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SB-696 Notaries public. (2023-2024)

As Amends the Law Today

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 California notary public shall not provide online notarization for any principal, and an online notarization platform shall not be authorized for use by a California notary public, until the earlier of the following:

(1) 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.

(2) January 1, 2030, unless the Secretary of State informs the Legislature and the Governor in writing on or before January 1, 2029, that the technology project necessary to implement statutes related to online notarization will not be completed by January 1, 2030, including a detailed status of the technology project.

(c) This section shall remain in effect until the attainment of paragraph (1) or (2) of subdivision (b), and as of that date is repealed.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 upon the earlier of the following:

(1) 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.

(2) January 1, 2030, unless the Secretary of State informs the Legislature and the Governor in writing on or before January 1, 2029, that the technology project necessary to implement statutes related to online notarization will not be completed by January 1, 2030, including a detailed status of the technology project.

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

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

~~(1)~~ (a) A justice, judge, or clerk of any court of record of the United States.

~~(2)~~ (b) A justice, judge, or clerk of any court of record of any state.

~~(3)~~ (c) A commissioner appointed by the Governor or Secretary of State for that purpose.

~~(4)~~ (d) A notary public.

~~(5)~~ (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 ~~made~~ *taken* without the United States, ~~before by~~ any of the following:

~~(a)~~ (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.

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

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

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

~~(e)~~ (5) A notary public.

(b) If the proof or acknowledgment is ~~made before~~ *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 ~~made,~~ *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, ~~8231.7,~~ or ~~8207.4~~ *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 ~~he or she~~ *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)~~ *(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 8231.5 or 8231.6.

(t) Use of an online notarization system from an online notarization platform not in compliance with Section 8231.14.

(u) Use of a depository not in compliance with Section 8231.14.

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, 2030, unless the Secretary of State informs the Legislature and the Governor in writing on or before January 1, 2029, that the technology project necessary to implement statutes related to online notarization is incomplete.

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 8231.6.

(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 8231.14 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) "Encrypt" or "encrypted" means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

(m) "Express written request" means a request made in writing and initiated by a principal to access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the specified 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. Express consent cannot be inferred.

(n) "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.

(o) "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, 8205, this article, and Sections 1185 and 1195 of the Civil Code.

(p) "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 8231.7.

(q) "Open format" means information that is formatted in a manner that is platform independent, machine readable, and made available to the public without restrictions that would impede the reuse of that information.

(r) "Online notarization" and "online notarial act" mean a notarial act performed by a notary public authorized to perform online notarization 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.

(s) "Online notarization platform" means an individual or entity that has an active registration with the Secretary of State pursuant to Section 8231.14 and provides an online notarization system to a notary public authorized to perform online notarization.

(t) "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).

(u) "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.

(v) "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.

(w) "Records of online notarial acts" means, collectively, the electronic journal entries required by Section 8231.5 and the audio-video recordings required by Section 8231.6.

(x) "Remote presentation" means transmission to the notary public through audio-video communication of an image of a government-issued identification that 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.

(y) "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. (a) The Secretary of State shall adopt rules and regulations necessary to implement this article. 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 and tangible 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, or registration as a depository or an online notarization platform.

(9) Remote presentation.

(10) Retention and storage of records of online notarial acts.

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

8231.3. *(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 Chapter 3 (commencing with Section 8200).*

(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 resigning their current commission in the manner prescribed by the Secretary of State and meeting the requirements of Article 1 (commencing with Section 8200) and Article 2 (commencing with Section 8231). The notary public's current commission shall remain in full force and effect until the effective date of the new commission.

(b) (1) In order to register with the Secretary of State to perform online notarizations, an applicant shall have completed the following requirements:

(A) During the commissioning for appointment as a notary public, the applicant 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.

(B) The applicant shall have satisfactorily completed a two-hour course of study approved by the Secretary of State pursuant to Section 8201.2 concerning the functions and duties of a notary public authorized to perform online notarizations under this article and have satisfactorily completed a written examination prescribed by the Secretary of State to determine the fitness of the person to exercise the functions and duties of a notary public authorized to perform online notarizations. All questions shall be based on the laws of this state as set forth in the booklet of the laws of California relating to notaries public distributed by the Secretary of State.

