or any witnesses  
615 are physically located in this state at the time of the online  
616 notarization. A commissioner of deeds registered as an online  
617 notary public may perform an online notarization while  
618 physically located within or outside the state in accordance  
619 with the territorial limits of its jurisdiction and other  
620 limitations and requirements otherwise applicable to notarial  
621 acts by commissioners of deeds.

622       (4) The validity of an online notarization performed by an  
623 online notary public registered in this state shall be  
624 determined by applicable laws of this state regardless of the  
625 physical location of the principal or any witnesses at the time

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CS/CS/HB 409

2019 Legislature

626 | of the notarial act.

627 | Section 8. Section 117.215, Florida Statutes, is created  
628 | to read:

629 | 117.215 Relation to other laws.—

630 | (1) If a provision of law requires a notary public or  
631 | other authorized official of this state to notarize a signature  
632 | or a statement, to take an acknowledgment of an instrument, or  
633 | to administer an oath or affirmation so that a document may be  
634 | sworn, affirmed, made under oath, or subject to penalty of  
635 | perjury, an online notarization performed in accordance with the  
636 | provisions of this part and any rules adopted hereunder  
637 | satisfies such requirement.

638 | (2) If a provision of law requires a signature or an act  
639 | to be witnessed, compliance with the online electronic  
640 | witnessing standards prescribed in s. 117.285 and any rules  
641 | adopted thereunder satisfies that requirement.

642 | Section 9. Section 117.225, Florida Statutes, is created  
643 | to read:

644 | 117.225 Registration; qualifications.—A notary public, a  
645 | civil-law notary appointed under chapter 118, or a commissioner  
646 | of deeds appointed under part IV of chapter 721 may complete  
647 | registration as an online notary public with the Department of  
648 | State by:

649 | (1) Holding a current commission as a notary public under  
650 | part I of this chapter, an appointment as a civil-law notary

ENROLLED

CS/CS/HB 409

2019 Legislature

651 under chapter 118, or an appointment as a commissioner of deeds  
652 under part IV of chapter 721, and submitting a copy of such  
653 commission or proof of such appointment with his or her  
654 registration.

655 (2) Certifying that the notary public, civil-law notary,  
656 or commissioner of deeds registering as an online notary public  
657 has completed a classroom or online course covering the duties,  
658 obligations, and technology requirements for serving as an  
659 online notary public.

660 (3) Paying a notary public registration fee as required by  
661 s. 113.01.

662 (4) Submitting a registration as an online notary public  
663 to the Department of State, signed and sworn to by the  
664 registrant.

665 (5) Identifying the RON service provider whose audio-video  
666 communication technology and processes for credential analysis  
667 and identity proofing technologies the registrant intends to use  
668 for online notarizations, and confirming that such technology  
669 and processes satisfy the requirements of this chapter and any  
670 rules adopted by the Department of State pursuant to s. 117.295.

671 (6) Providing evidence satisfactory to the Department of  
672 State that the registrant has obtained a bond in the amount of  
673 \$25,000, payable to any individual harmed as a result of a  
674 breach of duty by the registrant acting in his or her official  
675 capacity as an online notary public, conditioned for the due

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CS/CS/HB 409

2019 Legislature

676 discharge of the office, and on such terms as are specified in  
 677 rule by the Department of State as reasonably necessary to  
 678 protect the public. The bond shall be approved and filed with  
 679 the Department of State and executed by a surety company duly  
 680 authorized to transact business in this state. Compliance by an  
 681 online notary public with this requirement shall satisfy the  
 682 requirement of obtaining a bond under s. 117.01(7).

683 (7) Providing evidence satisfactory to the Department of  
 684 State that the registrant acting in his or her capacity as an  
 685 online notary public is covered by an errors and omissions  
 686 insurance policy from an insurer authorized to transact business  
 687 in this state, in the minimum amount of \$25,000 and on such  
 688 terms as are specified by rule by the Department of State as  
 689 reasonably necessary to protect the public.

690 Section 10. Section 117.235, Florida Statutes, is created  
 691 to read:

692 117.235 Performance of notarial acts.—

693 (1) An online notary public is subject to part I of this  
 694 chapter to the same extent as a notary public appointed and  
 695 commissioned only under that part, including the provisions of  
 696 s. 117.021 relating to electronic notarizations.

697 (2) An online notary public may perform notarial acts as  
 698 provided by part I of this chapter in addition to performing  
 699 online notarizations as authorized and pursuant to the  
 700 provisions of this part.

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CS/CS/HB 409

2019 Legislature

701 Section 11. Section 117.245, Florida Statutes, is created  
702 to read:

703 117.245 Electronic journal of online notarizations.-

704 (1) An online notary public shall keep one or more secure  
705 electronic journals of online notarizations performed by the  
706 online notary public. For each online notarization, the  
707 electronic journal entry must contain all of the following:

708 (a) The date and time of the notarization.

709 (b) The type of notarial act.

710 (c) The type, the title, or a description of the  
711 electronic record or proceeding.

712 (d) The name and address of each principal involved in the  
713 transaction or proceeding.

714 (e) Evidence of identity of each principal involved in the  
715 transaction or proceeding in any of the following forms:

716 1. A statement that the person is personally known to the  
717 online notary public.

718 2. A notation of the type of government-issued  
719 identification credential provided to the online notary public.

720 (f) An indication that the principal satisfactorily passed  
721 the identity proofing.

722 (g) An indication that the government-issued  
723 identification credential satisfied the credential analysis.

724 (h) The fee, if any, charged for the notarization.

725 (2) The online notary public shall retain an uninterrupted

ENROLLED

CS/CS/HB 409

2019 Legislature

726 and unedited copy of the recording of the audio-video  
 727 communication in which an online notarization is performed. The  
 728 recording must include all of the following:

729 (a) Appearance by the principal and any witness before the  
 730 online notary public.

731 (b) Confirmation of the identity of the principal and any  
 732 witness.

733 (c) A general description or identification of the records  
 734 to be signed.

735 (d) At the commencement of the recording, recitation by  
 736 the online notary public of information sufficient to identify  
 737 the notarial act.

738 (e) A declaration by the principal that his or her  
 739 signature on the record is knowingly and voluntarily made.

740 (f) All of the actions and spoken words of the principal,  
 741 notary public, and any required witness during the entire online  
 742 notarization, including the signing of any records before the  
 743 online notary public.

744 (3) The online notary public shall take reasonable steps  
 745 to:

746 (a) Ensure the integrity, security, and authenticity of  
 747 online notarizations.

748 (b) Maintain a backup record of the electronic journal  
 749 required by subsection (1).

750 (c) Protect the electronic journal, the backup record, and

ENROLLED

CS/CS/HB 409

2019 Legislature

751 any other records received by the online notary public from  
752 unauthorized access or use.

753 (4) The electronic journal required under subsection (1)  
754 and the recordings of audio-video communications required under  
755 subsection (2) shall be maintained for at least 10 years after  
756 the date of the notarial act. However, a full copy of the  
757 recording of the audio-video communication required under  
758 subsection (2) relating to an online notarization session that  
759 involves the signing of an electronic will must be maintained by  
760 a qualified custodian in accordance with chapters 731 and 732.  
761 The Department of State maintains jurisdiction over the  
762 electronic journal and audio-video communication recordings to  
763 investigate notarial misconduct for a period of 10 years after  
764 the date of the notarial act. The online notary public, a  
765 guardian of an incapacitated online notary public, or the  
766 personal representative of a deceased online notary public may,  
767 by contract with a secure repository in accordance with any  
768 rules established under this chapter, delegate to the repository  
769 the online notary public's duty to retain the electronic journal  
770 and the required recordings of audio-video communications,  
771 provided that the Department of State is notified of such  
772 delegation of retention duties to the repository within 30 days  
773 thereafter, including the address and contact information for  
774 the repository. If an online notary public delegates to a secure  
775 repository under this section, the online notary public shall

ENROLLED

CS/CS/HB 409

2019 Legislature

776 make an entry in his or her electronic journal identifying such  
777 repository, and provide notice to the Department of State as  
778 required in this subsection.

779 (5) An omitted or incomplete entry in the electronic  
780 journal does not impair the validity of the notarial act or of  
781 the electronic record which was notarized, but may be introduced  
782 as evidence to establish violations of this chapter; as evidence  
783 of possible fraud, forgery, impersonation, duress, incapacity,  
784 undue influence, minority, illegality, unconscionability; or for  
785 other evidentiary purposes. However, if the recording of the  
786 audio-video communication required under subsection (2) relating  
787 to the online notarization of the execution of an electronic  
788 will cannot be produced by the online notary public or the  
789 qualified custodian, the electronic will shall be treated as a  
790 lost or destroyed will subject to s. 733.207.

