

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 696 (Portantino)  
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AWM

**SUBJECT**

Notaries public

**DIGEST**

This bill establishes a framework for licensed California notaries to conduct remote online notarizations, including provisions for the licensure of remote online notarization platforms by the Secretary of State and requirements relating to data security and privacy in online notarial transactions.

**EXECUTIVE SUMMARY**

Current state law requires a notarization by a California-licensed notary to be conducted in person. In the last several years, however – at a pace accelerated by the COVID-19 pandemic – many states have authorized notaries to conduct notarizations through remote online means, namely a live audiovisual connection that results in a digitally applied notarization stamp. California law currently recognizes notarizations conducted by out-of-state notaries, meaning the state’s residents can have a document notarized remotely by another state’s notary, but not by an in-state notary.

The bill would task the Secretary of State, the state agency currently charged with regulating notaries, with developing a regulatory framework for remote online notarizations. The bill also directs the Secretary of State to develop a system so that the Secretary of State can serve as the repository of last resort for the digital assets associated with online notarial acts. The bill provides guidelines regarding the technology, privacy protections, and data retention requirements for online notarization. Finally, the bill adopts liability provisions for online notarization platforms that do not adhere to the provisions of this measure. The author has agreed to amendments to strengthen the consumer protection and data security provisions of the bill.

This bill is another entry in a discussion among stakeholders dating back to 2018. This bill is one of two bills to implement remote online notarization in California; the other, AB 743 (Petrie-Norris, 2023), is pending before the Assembly Appropriations Committee. Both bills are modeled after last year's AB 1093 (Jones-Sawyer, 2021), which died in this Committee after stakeholders could not reach a consensus on a handful of issues. Accounting for the amendments being taken by the author here, the major difference between this bill and AB 743 is that this bill requires the state to recognize other states' online notarizations, whereas AB 743 does not allow interstate recognition in most circumstances.

This bill is sponsored by the author and is supported by BSA | The Software Alliance, California Credit Union League, California Land Title Association, Chamber of Progress, DocuSign, Govern for California, National Notary Association, Notarize, Inc., and the Zillow Group. This bill is opposed by the California League of Independent Notaries and the Electronic Frontier Foundation.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Authorizes the Secretary of State to appoint and commission notaries public, who may act as such notaries in any part of this state. (Gov. Code, § 8200.)
- 2) Requires that every person appointed as a notary public in this state meet specified requirements, including having satisfactorily completed certain courses of study and passed a written exam prescribed by the Secretary of State. (Gov. Code, § 8201.)
- 3) Requires the Secretary of State, prior to granting an appointment as a notary public, to take certain actions to determine the applicant's honesty, credibility, truthfulness, and integrity to fulfill the position, including by obtaining the applicant's fingerprint images to information relating to the applicant's convictions and arrests, if any, and provide certain personal information. (Gov. Code, §§ 8201.1, 8201.5.)
- 4) Requires a notary, when executing a jurat (a notarial act in which the signer is swearing to the content of the document) to administer an oath or affirmation to the affiant and to determine, based on specified evidence, that the affiant is the person executing the document. The affiant must sign the document in the presence of the notary. (Gov. Code, § 8202.)
- 5) Establishes the duties of a notary public, which include taking the acknowledgment or proof of advance health care directives, powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and giving a certificate of that proof or acknowledgment endorsed on or attached to the

instrument. Additionally, the notary public must provide certain information to the Secretary of State upon written request. (Gov. Code, § 8205.)

- 6) Requires a notary public to keep one active sequential journal at a time, of all official acts performed as a notary public, in a locked and secure area and under the direct and exclusive control of the notary.
  - a) The journal must contain specified information related to the identities of the person signing and any witnesses, the fee charged, the document notarized and other information.
  - b) For specified transactions relating to real property or a power of attorney document, the notary public must also require the party signing the judgment to record their thumbprint or in the journal, subject to provisions for if a thumbprint is unavailable. (Gov. Code, § 8206.)
- 7) Requires a notary public to provide and keep an official seal to be embossed, stamped, impressed, or affixed to a document, as specified, which must be kept in a locked and secured area under the direct and exclusive control of the notary. (Gov. Code, §§ 8207, 8207.1.)
- 8) Requires, if any notary public resigns, is disqualified or removed from office, or allows their appointment to expire, all notarial records and papers to be delivered within 30 days to the clerk of the court in which the notary public's current oath of office is on file; failure to comply with this requirement is a misdemeanor and can result in personal liability by the notary public if any person is damaged by that failure. (Gov. Code, § 8209.)
- 9) Requires every person appointed a notary public to execute an official bond in the sum of \$15,000 in the form of a bond executed by an admitted surety insurer. (Gov. Code, § 8212.)
- 10) Provides that a notary public and the sureties on the notary public's official bond are liable in a civil action to the persons injured by the official conduct or neglect of the notary public for all of the damages sustained. (Gov. Code, § 8214.)
- 11) Authorizes the Secretary of State to adopt rules and regulations to carry out its regulation of notaries public. (Gov. Code, § 8220.)
- 12) Requires specified legal instruments to be proved or acknowledged before they can be recorded. (Gov. Code, § 27287.)
- 13) Authorizes the proof or acknowledgement of an instrument to be made as follows:
  - a) Within this state, the proof or acknowledgement may be made before a notary public anywhere in the state and before specified judicial, state, and

- municipal officers located in the jurisdiction wherein they were elected or appointed. (Civ. Code, § 1181.)
- b) Without this state, but within the United States, the proof or acknowledgement may be made before a justice, judge, or clerk of any court of record of the United States or any state; a commissioner appointed by the Governor or Secretary of State for that purpose; a notary public; or any other office of the state where the acknowledgement is made authorized by its laws to take such proof or acknowledgement. (Civ. Code, § 1182.)
  - c) Without the United States, the proof or acknowledgement may be made before a minister, commissioner, or *chargé d'affaires* of the United States who is resident and accredited in the country where the proof or acknowledgement is made; specified diplomatic officers resident in the country where the proof or acknowledgement is made; a judge of a court of record of the country where the proof or acknowledgement is made; commissioners appointed by the Governor or Secretary of State for that purpose; or a notary public, provided that the signature of the notary public is acknowledged before certain judicial or diplomatic officers or by an apostille, as specified. (Civ. Code, § 1183.)
- 14) Prohibits the acknowledgement of an instrument unless the officer taking it has satisfactory evidence that the person making the acknowledgement is the individual who is described in and who executed the instrument. (Civ. Code, § 1185(a).)
- a) "Satisfactory evidence" is the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgement is not the individual they claim to be and the officer verifies the person's identity through one of the methods specified. (Civ. Code, § 1185(b).)
- 15) Provides formatting requirements for a certificate of acknowledgement taken within this state, including for the application of the official seal by the person taking the acknowledgement, and provides that a certificate of acknowledgement taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgement is made. (Civ. Code, § 1189.)
- 16) Provides that a certificate of acknowledgement of a writing other than a will, or a certificate of proof of such a writing, is *prima facie* evidence of the facts recited in the certificate and the genuineness of the signature of each person by whom the writing purports to have been signed if the certificate meets the requirements set forth above. (Evid. Code, § 1451.)
- 17) Provides that a seal is presumed to be genuine and its use authorized if it purports to be the seal of specified persons, courts, or jurisdictions, including a notary public within any state of the United States. (Evid. Code, § 1452.)

- 18) Provides that a signature is presumed to be genuine if it purports to be the signature, affixed in their official capacity, of specified persons, including a notary public within any state of the United States. (Evid. Code, § 1453.)

This bill:

- 1) Implements the Online Notarization Act (the Act), which authorizes California notaries to perform notarial transactions through the use of audio-visual communication, subject to the terms set forth below, as soon as the Secretary of State completes the necessary technology projects to enable the RONS, which must be no later than January 1, 2028.
- 2) Defines relevant terms, including:
  - a) "Audio-video communication" means being able to see, hear, and communicate with another individual in real time using electronic means in a manner that conforms to the requirements of this article and any rules or regulations adopted by the Secretary of State.
  - b) "Credential analysis" means a process or service operating through which a third party affirms the validity of a credential through review of public and proprietary data sources.
  - c) "Depository" means an individual or entity that has an active registration with the Secretary of State and is capable of storing a journal entry or audio-video recording on behalf of a notary public.
  - d) "Electronic journal" means an active sequential record of official acts performed while using an online notarization system performed by a person acting as a notary public authorized to perform online notarization maintained in a secure electronic format.
  - e) "Electronic online notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public authorized to perform online notarization and contains both (1) the notary public's electronic signature and electronic seal, as specified; and (2) the facts attested to by the notary public in the particular online transaction.
  - f) "Electronic seal" means information within a notarized electronic record that corresponds to information in notary seals used on paper records and that, where applicable, conforms to the requirement of bill and any rules or regulations adopted by the Secretary of State pursuant to this article.
  - g) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.
  - h) "Notarial act" means the performance of an act by an individual that is authorized under the laws of this state, including acts described in Sections 8202 and 8205, and in this article.
  - i) "Notary public's electronic signature" means an electronic signature that (1) meets the requirement of this bill and rules or regulations adopted by the

- Secretary of State, and (2) includes an image of the notary public's handwritten signature.
- j) "Online notarization" and "online notarial act" mean a notarial act performed by a notary public by means of an online notarization system, as specified, if the record that is the subject of the notarial act is an electronic record.
  - k) "Online notarization platform" means an individual or entity that has an active registration with the Secretary of State pursuant to Section 8231.15 and provides an online notarization system to a notary public authorized to perform online notarization.
  - l) "Online notarization system" means the computer hardware and software that enable a notary public to do both (1) perform an online notarial act by means of audio-visual communication, and (2) create an audio-video recording and a corresponding entry for the appropriate electronic journal for each online notarial act.
  - m) "Record" means information that is inscribed on a paper copy or that is stored in an electronic or other medium and is retrievable in both physical and electronic form.
- 3) Requires the Secretary of State to adopt rules and regulations necessary to implement 1) by January 1, 2028, which set forth standards for online notarizations and notaries public authorized to perform online notarizations, including:
- a) Audio-visual communication, including ensuring access for persons with disabilities.
  - b) Credential analysis.
  - c) Electronic journals and seals.
  - d) Identity proofing, which must be performed at Identify Assurance Level 2 or above as established in NIST Special Publication 800-63A, dated June 2017, promulgated by the National Institutes of Standards and Technology, or any successor publication; if this standard cannot be met due to applicable state or federal laws, such as California law governing the disclosure of information regarding driver's licenses or other identification cards, then the Secretary of State must adopt the most rigorous standard for identity proofing that also conforms to those laws.
  - e) Online notarization systems, depositories (including security measures and storage capacity), remote presentation, and security and encryption.
  - f) Processes for a notary public to register to perform online notarial acts.
  - g) Retention and storage of records by registered online platforms and depositories; the Secretary of State shall consult with the Judicial Council of California and the Department of Justice regarding the required format for stored records.
- 4) Authorizes the Secretary of State, in developing rules and regulations pursuant to 3), to confer with other state entities, departments, or agencies on matters relating to equipment, security, and technological aspects of online notarization standards.