(2) A notary public who applies for reappointment and authorization to perform online notarizations shall satisfactorily complete the three-hour refresher course of study required by paragraph (2) of subdivision (b) of Section 8201 and the two-hour course of study approved by the Secretary of State required by subparagraph (B) of paragraph (1).

(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 8231.5 and the audio-video recording required by Section 8231.6.

8231.4. *(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 under any law of this state 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 in compliance with the requirements of this article and the rules or regulations adopted by the Secretary of State pursuant to this article.

(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 8231.6.

(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.

8231.5. *(a) (1) Pursuant to rules and regulations established by the Secretary of State, a notary public shall record each online notarial act performed by the notary public in one tangible sequential journal and one or more secure electronic journals.*

(2) Notwithstanding Section 8206, the tangible journal shall include all of the following:

(A) The date and time of the online notarization.

(B) The name of each person whose electronic signature is notarized.

(C) The title, or a short description if no title exists, of every electronic record sworn to, affirmed, acknowledged, or proved before the notary public.

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

(E) The unique transaction identifier provided by the online notarization platform that will, for not fewer than 10 years after the date of the online notarial act, be sufficient to identify the line item of the online notarial act in the applicable secure electronic journal. The Secretary of State shall adopt regulations related to the unique transaction identifier under this subparagraph.

(F) The location of the secure electronic journal.

(3) The requirements of subparagraphs (C) and (G) of paragraph (2) of subdivision (a) of Section 8206 do not apply to the tangible sequential journal for an online notarial act.

(4) Except as provided in this section, Sections 8206 through 8230, inclusive, shall apply to the notary public and the tangible sequential journal.

(b) An electronic journal shall be capable of providing both physical and electronic copies of any entry made therein. Notwithstanding Section 8206, 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 title, or a short description if no title exists, 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 8231.8, 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 8231.6.

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

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

(9) The unique transaction identifier as defined in subparagraph (C) of paragraph (2) of subdivision (a).

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

(d) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 8206, 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 electronic journal shall be kept under the direct and exclusive control of the notary public and the notary public shall take all reasonable steps to protect the electronic journal from unauthorized disclosure, access, or use.

(2) Notwithstanding paragraph (1) of subdivision (a) of Section 8206, 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 8231.14. If the online notarization platform does not provide custodial services for a notary public, the online notarization platform has a duty not 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 8231.14. The Secretary of State shall establish by rule or regulation the time period that constitutes a "reasonable opportunity" for downloading the electronic journal and any entries of an electronic journal.

(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 8231.14 at least once per calendar month.

(e) (1) A notary public shall immediately notify the Secretary of State, by certified or registered mail or any other means of delivery that provides a receipt, and all appropriate law enforcement agencies of the unauthorized disclosure to or 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, the notary public's commission number and the expiration date of the commission, a description of the affected data, a copy of any pertinent police report, and any other information required by the Secretary of State.

(2) An online notarization platform shall notify the Secretary of State and the notaries public using its online notarization system, by certified or registered mail or any other means of delivery that provides a receipt, and all appropriate law enforcement agencies of the unauthorized disclosure to or use by another person, loss, compromise, theft, vandalism, corruption, or breach of the online notarization system. The notification shall be made in the most expedient time possible and without unreasonable delay to the Secretary of State and notaries public and shall include the period of affected journal entries, a description of the affected data, a copy of any pertinent police report if available at the time of notification, and any other information required by the Secretary of State.

(f) (1) A notary public authorized to perform online notarizations shall maintain each tangible and electronic journal pursuant to this section for so long as the notary public is registered with the Secretary of State to perform online notarizations.

(2) Notwithstanding subdivision (a) of Section 8209, 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, retain the electronic journal for 10 years after the performance of the last notarial act chronicled in the electronic journal by either of the following methods:

(A) Personally.

(B) By transmitting the electronic journal to a depository registered with the Secretary of State within 30 days of the applicable event.

(3) If the notary public willfully fails or refuses to retain or 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) Notwithstanding subdivision (b) of Section 8209, 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 retain the journal or cause the journal to be retained by a depository designated by or on behalf of the person required to retain the journal.

(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 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 in the case of an electronic journal as applicable, an online notarization platform and depository shall enable, access to the notary public's 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, or to comply with any other applicable federal, state, or local law, a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.

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

(i) Notwithstanding subdivision (c) of Section 8206, 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.