791 Section 12. Section 117.255, Florida Statutes, is created  
792 to read:

793 117.255 Use of electronic journal, signature, and seal.—An  
794 online notary public shall:

795 (1) Take reasonable steps to ensure that any registered  
796 device used to create an electronic seal is current and has not  
797 been revoked or terminated by the issuing or registering  
798 authority of the device.

799 (2) Keep the electronic journal and electronic seal secure  
800 and under his or her sole control, which includes access



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CS/CS/HB 409

2019 Legislature

801 protection using passwords or codes under control of the online  
802 notary public. The online notary public may not allow another  
803 person to use the online notary public's electronic journal,  
804 electronic signature, or electronic seal, other than a RON  
805 service provider or other authorized person providing services  
806 to an online notary public to facilitate performance of online  
807 notarizations.

808 (3) Attach or logically associate the electronic signature  
809 and seal to the electronic notarial certificate of an electronic  
810 record in a manner that is capable of independent verification  
811 using tamper-evident technology that renders any subsequent  
812 change or modification to the electronic record evident.

813 (4) Notify an appropriate law enforcement agency and the  
814 Department of State of any unauthorized use of or compromise to  
815 the security of the electronic journal, official electronic  
816 signature, or electronic seal within 7 days after discovery of  
817 such unauthorized use or compromise to security.

818 (5) Make electronic copies, upon request, of the pertinent  
819 entries in the electronic journal and provide access to the  
820 related audio-video communication recordings to the following  
821 persons:

822 (a) The parties to an electronic record notarized by the  
823 online notary public;

824 (b) The qualified custodian of an electronic will  
825 notarized by the online notary public;

ENROLLED

CS/CS/HB 409

2019 Legislature

826       (c) The title agent, settlement agent, or title insurer  
 827 who insured the electronic record or engaged the online notary  
 828 public with regard to a real estate transaction;

829       (d) The online notary public's RON service provider whose  
 830 services were used by the online notary public to notarize the  
 831 electronic record;

832       (e) Any person who is asked to accept a power of attorney  
 833 that was notarized by the online notary public;

834       (f) The Department of State pursuant to a notary  
 835 misconduct investigation; and

836       (g) Any other persons pursuant to a subpoena, court order,  
 837 law enforcement investigation, or other lawful inspection  
 838 demand.

839       (6) The online notary public may charge a fee not to  
 840 exceed \$20 per transaction record for making and delivering  
 841 electronic copies of a given series of related electronic  
 842 records, except if requested by:

843           (a) A party to the electronic record;

844           (b) In a real estate transaction, the title agent,  
 845 settlement agent, or title insurer who insured the electronic  
 846 record or engaged the online notary public with regard to such  
 847 transaction; or

848           (c) The Department of State pursuant to an investigation  
 849 relating to the official misconduct of an online notary public.

850

ENROLLED

CS/CS/HB 409

2019 Legislature

851 If the online notary public does charge a fee, the online notary  
 852 public shall disclose the amount of such fee to the requester  
 853 before making the electronic copies.

854 Section 13. Section 117.265, Florida Statutes, is created  
 855 to read:

856 117.265 Online notarization procedures.—

857 (1) An online notary public physically located in this  
 858 state may perform an online notarization that meets the  
 859 requirements of this part regardless of whether the principal or  
 860 any witnesses are physically located in this state at the time  
 861 of the online notarization. A commissioner of deeds registered  
 862 as an online notary public may perform an online notarization  
 863 while physically located within or outside of this state in  
 864 accordance with the territorial limits of its jurisdiction and  
 865 other limitations and requirements otherwise applicable to  
 866 notarial acts by commissioners of deeds. An online notarization  
 867 performed in accordance with this chapter is deemed to have been  
 868 performed within this state and is governed by the applicable  
 869 laws of this state.

870 (2) In performing an online notarization, an online notary  
 871 public shall confirm the identity of a principal and any witness  
 872 appearing online, at the time that the signature is taken, by  
 873 using audio-video communication technology and processes that  
 874 meet the requirements of this part and of any rules adopted  
 875 hereunder and record the two-way audio-video conference session

ENROLLED

CS/CS/HB 409

2019 Legislature

876 between the notary public and the principal and any witnesses. A  
 877 principal may not act in the capacity of a witness for his or  
 878 her own signature in an online notarization.

879 (3) In performing an online notarization of a principal  
 880 not located within this state, an online notary public must  
 881 confirm, either verbally or through the principal's written  
 882 consent, that the principal desires for the notarial act to be  
 883 performed by a Florida notary public and under the general law  
 884 of this state.

885 (4) An online notary public shall confirm the identity of  
 886 the principal by:

887 (a) Personal knowledge of each principal; or

888 (b) All of the following, as such criteria may be modified  
 889 or supplemented in rules adopted by the Department of State  
 890 pursuant to s. 117.295:

891 1. Remote presentation of a government-issued  
 892 identification credential by each principal.

893 2. Credential analysis of each government-issued  
 894 identification credential.

895 3. Identity proofing of each principal in the form of  
 896 knowledge-based authentication or another method of identity  
 897 proofing that conforms to the standards of this chapter.

898  
 899 If the online notary public is unable to satisfy subparagraphs  
 900 (b)1.-3., or if the databases consulted for identity proofing do

ENROLLED

CS/CS/HB 409

2019 Legislature

901 not contain sufficient information to permit authentication, the  
 902 online notary public may not perform the online notarization.

903 (5) An online notary public may change his or her RON  
 904 service provider or providers from time to time, but shall  
 905 notify the Department of State of such change within 30 days  
 906 thereafter.

907 (6) The online notary public or his or her RON service  
 908 provider shall take reasonable steps to ensure that the audio-  
 909 video communication technology used in an online notarization is  
 910 secure from unauthorized interception.

911 (7) The electronic notarial certificate for an online  
 912 notarization must include a notation that the notarization is an  
 913 online notarization which may be satisfied by placing the term  
 914 "online notary" in or adjacent to the online notary public's  
 915 seal.

916 (8) Except where otherwise expressly provided in this  
 917 part, the provisions of part I of this chapter apply to an  
 918 online notarization and an online notary public.

919 (9) Any failure to comply with the online notarization  
 920 procedures set forth in this section does not impair the  
 921 validity of the notarial act or the electronic record that was  
 922 notarized, but may be introduced as evidence to establish  
 923 violations of this chapter or as an indication of possible  
 924 fraud, forgery, impersonation, duress, incapacity, undue  
 925 influence, minority, illegality, unconscionability, or for other

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CS/CS/HB 409

2019 Legislature

926 evidentiary purposes. This subsection may not be construed to  
 927 alter the duty of an online notary public to comply with this  
 928 chapter and any rules adopted hereunder.

929 Section 14. Section 117.275, Florida Statutes, is created  
 930 to read:

931 117.275 Fees for online notarization.—An online notary  
 932 public or the employer of such online notary public may charge a  
 933 fee, not to exceed \$25, for performing an online notarization  
 934 under this part. Fees for services other than notarial acts are  
 935 not governed by this section.

936 Section 15. Section 117.285, Florida Statutes, is created  
 937 to read:

938 117.285 Supervising the witnessing of electronic records.—  
 939 An online notary public may supervise the witnessing of  
 940 electronic records by the same audio-video communication  
 941 technology used for online notarization, as follows:

942 (1) The witness may be in the physical presence of the  
 943 principal or remote from the principal provided the witness and  
 944 principal are using audio-video communication technology.

945 (2) If the witness is remote from the principal and  
 946 viewing and communicating with the principal by means of audio-  
 947 video communication technology, the witness's identity must be  
 948 verified in accordance with the procedures for identifying a  
 949 principal as set forth in s. 117.265(4). If the witness is in  
 950 the physical presence of the principal, the witness must confirm

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CS/CS/HB 409

2019 Legislature

951 his or her identity by stating his or her name and current  
952 address on the audio-video recording as part of the act of  
953 witnessing.

954 (3) The act of witnessing an electronic signature means  
955 the witness is either in the physical presence of the principal  
956 or present through audio-video communication technology at the  
957 time the principal affixes the electronic signature and the  
958 witness hears the principal make a statement to the effect that  
959 the principal has signed the electronic record.

960 (4) A witness remote from the principal and appearing  
961 through audio-video communication technology must verbally  
962 confirm that he or she is a resident of and physically located  
963 within the United States or a territory of the United States at  
964 the time of witnessing.