- 5) Prohibits a notary public from providing an online notarization for any principal before the adoption of the rules and regulations in 3).
- 6) Provides procedures by which an applicant to become a notary public, or a person already commissioned as a notary public, may also register with the Secretary of State to perform online notarial transactions.
- 7) Authorizes a notary public authorized to perform an online notarization who is physically located in the state to perform an online notarization, consistent with 2), for a principal who is located:
  - a) Within this state.
  - b) Outside this state but within the United States.
  - c) Outside the United States if the act is not prohibited in the jurisdiction in which the principal is located.
- 8) Requires an online notarization conducted under 7) to be conducted through audiovisual means that provide continuous, synchronous audio and video feeds with adequate clarity such that all participants can be clearly seen and understood at all times.
  - a) The notary must terminate the session if, in their judgment, the adequacy of communication is insufficient for all participants to be clearly seen and understood.
  - b) The notary must create an audio-visual recording of the transaction, as specified in x).
- 9) Requires a notary public to keep one or more secure electronic journals to record each online notarial act performed by the notary public, and provides the following:
  - a) The electronic journal must be capable of providing both physical and electronic copies of any entry made therein.
  - b) Requirements for each electronic journal entry, including the date and time (in the notary's location) of the act, the type of transaction, the physical location of the principal as represented by the principal, the electronic signature of each person whose signature is being notarized, a record of the identity-proofing conducted, and the name of the online notarization platform whose online notarization system was used.
  - c) Requirements for maintaining the electronic journal securely and a prohibition against sharing the journal unless expressly authorized.
  - d) Provisions for storing the journal with an online notarization platform that expressly provides custodial services or on a registered depository.
  - e) Requirements relating to if the electronic journal is lost or compromised, and for the return of the electronic journal to the Secretary of State if the notary resigns, loses their commission, or passes away.

- f) Provisions for when members of the public may view an electronic journal record and when a notary public or online notarization platform shall provide an entry to law enforcement or in connection with a subpoena.
- 10) Requires a notary public to create an audio-video recording of each online notarial act, pursuant to specified security and quality requirements, and either retain custody of the recording or store it on an online notarization platform that expressly provides custodial services.
- a) If the notary does not use a platform that provides custodial services, they must upload all copies of recordings to a registered depository within five days of the creation of the recording and may delete their copy after confirming that the copy was uploaded.
  - b) Requires a notary public to transmit all recordings to the Secretary of State within 30 days of resigning or being removed from office.
- 11) Provides specifications for the notary public's online seal and its use, and security and storage requirements for the seal.
- 12) Requires a notary public, prior to performing an online notarization, to verify the identity of a principal by satisfactory evidence, which requires both of the following:
- a) The absence of information, evidence, or other circumstances that would lead a reasonable notary public to believe that the principal is not the individual that the principal claims to be.
  - b) The receipt of an oath or affirmation, personally known to the officer and identified through the presentation of an accepted form of identification, and credential analysis and identity proofing of the identification, pursuant to regulations and rules set forth by the Secretary of State.
- 13) Permits a notary public performing an online notarization to certify that a tangible copy of an electronic record that is the subject of an online notarization is an accurate representation of the electronic record; the certification shall not be subject to the penalty of perjury. If the notary public is certifying a power of attorney pursuant to section 4307 of the Probate Code, the certification must include the representations set forth in subdivision (c) of that section.
- 14) Requires a county recorder to accept for recording a tangible copy of an electronic record of an online notarial act bearing electronic signatures and containing a certificate set forth in 13) as satisfying any requirement that a document be accepted for recording be an original or bear an original signature.
- 15) Provides that, if a notary public commits official misconduct or neglect related to this bill, a notary public and the sureties on the notary public's official bond required by law are liable in a civil action to a person injured for all the damages sustained.



- 16) Requires a notary public authorized to perform online notarizations, upon resignation, allowing their license to lapse, or being disqualified or removed from office, to destroy within 30 days the software or other tool that enables them to affix their electronic seal to an electronic document and certify compliance with the Secretary of State.
- 17) Authorizes the Secretary of State to set additional requirements for notaries to perform online notarizations for persons stationed at military and naval reservations of the United States Armed Forces, whether or not those persons are at the reservations at the time.
- 18) Makes it a misdemeanor for a person who, without authorization, knowingly obtains, conceals, damages, or destroys the software or other tool enabling a notary public to affix their electronic signature or electronic seal to a document.
- 19) Requires an online notarization platform (which facilitates online notarizations) or a depository (which stores records of online notarizations) to obtain registration with the Secretary of State before providing services to a notary public authorized to perform online notarizations while commissioned in California.
- 20) Sets forth requirements for a person to apply, and be approved, for registration with the Secretary of State to be an online notarization platform or a depository, including:
  - a) A platform or depository shall provide security for claims against it for at least \$250,000 per claim for damages, through either an insurance policy, a bond or other deposit, or a combination of both.
  - b) Information to be set forth in the application to be submitted to the Secretary of State, including whether the platform provides custodial services to notaries public.
  - c) Requiring the Secretary of State to adopt procedures to verify that the platform or depository is capable of complying with the requirements for platforms and depositories; if the Secretary of State determines that the entity cannot satisfy its obligations, the application shall be denied or registration shall be terminated.
  - d) A platform must take all reasonable steps to ensure that a notary public for whom it provides an online notarization system has the knowledge to use the system in compliance with applicable laws and regulations.
  - e) Required procedures for when an online journal entry or recording of a notarization may be deleted from the platform or depository; the Secretary of State may adopt rules and regulations for the transmission of data between a platform and a depository or the Secretary of State, as specified.
  - f) Required procedures for when a platform or a depository ceases to do business in California, or merges with another company, including the transmission of data to the Secretary of State.

- 21) Provides that a notary public authorized to perform online notarizations who exercises reasonable care in using a platform or depository shall not be liable for any damages resulting from the platform or depository's failure to comply with the relevant laws or regulations. Any provision in a contract or agreement between a notary public and a platform or depository that attempts to waive this immunity shall be null and void.
- a) A notary public who utilizes a platform that does not provide custodial services does not exercise reasonable care if they fail to download a journal entry or audio-visual recording of a notarization in a timely manner or transmit the records to a depository in a timely manner.
- 22) Restricts an online notarization platform or depository's access to a notary's electronic seal, electronic signature, and electronic journal, including prohibiting the access to journal entries absent a request from a principal or a court order, or:
- a) To facilitate the performance of a notarial act.
  - b) To comply with applicable federal, state, or local law, or to comply with a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.
  - c) To administer, affect, enforce, or process a record provided by or on behalf of a principal or the transaction of which the record is a part.
  - d) Detect fraud, identity theft, or other criminal activities.
  - e) Monitor and improve the online notarization system and related processes, services, software, data storage, or other services offered by the platform or depository for the purpose of facilitating their performance of online notarization of receipt of other services, as specified.
  - f) In connection with a proposed or actual sale, merger, transfer, or exchange of all of a portion of the business or operating unit of a platform or depository, or the dissolution of a platform or depository, or of its business or operating unit, if limited to that personal information held by the business or unit and the transferee agrees to comply with applicable laws and regulations.
- 23) Requires a platform or depository to immediately notify the Secretary of State, appropriate law enforcement agencies, any affected notaries public, and any affected principals, of any unauthorized use or data breach involving a notary public's electronic seal or signature, an electronic journal, or records of online notarial acts.
- 24) Requires the Secretary of State to maintain a secure, indexed repository of electronic journal entries and audio-visual records submitted, which shall not be connected to the public internet.
- a) The Secretary of State shall establish a protocol for custodial platforms and depositories to transmit records to the Secretary of State at least once per quarter. A record may be destroyed at the latest of (1) 20 years after the record was transmitted to the Secretary of State, if no request for the record has been made; or (2) 10 years after the latest request for the audio-visual

- recording. A court may order a record destroyed 10 years after the date of transmission upon a finding of good cause.
- b) The Secretary of State shall produce an audio-visual recording or journal entry only in response to a court order issued upon a showing that an accurate copy of the record cannot be obtained from the notary, their platform, or a depository. If a platform or depository cannot produce a record prior to the permitted date of deletion, the Secretary of State shall consider this fact in deciding whether to maintain the platform or depository's registration.
  - c) Records maintained by the Secretary of State pursuant to this requirement are exempt from the California Public Records Act.
- 25) Permits the Secretary of State to refuse to appoint any person as a notary or revoke or suspend the commission of any notary who violates the provisions of the Act, or to refuse to certify any platform or depository or revoke or suspend the registration of a platform or depository for a violation of the Act.
- 26) Provides that a platform or depository shall be liable for a willful and knowing violation of the registration and data security/privacy provisions set forth in 20)-23) in a civil action to a notary or principal injured thereby for any of the following:
- a) Any actual damages sustained by that person as a result of the violation.
  - b) Injunctive or declaratory relief; such relief is presumed to accrue to the benefit of the public.
  - c) Any other relief that the court deems proper.
- 27) Provides that an action under 26) must be brought no later than one year from the date the plaintiff knew or reasonably should have known of the violation.
- 28) Permits the Attorney General, a city attorney, including the city attorney of a city and county, a county counsel, or a district attorney to bring a civil action in the name of the people of the State of California against a platform or depository for any willful and knowing violation of the registration and data security/privacy provisions set forth in 20)-23) or the rules and regulations adopted by the Secretary of State and recover or obtain any of the remedies available under 26).
- 29) Provides that an action brought under 28) must be brought no later than one year from the date the violation is discovered by the Secretary of State or one year from the date the platform or depository notifies the Secretary of State of the violation which is the basis of the action, whichever is earlier.
- 30) In actions brought under 26) and 28), each individual breach of duty shall be treated as a separate violation.

- 31) Provides that an online notarization platform shall not be liable or proximately liable for any of the following:
- a) The negligence, fraud, or willful misconduct of the notary public, principal, or the person that requested notarization of the record, or the notary public's failure to comply with the requirements of the Act, rules and regulations adopted by the Secretary of State, or any applicable law, unless the notary public is an agent of the online notarization platform, in which case the online notarization is responsible for the conduct of the notary public to the extent provided under other applicable law.
  - b) A notary public's failure to timely download an electronic journal or audio-video recording or failure to timely transfer those records to the Secretary of State, or the notary public's deletion of one or more audio-video recording or entries in the notary public's electronic journal.
  - c) The contents of records uploaded to the online notarization platform for notarization.
- 32) Provides that the remedy provided for a violation of the Act is not cumulative, and if a violation of the Act gives rise for other causes of action arising under state law, the plaintiff must elect their remedy.
- 33) Provides that any waiver of the provisions of the Act is contrary to public policy, void, and unenforceable, and that the provisions of the Act are severable.
- 34) Establishes provisions for the recognition of notarial acts performed by persons outside of California, with the following definitions:
- a) "Foreign state" means a government other than the United States, a state, or a federally recognized tribe.
  - b) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the laws of this state, another state, or a foreign state, or under federal law.
  - c) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.
  - d) "Notary public" means an individual commissioned to perform a notarial act.
  - e) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
  - f) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- 35) Generally provides that notarial acts performed in conformity with the jurisdiction in which it was performed shall have the same effect in California as if performed by a notarial officer in this state, with specified requirements for notarial acts performed in foreign states.

## COMMENTS

### 1. Author's comment

According to the author:

In the wake of a global pandemic that ground the world to a halt, we have seen the importance of giving people options to safely and securely complete transactions online that would have historically been done in person. Remote online notarization (RON) moves past the wet ink or electronic in-person notarizations of the past by allowing for the notary process to be conducted online with both parties in different locations, utilizing two-way audio-video communications.