8231.6. (a) A notary public shall create an audio-video recording of the audio-visual communication of each online notarial act performed through the online notarization platform pursuant to Section 8231.4 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 open 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 8231.14. If the online notarization platform does not provide custodial services for a notary public, the online notarization platform has a duty not 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 8231.14. The Secretary of State shall establish by rule or regulation the time period that constitutes a "reasonable opportunity" for downloading the audio-video recording.

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

(1) An online notarization platform that provides custodial services to the notary public and provided that information to the Secretary of State in its registration under Section 8231.14.

(2) A depository registered with the Secretary of State under Section 8231.14.

(d) The notary public shall retain each audio-video recording created as required by this section for at least 10 years after the performance of the notarial act documented in the audio-video recording, regardless of the notary public's current authorization status to perform online notarizations. The notary public shall cause the audio-video recording to be retained either:

(1) Personally.

(2) By a depository registered with the Secretary of State.

8231.7. (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. 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) Notwithstanding Section 8207, 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 paragraph 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. The notary public shall take all reasonable steps to protect the notary public's electronic signature and electronic seal from unauthorized disclosure, 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 electronic 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 or access by or disclosure to another person, loss, compromise, theft, vandalism, corruption, or breach of the notary public's electronic signature or electronic seal.

8231.8. *(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 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:

(A) Remote presentation of a credential by the principal.

(B) Credential analysis of the credential described in subparagraph (A).

(C) Identity proofing of the principal described in 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 8231.5.

(b) The notary public and the online notarization platform shall encrypt 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 represented to me that he/she/they was/were physically located in _____, and proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within 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 _____, who represented to me that he/she/they was/were physically located in _____, and 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

(d) (1) The notice shown in paragraphs (1) and (2) of subdivision (c) is for illustrative purposes and the format shall comply with Section 1189 of the Civil Code or Section 8202 of the Government Code, as applicable.

(2) Nothing in this section shall be construed to require the inclusion of the principal's physical location at the time of the online notarial act in the electronic notarial certificate as a condition of recording or acceptance under California law.

8231.9. *Fees charged by a notary public for the following services related to an online notarization shall not exceed the fees prescribed by this section.*

(a) For taking an acknowledgment of a deed or other instrument, to include the electronic seal and the completion of the electronic notarial certificate, the sum of thirty dollars (\$30) for each signature taken.

(b) For administering an oath or affirmation to one person and executing the jurat, including the electronic seal and the completion of the electronic online notarial certificate, the sum of thirty dollars (\$30).

(c) No fee may be charged for any online notarization pursuant to subdivisions (d) and (f) of Section 8211.

8231.10. *Every person appointed as a notary public authorized to perform online notarizations shall execute an official bond in the sum of twenty-five thousand dollars (\$25,000) in lieu of the bond required by Section 8212. The bond shall be in the form of a bond executed by an admitted surety insurer and not a deposit in lieu of bond. 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 this section are liable in a civil action to a person injured thereby provided, however, that the amount of the surety's liability shall be limited to fifteen thousand dollars (\$15,000) for notarial acts arising under Article 1 (commencing with Section 8200), and twenty-five thousand dollars (\$25,000) for online notarial acts arising under this article. Under no circumstances shall the surety's liability exceed the aggregate amount of twenty-five thousand dollars (\$25,000). The bond shall be filed with the county clerk within which the notary public maintains a principal place of business pursuant to Section 8213.*

8231.11. *(a) 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 take all necessary measures to disable the electronic affixation of the notary public's electronic signature or seal by the notary public or another person including, but not limited to, notifying the online notarization platform providing the online notarization system utilized by the notary public that their electronic signature and seal should be disabled, as well as adhering to any other requirements set forth in regulations adopted by the Secretary of State.*

(b) An online notarization platform notified by a notary public pursuant to subdivision (a) shall disable, destroy, or otherwise prevent the use of the notary public's electronic signature and electronic seal.

8231.12. *(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 _____

8231.13. *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.*

8231.14. (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 Secretary of State may refuse registration of an online notarization platform or depository for failure to conform with the application requirements. 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.

(4) A statement indicating that the applicant has no order, judgment, or decree entered against them in any civil or criminal action involving any of the following:

(A) Fraud.

(B) Material misrepresentation.

(C) Any willful acts or gross negligence related to breaches of secure information required to be stored under this act.