965 (5) Notwithstanding subsections (2) and (3), if an  
966 electronic record to be signed is a will under chapter 732, a  
967 trust with testamentary aspects under chapter 736, a health care  
968 advance directive, a waiver of spousal rights under s. 732.701  
969 or s. 732.702, or a power of attorney authorizing any of the  
970 transactions enumerated in s. 709.2208, the following shall  
971 apply:

972 (a) Prior to facilitating witnessing of an instrument by  
973 means of audio-video communication technology, a RON service  
974 provider shall require the principal to answer the following  
975 questions in substantially the following form:

ENROLLED

CS/CS/HB 409

2019 Legislature

976 1. Are you under the influence of any drug or alcohol  
 977 today that impairs your ability to make decisions?

978 2. Do you have any physical or mental condition or long-  
 979 term disability that impairs your ability to perform the normal  
 980 activities of daily living?

981 3. Do you require assistance with daily care?

982 (b) If any question required under paragraph (a) is  
 983 answered in the affirmative, the principal's signature on the  
 984 instrument may only be validly witnessed by witnesses in the  
 985 physical presence of the principal at the time of signing.

986 (c) Subsequent to submission of the answers required under  
 987 paragraph (a), the RON service provider shall give the principal  
 988 written notice in substantially the following form:

989  
 990 NOTICE: If you are a vulnerable adult as defined in s.  
 991 415.102, Florida Statutes, the documents you are about to  
 992 sign are not valid if witnessed by means of audio-video  
 993 communication technology. If you suspect you may be a  
 994 vulnerable adult, you should have witnesses physically  
 995 present with you before signing.

996  
 997 (d) The act of witnessing an electronic signature through  
 998 the witness's presence by audio-video communication technology  
 999 is valid only if, during the audio-video communication, the  
 1000 principal provides verbal answers to all of the following



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CS/CS/HB 409

2019 Legislature

1001 questions, each of which must be asked by the online notary  
 1002 public in substantially the following form:  
 1003 1. Are you currently married? If so, name your spouse.  
 1004 2. Please state the names of anyone who assisted you in  
 1005 accessing this video conference today.  
 1006 3. Please state the names of anyone who assisted you in  
 1007 preparing the documents you are signing today.  
 1008 4. Where are you currently located?  
 1009 5. Who is in the room with you?  
 1010 (e) An online notary public shall consider the responses  
 1011 to the questions specified in paragraph (d) in carrying out of  
 1012 the duties of a notary public as set forth in s. 117.107(5).  
 1013 (f) A principal's responses to the questions in paragraphs  
 1014 (a) and (d) may be offered as evidence regarding the validity of  
 1015 the instrument, but an incorrect answer may not serve as the  
 1016 sole basis to invalidate an instrument.  
 1017 (g) The presence of a witness with the principal at the  
 1018 time of signing by means of audio-video communication technology  
 1019 is not effective for witnessing the signature of a principal who  
 1020 is a vulnerable adult as defined in s. 415.102. The contestant  
 1021 of an electronic record has the burden of proving that the  
 1022 principal was a vulnerable adult at the time of executing the  
 1023 electronic record.  
 1024 (h) Nothing in this subsection shall preclude a power of  
 1025 attorney, which includes banking or investment powers enumerated

ENROLLED

CS/CS/HB 409

2019 Legislature

1026 in s. 709.2208, from being effective with respect to any other  
 1027 authority granted therein or with respect to the agent's  
 1028 authority in connection with a real property, commercial, or  
 1029 consumer transaction or loan, to exercise any power specified  
 1030 therein or to execute and deliver instruments obligating the  
 1031 principal or to draw upon the proceeds of such transaction or  
 1032 loan.

1033 (i) The electronic record containing an instrument signed  
 1034 by witnesses who were present with the principal by means of  
 1035 audio-video communication technology shall contain a perceptible  
 1036 indication of their presence by such means.

1037 (j) Nothing in this subsection shall affect the  
 1038 application of s. 709.2119.

1039 (6) Pursuant to subpoena, court order, an authorized law  
 1040 enforcement inquiry, or other lawful request, a RON service  
 1041 provider or online notary public shall provide:

1042 (a) The last known address of each witness who witnessed  
 1043 the signing of an electronic record using audio-video  
 1044 communication technology under this section.

1045 (b) A principal's responses to the questions in paragraphs  
 1046 (5) (a) or (b), as applicable.

1047 (c) An uninterrupted and unedited copy of the recording of  
 1048 the audio-video communication in which an online notarization is  
 1049 performed.

1050 (7) Except as set forth in s. 709.2202, an act of

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CS/CS/HB 409

2019 Legislature

1051 witnessing performed pursuant to this section satisfies any  
 1052 requirement that the witness must be a subscribing or attesting  
 1053 witness or must be in the presence of the principal at the time  
 1054 of signing.

1055 (8) The law of this state governs the validity of  
 1056 witnessing supervised by an online notary public pursuant to  
 1057 this section, regardless of the physical location of the witness  
 1058 at the time of witnessing. State and federal courts in this  
 1059 state have subject matter jurisdiction over any dispute arising  
 1060 out of an act of witnessing pursuant to this section, and may  
 1061 issue subpoenas for records or to require the appearance of  
 1062 witnesses in relation thereto in accordance with applicable law.

1063 Section 16. Effective upon becoming a law, section  
 1064 117.295, Florida Statutes, is created to read:

1065 117.295 Standards for electronic and online notarization;  
 1066 rulemaking authority.-

1067 (1) For purposes of this part, the Department of State may  
 1068 adopt rules necessary to implement the requirements of this  
 1069 chapter and to set standards for online notarization which  
 1070 include, but are not limited to:

1071 (a) Improvements in technology and methods of assuring the  
 1072 identity of principals and the security of an electronic record,  
 1073 including tamper-evident technologies in compliance with the  
 1074 standards adopted pursuant to s. 117.021 which apply to online  
 1075 notarizations.

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CS/CS/HB 409

2019 Legislature

1076 (b) Education requirements for online notaries public and  
 1077 the required terms of bonds and errors and omissions insurance,  
 1078 but not including the amounts of such bonds and insurance  
 1079 policies.

1080 (c) Identity proofing, credential analysis, unauthorized  
 1081 interception, remote presentation, audio-video communication  
 1082 technology, and retention of electronic journals and copies of  
 1083 audio-video communications recordings in a secure repository.

1084 (2) By January 1, 2020, the Department of State shall  
 1085 adopt forms, processes, and interim or emergency rules necessary  
 1086 to accept applications from and register online notaries public  
 1087 pursuant to s. 117.225.

1088 (3) Until such time as the Department of State adopts  
 1089 rules setting standards that are equally or more protective, the  
 1090 following minimum standards shall apply to any online  
 1091 notarization performed by an online notary public of this state  
 1092 or his or her RON service provider:

1093 (a) Use of identity proofing by means of knowledge-based  
 1094 authentication which must have, at a minimum, the following  
 1095 security characteristics:

1096 1. The principal must be presented with five or more  
 1097 questions with a minimum of five possible answer choices per  
 1098 question.

1099 2. Each question must be drawn from a third-party provider  
 1100 of public and proprietary data sources and be identifiable to

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CS/CS/HB 409

2019 Legislature

1101 the principal's social security number or other identification  
1102 information, or the principal's identity and historical events  
1103 records.

1104 3. Responses to all questions must be made within a 2-  
1105 minute time constraint.

1106 4. The principal must answer a minimum of 80 percent of  
1107 the questions correctly.

1108 5. The principal may be offered one additional attempt in  
1109 the event of a failed attempt.

1110 6. During the second attempt, the principal may not be  
1111 presented with more than three questions from the prior attempt.

1112 (b) Use of credential analysis using one or more  
1113 commercially available automated software or hardware processes  
1114 that are consistent with sound commercial practices; that aid  
1115 the notary public in verifying the authenticity of the  
1116 credential by analyzing the integrity of visual, physical, or  
1117 cryptographic security features to indicate that the credential  
1118 is not fraudulent or inappropriately modified; and that use  
1119 information held or published by the issuing source or  
1120 authoritative source, as available, to confirm the validity of  
1121 credential details. The output of the credential analysis  
1122 process must be provided to the online notary public performing  
1123 the notarial act.

1124 (c) Use of audio-video communication technology in  
1125 completing online notarizations that must meet the following

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CS/CS/HB 409

2019 Legislature

1126 requirements:

1127 1. The signal transmission must be reasonably secure from  
1128 interception, access, or viewing by anyone other than the  
1129 participants communicating.

1130 2. The technology must provide sufficient audio clarity  
1131 and video resolution to enable the notary to communicate with  
1132 the principal and any witness, and to confirm the identity of  
1133 the principal and any witness, as required, using the  
1134 identification methods described in s. 117.265.

1135 (4) A RON service provider is deemed to have satisfied  
1136 tamper-evident technology requirements by use of technology that  
1137 renders any subsequent change or modification to the electronic  
1138 record evident.

