

Amendment No. 1 to SB1758

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1758*

House Bill No. 1794

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 66-22-101, is amended by deleting the section and substituting instead the following:

(a) Unless otherwise provided by law, to authenticate an instrument or document for registration or recording in the office of the county register, the maker or the natural person acting on behalf of the maker shall execute the instrument or document by that person's original signature, and the signature shall be either acknowledged according to law or proved by at least two (2) subscribing witnesses. The county register may refuse to record any instrument or document not authenticated in accordance with this section.

(b) For purposes of this section, "person's original signature" includes an electronic signature as defined in § 8-16-302.

(c) For purposes of this title and subject to subsection (d), a person may personally appear before the officer taking the acknowledgment by:

(1) Appearing physically before the officer; or

(2) Appearing by means of an interactive two-way audio and video communication that meets the online notarization requirements under rules promulgated by the secretary of state pursuant to the Online Notary Public Act, compiled in title 8, chapter 16, part 3, to provide for the orderly administration of this chapter.

(d) The acknowledging officer must designate in the acknowledgment form whether the principal personally appeared before the officer by means of an interactive

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two-way audio and video communication pursuant to subdivision (c)(2). If the person appears by means of an interactive two-way audio and video communication, the appearance and the certificate shall be deemed compliant with this chapter if the acknowledging officer amends the acknowledgment forms set forth in §§ 66-22-107, 66-22-108, and 66-22-114, to read "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appear by audio-video communication" rather than "personally appeared before me" or "personally appeared" or "before me appear".

SECTION 2. Tennessee Code Annotated, Title 8, Chapter 16, is amended by adding the following as a new part:

8-16-301. Short title. This part shall be known and may be cited as the "Online Notary Public Act."

8-16-302. Part definitions. As used in this part:

(1) "Appear" or "appearance" or "personally appear" means:

(A) Appearing physically before a notary public; or

(B) Appearing before an online notary public by means of an interactive two-way audio and video communication that meets the online notarization requirements under rules promulgated by the secretary of state;

(2) "Credential analysis" means a process or service operating as outlined in rules promulgated by the secretary of state, through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources;

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(4) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means;

(5) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an online notary public and contains the following:

(A) The online notary public's electronic signature, electronic seal, title, and commission expiration date;

(B) Other information required by the secretary of state in rule concerning the date and place of the online notarization; and

(C) The facts attested to or certified by the online notary public in the particular notarization;

(6) "Electronic seal" means information within a notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents;

(7) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document;

(8) "Identity proofing" means a process or service operating according to criteria as outlined in rules promulgated by the secretary of state, through which a third person affirms the identity of an individual through review of personal information in public and proprietary data sources;

(9) "Notarial act" means the performance by an online notary public of a function authorized under § 8-16-112;

(10) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under § 8-16-305;

(11) "Online notary public" means a notary public who is a commissioned notary public and has been additionally commissioned to perform online notarizations as outlined in this part;

(12) "Principal" means an individual:

(A) Whose electronic signature is notarized in an online notarization; or

(B) Who appears before and provides an acknowledgement of or takes an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization; and

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

(A) Identify the individual seeking the online notary public's services; and

(B) Perform credential analysis.

8-16-303. Applicability of part. This part only applies to online notarizations.

8-16-304. Rulemaking. The secretary of state shall promulgate rules necessary to implement this part, including rules to facilitate online notarizations. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

8-16-305. Standards for online notarization.

(a) The secretary of state shall promulgate by rule standards for online notarization in accordance with this part, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with other appropriate agencies on matters relating to equipment, security, and technological aspects of the online notarization standards.

8-16-306. Application; qualifications.

(a) A person who has been commissioned as a notary public may apply to the secretary of state to be commissioned as an online notary public in the manner provided by this section.

(b) A person qualifies to be commissioned as an online notary public by:

(1) Satisfying the qualification requirements for appointment as a notary public under part 1 of this chapter; and

(2) Submitting to the secretary of state an application in the form prescribed by the secretary of state that satisfies the secretary of state that the applicant is qualified.