(e) Registration may be refused or canceled if the application is found to include a material misrepresentation or if the registrant subsequently has an order, judgment, or decree entered against them in any civil or criminal action as defined in paragraph (4) of subdivision (d).

(f) 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.

(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 downloaded the journal entry or audio-video recording. The online notarization platform or depository shall provide a reasonable opportunity for download upon termination of the contract for custodial services. The Secretary of State shall establish by rule or regulation the time period that constitutes a "reasonable opportunity" for download following termination of a contract for custodial services.

(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 by rule or regulation the time period that constitutes a "reasonable opportunity" for downloading the audio-video recording.

(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, 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, at no cost to the notary public. The online notarization platform or depository shall not delete any records of online notarial acts performed by the notary public until the notary public has been provided a reasonable opportunity to download the entry or record. The Secretary of State shall establish by rule or regulation the time period that constitutes a "reasonable opportunity" for downloading records of online notarial acts.

(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) A notary public authorized to perform online notarization using an online notarization platform or depository shall not be vicariously 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.

8231.15. *(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, except to comply with any other applicable federal, state, or local law, a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.

(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 to comply with any other applicable federal, state, or local law, a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.

(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 to comply with any other applicable federal, state, or local law, a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.

(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 to comply with any other applicable federal, state, or local law, a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.

(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 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) As necessary to implement the requirements of this article and any rules or regulations adopted by the Secretary of State and to implement the fraud mitigation measures as outlined in NIST Special Publication 800-63A, dated June 2017, promulgated by the National Institutes of Standards and Technology, or any successor publication.

(g) An online notarization platform or depository shall, in the most expedient time possible and without unreasonable delay, 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 access or use by or disclosure to 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.

8231.16. *(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 register 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.

8231.17. *(a) For a violation of any provision of this article, an online notarization platform or depository is liable in civil action to the 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 two hundred fifty dollars (\$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 any successful cause of action under this section, the court shall award costs of the action, together with reasonable attorney's fees, as determined by the court.

(c) An action under subdivision (a) shall be brought no later than four years from the date the plaintiff had actual knowledge of the violation.

(d) (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 violation of this article and recover or obtain any of the remedies available under subdivision (a).

(2) An action shall be brought under this subdivision no later than four years from the date 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.

(e) An online notarization platform shall not be vicariously liable for any of the following and shall not be vicariously 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.

8231.18. *(a) As used in this section, the following terms have the following meanings:*

(1) "Audio-video communication" means being able to see, hear, and communicate with another individual in real time using electronic means.

(2) "Audio-video recording" means a recording of the audio-video communication of a remote online notarial act.

(3) "Business" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of individuals acting in concert that provides a software platform for use by a notarial officer not in the physical presence of the principal to communicate with the principal, enable the performance of a remote online notarial act, and record the performance of the remote online notarial act.

(4) "Electronic journal" means a sequential record of remote online notarial acts performed by a notarial officer facilitated by a business.

(5) "Encrypt" or "encrypted" means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

(6) "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 a state other than California, a foreign state, or under federal law.

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

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

(9) "Open format" means information that is formatted in a manner that is platform independent, machine readable, and made available to the public without restrictions that would impede the reuse of that information.

(10) "Principal" means an individual for whom a remote online notarial act is performed who has represented to the business that they are located in California.

(11) "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.

(12) "Remote online notarial act" or "remote online notarization" means a notarial act performed for a principal by a notarial officer using audio-video communication through a business when the notarial officer is located in a state other than California.

(13) "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.

(b) A business consents to the jurisdiction of the courts of this state for transactions related to a principal.

(c) For transactions related to a principal, a business shall comply with all of the following:

(1) (A) A business shall create an encrypted electronic journal entry for each remote online notarial act. The business shall enable access to the electronic journal by the notarial officer through secure multifactor means of authentication. The electronic journal shall be capable of providing both physical and electronic copies of any entry made therein. Each electronic journal entry shall contain, at a minimum, the following information:

(i) The date, time, and type of each remote online notarial act. The time entered shall be in Coordinated Universal Time.

(ii) The physical location of the principal as represented to the business by the principal, and the physical location of the notarial officer at the time of the remote online notarial act.

(iii) The title, or a short description if no title exists, of each record that was the subject of the remote online notarial act.

(iv) The electronic signature of each principal.

(v) A statement as to the basis of the notarial officer's method of identification of the principal.