1139 (5) In addition to any coverage it elects to provide for  
1140 individual online notaries public, maintenance of errors and  
1141 omissions insurance coverage by a RON service provider in a  
1142 total amount of at least \$250,000 in the annual aggregate with  
1143 respect to potential errors or omissions in or relating to the  
1144 technology or processes provided by the RON service provider. An  
1145 online notary public is not responsible for the security of the  
1146 systems used by the principal or others to access the online  
1147 notarization session.

1148 (6) A 2-hour in-person or online course addressing the  
1149 duties, obligations, and technology requirements for serving as  
1150 an online notary public offered by the Florida Land Title

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CS/CS/HB 409

2019 Legislature

1151 Association; the Real Property, Probate and Trust Law Section of  
 1152 the Florida Bar; the Florida Legal Education Association, Inc.;  
 1153 the Department of State; or a vendor approved by the Department  
 1154 of State shall satisfy the education requirements of s.  
 1155 117.225(2). Each such provider shall make the in-person or  
 1156 online course generally available to all applicants. Regardless  
 1157 of membership in the provider's organization, the provider shall  
 1158 charge each attendee the same cost for the course unless the  
 1159 course is provided in conjunction with a regularly scheduled  
 1160 meeting of the provider's membership.

1161 (7) The rulemaking required under this section is exempt  
 1162 from s. 120.541(3).

1163 Section 17. Section 117.305, Florida Statutes, is created  
 1164 to read:

1165 117.305 Relation to federal law.—This part supersedes the  
 1166 Electronic Signatures in Global and National Commerce Act as  
 1167 authorized under 15 U.S.C. s. 7001 et seq., but does not modify,  
 1168 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
 1169 or authorize the electronic delivery of the notices described in  
 1170 15 U.S.C. s. 7003(b).

1171 Section 18. Paragraph (h) of subsection (3) of section  
 1172 28.222, Florida Statutes, is redesignated as paragraph (i), and  
 1173 a new paragraph (h) is added to that subsection to read:

1174 28.222 Clerk to be county recorder.—

1175 (3) The clerk of the circuit court shall record the

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CS/CS/HB 409

2019 Legislature

1176 following kinds of instruments presented to him or her for  
 1177 recording, upon payment of the service charges prescribed by  
 1178 law:

1179 (h) Copies of any instruments originally created and  
 1180 executed using an electronic signature, as defined in s. 695.27,  
 1181 and certified to be a true and correct paper printout by a  
 1182 notary public in accordance with chapter 117, if the county  
 1183 recorder is not prepared to accept electronic documents for  
 1184 recording electronically.

1185 Section 19. Subsections (1) and (2) of section 92.50,  
 1186 Florida Statutes, are amended to read:

1187 92.50 Oaths, affidavits, and acknowledgments; who may take  
 1188 or administer; requirements.—

1189 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments  
 1190 required or authorized under the laws of this state (except  
 1191 oaths to jurors and witnesses in court and such other oaths,  
 1192 affidavits and acknowledgments as are required by law to be  
 1193 taken or administered by or before particular officers) may be  
 1194 taken or administered by or before any judge, clerk, or deputy  
 1195 clerk of any court of record within this state, including  
 1196 federal courts, or by or before any United States commissioner  
 1197 or any notary public within this state. The jurat, or  
 1198 certificate of proof or acknowledgment, shall be authenticated  
 1199 by the signature and official seal of such officer or person  
 1200 taking or administering the same; however, when taken or



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CS/CS/HB 409

2019 Legislature

1201 administered by or before any judge, clerk, or deputy clerk of a  
 1202 court of record, the seal of such court may be affixed as the  
 1203 seal of such officer or person.

1204 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE  
 1205 UNITED STATES.—Oaths, affidavits, and acknowledgments required  
 1206 or authorized under the laws of this state, may be taken or  
 1207 administered in any other state, territory, or district of the  
 1208 United States, by or before any judge, clerk or deputy clerk of  
 1209 any court of record, within such state, territory, or district,  
 1210 having a seal, or by or before any notary public or justice of  
 1211 the peace, having a seal, in such state, territory, or district;  
 1212 provided, however, such officer or person is authorized under  
 1213 the laws of such state, territory, or district to take or  
 1214 administer oaths, affidavits and acknowledgments. The jurat, or  
 1215 certificate of proof or acknowledgment, shall be authenticated  
 1216 by the signature and official seal of such officer or person  
 1217 taking or administering the same; provided, however, when taken  
 1218 or administered by or before any judge, clerk, or deputy clerk  
 1219 of a court of record, the seal of such court may be affixed as  
 1220 the seal of such officer or person.

1221 Section 20. Subsection (1) of section 95.231, Florida  
 1222 Statutes, is amended to read:

1223 95.231 Limitations where deed or will on record.—

1224 (1) Five years after the recording of an instrument  
 1225 required to be executed in accordance with s. 689.01; 5 years

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CS/CS/HB 409

2019 Legislature

1226 after the recording of a power of attorney accompanying and used  
 1227 for an instrument required to be executed in accordance with s.  
 1228 689.01; or 5 years after the probate of a will purporting to  
 1229 convey real property, from which it appears that the person  
 1230 owning the property attempted to convey, affect, or devise it,  
 1231 the instrument, power of attorney, or will shall be held to have  
 1232 its purported effect to convey, affect, or devise, the title to  
 1233 the real property of the person signing the instrument, as if  
 1234 there had been no lack of seal or seals, witness or witnesses,  
 1235 defect in, failure of, or absence of acknowledgment or  
 1236 relinquishment of dower, in the absence of fraud, adverse  
 1237 possession, or pending litigation. The instrument is admissible  
 1238 in evidence. A power of attorney validated under this subsection  
 1239 shall be valid only for the purpose of effectuating the  
 1240 instrument with which it was recorded.

1241 Section 21. Section 689.01, Florida Statutes, is amended  
 1242 to read:

1243 689.01 How real estate conveyed.—

1244 (1) No estate or interest of freehold, or for a term of  
 1245 more than 1 year, or any uncertain interest of, in or out of any  
 1246 messuages, lands, tenements or hereditaments shall be created,  
 1247 made, granted, transferred or released in any other manner than  
 1248 by instrument in writing, signed in the presence of two  
 1249 subscribing witnesses by the party creating, making, granting,  
 1250 conveying, transferring or releasing such estate, interest, or

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CS/CS/HB 409

2019 Legislature

1251 term of more than 1 year, or by the party's lawfully authorized  
 1252 agent, unless by will and testament, or other testamentary  
 1253 appointment, duly made according to law; and no estate or  
 1254 interest, either of freehold, or of term of more than 1 year, or  
 1255 any uncertain interest of, in, to, or out of any messuages,  
 1256 lands, tenements or hereditaments, shall be assigned or  
 1257 surrendered unless it be by instrument signed in the presence of  
 1258 two subscribing witnesses by the party so assigning or  
 1259 surrendering, or by the party's lawfully authorized agent, or by  
 1260 the act and operation of law. No seal shall be necessary to give  
 1261 validity to any instrument executed in conformity with this  
 1262 section. Corporations may execute any and all conveyances in  
 1263 accordance with the provisions of this section or ss. 692.01 and  
 1264 692.02.

1265 (2) For purposes of this chapter:

1266 (a) Any requirement that an instrument be signed in the  
 1267 presence of two subscribing witnesses may be satisfied by  
 1268 witnesses being present and electronically signing by means of  
 1269 audio-video communication technology, as defined in s. 117.201.

1270 (b) The act of witnessing an electronic signature is  
 1271 satisfied if a witness is in the physical presence of the  
 1272 principal or present through audio-video communication  
 1273 technology at the time the principal affixes his or her  
 1274 electronic signature and the witness hears the principal make a  
 1275 statement acknowledging that the principal has signed the

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CS/CS/HB 409

2019 Legislature

1276 | electronic record.

1277 |       (c) The terms used in this subsection have the same  
 1278 | meanings as the terms defined in s. 117.201.

1279 |       (3) All acts of witnessing made or taken in the manner  
 1280 | described in subsection (2) are validated and, upon recording,  
 1281 | may not be denied to have provided constructive notice based on  
 1282 | any alleged failure to have strictly complied with this section  
 1283 | or the laws governing notarization of instruments, including  
 1284 | online notarization. This subsection does not preclude a  
 1285 | challenge to the validity or enforceability of an instrument or  
 1286 | electronic record based upon fraud, forgery, impersonation,  
 1287 | duress, incapacity, undue influence, minority, illegality,  
 1288 | unconscionability, or any other basis not related to the act of  
 1289 | witnessing.