Here are a few important items to consider: nearly 90% of states allow their notaries to perform RON; RON allows the consumers and notary the ability to complete their mortgage, will, or medical directive in a safe, secure and transparent environment; RON allows remote or rural areas better access to notarial services, where many are currently underserved; it gives the consumers a choice on how their documents are notarized – whether it is in-person on paper, in-person via electronic notarization or with remote notarization. RON is a modern form of notarization that allows you to appear before a commissioned notary public via audio/video technology and get documents notarized online, and was designed with fraud prevention in mind. RON's multi-layered approach to security and fraud prevention is comprised of: a multi-step identity verification process (including at least two forms of identity proofing and validation by a live commissioned notary); an A/V recording of the session; a detailed audit log; and the use of a tamper-evident records. The notary maintains the ability to terminate the session at any time and for any reason allowed by law, including if the notary is uncomfortable, suspects that fraud may be taking place or if there is an interruption in a user's internet or A/V connection. RON is an enhancement to, not a replacement of, traditional notarization. RON is a complement to the state's existing notarial act, it is not a replacement for the traditional in-person pen and paper transaction. Furthermore, a RON law and subsequent regulations establish clear rules that notaries and RON technology vendors must adhere to and standards they must maintain.

RON gives commissioned notaries another tool to add to their book of business and provides them with the resources they need to compete in today's digital economy. The ability to offer services 24/7/365 gives notaries and consumers more control over the schedule, and greater access to critical services, particularly in communities that traditionally lack adequate access to these services. Since notarization is such an important part of many financial transactions, RON will help expand services in underserved and underbanked

communities. SB 696 will also improve physical safety during transactions, and ensure California leads the way in adapting a safe and secure RON system. This bill creates a framework to allow for California based notaries to be commissioned to offer remote online notarizations, joining over 40 other states who have already permitted it. SB 696 includes a private right of action and the strictest privacy requirements introduced nationwide to ensure the consumer's safety.

## 2. The status of remote online notarization, nationally and within this state

Notaries licensed in California are currently limited to performing in-person notarial transactions. Other states, however, have embraced remote online notarization – shorthand, unfortunately, as “RON” – beginning with Virginia in 2011.<sup>1</sup> As with other remote procedures, the COVID-19 pandemic was a catalyst for the adoption of RON: 45 states and Washington, D.C., now authorize RON through either law or emergency authorization.<sup>2</sup> States’ RON laws and emergency authorizations vary widely in terms of how precisely they dictate how RON may be accomplished, with respect to both the individual notary’s obligations and the obligations of the notarization platform (if any).<sup>3</sup>

For now, whether, and how, to adopt RON remains within the purview of this State – but it might not be for long. For several years, industry representatives have lobbied Congress to implement RON nationwide. While the constitutional basis for trampling a state’s prerogative to regulate its own notarial transactions is unclear,<sup>4</sup> Congress came close to enacting a federal RON measure in 2021,<sup>5</sup> and a similar bill is currently pending before the Senate Judiciary Committee after having been passed by the House.<sup>6</sup>

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<sup>1</sup> See National Association of Secretaries of State (NASS), Remote Electronic Notarization, <https://www.nass.org/initiatives/remote-electronic-notarization>. All links in this analysis are current as of April 21, 2023.

<sup>2</sup> *Ibid.*

<sup>3</sup> Compare, e.g., N.Y. Cons. Laws., Exec. L., § 135-c with N.D. Stats. § 44-06.1-13.1.

<sup>4</sup> H.R. 1059, 118th Congress (2023-2024), available at <https://www.congress.gov/bill/118th-congress/house-bill/1059>, the federal RON legislation pending this year, authorizes RON for “a notarization that occurs in or affects interstate commerce with respect to an electronic record.” (*Id.*, § 3(a).) This language echoes the Interstate Commerce Clause (see U.S. Const., art. I, § 8, cl. 3), but it hardly seems practical to require notaries to determine, on a transaction-by-transaction basis, whether a particular transaction is sufficiently interstate so as to allow them to complete the RON; moreover, given the commonality of transactions that do not plainly implicate interstate commerce – e.g., powers of attorney established, and homes bought and sold, entirely by intrastate residents – the value of an interstate-transaction-only RON scheme seems limited. So it goes.

<sup>5</sup> See H.R. 4350, 117th Congress (2021-2022), available at <https://www.congress.gov/bill/117th-congress/house-bill/4350/text>.

<sup>6</sup> H.R. 1059, 118th Congress (2023-2024), *supra*.

The federal legislation that has been introduced to date authorizes notaries public to perform RONs whether or not a state has permitted it,<sup>7</sup> and requires interstate recognition of all RONs conducted pursuant to the federal bill.<sup>8</sup> The federal legislation provides only minimum standards for identification and data security,<sup>9</sup> but it permits a state to adopt additional procedures or requirements for RONs conducted under state law.<sup>10</sup>

In the event that the federal legislation passes, California would be caught without adequate RON protections if it does not already have guiding legislation and regulations in place. Both the Legislature and the Governor, however, have declined to authorize state notaries to conduct notarizations remotely. Bills to authorize RON in California in 2018 and 2019 died.<sup>11</sup> When the COVID-19 pandemic struck, the Governor declined to issue an emergency RON authorization, and an urgency measure to implement RON died in this Committee.<sup>12</sup> Last year, AB 1093 (Jones-Sawyer, 2022) made it to the Senate after being heavily amended in the Assembly Judiciary Committee, but the author ultimately declined to have the bill heard in this Committee due to stakeholder disagreement over proposed amendments.

Despite the lack of authorization for California notaries to perform RONs, California is not entirely RON-less. Early on in the pandemic, the Secretary of State's office reportedly suggested that California residents could have documents notarized online by notaries public in states authorizing RON.<sup>13</sup> This is consistent with California's current interstate notarial recognition statute, which recognizes a proof or acknowledgement of an instrument made by a notary public outside the state, without any carve-out for online transactions.<sup>14</sup> While stakeholders report that certain industries generally still rely on mobile notaries licensed in California rather than out-of-state online notaries, it appears that a significant volume of instruments have been notarized for Californians by out-of-state online notaries.

### 3. The policy choices implicit in in-person notarization vs. RON

With apologies to notaries public, notarization is a hassle. The inconvenience, however, is the point: the requirement that certain instruments be notarized reflects the state's policy decision that certain legal decisions are too significant to be finalized without the

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<sup>7</sup> *Id.*, § 4.

<sup>8</sup> *Id.*, § 6.

<sup>9</sup> *Id.*, § 4.

<sup>10</sup> *Id.*, § 9.

<sup>11</sup> AB 199 (Calderon, 2019); AB 2368 (Calderon, 2018).

<sup>12</sup> See SB 1332 (Rubio, 2020).

<sup>13</sup> See, e.g., California Land Title Association, *CA Secretary of State Issues Guidance on Notarization* (Mar. 26, 2020), <https://www.clta.org/news/498236/CA-Secretary-of-State-Issues-Guidance-on-Notarization.htm>.

<sup>14</sup> See Civ. Code, § 1182(4).

added security of a third party confirming the identity or identities of the parties and, where necessary, confirming the identities and presence of witnesses.

The tradeoff for the added inconvenience of notarization is protection. The Evidence Code provides that the signatures on a document acknowledged by a notary are presumed to be genuine,<sup>15</sup> which provides valuable protection against baseless lawsuits. The requirement that a notary acknowledge the execution of a power of attorney provides valuable protection against elder abuse. Notarization requirements also enable persons whose signatures were forged to prove that the fraud occurred.<sup>16</sup>

Remote online notarization presents a different convenience/security calculus than traditional in-person notarization. At the time of the notarial transaction, the added convenience is obvious: instead of having to travel to a notary or schedule a mobile notary, the principal can have their document notarized anywhere they have access to the internet and an audiovisual connection. RON can also provide improved identification verification at the time of a transaction: RON platforms employ identification verification methods that are more sophisticated than simply checking an I.D. With respect to preventing other types of fraud or coercion, it might be a wash: a remote notary has fewer cues from which to ascertain whether a customer is feeling pressured, but the fact that RON produces a video recording of the whole transaction could dissuade fraudsters. Also, RON platforms have no way to take fingerprints, which is currently required under California law for all persons signing real estate documents and powers of attorney.<sup>17</sup>

On the back end – after the transaction is complete – RON presents risks not present for in-person notarial transactions. Each RON transaction must be performed through a platform that preserves certain data in a secured form, including the video of the transaction. There are thus risks that evidence supporting the transaction can be lost at the time of the transaction, or after-the-fact if the notary or the platform fails to save the data properly. And if data were compromised at the platform level – say, through malware or hacking attacks – thousands of notarial records could be lost in the blink of an eye. The heightened risk of record loss increases the likelihood that any challenged transaction will not be verifiable by the notarial records, and at a scale that is simply not presented by in-person notarial transactions.

Finally, the threat of deepfakes looms over the entire enterprise. The above-mentioned advantages of RON are considerably lessened if any person can easily impersonate another online. Deepfake technology has made shocking progress in the last few years, to the point that cheap and free apps can make convincing deepfake videos from

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<sup>15</sup> Evid. Code, § 1451.

<sup>16</sup> *E.g., In re Marriage of Stone* (Cal.Ct.App. 2010) Case No. G042002, 2010 WL 1679989.

<sup>17</sup> Gov. Code, § 8206(a)(2)(G).



existing clips.<sup>18</sup> It may seem counterintuitive that advances in technology could presage a return to analog ways of doing business, but without reliable security against deepfakes, RON could end up significantly less reliable than in-person remote notarizations.

#### 4. The debate over interstate recognition

As noted above, longstanding California law – developed when in-person notarization was the only possible option – recognizes documents notarized in another state, provided that the notarization complied with that state’s laws.<sup>19</sup> Because notaries are licensed to perform notarizations only in their own states (except in limited circumstances involving the armed forces), interstate recognition did not meaningfully affect California’s ability to regulate its own notarial processes; a Californian in California could obtain a notarization only from a California notary. As such, the Secretary of State and California law enforcement generally retained control over, and access to, notarized documents in the state.

RON has changed this calculus. A person seeking an online notarization may have no idea where their notary is located, and information provided to Committee staff from stakeholders indicates that there is no RON platform that currently offers a principal the option of choosing an in-state notary. As such, RON – without limits on interstate recognition of other states’ online notarizations – removes the state’s control over the notarial process and scatters it across the country.

Unrestricted recognition to out-of-state notarizations – thereby allowing a California resident to have a document notarized pursuant to any other state’s RON laws – raises several potential concerns. First and foremost, although this bill establishes a regulatory framework for California RONs that is intended to satisfy our state’s high standards for consumer protection, data privacy, and access to evidence, these measures will be meaningless if RON platforms simply flood the state with access to out-of-state notaries not subject to our framework. With interstate recognition, the state could do nothing if an online notary company set up a cubicle farm in some lightly regulated, low-cost jurisdiction and started churning out online notarizations that did not meet California’s standards; the state would simply have to accept these for filing. The availability of out-of-state notaries to swoop in and notarize documents also seems likely to harm California’s own notaries public.

Similarly, all of the provisions in this bill meant to ensure preservation of records and evidentiary accessibility would be moot if the companies facilitating these notarial acts were not required to transfer records to the Secretary of State and were not required to

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<sup>18</sup> E.g., Thompson, *Making Deepfakes Gets Cheaper and Easier Thanks to A.I.*, N.Y. Times (Mar. 12, 2023), available at <https://www.nytimes.com/2023/03/12/technology/deepfakes-cheapfakes-videos-ai.html>.