(vi) A statement that an audio-video recording of the remote online notarial act was made pursuant to subparagraph (B) of this paragraph.

(vii) The fee, if any, charged for the remote online notarial act.

(viii) The name of the business that provided the software platform for the performance of the remote online notarial act.

(B) A business shall create an audio-video recording of the audio-video communication of each remote online notarial act facilitated by the business. The business shall enable access to the audio-video recording by the notarial officer through a secure multifactor means of authentication. The audio-video recording shall be created in an open format and shall not include images of any record that was the subject of the remote online notarization.

(C) Each electronic journal entry and audio-video recording shall be retained, in accordance with federal, state, or local law, as applicable.

(D) A business shall provide the principal with a copy of each relevant electronic journal entry and audio-video recording following the completion of a transaction in the most expedient time possible.

(2) (A) A business shall provide each individual for whom a remote online notarial act is to be performed with a prompt asking if the individual is located in California before the performance of a remote online notarial act.

(B) If the individual represents to the business that the individual is located in California in response to the prompt under subparagraph (A), the business shall append a document to the record that is subject to the remote online notarial act. The appended document shall indicate the principal's response to the prompt, as well as the notarial officer's location at the time of the remote online notarial act. The failure to obtain or append the document indicating the principal's location does not affect the validity of the record or the remote online notarial act, and nothing in this section shall be construed to require submission of the appended document referenced in this subparagraph as a condition of recording or acceptance under California law.

(3) (A) A business shall produce an audit trail detailing the following information completed as a part of each transaction involving a remote online notarial act:

(i) The action performed.

(ii) The date and time of the action's performance in Coordinated Universal Time.

(iii) The name of the party performing the action.

(iv) The Internet Protocol address of the party performing the action.

(B) A business shall encrypt all audio-video communication and all records related to a remote online notarization and shall take reasonable steps to ensure that the audio-video communication used in a remote online notarization is secure from unauthorized interception.

(4) A business shall, in the most expedient time possible and without unreasonable delay, notify all appropriate law enforcement agencies and any affected principals of the unauthorized access or use by or disclosure to another person, loss, compromise, theft, vandalism, corruption, or breach of a principal's personal information or an electronic journal or audio-video recording.

(5) (A) A business shall not access, use, share, sell, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the contents of any of the following related to a principal:

(i) An electronic journal entry.

(ii) The contents of a record that is the subject of a remote online notarial act.

(iii) The audio-video recording of a remote online notarial act.

(iv) Personal information.

(B) Notwithstanding subparagraph (A), a business may access, use, share, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the contents of clauses (i), (ii), (iii), and (iv) of subparagraph (A) to the extent necessary to do any of the following:

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

(ii) To comply with any other applicable federal, state, or local law, a lawful subpoena or court order, or a lawful request from a law enforcement or regulatory agency.

(iii) 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.

(iv) As necessary to implement the requirements of this section and to implement the fraud mitigation measures as outlined in NIST Special Publication 800-63A, dated June 2017, promulgated by the National Institute of Standards and Technology, or any successor publication.

(d) (1) For a violation of any provision of this section, a business is liable in civil action to the persons injured thereby for any of the following:

(A) The greater of the following:

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

(ii) Statutory damages of two hundred fifty dollars (\$250) per 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.

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

(3) An action under paragraph (1) of subdivision (d) shall be brought no later than four years from the date the plaintiff had actual knowledge of the violation.

(4) (A) 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 a business for any violation of this article and recover or obtain any of the remedies available under paragraph (1) of subdivision (d).

(B) An action shall be brought under this paragraph no later than four years from the date the business notifies the Attorney General of the violation that is the basis of the action.

(5) A business shall not be vicariously liable for any of the following and shall not be vicariously liable in any civil action brought under this article for any damages proximately resulting from any of the following:

(A) The negligence, fraud, or willful misconduct of the notarial officer, principal, or the person that requested notarization of the record, unless the notarial officer is an employee or agent of the business, in which case the business is responsible for the conduct of the notarial officer to the extent provided under other applicable law.

(B) The contents of records uploaded to the business for remote online notarization.

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

8231.19. *Any waiver of the provisions of this article is contrary to public policy and is void and unenforceable.*

8231.20. *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 shall be afforded the same legal 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 shall be afforded the same legal 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 shall be afforded the same legal 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 shall be afforded the same legal 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.*