

GOVERNMENT CODE

TITLE 4. EXECUTIVE BRANCH

SUBTITLE A. EXECUTIVE OFFICERS

CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS

SUBCHAPTER A. NOTARY PUBLIC

Sec. 406.001. APPOINTMENTS. (a) The secretary of state may appoint a notary public at any time.

(b) The secretary of state shall assign each notary public an identifying number and keep a record of the number assigned to each notary public.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1041 (H.B. 1683), Sec. 1, eff. January 1, 2016.

Sec. 406.002. TERM. The term of a notary public expires four years after the date the notary public qualifies.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.003. JURISDICTION. A notary public has statewide jurisdiction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.004. ELIGIBILITY. (a) Each person appointed and commissioned as a notary public shall be at least 18 years of age and a resident of the State of Texas and must not have been convicted of a felony or crime involving moral turpitude.

(b) If the secretary of state discovers, at any time, that an applicant to be a notary public or a commissioned notary public is not eligible to serve as a notary public, the secretary of state shall:

- (1) reject the notary application; or
- (2) revoke the notary commission.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 1, eff. Jan. 1, 1996.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 766 (H.B. 2235), Sec. 1, eff. September 1, 2015.

Sec. 406.005. APPOINTMENT PROCEDURE--STATEMENT. (a) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The application must state:

- (1) the applicant's name to be used in acting as a notary public;
- (2) the applicant's post office address;
- (3) the applicant's county of residence;
- (4) the applicant's date of birth;
- (5) the applicant's driver's license number or the number of other official state-issued identification; and
- (6) the applicant's social security number.

(b) The applicant shall also execute the statement of officers as required by Section 1, Article XVI, Texas Constitution.

(c) Repealed by Acts 2003, 78th Leg., ch. 1211, Sec. 1. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 2, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 2003.

Sec. 406.006. QUALIFICATION. An individual qualifies by:

- (1) properly completing the application form;
- (2) executing the statement;
- (3) providing the bond, if required;
- (4) paying the required filing fees; and
- (5) meeting the eligibility requirements.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 406, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 719, Sec. 3, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 285, Sec. 14, eff. Sept. 1, 2003.

Sec. 406.007. FEES PAID TO SECRETARY OF STATE. (a) The applicant must submit to the secretary of state:

(1) a fee of \$10 for approving and filing the bond of the notary public, if required; and

(2) a fee of \$1 to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.

(b) The secretary of state shall charge for use of the state a fee of \$10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.14(a), eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 285, Sec. 15, eff. Sept. 1, 2003.

Sec. 406.008. COMMISSION; NOTARY MATERIALS. (a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.

(b) When the commission is issued, the secretary of state shall supply the notary public with:

(1) materials outlining the powers and duties of the office;

(2) a list of prohibited acts;

(3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition; and

(4) the identifying number assigned to the notary public.

(c) Repealed by Acts 1995, 74th Leg., ch. 719, Sec. 10, eff. Jan. 1, 1996.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 4, 10, eff. Jan. 1, 1996.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1041 (H.B. 1683), Sec. 2, eff. January 1, 2016.

Sec. 406.009. REJECTION OF APPOINTMENT; SUSPENSION OR

REVOCAATION OF COMMISSION. (a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:

(1) a false statement knowingly made in an application;

(2) the failure to comply with Section [406.017](#);

(3) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;

(4) the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or

(5) performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

(e) The following may not be considered a conviction for the purposes of determining eligibility and good cause:

(1) a dismissal of a proceeding against the defendant and discharge of the defendant before an adjudication of guilt; and

(2) a finding of guilt that has been set aside.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.15(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 719, Sec. 5, 6, eff. Jan. 1, 1996.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 569 (S.B. [2073](#)), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 766 (H.B. [2235](#)), Sec. 2, eff. September 1, 2015.

Sec. 406.010. BOND; OATH. (a) Each person to be appointed

a notary public shall, before entering the official duties of office, execute a bond in the amount of \$10,000 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office. The secretary of state has the authority to accept an electronic filing of the notary public bond if an agreement has been made with the surety company.

(b) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(c) A notary public, before entering on the duties of office, shall take the official oath required by Section 1, Article XVI, Texas Constitution.

(d) The oath shall be signed and sworn to or affirmed by the notary public in the presence of a notary public or other person authorized to administer oaths in this state. A notary public cannot execute his or her own oath of office.

(e) The secretary of state shall provide an oath of office form along with the commission and educational materials.

(f) Subsections (a) and (b) do not apply to a person whose services as a notary public are performed primarily as a state officer or employee.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 7, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 285, Sec. 16, eff. Sept. 1, 2003.

