

- SUBJECT:** Establishing rules and procedures for an online notary service
- COMMITTEE:** Investments and Financial Services — committee substitute recommended
- VOTE:** 6 ayes — Parker, Stephenson, Burrows, Dean, Holland, Longoria
- 0 nays
- 1 absent — E. Johnson
- WITNESSES:** For — Dawn Lewallen, Stewart Title Guaranty; Jeffrey Bode, Texas Mortgage Bankers Association; Justin Lischak Earley; (*Registered, but did not testify*: Brian Engel, Barrett Daffin Frappier Turner and Engel; Randy Lee, First American Title Insurance Company; Brian Yarbrough, JPMorgan Chase; Vicki Truitt, Mackie Wolf Zientz & Mann, P.C.; Julia Parenteau, Texas Association of Realtors; Celeste Embrey, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Kelly Rodgers, Wells Fargo)
- Against — Bob Rice, Notaries; (*Registered, but did not testify*: Kal Tabbara, American Association of Notaries)
- On — Michael Chodos, Notarize, Inc.; (*Registered, but did not testify*: Robert Sumners and Briana Godbey, Texas Secretary of State)
- BACKGROUND:** Some observers note while many states have recently begun authorizing a notary public to conduct an online notary service, Texas provides no such authorization.
- DIGEST:** CSHB 1217 would require the secretary of state to develop standards and rules for online notarization, a notarial act conducted using two-way video and audio conferencing. The standards would provide for credential analysis to affirm the validity of government-issued identification and identity proofing by third parties. The secretary of state could confer with the Department of Information Resources or other appropriate state agencies on certain aspects of the standards.

A notary public or an applicant for appointment as a notary public could apply to the secretary of state to be commissioned as an online notary public. The bill would outline application requirements and would allow the secretary of state to charge a fee in an amount necessary to administer requirements for online notaries public. Online notaries public would be subject to the same requirements under current law as a typical notary public.

An online notary public could perform an online notarization relating only to documents:

- signed by a Texas resident
- relating to real estate in Texas;
- relating to a transaction in which at least one of the parties was a Texas resident and authorized to do business here;
- relating to a debt that was payable at a location in this state;
- intended to be filed in the state's public records, including an affidavit or deposition to be filed in a Texas court; or
- constituting an acknowledgment or affirmation made by a person physically located in Texas.

Online notaries public would be required to determine the basis for an online notarization before conducting it, and would have to maintain a secure electronic record of this information in a manner prescribed by the bill. CSHB 1217 also would set requirements for ensuring the security of the online notary public's electronic record, electronic signature, and electronic seal.

In performing an online notarization, an online notary public would have to verify the identity of a person creating an electronic signature at the time it was taken by using two-way video and audio conferencing. The notary also would need to take steps to ensure the video and audio communication was protected from unauthorized interception. The electronic notarial certificate would include a notation that the notarization was performed online. Under the bill, a fee of up to \$25 could be charged

for an online notarization, in addition to any other fees currently authorized for public notaries.

Online notaries public whose commission ended would be required to destroy the certificate allowing them to conduct online notarization, with certain exceptions for terminated notaries who were recommissioned.

An unauthorized person who knowingly obtained, concealed, damaged, or destroyed such an enabling certificate would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

This bill would take effect July 1, 2018.