<sup>19</sup> Civ. Code, § 1102.

respond to process served within California. Law enforcement would have to employ cumbersome interstate discovery processes instead of simply getting a journal entry from an in-state notary. Attorney General Rob Bonta, in a letter to Senators Feinstein and Padilla about the federal RON statute, had this to say about the evidentiary difficulties posed by interstate RON:

[S]tates will be in a difficult enforcement position in which notarizations are primarily performed by out-of-state notaries not operating according to that state's laws and not commissioned or regulated by that state. Under current California law, for example, notaries may be sued for neglect or official misconduct, have their commissions suspended or revoked, and be subject to civil penalties or criminal sanctions. [Citations.] In contrast, out-of-state notaries pose difficult enforcement problems for the states and would greatly increase the time and expense of litigation for aggrieved litigants forced to conduct discovery related to out-of-state entities.

Concerns about interstate notarization existed before RON. In the foreclosure crisis of 2010, questionable and outright fraudulent notarizations were a key component in the banks' ability to process robo-signed foreclosure documents;<sup>20</sup> the inability to verify the integrity of foreclosure documents led several major banks to halt their foreclosure proceedings,<sup>21</sup> and ultimately led to a \$26 billion 50-state settlement with Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, and Ally Financial.<sup>22</sup> Amid the crisis, President Barack Obama pocket-vetoed the Interstate Recognition of Notarizations Act of 2010, which would have required all states to recognize other states' notarizations, thereby preempting any state limits on interstate recognition.<sup>23</sup> President Obama explained that, while the goal of removing impediments to interstate commerce was worthwhile, it was necessary "to think through the intended and unintended consequences of th[e] bill on consumer protections, especially in light of the recent developments with mortgage processors."<sup>24</sup>

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<sup>20</sup> E.g., Morgenson, *Flawed Paperwork Aggravates a Foreclosure Crisis*, N.Y. Times (Oct. 3, 2010), <https://www.nytimes.com/2010/10/04/business/04mortgage.html>; see generally Dayen, *Chain of Title* (2016).

<sup>21</sup> Reckard, *Bank of America freezes evictions in 23 states*, Los Angeles Times (Oct. 2, 2010), available at <https://www.latimes.com/archives/la-xpm-2010-oct-02-la-fi-1002-mortgage-20101002-story.html> (Bank of America, Ally Financial, Inc., and JPMorgan Chase all suspended evictions).

<sup>22</sup> Schwartz & Dewan, *States Negotiate \$26 billion Agreement for Homeowners*, N.Y. Times (Feb. 8, 2012), available at <https://www.nytimes.com/2012/02/09/business/states-negotiate-25-billion-deal-for-homeowners.html>.

<sup>23</sup> See H.R. No. 3808, 111th Cong. (2009-2010).

<sup>24</sup> Obama White House Archives, Blog, "Why President Obama is Not Signing H.R. 3808" (Oct. 7, 2010), <https://obamawhitehouse.archives.gov/blog/2010/10/07/why-president-obama-not-signing-hr-3808>.

5. This bill authorizes California notaries to perform RONs

This bill is one of two RON bills pending in the Legislature this year. The other, AB 743 (Petrie-Norris, 2023), is pending before the Assembly Appropriations Committee. Both bills are modeled after the final version of AB 1093 (Jones-Sawyer, 2022), which died in this Committee last year after the author requested it not be heard. This bill adopts the basic AB 1093 framework with some changes, including authorizing interstate recognition for online notarization. In broad strokes, this bill does all of the following:

*Online notaries.* This bill authorizes already-commissioned California notaries to additionally register as online notaries, all under a single commission. The Secretary of State will administer the registration process and oversight consistent with its existing role in regulating notaries public. A notary public authorized to perform online notarizations (shortened to “online notary”) will keep two separate journals: one for in-person transactions and one for online transactions. By keeping the journals separate, notaries public retain the ability to obtain a thumbprint in in-person notarizations without needing to place biometric information online.

An online notary retains the discretion to terminate a transaction if, in their judgment, they believe the principal’s ability to consent is compromised; the online notary *must* terminate the session if the video or audio is inadequate for the participants to be seen and understood at all times.

*Identification verification.* A principal in a notarial transaction must show the online notary a valid government-issued ID, as specified, and answer verification questions to provide additional security. The preserved video recording of the notarial transaction, discussed below, will not include the identification verification procedure. These added security measures will, hopefully, make up for the loss of the thumbprint in the notarizations of documents such as powers of attorney.

*Notarization records.* The record of a RON will include two components: the entry in the online notary’s online journal and the video recording of the transaction. The online notary is required to store these records until they resign or otherwise lose their commission. In the event that an online notary resigns, is disqualified, is removed from office, allows their registration to perform online notarizations to expire, or dies, the online notary must transmit all of their records to the Secretary of State for storage within 30 days.

*Record storage.* An online notary has two options for storing their records: on an online notarization platform that expressly provides custodial services for the notary, or on a depository. Both types of systems must be certified by the Secretary of State before they can be utilized by a California online notary; however, the bill permits platforms and depositories to operate in California prior to certification to the extent they provide access to other states’ notaries. The bill also allows a platform that does not provide

custodial services to a delete record if a notary fails to download it after a “reasonable time”; the amendments permit the Secretary of State to determine what constitutes a reasonable time through its rules and regulations. The amendments are set forth at Appendix A of the analysis.

Custodial platforms and depositories must transfer their records to the Secretary of State at least once per quarter. Once the records of a transaction have been transmitted to the Secretary of State, the Secretary of State must retain them for the longer of (1) 20 years after obtaining the record from the online notary, if no request for the record has been made; (2) 10 years after the latest request for the record of the transaction; or (3) 10 years after obtaining the record, if authorized by an order of the superior court upon a finding of good cause. Records stored by the Secretary of State are exempt from disclosure under the Public Records Act,<sup>25</sup> given the obvious interest in maintaining the privacy of notarial transactions and personal information contained in the records.

*Online notarization platforms.* An online notarization platform must be a one-stop-shop for the identification verification, audio-visual recordings, and seal/acknowledgement functionalities for the online notarial transaction. The platform must provide video consisting of a synchronous audio and visual feed with adequate clarity such that all participants can be clearly seen and understood at all times. The platform may, but is not required to, offer custodial services for the online notary; if it does not offer such services, it must make the records of the transaction available to the online notary to download for storage in a depository.

A California online notary can use an online notarization platform only if it has been certified by the Secretary of State. The online notarization platform must provide security for claims against it, in specified forms, sufficient to cover claims in an amount of at least \$250,000.

*Depositories.* If an online notary does not use an online notarization platform that provides custodial services, the online notary must use a depository certified by the Secretary of State to store notarial records.

As with online notarization platforms, a California online notary can use depository only if it has been certified by the Secretary of State and the depository must provide security for claims against it, in specified forms, sufficient to cover claims in an amount of at least \$250,000.

*Integrity of evidence.* The bill provides for when, and how, a litigant may obtain a record of a notarial transaction conducted online. As with in-person notarial records, a party may obtain a subpoena to obtain a record of a notarial transaction from the online notary; if the notary does not have the record, the party can seek the record from the

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<sup>25</sup> Gov. Code, tit. 1, div. 10, §§ 7920.000 et seq.

platform or depository or, as a last resort, the Secretary of State. The bill also requires the online notary to allow, and a platform or depository to provide, access to online notarial records to a peace officer or the Secretary of State, consistent with existing statutes providing access to notarial records to those entities.

For documents notarized online that are required to be printed and recorded, the online notary must execute a separate certification confirming that the print-out is an accurate representation of the electronic record. The bill provides the required form of the certification. This measure provides added security for the integrity of recorded, notarized documents.

*Privacy protections.* The bill generally provides that a platform or depository shall not have access to a notary public's electronic signature or seal, and shall not access, use, or communicate the contents of the electronic journal, the contents of a document notarized, or the video of the transaction without written request of the principal or a court order.

The general rule notwithstanding, however, the bill authorizes platforms to access, use, or communicate a seal or signature, and the contents of a journal entry, video, or notarized document, for several reasons. The author has agreed to amendments to limit a platform's ability to access this information for purposes unrelated to processing the transaction, security, or compliance with law enforcement. The amendments are set forth in Appendix A.

*Secretary of State rules and regulations.* This bill charges the Secretary of State with the herculean task of developing and promulgating regulations and rules for the implementation of this bill's provisions, including matters related to the performance of online notarial transactions, online security, data privacy and integrity, notarial fees, standards for online notarization platforms and depositories, audio and visual transmission standards, identity and location verification, online seals and signatures, and record storage; this is all on top of their existing obligations to regulate notaries public. The Secretary of State will be required to implement RON by January 1, 2025.

*Private right of action.* This bill establishes a right of action against platforms and depositories. The bill currently permits a notary or principal to seek damages for injuries caused by a platform or depository's "knowing and willful" violations; the amendments agreed to by the author lower the standard of culpability to simple negligence. The amendments make other changes to ensure Californians can fairly recover for injuries caused by a platform or depository, such as awarding attorney's fees to a prevailing plaintiff and extending the statute of limitations to three years from the date the injured person learned of the violation.

The bill also permits the Attorney General or other public prosecutors to bring an action in the name of the people of the State of California for a platform or depository's knowing and willful violations.

6. Arguments in support

According to DocuSign, writing in support:

As a California-based company focused on delivering digital transformation, the DocuSign platform helps organizations automate and connect the entire agreement process – allowing business to be done faster with less risk, lower costs and better experiences for customers, partners and employees. We share your vision that Californians should have access to the full array of technology innovations, including RON, that keep people safe while ensuring continuity of government and business processes.

Our view is that adoption of this remote option for notarization will provide a fully digital experience for businesses and individuals that removes barriers, saves time, reduces costs, and mitigates risk and fraud throughout the notarization process. RON helped businesses and individuals keep moving forward despite the challenges posed by the pandemic, but also will remain a critically important tool for Californians into the future.

According to Notarize, writing in support:

Importantly, SB 696 maintains California's current approach to reciprocity, more commonly referred to as interstate recognition, for documents notarized outside of the state. California remains one of the most visited states in the country and continues to have the largest gross domestic product in the nation, as a center of U.S. business. That is why it is important that any online notarization law passed in California maintain the state's existing approach to accepting documents notarized outside of the state at face value. Over the last decade as states moved to adopt online notarization laws, one thing has remained the same: a notarization is treated the same regardless of how or where that notarization was executed. The interstate recognition of notarized documents is a long-standing legal framework, both in California and nationally. Rooted in state statutes, common law, and the U.S. Constitution, interstate recognition affirms that a validly performed notarization will be accepted in any state regardless of which state's notary performed the notarization. California's interstate recognition statutes have been in place for over 100 years, and the legal standing for this framework goes back over 200 years. Preserving the state's approach to interstate recognition will not only serve to provide stability to industries engaged in business across state lines, but it will also uphold important consumer protections.

7. Arguments in opposition

According to the California League of Independent Notaries, writing in opposition:

SB 696 will create a permissive environment that will allow large out-of-state technology companies, who facilitate online notarizations, to consolidate the notarial business and channel it through notary farms located in states with lesser standards, thereby putting California residents at risk. If an irregularity arises in a notarization performed by an out-of-state online notary that results in harm, the principal will have limited options for restitution. California enforcement agencies lack jurisdiction over out-of-state online notaries, rendering them powerless to force the surrender of notarial evidentiary records or to take disciplinary action against the notary for erroneous notarial acts. The lack of jurisdictional protections in this bill will lead local notaries to be driven out of business leaving only online notarization as an option, hindering California businesses and residents who seek in-person notarization or lack internet connectivity. Over time, this may result in a loss of control over notarization in the State of California which is undesirable and harmful to the public.