Sec. 406.011. REAPPOINTMENT. (a) Not earlier than 90 days prior to the expiration date of the notary's term, a notary public may apply for reappointment on submission of a new application to the secretary of state.

(b) A notary public who is not reappointed on or before the expiration date of the term the notary public is serving will be appointed for a new term expiring four years from the date of qualification.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1995, 74th Leg., ch. 719, Sec. 8, eff. Jan. 1, 1996.

Sec. 406.012. INSPECTION OF RECORDS. All records concerning the appointment and qualification of the notary public shall be kept in the office of the secretary of state. The records are public information.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.16(a), eff. Sept. 1, 1989.

Sec. 406.013. SEAL. (a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, the notary public's identifying number, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

(d) Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.71(d), eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 95, Sec. 2, eff. May 11, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1041 (H.B. [1683](#)), Sec. 3, eff. January 1, 2016.

Sec. 406.014. NOTARY RECORDS. (a) A notary public other

than a court clerk notarizing instruments for the court shall keep in a book a record of:

(1) the date of each instrument notarized;

(2) the date of the notarization;

(3) the name of the signer, grantor, or maker;

(4) the signer's, grantor's, or maker's mailing address;

(5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and mailing address of the individual introducing the signer, grantor, or maker;

(6) if the instrument is proved by a witness, the mailing address of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and mailing address of the individual introducing the witness;

(7) the name and mailing address of the grantee;

(8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and

(9) a brief description of the instrument.

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record of official acts in the notary public's book of record to any person requesting the copy.

(d) A notary public who administers an oath pursuant to Article 45.019, Code of Criminal Procedure, is exempt from the requirement in Subsection (a) of recording that oath.

(e) A notary public may maintain the records required by Subsection (a) electronically in a computer or other storage device.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.17(a), eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 406, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 451, Sec. 1, eff. June 14, 1989; Acts 1999,

76th Leg., ch. 1545, Sec. 71, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 103 (S.B. 220), Sec. 1, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 731 (S.B. 1098), Sec. 1, eff. September 1, 2017.

Sec. 406.015. COPIES CERTIFIED BY COUNTY CLERK. (a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection (a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.016. AUTHORITY. (a) A notary public has the same authority as the county clerk to:

(1) take acknowledgments or proofs of written instruments;

(2) protest instruments permitted by law to be protested;

(3) administer oaths;

(4) take depositions; and

(5) certify copies of documents not recordable in the public records.

(b) A notary public shall sign an instrument in Subsection (a) in the name under which the notary public is commissioned.

(c) A notary public may not issue an identification card.

(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.0165. SIGNING DOCUMENT FOR INDIVIDUAL WITH DISABILITY. (a) A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for

notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

(b) A notary who signs a document under this section shall write, beneath the signature, the following or a substantially similar sentence:

"Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code."

(c) A signature made under this section is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual's consent to execution of the document.

(d) In this section, "disability" means a physical impairment that impedes the ability to sign or make a mark on a document.

Added by Acts 1997, 75th Leg., ch. 1218, Sec. 1, eff. Sept. 1, 1997.

Sec. 406.017. REPRESENTATION AS ATTORNEY. (a) A person commits an offense if the person is a notary public and the person:

(1) states or implies that the person is an attorney licensed to practice law in this state;

(2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration or admission to the United States, United States citizenship, or related matters;

(3) solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;

(4) uses the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio

or television; or

(5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection (b).

(a-1) A person does not violate this section by offering or providing language translation or typing services and accepting compensation.

(b) The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 566, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 2.002, eff. September 1, 2017.

Sec. 406.018. REMOVAL FROM OFFICE. (a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.019. CHANGE OF ADDRESS. A notary public shall notify the secretary of state of a change of the notary public's address not later than the 10th day after the date on which the change is made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.020. REMOVAL FROM STATE. A notary public who removes his residence from this state vacates the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.021. REMOVAL FROM PRECINCT. An ex officio notary public who moves permanently from the notary public's precinct vacates the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.022. EFFECT OF VACANCY. If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk's office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 406, Sec. 3, eff. Sept. 1, 1989.