1290 |       Section 22. Section 694.08, Florida Statutes, is amended  
 1291 | to read:

1292 |       694.08 Certain instruments validated, notwithstanding lack  
 1293 | of seals or witnesses, or defect in acknowledgment,~~—ete.—~~

1294 |       (1) Whenever any power of attorney has been executed and  
 1295 | delivered, or any conveyance has been executed and delivered to  
 1296 | any grantee by the person owning the land therein described, or  
 1297 | conveying the same in an official or representative capacity,  
 1298 | and has, for a period of 7 years or more been spread upon the  
 1299 | records of the county wherein the land therein described has  
 1300 | been or was at the time situated, and one or more subsequent

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CS/CS/HB 409

2019 Legislature

1301 conveyances of said land or parts thereof have been made,  
 1302 executed, delivered and recorded by parties claiming under such  
 1303 instrument or instruments, and such power of attorney or  
 1304 conveyance, or the public record thereof, shows upon its face a  
 1305 clear purpose and intent of the person executing the same to  
 1306 authorize the conveyance of said land or to convey the said  
 1307 land, the same shall be taken and held by all the courts of this  
 1308 state, in the absence of any showing of fraud, adverse  
 1309 possession, or pending litigation, to have authorized the  
 1310 conveyance of, or to have conveyed, the fee simple title, or any  
 1311 interest therein, of the person signing such instruments, or the  
 1312 person in behalf of whom the same was conveyed by a person in an  
 1313 official or representative capacity, to the land therein  
 1314 described as effectively as if there had been no defect in,  
 1315 failure of, or absence of the acknowledgment or the certificate  
 1316 of acknowledgment, if acknowledged, or the relinquishment of  
 1317 dower, and as if there had been no lack of the word "as"  
 1318 preceding the title of the person conveying in an official or  
 1319 representative capacity, of any seal or seals, or of any witness  
 1320 or witnesses, and shall likewise be taken and held by all the  
 1321 courts of this state to have been duly recorded so as to be  
 1322 admissible in evidence;

1323 (2) Provided, however, that this section shall not apply  
 1324 to any conveyance the validity of which shall be contested or  
 1325 have been contested by suit commenced heretofore or within 1

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CS/CS/HB 409

2019 Legislature

1326 | year of the effective date of this law.

1327 |       Section 23. Section 695.03, Florida Statutes, is amended  
1328 | to read:

1329 |       695.03 Acknowledgment and proof; validation of certain  
1330 | acknowledgments; legalization or authentication before foreign  
1331 | officials.—To entitle any instrument concerning real property to  
1332 | be recorded, the execution must be acknowledged by the party  
1333 | executing it, proved by a subscribing witness to it, or  
1334 | legalized or authenticated in one of the following forms ~~by a~~  
1335 | ~~civil-law notary or notary public who affixes her or his~~  
1336 | ~~official seal, before the officers and in the form and manner~~  
1337 | ~~following:~~

1338 |       (1) WITHIN THIS STATE.—An acknowledgment or a proof may be  
1339 | taken, administered, or made within this state by or ~~may be made~~  
1340 | before a judge, clerk, or deputy clerk of any court; a United  
1341 | States commissioner or magistrate; or any ~~a~~ notary public or  
1342 | civil-law notary of this state, and the certificate of  
1343 | acknowledgment or proof must be under the seal of the court or  
1344 | officer, as the case may be. ~~All affidavits and acknowledgments~~  
1345 | ~~heretofore made or taken in this manner are hereby validated.~~

1346 |       (2) OUTSIDE ~~WITHOUT~~ THIS STATE BUT WITHIN THE UNITED  
1347 | STATES.—An acknowledgment or a proof taken, administered, or  
1348 | made outside ~~out~~ of this state but within the United States may  
1349 | be taken, administered, or made by or before a civil-law notary  
1350 | of this state or a commissioner of deeds appointed by the

ENROLLED

CS/CS/HB 409

2019 Legislature

1351 Governor of this state; a judge or clerk of any court of the  
 1352 United States or of any state, territory, or district; by or  
 1353 before a United States commissioner or magistrate; or by or  
 1354 before any a notary public, justice of the peace, master in  
 1355 chancery, or registrar or recorder of deeds of any state,  
 1356 territory, or district having a seal, and the certificate of  
 1357 acknowledgment or proof must be under the seal of the court or  
 1358 officer, as the case may be. If the acknowledgment or proof is  
 1359 taken, administered, or made by or before a notary public who  
 1360 does not affix a seal, it is sufficient for the notary public to  
 1361 type, print, or write by hand on the instrument, "I am a Notary  
 1362 Public of the State of ...(state)..., and my commission expires  
 1363 on ...(date)...."

1364 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN  
 1365 COUNTRIES.—~~An If the~~ acknowledgment, an affidavit, an oath, a  
 1366 legalization, an authentication, or a proof taken, administered,  
 1367 or made outside the United States or is made in a foreign  
 1368 country, ~~it~~ may be taken, administered, or made by or before a  
 1369 commissioner of deeds appointed by the Governor of this state to  
 1370 act in such country; before a notary public of such foreign  
 1371 country or a civil-law notary of this state or of such foreign  
 1372 country who has an official seal; before an ambassador, envoy  
 1373 extraordinary, minister plenipotentiary, minister, commissioner,  
 1374 charge d'affaires, consul general, consul, vice consul, consular  
 1375 agent, or other diplomatic or consular officer of the United

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CS/CS/HB 409

2019 Legislature

1376 States appointed to reside in such country; or before a military  
 1377 or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~  
 1378 ~~Articles of War of the United States~~ to perform the duties of  
 1379 notary public, and the certificate of acknowledgment,  
 1380 legalization, authentication, or proof must be under the seal of  
 1381 the officer. A certificate legalizing or authenticating the  
 1382 signature of a person executing an instrument concerning real  
 1383 property and to which a civil-law notary or notary public of  
 1384 that country has affixed her or his official seal is sufficient  
 1385 as an acknowledgment. For the purposes of this section, the term  
 1386 "civil-law notary" means a civil-law notary as defined in  
 1387 chapter 118 or an official of a foreign country who has an  
 1388 official seal and who is authorized to make legal or lawful the  
 1389 execution of any document in that jurisdiction, in which  
 1390 jurisdiction the affixing of her or his official seal is deemed  
 1391 proof of the execution of the document or deed in full  
 1392 compliance with the laws of that jurisdiction.

1393 (4) COMPLIANCE AND VALIDATION.—The affixing of the  
 1394 official seal or the electronic equivalent thereof under s.  
 1395 117.021 or other applicable law, including part II of chapter  
 1396 117, conclusively establishes that the acknowledgment or proof  
 1397 was taken, administered, or made in full compliance with the  
 1398 laws of this state or, as applicable, the laws of the other  
 1399 state, or of the foreign country governing notarial acts. All  
 1400 affidavits, oaths, acknowledgments, legalizations,



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CS/CS/HB 409

2019 Legislature

1401 authentications, or proofs taken, administered, or made in any  
1402 manner as set forth in subsections (1), (2), and (3) are  
1403 validated and upon recording may not be denied to have provided  
1404 constructive notice based on any alleged failure to have  
1405 strictly complied with this section, as currently or previously  
1406 in effect, or the laws governing notarization of instruments.  
1407 This subsection does not preclude a challenge to the validity or  
1408 enforceability of an instrument or electronic record based upon  
1409 fraud, forgery, impersonation, duress, incapacity, undue  
1410 influence, minority, illegality, unconscionability, or any other  
1411 basis not related to the notarial act or constructive notice  
1412 provided by recording.

1413  
1414 ~~All affidavits, legalizations, authentications, and~~  
1415 ~~acknowledgments heretofore made or taken in the manner set forth~~  
1416 ~~above are hereby validated.~~

1417 Section 24. Section 695.04, Florida Statutes, is amended  
1418 to read:

1419 695.04 Requirements of certificate.—The certificate of the  
1420 officer before whom the acknowledgment or proof is taken, except  
1421 for a certificate legalizing or authenticating the signature of  
1422 a person executing an instrument concerning real property  
1423 pursuant to s. 695.03(3), shall contain and set forth  
1424 substantially the matter required to be done or proved to make  
1425 such acknowledgment or proof effectual as set forth in s.

ENROLLED

CS/CS/HB 409

2019 Legislature

1426 117.05.

1427 Section 25. Section 695.25, Florida Statutes, is amended  
1428 to read:

1429 695.25 Short form of acknowledgment.—The forms of  
1430 acknowledgment set forth in this section may be used, and are  
1431 sufficient for their respective purposes, under any law of this  
1432 state. The forms shall be known as "Statutory Short Forms of  
1433 Acknowledgment" and may be referred to by that name. The  
1434 authorization of the forms in this section does not preclude the  
1435 use of other forms.