**SUPPORT**

BSA | The Software Alliance  
California Credit Union League  
California Land Title Association  
Chamber of Progress  
DocuSign  
Govern for California  
National Notary Association  
Notarize, Inc.  
Zillow Group

**OPPOSITION**

California League of Independent Notaries  
Electronic Frontier Foundation

**RELATED LEGISLATION**

Pending Legislation: AB 743 (Petrie-Norris, 2023) is similar to this bill in that it would authorize California notaries to perform RONS, but includes substantive differences including a provision not recognizing out-of-state RONS for in-state transactions and a broader private right of action against online notarial platforms for violations of the bill's requirements. AB 743 is pending before the Assembly Appropriations Committee.

Prior Legislation:

AB 1093 (Jones-Sawyer, 2022) was somewhat similar in that it would have established a framework for licensed California notaries to conduct remote online notarizations and provides for the licensure of remote online notarization platforms by the Secretary of State and the registration of licensed California notaries to provide remote online notarizations; the bill did not recognize out-of-state remote notarizations and authorized a broader private right of action against online notarial platforms. AB 1093 died in the Senate Judiciary Committee.

SB 1322 (Rubio, 2020) an urgency measure, would have legalized remote online notarization for the duration of the COVID-19 state of emergency, delegating details of implementation to the Secretary of State. SB 1322 died in the Senate Judiciary Committee.

AB 199 (Calderon, 2019) would have established the California Online Notary Act of 2019, which would have implemented a remote online notarization framework similar, but not identical to, the one in this bill. AB 199 died in the Senate Judiciary Committee.

AB 2368 (Calderon, 2018) would have established the California Online Notary Act of 2018, which would have implemented a remote online notarization framework similar, but not identical to, the one in this bill. AB 2368 died in the Assembly Judiciary Committee.

AB 2326 (Wagner, Ch. 202, Stats. 2012) required a notary public to obtain the thumbprint, or other mark if a thumbprint is not available, of a party signing a document to be notarized that affects real property.

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Appendix A

Proposed amendments in the attached mockup, subject to any nonsubstantive changes the Office of Legislative Counsel may make. Additions are in underline and deletions are in strikethrough.

**The people of the State of California do enact as follows:**

**SECTION 1.** Section 1181.1 is added to the Civil Code, to read:

**1181.1.** (a) Section 1181 shall not be construed to authorize any person, other than a notary public authorized by the Secretary of State to perform online notarizations pursuant to Article 2 (commencing with Section 8231) of Chapter 3 of Division 1 of Title 2 of the Government Code, to take a proof or acknowledgment of an instrument by means of appearances using audio-video communication, as that term is defined in subdivision (a) of Section 8231.1 of the Government Code.

(b) A notary public shall not provide online notarization for any principal prior to certification by the Secretary of State on its internet website that the Secretary of State's technology project necessary to implement statutes related to online notarization is complete.

(c) This section shall remain in effect until January 1, 2025, and as of that date is repealed.

**SEC. 2.** Section 1181.1 is added to the Civil Code, to read:

**1181.1.** (a) Section 1181 shall not be construed to authorize any person, other than a notary public authorized by the Secretary of State to perform online notarizations pursuant to Article 2 (commencing with Section 8231) of Chapter 3 of Division 1 of Title 2 of the Government Code, to take a proof or acknowledgment of an instrument by means of appearances using audio-video communication, as that term is defined in subdivision (a) of Section 8231.1 of the Government Code.

(b) This section shall become operative on January 1, 2025.

**SEC. 3.** Section 1182 of the Civil Code is amended to read:

**1182.** The proof or acknowledgment of an instrument may be taken without this state, but within the United States, and within the jurisdiction of the officer, by any of the following:

(a) A justice, judge, or clerk of any court of record of the United States.

(b) A justice, judge, or clerk of any court of record of any state.

(c) A commissioner appointed by the Governor or Secretary of State for that purpose.

(d) A notary public.

(e) Any other officer of the state where the acknowledgment is made authorized by its laws to take such proof or acknowledgment.

**SEC. 4.** Section 1183 of the Civil Code is amended to read:

**1183.** (a) The proof or acknowledgment of an instrument may be taken without the United States, by any of the following:

(1) A minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.

(2) A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made.

(3) A judge of a court of record of the country where the proof or acknowledgment is made.

(4) Commissioners appointed by the Governor or Secretary of State for that purpose.

(5) A notary public.

(b) If the proof or acknowledgment is taken by a notary public, the signature of the notary public shall be proved or acknowledged (1) before a judge of a court of record of the country where the proof or acknowledgment is taken, or (2) by any American diplomatic officer, consul general, consul, vice consul, or consular agent, or (3) by an apostille (certification) affixed to the instrument pursuant to the terms of The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

**SEC. 5.** The heading of Article 1 (commencing with Section 8200) is added to Chapter 3 of Division 1 of Title 2 of the Government Code, to read:

**Article 1.** Notaries Public

**SEC. 6.** Section 8207.4 of the Government Code is amended to read:

**8207.4.** (a) Any person who willfully violates any part of Section 8207, 8207.1, 8207.2, 8207.3, or 8231.8 shall be subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation, which may be recovered in a civil action brought by the Attorney General or the district attorney or city attorney, or by a city prosecutor in any city and county.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

(c) This section shall become operative on January 1, 1992.

**SEC. 7.** Section 8214.1 of the Government Code is amended to read:

**8214.1.** The Secretary of State may refuse to appoint any person as notary public or may revoke or suspend the commission of any notary public upon any of the following grounds:

- (a) Substantial and material misstatement or omission in the application submitted to the Secretary of State to become a notary public.
- (b) Conviction of a felony, a lesser offense involving moral turpitude, or a lesser offense of a nature incompatible with the duties of a notary public. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this subdivision.
- (c) Revocation, suspension, restriction, or denial of a professional license, if the revocation, suspension, restriction, or denial was for misconduct based on dishonesty, or for any cause substantially relating to the duties or responsibilities of a notary public.
- (d) Failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public.
- (e) When adjudicated liable for damages in any suit grounded in fraud, misrepresentation, or for a violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully the duties as a notary public.
- (f) The use of false or misleading advertising wherein the notary public has represented that the notary public has duties, rights, or privileges that the notary public does not possess by law.
- (g) The practice of law in violation of Section 6125 of the Business and Professions Code.
- (h) Charging more than the fees prescribed by this chapter.
- (i) Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or substantially injure another.
- (j) Failure to complete the acknowledgment at the time the notary's signature and seal are affixed to the document.
- (k) Failure to administer the oath or affirmation as required by paragraph (3) of subdivision (a) of Section 8205.

(l) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(m) Violation of Section 8223.

(n) Failure to submit any remittance payable upon demand by the Secretary of State under this chapter or failure to satisfy any court-ordered money judgment, including restitution.

(o) Failure to secure the sequential journal of official acts, pursuant to Section 8206, or the official seal, pursuant to Section 8207, or willful failure to report the theft or loss of the sequential journal, pursuant to subdivision (b) of Section 8206.

(p) Violation of Section 8219.5.

(q) Commission of an act in violation of Section 6203, 8214.2, 8225, or 8227.3 of the Government Code or of Section 115, 470, 487, subdivision (a) of Section 487a, or Section 530.5 of the Penal Code.

(r) Willful failure to provide access to the sequential journal of official acts upon request by a peace officer.

(s) Violation of Section 8231.6 or 8231.7.

**SEC. 8.** Article 2 (commencing with Section 8231) is added to Chapter 3 of Division 1 of Title 2 of the Government Code, to read:

**Article 2.** Online Notarization

**8231.** (a) This article shall be known, and may be cited, as the Online Notarization Act.

(b) An online notarization platform shall not be authorized for use by a notary public in California and a notary public shall not provide online notarization for any principal pursuant to this article prior to registration with the Secretary of State or prior to completion of the Secretary of State's technology project necessary to implement statutes related to online notarization. The Secretary of State shall complete the technology project no later than January 1, 2025.

**8231.1.** As used in this article, the following terms have the following meanings:

(a) "Audio-video communication" means being able to see, hear, and communicate with another individual in real time using electronic means in a manner that conforms to the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article.

(b) "Audio-video recording" means a recording of the audio-video communication of an online notarial act required by Section 8231.7.

(c) "Credential" means a government-issued record evidencing an individual's identity that satisfies the requirements of paragraph (3) or (4) of subdivision (b) of Section 1185 of the Civil Code.

(d) "Credential analysis" means a process or service operating according to the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article, through which a third party affirms the validity of a credential through review of public and proprietary data sources.

(e) "Depository" means an individual or entity that has an active registration with the Secretary of State pursuant to Section 8231.15 and is capable of storing a journal entry or audio-video recording on behalf of a notary public.

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

(g) "Electronic journal" means an active sequential record of official acts performed while using an online notarization system performed by a person acting as a notary public authorized to perform online notarization maintained in a secure electronic format according to the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article.

(h) "Electronic online notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public authorized to perform online notarization and contains both of the following:

(1) The notary public's electronic signature and electronic seal or, where applicable, the notary public's electronic signature that meets the requirements of subdivision (f) of Section 27391.

(2) The facts attested to by the notary public in the particular online notarization.

(i) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(j) "Electronic seal" means information within a notarized electronic record that corresponds to information in notary seals used on paper records and that, where applicable, conforms to the requirement of this article, including, but not limited to, subdivision (b) of Section 8231.7 and any rules or regulations adopted by the Secretary of State pursuant to this article.

(k) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(l) “Express written request” means a request made ~~or consent provided~~ in writing and initiated by a principal to ~~allow~~ access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the specified ~~personal~~ information for a specific purpose. The nature of the access, use, sharing, sale, disclosure, production, provision, release, transfer, dissemination, or other communication shall be conveyed to the principal in clear and prominent terms in such a manner that an ordinary principal would notice and understand it. ~~An e~~Express ~~written request shall~~ consent can not be inferred.

(m) “Identity proofing” means a process or service operating according to the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article through which a third party affirms the identity of an individual through review of personal information from public or proprietary data sources.

(n) “Notarial act” means the performance of an act by an individual that is authorized under the laws of this state, including acts described in Sections 8202 and 8205, and in this article.

(o) “Notary public’s electronic signature” means an electronic signature that does both of the following:

(1) Meets the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article.

(2) Includes an image of the notary public’s handwritten signature as required to be provided to the Secretary of State under subdivision (d) of Section 8231.8.

(p) “Online notarization” and “online notarial act” mean a notarial act performed by a notary public by means of an online notarization system that meets the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article, if the record that is the subject of the notarial act is an electronic record.

(q) “Online notarization platform” means an individual or entity that has an active registration with the Secretary of State pursuant to Section 8231.15 and provides an online notarization system to a notary public authorized to perform online notarization.

(r) “Online notarization system” means the computer hardware and software that enable a notary public to do both of the following:

- (1) Perform an online notarial act by means of audio-video communication.
- (2) Create an audio-video recording and a corresponding entry for the appropriate electronic journal for each online notarial act performed as described in paragraph (1).
- (s) “Principal” means an individual, other than a credible witness pursuant to Section 1185 of the Civil Code, whose electronic signature is notarized, or whose oath or affirmation is taken by a notary public, during an online notarization.
- (t) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in both physical and electronic form.
- (u) “Records of online notarial acts” means, collectively, the electronic journal entries required by Section 8231.6 and the audio-video recordings required by Section 8231.7.
- (v) “Remote presentation” means transmission to the notary public through audio-video communication of an image of a credential-government-issued identification, which complies with paragraph (3) or (4) of subdivision (b) of Section 1185 of the Civil Code that is of sufficient quality to enable the notary public to identify the individual seeking the notary public’s services. Remote presentation shall conform to the standards of this article and any rules or regulations adopted by the Secretary of State pursuant to this article.
- (w) “United States” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**8231.2.** This article applies only to online notarizations. To the extent that a provision of this article conflicts with Article 1 (commencing with Section 8200), this article controls with respect to an online notarization.