Sec. 406.023. ADMINISTRATION AND ENFORCEMENT. (a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid

in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks' offices.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.024. FEES CHARGED BY NOTARY PUBLIC. (a) A notary public or its employer may charge the following fees:

(1) for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of \$4;

(2) for each notice of protest, a fee of \$1;

(3) for protesting in all other cases, a fee of \$4;

(4) for certificate and seal to a protest, a fee of \$4;

(5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of \$6 for the first signature and \$1 for each additional signature;

(6) for administering an oath or affirmation with certificate and seal, a fee of \$6;

(7) for a certificate under seal not otherwise provided for, a fee of \$6;

(8) for a copy of a record or paper in the notary public's office, a fee of 50 cents for each page;

(9) for taking the deposition of a witness, 50 cents for each 100 words;

(10) for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of \$6; and

(11) for a notarial act not provided for, a fee of \$6.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.18(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1995.

Sec. 406.025. SIGNATURE ON COMMISSIONS AFTER CHANGE IN OFFICE. If the governor or secretary of state ceases to hold or perform the duties of office, existing stocks of commissions bearing the person's printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the commissions issued with:

(1) the obsolete printed name, signature, or facsimile signature struck through;

(2) the successor's printed name submitted for the obsolete printed name, signature, or facsimile signature; and

(3) the inscription "Printed name authorized by law" near the successor's printed name.

Added by Acts 1995, 74th Leg., ch. 719, Sec. 9, eff. Jan. 1, 1996.

Sec. 406.026. ELECTRONIC NOTARIZATION. In a proceeding filed under Title 5, Family Code, if a signature is required to be notarized, acknowledged, verified, or made under oath, the requirement may be satisfied if the electronic signature of the person authorized to perform that act, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature required to be notarized, acknowledged, verified, or made under oath.

Added by Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. [1726](#)), Sec. 10, eff. September 1, 2015.

SUBCHAPTER B. COMMISSIONER OF DEEDS

Sec. 406.051. APPOINTMENT. (a) The governor may biennially appoint and commission one or more individuals in other states, territories, or foreign countries or in the District of Columbia to serve as commissioner of deeds.

(b) An appointment may be made only on the recommendation of the executive authority of the state, territory, or foreign country or of the District of Columbia.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.052. TERM. The term of office of a commissioner of deeds is two years.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.053. OATH. Before performing the duties of office, a commissioner of deeds shall take and subscribe an oath to well and faithfully perform the duties of office under the laws of this state. The oath shall be:

(1) taken before the clerk of a court of record in the city, county, or country in which the commissioner resides;

(2) certified to by the clerk under the clerk's hand and seal of office; and

(3) filed in the office of the secretary of state of this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.054. SEAL. A commissioner of deeds shall provide a seal with a star of five points in the center and the words "Commissioner of the State of Texas" engraved on the seal. The seal shall be used to certify all official acts of the commissioner of deeds. An instrument that does not have the impression of the seal, or an act of the commissioner of deeds that is not certified by the impression of the seal, is not valid in this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.055. AUTHORITY. A commissioner of deeds has the same authority as a notary public to take acknowledgments and proofs of written instruments, to administer oaths, and to take depositions to be used or recorded in this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. In this subchapter:

(1) "Credential analysis" means a process or service operating according to criteria approved 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.

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

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

(4) "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 required information 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.

(5) "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.

(6) "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.

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

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section [406.016](#).

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

(10) "Online notary public" means a notary public who

has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) "Principal" means an individual:

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

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

(12) "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.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an online notarization.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

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

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

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

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

(3) electronically 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 name to be used in acting as a notary public;

(2) a certification that the applicant will comply with the secretary of state's standards developed under Section [406.104](#); and

(3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. An online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to the same extent as a notary public appointed and commissioned under that subchapter;

(2) may perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and

(3) may perform an online notarization authorized under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. 1217), Sec. 3, eff. July 1, 2018.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. 1217), Sec. 3, eff. July 1, 2018.

Sec. 406.108. 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 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 under Section 406.110, if applicable; or

(D) the following:

(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) shall be maintained for at least five years after the date of the transaction or proceeding.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

Sec. 406.109. 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. The online notary public may not allow another person to use the online notary public's electronic record, electronic signature, or electronic seal.

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

(d) An online notary public shall attach the online notary public's electronic signature and 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.
Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. 1217), Sec. 3, eff. July 1, 2018.

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

(b) 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 subchapter and rules adopted under this subchapter. Identity may be verified by:

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

(2) each of the following:

(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 by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) 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.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

Sec. 406.111. 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 \$25 for performing an online notarization in addition to any other fees authorized under Section [406.024](#).

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION. (a) Except as provided by Subsection (b), 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 to the secretary of state.

(b) 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 by Subsection (a) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former online notary public's former commission terminated.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3, eff. July 1, 2018.

Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE. (a) 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 seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.
Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. [1217](#)), Sec. 3,
eff. July 1, 2018.