1436 (1) For an individual acting in his or her own right:

1437 STATE OF ....

1438 COUNTY OF ....

1439 The foregoing instrument was acknowledged before me by  
1440 means of [] physical presence or [] online notarization, this  
1441 ... (date) ... by ... (name of person acknowledging) ..., who is  
1442 personally known to me or who has produced ... (type of  
1443 identification) ... as identification.

1444 ... (Signature of person taking acknowledgment) ...

1445 ... (Name typed, printed or stamped) ...

1446 ... (Title or rank) ...

1447 ... (Serial number, if any) ...

1448 (2) For a corporation:

1449 STATE OF ....

1450 COUNTY OF ....

ENROLLED  
CS/CS/HB 409

2019 Legislature

1451           The foregoing instrument was acknowledged before me by  
1452 means of [] physical presence or [] online notarization, this  
1453 ...(date)... by ...(name of officer or agent, title of officer  
1454 or agent)... of ...(name of corporation acknowledging)..., a  
1455 ...(state or place of incorporation)... corporation, on behalf  
1456 of the corporation. He/she is personally known to me or has  
1457 produced ...(type of identification)... as identification.

1458                           ...(Signature of person taking acknowledgment)...  
1459   ...(Name typed, printed or stamped)...  
1460   ...(Title or rank)...  
1461   ...(Serial number, if any)...

1462           (3) For a limited liability company:

1463           STATE OF ....

1464           COUNTY OF ....

1465           The foregoing instrument was acknowledged before me by  
1466 means of [] physical presence or [] online notarization, this  
1467 ...(date)... by ...(name of member, manager, officer or agent,  
1468 title of member, manager, officer or agent)..., of ...(name of  
1469 company acknowledging)..., a ...(state or place of formation)...  
1470 limited liability company, on behalf of the company, who is  
1471 personally known to me or has produced ...(type of  
1472 identification)... as identification.

1473  
1474                           ...(Signature of person taking acknowledgment)...  
1475   ...(Name typed, printed or stamped)...

ENROLLED

CS/CS/HB 409

2019 Legislature

1476 ...(Title or rank)...  
 1477 ...(Serial number, if any)...

1478 ~~(4)~~~~(3)~~ For a partnership:

1479 STATE OF ....

1480 COUNTY OF ....

1481 The foregoing instrument was acknowledged before me by  
 1482 means of [] physical presence or [] online notarization, this  
 1483 ...(date)... by ...(name of acknowledging partner or agent)...,  
 1484 partner (or agent) on behalf of ...(name of partnership)..., a  
 1485 partnership. He/she is personally known to me or has produced  
 1486 ...(type of identification)... as identification.

1487 ...(Signature of person taking acknowledgment)...

1488 ...(Name typed, printed or stamped)...

1489 ...(Title or rank)...

1490 ...(Serial number, if any)...

1491 ~~(5)~~~~(4)~~ For an individual acting as principal by an  
 1492 attorney in fact:

1493 STATE OF ....

1494 COUNTY OF ....

1495 The foregoing instrument was acknowledged before me by  
 1496 means of [] physical presence or [] online notarization, this  
 1497 ...(date)... by ...(name of attorney in fact)... as attorney in  
 1498 fact, who is personally known to me or who has produced ...(type  
 1499 of identification)... as identification on behalf of ...(name of  
 1500 principal)....

ENROLLED  
CS/CS/HB 409

2019 Legislature

1501                                   ...(Signature of person taking acknowledgment)...  
1502   ...(Name typed, printed or stamped)...  
1503   ...(Title or rank)...  
1504   ...(Serial number, if any)...

1505            ~~(6)~~(5) By any public officer, trustee, or personal  
1506 representative:

1507 STATE OF ....  
1508 COUNTY OF ....

1509            The foregoing instrument was acknowledged before me by  
1510 means of [] physical presence or [] online notarization, this  
1511 ... (date)... by ... (name and title of position)..., who is  
1512 personally known to me or who has produced ... (type of  
1513 identification)... as identification.

1514                                   ...(Signature of person taking acknowledgment)...  
1515   ...(Name typed, printed or stamped)...  
1516   ...(Title or rank)...  
1517   ...(Serial number, if any)....

1519            Section 26. Section 695.28, Florida Statutes, is amended  
1520 to read:

1521            695.28 Validity of recorded electronic documents.—

1522            (1) A document that is otherwise entitled to be recorded  
1523 and that was or is submitted to the clerk of the court or county  
1524 recorder by electronic or other means and accepted for  
1525 recordation is deemed validly recorded and provides notice to

ENROLLED

CS/CS/HB 409

2019 Legislature

1526 | all persons notwithstanding:

1527 |       (a) That the document was received and accepted for  
1528 | recordation before the Department of State adopted standards  
1529 | implementing s. 695.27; ~~or~~

1530 |       (b) Any defects in, deviations from, or the inability to  
1531 | demonstrate strict compliance with any statute, rule, or  
1532 | procedure relating to electronic signatures, electronic  
1533 | witnesses, electronic notarization, or online notarization, or  
1534 | for submitting or recording ~~to submit or record~~ an electronic  
1535 | document in effect at the time the electronic document was  
1536 | executed or was submitted for recording;

1537 |       (c) That the document was signed, witnessed, or notarized  
1538 | electronically, and that the document was notarized by an online  
1539 | notary public outside the physical presence of the signer  
1540 | through audio-video communication technology, as defined in s.  
1541 | 117.201, or that witnessing may have been done outside the  
1542 | physical presence of the notary public or principal through such  
1543 | audio-visual communication; or

1544 |       (d) That the document recorded was a certified printout of  
1545 | a document to which one or more electronic signatures have been  
1546 | affixed.

1547 |       (2) This section does not alter the duty of the clerk or  
1548 | recorder to comply with s. 28.222, s. 695.27, or any rules  
1549 | adopted pursuant to those sections ~~that section.~~

1550 |       (3) This section does not preclude a challenge to the

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CS/CS/HB 409

2019 Legislature

1551 validity or enforceability of an instrument or electronic record  
 1552 based upon fraud, forgery, impersonation, duress, incapacity,  
 1553 undue influence, minority, illegality, unconscionability, or any  
 1554 other basis not in the nature of those matters described in  
 1555 subsection (1).

1556 Section 27. Subsections (3) and (4) of section 709.2119,  
 1557 Florida Statutes, are amended to read:

1558 709.2119 Acceptance of and reliance upon power of  
 1559 attorney.—

1560 (3) A third person who is asked to accept a power of  
 1561 attorney that appears to be executed in accordance with s.  
 1562 709.2105 may in good faith request, and rely upon, without  
 1563 further investigation:

1564 (a) A certified English translation of the power of  
 1565 attorney if the power of attorney contains, in whole or in part,  
 1566 language other than English;

1567 (b) An opinion of counsel as to any matter of law  
 1568 concerning the power of attorney if the third person making the  
 1569 request provides in a writing or other record the reason for the  
 1570 request; ~~or~~

1571 (c) The affidavit described in subsection (2); or

1572 (d) The electronic journal or record made by the notary  
 1573 public pursuant to the laws of the state in which the notary  
 1574 public is appointed if the power of attorney is witnessed or  
 1575 notarized remotely through the use of online witnesses or

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CS/CS/HB 409

2019 Legislature

1576 notarization.

1577 (4) An English translation, ~~or~~ an opinion of counsel, or  
 1578 an electronic journal or record requested under this section  
 1579 must be provided at the principal's expense unless the request  
 1580 is made after the time specified in s. 709.2120(1) for  
 1581 acceptance or rejection of the power of attorney.

1582 Section 28. Subsection (4) of section 709.2120, Florida  
 1583 Statutes, is amended to read:

1584 709.2120 Rejecting power of attorney.—

1585 (4) A third person is not required to accept a power of  
 1586 attorney if:

1587 (a) The third person is not otherwise required to engage  
 1588 in a transaction with the principal in the same circumstances;

1589 (b) The third person has knowledge of the termination or  
 1590 suspension of the agent's authority or of the power of attorney  
 1591 before exercising the power;

1592 (c) A timely request by the third person for an affidavit,  
 1593 English translation, ~~or~~ opinion of counsel, or electronic  
 1594 journal or record under s. 709.2119 ~~s. 709.2119(4)~~ is refused by  
 1595 the agent;

1596 (d) The power of attorney is witnessed or notarized  
 1597 remotely through the use of online witnesses or notarization,  
 1598 and either the agent is unable to produce the electronic journal  
 1599 or record, or the notary public did not maintain an electronic  
 1600 journal or record of the notarization;



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CS/CS/HB 409

2019 Legislature

1601           ~~(e)-(d)~~ Except as provided in paragraph (b), the third  
 1602 person believes in good faith that the power is not valid or  
 1603 that the agent does not have authority to perform the act  
 1604 requested; or

1605           (f)-(e) The third person makes, or has knowledge that  
 1606 another person has made, a report to the local adult protective  
 1607 services office stating a good faith belief that the principal  
 1608 may be subject to physical or financial abuse, neglect,  
 1609 exploitation, or abandonment by the agent or a person acting for  
 1610 or with the agent.