**8231.3.** (a) The Secretary of State shall adopt rules and regulations necessary to implement this article by January 1, 2025. The rules and regulations shall set and maintain standards for online notarizations and notaries public authorized to perform online notarization, including, but not limited to, all of the following:

- (1) Audio-video communication, including ensuring that principals with disabilities are accommodated by online notarization systems of online notarization platforms and notaries public in a manner consistent with applicable laws.
- (2) Credential analysis.
- (3) Electronic journals, including their form and content.



(4) Electronic seals.

(5) Identity proofing, which shall be performed at least at Identity Assurance Level 2, as established in NIST Special Publication 800-63A, dated June 2017, promulgated by the National Institutes of Standards and Technology, or any successor publication. If this standard cannot be met due to applicable state or federal laws, such as California law governing the disclosure of information regarding driver's licenses or other identification cards, then the Secretary of State shall adopt the most rigorous standard for identity proofing that also conforms to those laws.

(6) Online notarization systems.

(7) Depositories, including standards for security measures and storage capacity.

(8) Registration with the Secretary of State as a notary public authorized to perform online notarizations, a depository, or an online notarization platform.

(9) Remote presentation.

(10) Retention and storage of records of online notarial acts by registered online notarization platforms and by registered depositories. The Secretary of State shall consult with the Judicial Council of California and the Department of Justice regarding the required format for these records.

(11) Security and encryption.

(b) The Secretary of State may confer with other state entities, departments, or agencies on matters relating to equipment, security, and technological aspects of online notarization standards.

(c) The Secretary of State, in developing the rules and regulations required by this section, may consider the views of other state entities, departments, or agencies, and members of the public.

(d) A notary public shall not provide online notarization for any principal before the adoption of rules by the Secretary of State pursuant to this section.

**8231.4.** (a) (1) An applicant for a commission as a notary public may apply for registration with the Secretary of State to perform online notarization by complying with the requirements of Article 1 (commencing with Section 8200) and this section.

(2) A notary public who holds a California notary public commission but is not yet registered with the Secretary of State to perform online notarizations may obtain

registration before the expiration of their term by meeting the requirements of this section.

(b) (1) In order to register with the Secretary of State to perform online notarizations, an applicant, during the commissioning of an applicant for appointment as a notary public, shall have satisfactorily completed the six-hour course of study approved by the Secretary of State as required by paragraph (3) of subdivision (a) of Section 8201 and satisfactorily completed a written examination as required by paragraph (4) of subdivision (a) of Section 8201.

(2) Any application for reappointment of a commissioned notary public that requests registration to perform online notarizations pursuant to paragraph (2) of subdivision (a) shall require a one-hour course of study approved by the Secretary of State regarding online notarization in addition to the three-hour refresher course of study required by paragraph (2) of subdivision (b) of Section 8201.

(c) A notary public shall be issued only one commission number for each term, which shall have the same meaning as Section 8204.

(d) The Secretary of State may charge an additional fee for an application for registration submitted pursuant to this section in an amount necessary to cover the additional costs of administering this article.

(e) If the notary public ceases to use an online notarization platform or depository, neither the notary public nor the online notarization platform or depository is absolved of their respective duties under this article, or the rules and regulations adopted pursuant to this article, with respect to the security, preservation, and production of records of online notarial acts generated using the online notarization system of the online notarization platform or stored by the depository, including the electronic journal required by Section 8231.6 and the audio-video recording required by Section 8231.7.

**8231.5.** (a) A notary public authorized to perform online notarization and physically located in this state may perform an online notarization that meets the requirements of this article and the rules and regulations adopted by the Secretary of State pursuant to this article for a principal who is located in any of the following places:

(1) Within this state.

(2) Outside this state but within the United States.

(3) Outside the United States if the act is not prohibited in the jurisdiction in which the principal is physically located at the time of the act.

(b) (1) A requirement that a principal appear before or in the presence of the notary public shall be satisfied by appearing by means of audio-video communication before a notary public authorized to perform online notarization.

(2) Audio-video communication with a notary public authorized to perform online notarization shall consist of continuous, synchronous audio and video feeds with adequate clarity such that all participants can be clearly seen and understood at all times. The notary public shall terminate the session if, in the notary public's judgment, the adequacy of communications is insufficient for all participants to be clearly seen and understood at all times.

(3) The notary public, by use of the online notarization system, shall create the audio-video recording required by Section 8231.7.

(c) A requirement under Section 8205 that a certificate of acknowledgment or proof, or a deposition, affidavit, oath, or affirmation, or certification of a copy, be signed in the notary public's own handwriting, is satisfied by the notary public's electronic signature if the notarial act is performed by online notarization.

**8231.6.** (a) (1) A notary public shall keep one or more secure electronic journals to record each online notarial act performed by the notary public pursuant to this article. An electronic journal shall be capable of providing both physical and electronic copies of any entry made therein.

(2) If a notary public utilizes more than one online notarization platform, the notary public may keep one secure electronic journal per platform. The notary public shall comply with all of the relevant requirements with respect to each electronic journal.

(b) The notary public authorized to perform online notarizations shall include in an electronic journal all of the following:

(1) The date, time, and type of each official online notarial act. The time entered shall be the time at the notary's location at the time of the online notarial act.

(2) The physical location of the principal as represented to the notary public by the principal at the time of the online notarial act and the physical location of the notary public at the time of the online notarial act.

(3) The character of every electronic record sworn to, affirmed, acknowledged, or proved before the notary public.

(4) The electronic signature of each person whose electronic signature is being notarized.

(5) Satisfactory evidence of identity of the principal pursuant to subdivision (a) of Section 8231.9, which shall be in the form of a notation of the type of identification credential provided to the notary public for credential analysis, a record of the identity proofing, and other information as may be required by the Secretary of State.

(6) A statement that an audio-video recording of the online notarial act was made pursuant to Section 8231.7.

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

(8) The name of the online notarization platform whose online notarization system was used.

(c) The requirements of subparagraph (G) of paragraph (2) of subdivision (a) of Section 8206 do not apply to an online notarial act.

(d) (1) An electronic journal shall be maintained on an encrypted storage device or encrypted online media that is accessed by the notary public with secure multifactor means of authentication. A backup of the electronic journal shall be made immediately after new information is added to the electronic journal. The notary public shall not allow another person to access or use a notary public's electronic journal. The notary public shall take all reasonable steps to protect the journal from unauthorized access or use.

(2) An online notarization platform may retain custody of the electronic journal on behalf of the notary public if it expressly provides custodial services as part of the online notarization system and provided that information to the Secretary of State in its application under Section 8231.15. If the online notarization platform does not provide custodial services for a notary public, the online notarization platform does not have a duty to retain the electronic journal or any entries after providing a reasonable opportunity for download by the notary public as required by subdivision (i) of Section 8231.15 and does not violate this article by failure to retain the electronic journal or any entries after providing that reasonable opportunity for download.

(3) A notary public utilizing an online notarization platform that does not provide custodial services shall save a copy of the electronic journal to a depository registered with the Secretary of State under Section 8231.15 at least once per calendar month.

(e) A notary public shall immediately notify the Secretary of State, using a notification process designated by the Secretary of State, and all appropriate law enforcement agencies of the use by another person, loss, compromise, theft, vandalism, corruption, or breach of the notary public's electronic journal. The notification to the Secretary of State shall include the period of the affected journal entries, a description of the affected

data, a copy of any pertinent police report, and any other information required by the Secretary of State.

(f) (1) A notary public authorized to perform online notarizations shall maintain each entry for an online notarization in an electronic journal for so long as the notary public is registered with the Secretary of State to perform online notarizations.

(2) A notary public who resigns, is disqualified, is removed from office, or allows their registration as a notary public authorized to perform online notarizations to expire without obtaining reappointment within 30 days shall, pursuant to Section 8209, within 30 days of the applicable event, deliver their electronic journal to the Secretary of State through their online notarization platform or depository.

(3) If the notary public refuses or willfully fails to deliver their electronic journals pursuant to paragraph (2), the notary public is guilty of a misdemeanor and shall be personally liable for damages to any person injured by that action or inaction.

(4) In the case of the death of a notary public authorized to perform online notarizations, the personal representative of the deceased shall promptly notify the Secretary of State of the death of the notary public and shall deliver their electronic journal to the Secretary of State through the online notarization platform or depository used by the notary public.

(g) A notary public shall provide to a member of the public, pursuant to subdivision (c) of Section 8206 and to Section 8206.5, a copy of the entry in the notary public's electronic journal corresponding to the requested transaction in tangible format or in an electronic format in accordance with rules and regulations adopted by the Secretary of State pursuant to this article.

(h) A notary public shall provide, and an online notarization platform and depository shall enable, access to the notary public's electronic journal or a copy of the notary public's electronic journal:

(1) To a peace officer pursuant to subdivision (d) of Section 8206 or to Section 8228.

(2) Upon receipt of a subpoena duces tecum or a court order pursuant to subdivision (e) of Section 8206.

(3) To the Secretary of State pursuant to Section 8228.

(i) A notary public authorized to perform online notarizations may charge a reasonable fee, as determined by a rule adopted by the Secretary of State pursuant to this article, to recover the cost to the notary of providing a copy of an entry in an electronic journal.

**8231.7.** (a) A notary public shall create an audio-video recording of each the audio-visual communication of each online notarial act performed through the online notarization system platform pursuant to Section 8231.5 and this section.

(b) (1) The notary public shall retain the audio-video recording on an encrypted storage device or encrypted online media that is accessed by the notary public with secure multifactor means of authentication. The audio-video recording shall be created in an industry-standard audio-visual file format and shall not include images of any electronic record that was the subject of the online notarization. The notary public shall utilize an online notarization platform or depository approved by the Secretary of State for purposes of this section.

(2) An online notarization platform may retain custody of the audio-video recording on behalf of the notary public if it expressly provides custodial services and provided that information to the Secretary of State in its application under Section 8231.15. If the online notarization platform does not provide custodial services for a notary public, the online notarization platform does not have a duty to retain the audio-video recordings after providing a reasonable opportunity for the download by the notary public as required by subdivision (i) of Section 8231.15 and does not violate this article by failure to retain the electronic journal or any entries after providing that reasonable opportunity for download. The Secretary of State shall establish through rules or regulations the time period that constitutes a "reasonable time" for downloading the audio-video recording.

(3) A notary public who utilizes an online notarization system that does not provide custodial services shall upload copies of all audio-video recordings to a depository registered with the Secretary of State within five days of the creation of the recording. The notary public may delete their local copy of the audio-video recording upon confirming that the copy was uploaded to the depository.

(c) (1) A notary public shall retain the audio-video recording of each online notarial act with either of the following:

(A) An online notarization platform that provides custodial services to the notary public and provided that information to the Secretary of State in its application under Section 8231.15.

(B) A depository registered with the Secretary of State under Section 8231.15.

(2) If a notary public resigns, is disqualified, is removed from office, or allows their registration as a notary public authorized to perform online notarizations to expire without reappointment, within 30 days, the notary public shall transmit all audio-video recordings to the Secretary of State through their online notarization platform or depository.