(c) The application required by subsection (b) must include:

(1) The applicant's legal name as listed in the records of the county where the applicant is commissioned as a notary;

(2) The applicant's physical address in this state, which includes the street address, city, state, and zip code. However, the applicant may provide a post office box number for purposes of receiving mail from the secretary of state;

(3) A valid email address for the applicant;

(4) A valid telephone number of the applicant;

(5) The county in this state where the notary was commissioned as well as the date the notary was commissioned and the date the notary commission expires;

(6) Any other information deemed necessary by the secretary of state for the purpose of determining whether the applicant qualifies to become an online notary; and

(7) A certification that the applicant will comply with the secretary of state's standards promulgated pursuant to § 8-16-305.

(d) The secretary of state may charge a fee for an application submitted under this section not to exceed an amount necessary to administer this part.

8-16-307. Performance of notarial acts. An online notary public:

(1) Is a notary public for purposes of this chapter, is subject to this chapter, and must be appointed and commissioned as a notary public under this chapter;

(2) May perform notarial acts as provided in part 1 of this chapter; and

(3) May perform an online notarization, without regard to the physical location of the principal, if the notary is physically located in this state.

8-16-308. Electronic record of online notarizations.

(a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The record may be kept in one (1) or more electronic journals. The electronic record must contain for each online notarization:

(1) The date and time of the notarization;

(2) The type of notarial act;

(3) The type, the title, or a description of the electronic document or proceeding;

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

(5) Evidence of identity of each principal involved in the transaction or proceeding in the form of:

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

(B) A notation of the type of identification document provided to the online notary public;

(C) A record of the identity verification made, if applicable; or

(D)

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

(ii) For each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

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

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

(b) The online notary public shall take reasonable steps to:

(1) Ensure the integrity, security, and authenticity of online notarizations;

(2) Maintain a backup for the electronic record required by subsection

(a); and

(3) Protect the backup record from unauthorized use.

(c) The electronic record required by subsection (a) must be maintained for at least five (5) years after the date of the transaction or proceeding requiring notarization.

The notary, or a guardian or personal representative of an incapacitated or deceased notary, may by agreement use a repository acting in accordance with any rules established under this chapter to maintain such records.

8-16-309. Use of electronic record, signature, and seal.

(a) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) An online notary public shall keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control, which includes access protection through the use of passwords or codes under control of the notary public. No online notary public shall allow another person to use the online notary public's electronic record, electronic signature, or electronic seal.

(c) An online notary public may only use the online notary public's electronic signature for performing online notarizations.

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

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

8-16-310. Online notarization procedures.

(a) In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the

requirements of this part and rules promulgated pursuant to this part. Identity may be verified by:

(1) The online notary public's personal knowledge of the person creating the electronic signature; or

(2)

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

(B) Credential analysis of the credential described in subdivision (a)(2)(A); and

(C) Identity proofing of the person described in subdivision (a)(2)(A).

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

(c) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

(d) The validity of an online notarization performed by an online notary public of this state in accordance with this chapter shall be determined by applying the laws of this state.

8-16-311. Fees for online notarization. An online notary public or the online notary public's employer may charge a fee in an amount not to exceed twenty-five dollars (\$25.00) each for performing an online notarization in addition to any other fees authorized under this chapter.

8-16-312. Termination of online notary public's commission.

(a) The secretary of state shall terminate the commission of an online notary public if the online notary fails to comply with this chapter.

(b) Except as provided in subsection (c), an online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the online notary public's official electronic signature or seal. The online notary public shall certify compliance with this subsection (b) to the secretary of state as provided in rule.

(c) A former online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described in subsection (b) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three (3) months after the former commission terminated.

8-16-313. Wrongful possession of software or hardware; criminal offense.

(a) It is an offense for a person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or electronic seal.

(b) A violation of this section is a Class D felony.

SECTION 3. Tennessee Code Annotated, Section 8-16-112, is amended by designating the existing language (a) and adding the following new subsection (b):

(b) The requirement of a notary public's signature by in ink by the notary's hand and a seal is satisfied if an electronic signature or a digitized image of a wet signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

SECTION 4. Tennessee Code Annotated, Section 8-16-114, is amended by adding the following subsection (b) and redesignating the current subsection (b) and subsequent subsections accordingly:

(b) The requirement in subsection (a) of an official seal of office or stamp imprinted in color ink is satisfied by an electronically transmitted document, if the document legibly reproduces the required elements of the seal. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

SECTION 5. For administrative and rulemaking purposes, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2019, the public welfare requiring it.