1611           Section 29. Subsection (6) of section 709.2202, Florida  
 1612 Statutes, is renumbered as subsection (7), and a new subsection  
 1613 (6) is added to that section to read:

1614           709.2202 Authority that requires separate signed  
 1615 enumeration.—

1616           (6) Notwithstanding subsection (1) and s. 709.2106(3), a  
 1617 power of attorney, executed by a principal domiciled in this  
 1618 state at the time of execution, that is witnessed remotely  
 1619 pursuant to s. 117.285 or other applicable law by a witness who  
 1620 is not in the physical presence of the principal is not  
 1621 effective to grant authority to an agent to take any of the  
 1622 actions enumerated in subsection (1).

1623           Section 30. Subsection (40) of section 731.201, Florida  
 1624 Statutes, is amended to read:

1625           731.201 General definitions.—Subject to additional

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CS/CS/HB 409

2019 Legislature

1626 definitions in subsequent chapters that are applicable to  
 1627 specific chapters or parts, and unless the context otherwise  
 1628 requires, in this code, in s. 409.9101, and in chapters 736,  
 1629 738, 739, and 744, the term:

1630 (40) "Will" means a testamentary ~~an~~ instrument, including  
 1631 a codicil, executed by a person in the manner prescribed by this  
 1632 code, which disposes of the person's property on or after his or  
 1633 her death and includes an instrument which merely appoints a  
 1634 personal representative or guardian or revokes or revises  
 1635 another will. The term includes an electronic will as defined in  
 1636 s. 732.521.

1637 Section 31. Section 732.506, Florida Statutes, is amended  
 1638 to read:

1639 732.506 Revocation by act.—A will or codicil, other than  
 1640 an electronic will, is revoked by the testator, or some other  
 1641 person in the testator's presence and at the testator's  
 1642 direction, by burning, tearing, canceling, defacing,  
 1643 obliterating, or destroying it with the intent, and for the  
 1644 purpose, of revocation. An electronic will or codicil is revoked  
 1645 by the testator, or some other person in the testator's presence  
 1646 and at the testator's direction, by deleting, canceling,  
 1647 rendering unreadable, or obliterating the electronic will or  
 1648 codicil, with the intent, and for the purpose, of revocation, as  
 1649 proved by clear and convincing evidence.

1650 Section 32. Section 732.521, Florida Statutes, is created

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CS/CS/HB 409

2019 Legislature

1651 to read:

1652 732.521 Definitions.—As used in ss. 732.521-732.525, the  
 1653 term:

1654 (1) "Audio-video communication technology" has the same  
 1655 meaning as provided in s. 117.201.

1656 (2) "Electronic record" has the same meaning as provided  
 1657 in s. 668.50.

1658 (3) "Electronic signature" means an electronic mark  
 1659 visibly manifested in a record as a signature and executed or  
 1660 adopted by a person with the intent to sign the record.

1661 (4) "Electronic will" means a testamentary instrument,  
 1662 including a codicil, executed with an electronic signature by a  
 1663 person in the manner prescribed by this code, which disposes of  
 1664 the person's property on or after his or her death and includes  
 1665 an instrument which merely appoints a personal representative or  
 1666 guardian or revokes or revises another will.

1667 (5) "Online notarization" has the same meaning as provided  
 1668 in s. 117.201.

1669 (6) "Online notary public" has the same meaning as  
 1670 provided in s. 117.201.

1671 (7) "Qualified custodian" means a person who meets the  
 1672 requirements of s. 732.525(1).

1673 (8) "Secure system" means a system that satisfies the  
 1674 requirements of a secure repository qualified to retain  
 1675 electronic journals of online notaries public in accordance with

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CS/CS/HB 409

2019 Legislature

1676 s. 117.245 and any rules established under part II of chapter  
1677 117.

1678 Section 33. Effective July 1, 2020, section 732.522,  
1679 Florida Statutes, is created to read:

1680 732.522 Method and place of execution.—For purposes of the  
1681 execution or filing of an electronic will, the acknowledgment of  
1682 an electronic will by the testator and the affidavits of  
1683 witnesses under s. 732.503, or any other instrument under the  
1684 Florida Probate Code:

1685 (1) Any requirement that an instrument be signed may be  
1686 satisfied by an electronic signature.

1687 (2) Any requirement that individuals sign an instrument in  
1688 the presence of one another may be satisfied by witnesses being  
1689 present and electronically signing by means of audio-video  
1690 communication technology that meets the requirements of part II  
1691 of chapter 117 and any rules adopted thereunder, if:

1692 (a) The individuals are supervised by a notary public in  
1693 accordance with s. 117.285;

1694 (b) The individuals are authenticated and signing as part  
1695 of an online notarization session in accordance with s. 117.265;

1696 (c) The witness hears the signer make a statement  
1697 acknowledging that the signer has signed the electronic record;  
1698 and

1699 (d) The signing and witnessing of the instrument complies  
1700 with the requirements of s. 117.285.

ENROLLED

CS/CS/HB 409

2019 Legislature

1701           (3) Except as otherwise provided in this part, all  
 1702 questions as to the force, effect, validity, and interpretation  
 1703 of an electronic will which comply with this section must be  
 1704 determined in the same manner as in the case of a will executed  
 1705 in accordance with s. 732.502.

1706           (4) An instrument that is signed electronically is deemed  
 1707 to be executed in this state if the instrument states that the  
 1708 person creating the instrument intends to execute and  
 1709 understands that he or she is executing the instrument in, and  
 1710 pursuant to the laws of, this state.

1711           Section 34. Section 732.523, Florida Statutes, is created  
 1712 to read:

1713           732.523 Self-proof of electronic will.—An electronic will  
 1714 is self-proved if:

1715           (1) The acknowledgment of the electronic will by the  
 1716 testator and the affidavits of the witnesses are made in  
 1717 accordance with s. 732.503 and are part of the electronic record  
 1718 containing the electronic will, or are attached to, or are  
 1719 logically associated with, the electronic will;

1720           (2) The electronic will designates a qualified custodian;

1721           (3) The electronic record that contains the electronic  
 1722 will is held in the custody of a qualified custodian at all  
 1723 times before being offered to the court for probate; and

1724           (4) The qualified custodian who has custody of the  
 1725 electronic will at the time of the testator's death certifies

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CS/CS/HB 409

2019 Legislature

1726 under oath that, to the best knowledge of the qualified  
 1727 custodian, the electronic record that contains the electronic  
 1728 will was at all times before being offered to the court in the  
 1729 custody of a qualified custodian in compliance with s. 732.524  
 1730 and that the electronic will has not been altered in any way  
 1731 since the date of its execution.

1732 Section 35. Section 732.524, Florida Statutes, is created  
 1733 to read:

1734 732.524 Qualified custodians.—

1735 (1) To serve as a qualified custodian of an electronic  
 1736 will, a person must be:

1737 (a) Domiciled in and a resident of this state; or

1738 (b) Incorporated, organized, or have its principal place  
 1739 of business in this state.

1740 (2) A qualified custodian shall:

1741 (a) In the course of maintaining custody of electronic  
 1742 wills, regularly employ a secure system and store in such secure  
 1743 system electronic records containing:

1744 1. Electronic wills;

1745 2. Records attached to or logically associated with  
 1746 electronic wills; and

1747 3. Acknowledgments of the electronic wills by testators,  
 1748 affidavits of the witnesses, and the records described in s.  
 1749 117.245(1) and (2) which pertain to the online notarization.

1750 (b) Furnish for any court hearing involving an electronic

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CS/CS/HB 409

2019 Legislature

1751 will that is currently or was previously stored by the qualified  
 1752 custodian any information requested by the court pertaining to  
 1753 the qualified custodian's qualifications, policies, and  
 1754 practices related to the creation, sending, communication,  
 1755 receipt, maintenance, storage, and production of electronic  
 1756 wills.

1757 (c) Provide access to or information concerning the  
 1758 electronic will, or the electronic record containing the  
 1759 electronic will, only:

1760 1. To the testator;

1761 2. To persons authorized by the testator in the electronic  
 1762 will or in written instructions signed by the testator with the  
 1763 formalities required for the execution of a will in this state;

1764 3. After the death of the testator, to the testator's  
 1765 nominated personal representative; or

1766 4. At any time, as directed by a court of competent  
 1767 jurisdiction.