**8231.8.** (a) A notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature or electronic seal is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) (1) Notwithstanding Section 8207, when a notary public's electronic signature is required to be accompanied by a notary public's electronic seal, that requirement is satisfied if the electronic seal of the notary public contains all of the following:

(A) The name of the notary public.

(B) The Great Seal of the State of California.

(C) The words "Notary Public."

(D) The name of the county where the bond and oath of office of the notary public are filed.

(E) The date the notary public's commission expires.

(F) The notary public's commission number.

(G) The sequential identification number assigned to the manufacturer or vendor of the notary public's electronic seal.

(2) The seal may be circular not over two inches in diameter or may be rectangular not more than one inch in width by two and one-half inches in length.

~~(c) A manufacturer or vendor of the notary public's electronic seal shall apply to the Secretary of State to be assigned an identification number, through an application process prescribed by the Secretary of State Sections 8207.2 to 8207.4, inclusive, shall apply to the manufacture, duplication, sale, and offer of electronic seals to be used by a notary public.~~ The electronic seal shall meet the requirements of this article and any rules or regulations adopted by the Secretary of State pursuant to this article.

(d) (1) A notary public authorized to perform online notarizations shall keep the notary public's electronic signature and electronic seal in a secure encrypted manner under the direct and exclusive control of the notary public. For purposes of satisfying the requirements of this subdivision, the notary public's electronic signature and electronic seal may be kept on a storage device or online media that is accessed by the notary public with a secure means of multifactor authentication and protected by, at minimum, security requirements as set forth by the Secretary of State. The notary public shall not allow another person to access or use the notary public's electronic signature or electronic seal except as permitted in this article. The notary public shall take all

reasonable steps to protect the notary public's electronic signature and electronic seal from unauthorized access or use.

(2) A notary public shall provide the Secretary of State with a copy of the notary public's electronic signature and electronic seal as prescribed by the Secretary of State.

(e) A notary public shall attach or logically associate the notary public's electronic signature and seal to an electronic online notarial certificate of an electronic record in a manner that is capable of independent verification and makes evident any tampering or subsequent change or modification to the electronic record that has occurred.

(f) A notary public shall immediately notify the Secretary of State, using a notification process designated by the Secretary of State, and all appropriate law enforcement agencies of the unauthorized use by another person, loss, compromise, theft, vandalism, corruption, or breach of the notary public's electronic signature or electronic seal.

**8231.9.** (a) In performing an online notarization, a notary public authorized to perform online notarizations shall verify the identity of a principal by satisfactory evidence that meets the requirements of this subdivision and the rules and regulations adopted by the Secretary of State.

(1) For purposes of this subdivision, "satisfactory evidence" means ~~both of the following conditions are satisfied:~~

~~(A) The absence of information, evidence, or other circumstances that would lead a reasonable notary public to believe that the principal is not the individual that the principal claims to be~~ and all of the following.

~~(B) The receipt of an oath or affirmation of a credible witness, personally known to the officer and identified pursuant to all of the following:~~

(i) Remote presentation of a credential by the principal. ~~Remote presentation shall conform to the standards of this article and any rules or regulations adopted by the Secretary of State pursuant to this article.~~

(ii) Credential analysis of the credential described in ~~clause (i) subparagraph (A).~~

(iii) Identity proofing of the principal described in ~~clause (i) subparagraph (A).~~

(2) For purposes of this subdivision, "satisfactory evidence" does not include the definition of "satisfactory evidence" set forth in Section 1185 of the Civil Code.

(3) Any record of a credential transmitted pursuant to this subdivision shall be retained no longer than necessary to do both of the following:



(A) Verify the identity of the principal.

(B) Make an entry in an electronic journal pursuant to subdivision (b) of Section 8231.6.

(b) The notary public and the online notarization platform shall use industry-standard encryption in all audio-video communication and shall take reasonable steps to ensure that the audio-video communication used in an online notarization is secure from unauthorized interception.

(c) The electronic online notarial certificate shall include a notation that the notarization is an online notarization. An electronic online notarial certificate shall be in the following form:

(1) For an acknowledgment:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

Online Notarial Act

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_ (here insert name and title of officer), personally appeared \_\_\_\_\_ by means of audio-video communication, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the electronic record and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the electronic record the person(s), or the entity upon behalf of which the person(s) acted, executed the electronic record.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Electronic Seal  
Electronic Signature

(2) For a jurat:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

Online Notarial Act

Subscribed and sworn to (or affirmed) before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me by means of audio-video communication.

Electronic Seal  
Electronic Signature

(2) The notice shown in subparagraphs (1) and (2) is for illustrative purposes and the format may be modified provided that the requirements of subdivision (c) are met.

(d) A notary public may certify that a tangible copy of an electronic record that is the subject of an online notarization is an accurate representation of the electronic record. The certification shall be in the following form and signed by the notary public:

State of California

County of \_\_\_\_\_

The attached document entitled \_\_\_\_\_ (document title, if applicable), dated \_\_\_\_\_ (document date, if applicable), and containing \_\_\_\_ pages is an accurate copy of an electronic record printed by me or under my supervision.

Dated: \_\_\_\_\_

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Seal \_\_\_\_\_

(e) A county recorder shall accept for recording a tangible copy of an electronic record of an online notarial act bearing electronic signatures and containing a certificate in the form specified in subdivision (d) as satisfying any requirement under the laws of this state that a document accepted for recording be an original or bear an original signature, if the notary public executing the certificate certifies that the tangible copy is an accurate copy of the electronic record. For the purposes of this section, “electronic record” and “electronic signature” have the same meaning as in Section 1633.2 of the Civil Code.

(f) The certificate for a copy certification of a power of attorney performed by means of online notarization shall include the representations required under subdivision (c) of Section 4307 of the Probate Code.

**8231.10.** The Secretary of State shall establish by rule the maximum fee that may be charged for an online notarial act.

**8231.11.** For the official misconduct or neglect of a notary public related to this article, the notary public and the sureties on the notary public’s official bond required by Section 8212 are liable in a civil action to a person injured thereby for all the damages sustained.

**8231.12.** A notary public authorized to perform online notarization who resigns, is disqualified or removed from office, or allows the notary public’s registration to perform online notarization to expire without obtaining a reappointment, within 30 days, pursuant to Section 8209, shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the notary public’s electronic signature or electronic seal. The notary public shall certify compliance with this subdivision to the Secretary of State in the manner prescribed by rule by the Secretary of State.

**8231.13.** (a) The Secretary of State may approve registrations of notaries public authorized to perform online notarizations for the military and naval reservations of the Army, Navy, Coast Guard, Air Force, and Marine Corps of the United States that are located in the State of California. Such registrants shall meet the requirements of Article 1 (commencing with Section 8200) in addition to the requirements of this article.

(b) Notwithstanding Section 8203.2, a notary public authorized to perform online notarizations approved for registration under subdivision (a) may perform notarial acts for principals who are stationed at the reservation for which that notary public was

approved, regardless of whether the principal was physically located on the reservation at the time of the notarial act.

(c) Notwithstanding Section 8203.5, the electronic online notarial certificate by a notary public authorized to perform online notarizations shall contain the name of the reservation for which the notary public was approved and where the principal for which the online notarization was performed was stationed at the time of the online notarial act. A notation in the following form shall be sufficient for purposes of this subdivision:

State of California Online Notarial Act

Military Reservation of \_\_\_\_\_

**8231.14.** A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling a notary public to affix the notary public's electronic signature or electronic seal is guilty of a misdemeanor.

**8231.15.** (a) A person or entity shall apply for registration with the Secretary of State to be an online notarization platform or depository as prescribed by the Secretary of State.

(b) An entity required to obtain a certificate of qualification from the Secretary of State in order to transact business in California shall do so before applying for registration with the Secretary of State to be an online notarization platform or depository.

(c) An online notarization platform or depository shall provide security for claims against the online notarization platform or depository or the online notarization platform's or depository's representatives, or employees based upon acts, errors, or omissions arising out of the business of the online notarization platform or depository through either one or an aggregate of both of the following:

(1) A policy or policies of insurance against liability imposed on or against the online notarization platform or depository by law for damages arising out of claims in an amount for each claim of at least two hundred fifty thousand dollars (\$250,000).

(2) In trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least two hundred fifty thousand dollars (\$250,000).

(d) The Secretary of State shall develop an application for registration to be submitted by an applicant. The application shall include, but not be limited to, all of the following:

(1) The name and complete business or residence street address of an agent upon whom process may be served within this state if this information is not already on file with the Secretary of State.

(2) A statement signed under penalty of perjury by an officer of the applicant authorized to enter into binding agreements on behalf of the applicant that the applicant shall comply with both of the following:

(A) This article and any rules or regulations adopted by the Secretary of State pursuant to this article that apply to online notarization platforms or depositories.

(B) The lawful properly-served process.

(3) For applications to be an online notarization platform, whether the online notarization platform provides custodial services for the notary public.

(e) The Secretary of State may charge a fee for an application for registration submitted pursuant to this section in an amount necessary to administer this article.

(f) The Secretary of State shall adopt procedures to verify that an online notarization platform or depository is capable of complying with this article and any rules or regulations adopted by the Secretary of State pursuant to this article. If the Secretary of State determines that an online notarization platform or depository is not capable of complying with this article or any rule or regulation adopted by the Secretary of State pursuant to this article, the Secretary of State shall deny or terminate the registration.

(g) Only an online notarization platform that has obtained registration from the Secretary of State may provide an online notarization system for a notary public authorized to perform online notarizations while commissioned in California.

(h) An online notarization platform shall take all reasonable steps to ensure that a notary public for whom it provides an online notarization system has the knowledge to use the system to perform online notarial acts in compliance with this article and any rules or regulations adopted by the Secretary of State pursuant to this article.

(i) (1) An online notarization platform or depository that provides custodial services for a notary public shall not delete an online journal entry or the audio-video recording of an online notarization until (A) the contract for custodial services is terminated or the notary public resigns, is disqualified, is removed from office, or allows their registration as a notary public authorized to perform online notarizations to expire without obtaining reappointment and (B) the notary public has transmitted the journal entry or audio-video recording to the Secretary of State or the online notarization platform or depository has transferred the journal entry or audio-video recording to the Secretary of State pursuant to subdivision (b) of Section 8231.17.

(2) An online notarization platform that does not provide custodial services for a notary public shall not delete an online journal entry or audio-video recording of an online notarial act until the notary public has been provided a reasonable opportunity to download the entry or record. The Secretary of State shall establish through rules or regulations the time period that constitutes a “reasonable time” for downloading the audio-video recording.

(3) The Secretary of State may adopt rules and regulations for the transmission of data under this subdivision, including timelines and schedules for the transmission of data from an online notarization platform or depository to the Secretary of State and alternatives for an online notarization platform under paragraph (2) when a notary fails to download an electronic journal entry or audio-video recording after a reasonable opportunity to download has been provided to the notary public, as determined by the Secretary of State, which shall include multiple reminders from the platform.

(j) (1) An online notarization platform or depository that ceases to provide an online notarization system or depository for use within California, goes out of business, ceases operations, or is acquired by or merges with another entity that is not registered with the Secretary of State as an online notarization platform or depository, and an online notarization platform that ceases to provide custodial services, shall do both of the following:

(A) At least 30 calendar days before this event, ~~or as soon as permitted by applicable law~~, notify each notary public that has utilized the online notarization platform or depository of the event and enable the notary public to transfer all records of online notarial acts performed by the notary public, or all records stored by the depository, including, but not limited to, any electronic journals or audio-video recordings, to another online notarization platform, to the notary public, to a certified depository, or to the Secretary of State at no cost to the notary public.