1768 (3) The qualified custodian of the electronic record of an  
 1769 electronic will may elect to destroy such record, including any  
 1770 of the documentation required to be created and stored under  
 1771 paragraph (2) (a), at any time after the earlier of the fifth  
 1772 anniversary of the conclusion of the administration of the  
 1773 estate of the testator or 20 years after the death of the  
 1774 testator.

1775 (4) A qualified custodian who at any time maintains

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CS/CS/HB 409

2019 Legislature

1776 custody of the electronic record of an electronic will may elect  
 1777 to cease serving in such capacity by:

1778 (a) Delivering the electronic will or the electronic  
 1779 record containing the electronic will to the testator, if then  
 1780 living, or, after the death of the testator, by filing the will  
 1781 with the court in accordance with s. 732.901; and

1782 (b) If the outgoing qualified custodian intends to  
 1783 designate a successor qualified custodian, by doing the  
 1784 following:

1785 1. Providing written notice to the testator of the name,  
 1786 address, and qualifications of the proposed successor qualified  
 1787 custodian. The testator must provide written consent before the  
 1788 electronic record, including the electronic will, is delivered  
 1789 to a successor qualified custodian;

1790 2. Delivering the electronic record containing the  
 1791 electronic will to the successor qualified custodian; and

1792 3. Delivering to the successor qualified custodian an  
 1793 affidavit of the outgoing qualified custodian stating that:

1794 a. The outgoing qualified custodian is eligible to act as  
 1795 a qualified custodian in this state;

1796 b. The outgoing qualified custodian is the qualified  
 1797 custodian designated by the testator in the electronic will or  
 1798 appointed to act in such capacity under this paragraph;

1799 c. The electronic will has at all times been in the  
 1800 custody of one or more qualified custodians in compliance with



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CS/CS/HB 409

2019 Legislature

1801 this section since the time the electronic record was created,  
1802 and identifying such qualified custodians; and

1803 d. To the best of the outgoing qualified custodian's  
1804 knowledge, the electronic will has not been altered since the  
1805 time it was created.

1806  
1807 For purposes of making this affidavit, the outgoing qualified  
1808 custodian may rely conclusively on any affidavits delivered by a  
1809 predecessor qualified custodian in connection with its  
1810 designation or appointment as qualified custodian; however, all  
1811 such affidavits must be delivered to the successor qualified  
1812 custodian.

1813 (5) Upon the request of the testator which is made in  
1814 writing signed with the formalities required for the execution  
1815 of a will in this state, a qualified custodian who at any time  
1816 maintains custody of the electronic record of the testator's  
1817 electronic will must cease serving in such capacity and must  
1818 deliver to a successor qualified custodian designated in writing  
1819 by the testator the electronic record containing the electronic  
1820 will and the affidavit required in subparagraph (4) (b) 3.

1821 (6) A qualified custodian may not succeed to office as a  
1822 qualified custodian of an electronic will unless he or she  
1823 agrees in writing to serve in such capacity.

1824 (7) If a qualified custodian is an entity, an affidavit,  
1825 or an appearance by the testator in the presence of a duly

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CS/CS/HB 409

2019 Legislature

1826 authorized officer or agent of such entity, acting in his or her  
1827 own capacity as such, shall constitute an affidavit, or an  
1828 appearance by the testator in the presence of the qualified  
1829 custodian.

1830 (8) A qualified custodian must provide a paper copy of an  
1831 electronic will and the electronic record containing the  
1832 electronic will to the testator immediately upon request. For  
1833 the first request, the testator may not be charged a fee for  
1834 being provided with these documents.

1835 (9) The qualified custodian shall be liable for any  
1836 damages caused by the negligent loss or destruction of the  
1837 electronic record, including the electronic will, while it is in  
1838 the possession of the qualified custodian. A qualified custodian  
1839 may not limit liability for such damages.

1840 (10) A qualified custodian may not terminate or suspend  
1841 access to, or downloads of, the electronic will by the testator,  
1842 provided that a qualified custodian may charge a fee for  
1843 providing such access and downloads.

1844 (11) Upon receiving information that the testator is dead,  
1845 a qualified custodian must deposit the electronic will with the  
1846 court in accordance with s. 732.901. A qualified custodian may  
1847 not charge a fee for depositing the electronic will with the  
1848 clerk, provided the affidavit is made in accordance with s.  
1849 732.503, or furnishing in writing any information requested by a  
1850 court under paragraph (2) (b).

ENROLLED

CS/CS/HB 409

2019 Legislature

1851           (12) Except as provided in this act, a qualified custodian  
 1852 must at all times keep information provided by the testator  
 1853 confidential and may not disclose such information to any third  
 1854 party.

1855           (13) A contractual venue provision between a qualified  
 1856 custodian and a testator is not valid or enforceable to the  
 1857 extent that it requires a specific jurisdiction or venue for any  
 1858 proceeding relating to the probate of an estate or the contest  
 1859 of a will.

1860           Section 36. Section 732.525, Florida Statutes, is created  
 1861 to read:

1862           732.525 Liability coverage; receivership of qualified  
 1863 custodians.—

1864           (1) A qualified custodian shall:

1865           (a) Post and maintain a blanket surety bond of at least  
 1866 \$250,000 to secure the faithful performance of all duties and  
 1867 obligations required under this part. The bond must be made  
 1868 payable to the Governor and his or her successors in office for  
 1869 the benefit of all persons who store electronic records with a  
 1870 qualified custodian and their estates, beneficiaries,  
 1871 successors, and heirs, and be conditioned on the faithful  
 1872 performance of all duties and obligations under this chapter.  
 1873 The terms of the bond must cover the acts or omissions of the  
 1874 qualified custodian and each agent or employee of the qualified  
 1875 custodian; or

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CS/CS/HB 409

2019 Legislature

1876           (b) Maintain a liability insurance policy that covers any  
 1877 losses sustained by any person who stores electronic records  
 1878 with a qualified custodian and their estates, beneficiaries,  
 1879 successors, and heirs which are caused by errors or omissions by  
 1880 the qualified custodian and each agent or employee of the  
 1881 qualified custodian. The policy must cover losses of at least  
 1882 \$250,000 in the aggregate.

1883           (2) The Attorney General may petition a court of competent  
 1884 jurisdiction for the appointment of a receiver to manage the  
 1885 electronic records of a qualified custodian for proper delivery  
 1886 and safekeeping if any of the following conditions exist:

1887           (a) The qualified custodian is ceasing operation;

1888           (b) The qualified custodian intends to close the facility  
 1889 and adequate arrangements have not been made for proper delivery  
 1890 of the electronic records in accordance with this part;

1891           (c) The Attorney General determines that conditions exist  
 1892 which present a danger that electronic records will be lost or  
 1893 misappropriated; or

1894           (d) The qualified custodian fails to maintain and post a  
 1895 surety bond or maintain insurance as required in this section.

1896           Section 37. Section 732.526, Florida Statutes, is created  
 1897 to read:

1898           732.526 Probate.—

1899           (1) An electronic will that is filed electronically with  
 1900 the clerk of the court through the Florida Courts E-Filing

ENROLLED

CS/CS/HB 409

2019 Legislature

1901 Portal is deemed to have been deposited with the clerk as an  
 1902 original of the electronic will.

1903 (2) A paper copy of an electronic will which is certified  
 1904 by a notary public to be a true and correct copy of the  
 1905 electronic will may be offered for and admitted to probate and  
 1906 shall constitute an original of the electronic will.

1907 Section 38. Subsection (1) of section 733.201, Florida  
 1908 Statutes, is amended to read:

1909 733.201 Proof of wills.—

1910 (1) Self-proved wills executed in accordance with this  
 1911 code may be admitted to probate without further proof. However,  
 1912 a purportedly self-proved electronic will may be admitted to  
 1913 probate only in the manners prescribed in subsections (2) and  
 1914 (3) if the execution of such electronic will, or the  
 1915 acknowledgment by the testator and the affidavits of the  
 1916 witnesses, involves an online notarization in which there was a  
 1917 substantial failure to comply with the procedures set forth in  
 1918 s. 117.265.

1919 Section 39. Section 740.11, Florida Statutes, is created  
 1920 to read:

1921 740.11 Relation to wills.—No act taken pursuant to this  
 1922 chapter is valid to affect the obligation of a person to deposit  
 1923 a will of a decedent as required under s. 732.901.

1924 Section 40. Except as otherwise expressly provided in this  
 1925 act, and except for this section, which shall take effect upon

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CS/CS/HB 409

2019 Legislature

1926 | becoming a law, this act shall take effect January 1, 2020. |