(B) Upon full compliance with subparagraph (A), thereafter promptly delete all audio-video recordings of online notarizations and electronic journals.

(2) An online notarization platform or depository that is acquired by or merges with another entity that is not registered with the Secretary of State as an online notarization platform or depository may continue operating as an online notarization platform or as a depository if all of the following are met:

(A) The online notarization platform or depository submits an updated application for registration as required by subdivision (d) based on the new circumstances after acquisition or merger.

(B) The updated application for registration is submitted to the Secretary of State at least 90 days prior to the acquisition or merger being completed, or as soon as permitted by applicable law, and the Secretary of State approves the updated application.

(C) The online notarization platform or depository notifies all notaries using the online notarization platform or depository at least 30 days before the completion of the acquisition or merger, or as soon as permitted by applicable law.

(k) (1) A notary public authorized to perform online notarization who exercises reasonable care using an online notarization platform or depository shall not be liable for any damages resulting from the online notarization platform's or depository's failure to comply with the requirements of this article or any rules or regulations adopted by the Secretary of State pursuant to this article. Any provision in a contract or agreement between a notary public and an online notarization platform or depository that attempts to waive this immunity shall be null and void.

(2) A notary public who utilizes an online notarization platform that does not provide custodial services does not exercise reasonable care if they fail to download a journal entry or audio-video recording of an online notarization in a timely manner or transmit those records to a registered depository in a timely manner.

**8231.16.** (a) An online notarization platform or depository shall not have access to a notary public's electronic signature or electronic seal.

(b) An online notarization platform or depository shall not access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the contents of the notary public's electronic journal absent a court order.

(c) An online notarization platform or depository shall not access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the contents of a document notarized by a notary public absent express written request from the principal or a court order.

(d) An online notarization platform or depository shall not access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the contents of an audio-video recording of an online notarial act absent express written request from the principal or a court order.

(e) An online notarization platform or depository shall not access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the personal information of a principal absent express written request from the principal or a court order.

(f) Notwithstanding subdivisions (a), (b), (c), (d), and (e), an online notarization platform or depository may access, use, share, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the notary public's electronic signature or electronic seal, the contents of the notary public's electronic journal, the contents of a notarized document or audio-video recording, or the personal information of a principal, to the extent necessary to do any of the following:

(1) Facilitate the performance of an online notarial act.

(2) Comply with the requirements of Article 1 (commencing with Section 8200), this article, rules and regulations adopted by the Secretary of State pursuant to this article, or any other applicable federal, state, or local law, or to comply with a lawful subpoena or court order or a lawful request from a law enforcement or regulatory agency.

~~(3) Administer, affect, enforce, or process a record provided by or on behalf of a principal or the transaction of which the record is a part.~~

~~(4) Detect fraud, identity theft, or other criminal activities.~~

~~(5) Monitor and improve the online notarization system and related processes, services, software, data storage, or other services offered by the online notarization platform or depository to notaries public for the purpose of facilitating their performance of online notarizations or receipt of other services subject to this article.~~

~~(6)~~ In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit of an online notarization platform or depository, or the dissolution, insolvency, or cessation of operations of a business or operating unit, if limited to that personal information held by that business or unit and the transferee agrees to comply with the restrictions set forth in this section, rules and regulations developed by the Secretary of State for sales, mergers, and transfers of businesses registered under this article, and other applicable privacy laws of this state.

~~(4) Administer, affect, enforce, or process a record provided by or on behalf of a principal or the transaction of which the record is a part.~~

~~(5) Detect fraud, identity, theft, or other criminal activities.~~

(g) An online notarization platform or depository shall immediately notify the Secretary of State, using a notification process designated by the Secretary of State, all appropriate law enforcement agencies, any affected online notaries public, and any affected principals, of the unauthorized use by another person, loss, compromise, theft, vandalism, corruption, or breach of any of the following:

(1) A notary public's electronic signature or electronic seal.



(2) A notary public's electronic journal.

(3) Any records of online notarial acts.

**8231.17.** (a) The Secretary of State shall maintain a secure, indexed repository of electronic journal entries and the audio-video recordings required by subdivision (b) of Section 8231.6 and subdivision (a) of Section 8231.7. The repository shall not be connected to the public internet.

(b) The Secretary of State shall establish a protocol for an online notarization platform that retains custody of records of an online notarization on behalf of the notary public or a depository to transfer records of online notarial acts to the Secretary of State at least once each calendar quarter.

(c) The Secretary of State shall produce an audio-video recording or journal entry of an online notarization only in response to a court order. That court order, in turn, shall be issued by a court only upon a showing that an accurate copy cannot be obtained (i) from the notary public that performed the online notarization, (ii) from the online notarization platform that enabled the audio-video recording to be made or the journal entry to be created, or (iii) from the depository utilized by the notary public. The failure of an online notarization platform or depository to produce an audio-video recording or a journal entry made before the date on which deletion is provided for under subdivision (i) of Section 8231.15 shall be considered by the Secretary of State in deciding whether to maintain the registration of that platform or depository.

(d) The Secretary of State may charge a reasonable fee, as determined by a rule adopted by the Secretary of State pursuant to this article, to recover the cost of providing a copy of an audio-video recording or a journal entry to a requesting party.

(e) Records of online notarizations maintained by the Secretary of State pursuant to this section shall be exempt from the requirements of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).

(f) The Secretary of State may destroy an electronic journal pursuant to subdivision (f) of Section 8231.6, or an audio-video recording required by subdivision (b) of Section 8231.7, at the latest of 20 years following the date the record was transmitted to the Secretary of State, if no request for an audio-video recording of an online notarization contained or referenced in that journal or recording has been made, 10 years after the latest request for an audio-video recording of an online notarization contained or referenced in that journal or recording, or 10 years following the date of the transmission, if authorized by an order of the superior court upon a finding of good cause.

**8231.18.** (a) The Secretary of State may refuse to appoint any person as a notary public or may revoke or suspend the commission of any notary public for a violation of this article.

(b) The Secretary of State may refuse to certify any online notarization platform or depository or may revoke or suspend the registration of any online notarization platform or depository for a violation of this article.

**8231.19.** (a) For a ~~willful and knowing~~negligent violation of ~~Section 8231.15 or 8231.16~~any provision of this article, an online notarization platform or depository is liable in civil action to the ~~notaries public or principals~~persons injured thereby for any of the following:

(1) The greater of the following:

(A) Any actual damages sustained by that person as a result of the violation.

(B) Statutory damages of \$250 per violation.

(2) Injunctive or declaratory relief. Such relief is presumed to accrue to the benefit of the public.

(3) Any other relief that the court deems proper.

(b) In the case of any successful cause of action under this section, the court shall award costs of the action, together with reasonable attorney fees, as determined by the court.

~~(bc)~~ An action under subdivision (a) shall be brought no later than ~~one-three~~three years from the date the plaintiff ~~knew or reasonably should have known~~had actual knowledge of the violation.

(ed) (1) The Attorney General, a city attorney, including the city attorney of a city and county, a county counsel, or a district attorney may bring a civil action in the name of the people of the State of California against an online notarization platform or depository for any ~~willful and knowing~~negligent violation of ~~this article by the online notarization platform or depository of Section 8231.15 or 8231.16 or the rules and regulations adopted by the Secretary of State~~ and recover or obtain any of the remedies available under subdivision (a).

(2) An action shall be brought under this subdivision no later than ~~one-three~~three years from the date the ~~violation is discovered by the Secretary of State or~~ the online notarization platform or depository notifies the Secretary of State and the Attorney General of the violation that is the basis of the action, ~~whichever is earlier~~.

(~~d~~e) For purposes of this section, each individual breach of duty imposed by Section 8231.15 or 8231.16 shall be treated as a separate violation.

(~~e~~f) This article does not limit the Attorney General's authority to investigate and prosecute violations of duties related to notarial acts.

(~~g~~f) An online notarization platform shall not be liable for any of the following and shall not be liable in any civil action brought under this article for any damages proximately resulting from any of the following:

(1) The negligence, fraud, or willful misconduct of the notary public, principal, or the person that requested notarization of the record, or the notary public's failure to comply with the requirements of this article, any rules or regulations adopted by the Secretary of State pursuant to this article, or any applicable law, unless the notary public is an employee or agent of the online notarization platform, in which case the online notarization platform is responsible for the conduct of the notary public to the extent provided under other applicable law.

(2) A notary public's failure to timely download an electronic journal or audio-video recording or failure to timely transfer those records to the Secretary of State, or the notary public's deletion of one or more audio-video recording or entries in the notary public's electronic journal.

(3) The contents of records uploaded to the online notarization platform for notarization.

(~~g~~h) If a violation of this article gives rise to liability for statutory damages ~~or relief~~ under paragraph (1) of subdivision (a) as well as under one or more other provisions of the California Code, the prevailing plaintiff shall elect under which statute ~~the plaintiff is seeking~~ damages or relief shall be awarded. This form of remedy is not cumulative.

**8231.20.** Any waiver of the provisions of this article is contrary to public policy and is void and unenforceable.

**8231.21.** The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 9.** Article 3 (commencing with Section 8232) is added to Chapter 3 of Division 1 of Title 2 of the Government Code, to read:

**Article 3.** Recognition of Notarial Acts

**8232.** For purposes of this article, the following definitions apply:

(a) "Foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.

(b) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the laws of this state, another state, or a foreign state or under federal law.

(c) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(d) "Notary public" means an individual commissioned to perform a notarial act.

(e) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(f) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**8232.1.** (a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by any of the following:

(1) A notary public of that state.

(2) A judge, clerk, or deputy clerk of a court of that state.

(3) Any other individual authorized by the law of that state to perform the notarial act.

(b) (1) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(2) The signature and title of a notarial officer described in paragraph (1) or (2) of subdivision (a) conclusively establish the authority of the officer to perform the notarial act.

**8232.2.** (a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in the jurisdiction of that tribe is performed by any of the following:

(1) A notary public of the tribe.

(2) A judge, clerk, or deputy clerk of a court of the tribe.

(3) Any other individual authorized by the law of the tribe to perform the notarial act.

(b) (1) The signature and title of an individual performing a notarial act under the authority and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(2) The signature and title of a notarial officer described in paragraph (1) or (2) of subdivision (a) conclusively establish the authority of the officer to perform the notarial act.

**8232.3.** (a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by any of the following:

(1) A judge, clerk, or deputy clerk of a court.

(2) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law.

(3) An individual designated a notarizing officer by the United States Department of State for performing notarial acts.

(4) Any other individual authorized by federal law to perform the notarial act.

(b) (1) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(2) The signature and title of a notarial officer described in paragraph (1), (2), or (3) of subdivision (a) conclusively establish the authority of the officer to perform the notarial act.

**8232.4.** (a) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

(b) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that

information, the authority of an officer with that title to perform notarial acts is conclusively established.

(c) The signature and official stamp of an individual holding an office described in subdivision (b) are prima facie evidence that the signature is genuine and the individual holds the designated title.

(d) An apostille in the form prescribed by the October 5, 1961, Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention), and issued by a foreign state party to the convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(e) A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

**SEC. 10.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**SEC. 11.** The Legislature finds and declares that Section 8 of this act, which adds Section 8231.17 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The interest protected by this limitation is the privacy of Californians, whose highly sensitive personal information is held by the Secretary of State, and records of online notarizations will contain highly sensitive personal information, including, but not limited to, medical and financial information. This act protects this interest by excluding records of online notarizations maintained by the Secretary of State from the provisions of the California Public Records Act.