STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE/SENATE BILL [\_\_\_\_] By: [\_\_\_\_\_\_\_\_\_\_\_]

**DISCUSSION DRAFT (Rev. 10/1/2018)**

JOINT TASK FORCE ON REMOTE ONLINE NOTARY LEGISLATION OF THE

OKLAHOMA ASSOCIATION OF REALTORS

AND

OKLAHOMA LAND TITLE ASSOCIATION

*Draft based upon the*

*Mortgage Bankers Association – American Land Title Association*

*Model Legislation for Remote Online Notarization*

AS INTRODUCED

An Act relating to remote online notarial acts performed by means of communication technology; authorizing recordation of electronic documents in tangible form; providing for certification of paper or tangible copies of electronic records; providing definitions; requiring the Secretary of State to promulgate standards regulating remote online notarizations; providing for registration requirements; authorizing performance of remote online notarial acts; requiring the creation and retention of certain electronic records; providing for use of electronic signatures and seals; providing procedures for performance of remote online notarial acts; authorizing fee for remote online notarial acts; requiring notaries public to destroy electronic software upon termination of commission; providing legal recognition of remote online notarial acts; providing for validity of remote online notarial acts; providing for applicability of the Remote Online Notary Act; providing for relation of the Remote Online Notary Act to the Electronic Signatures in Global and National Commerce Act; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 87 of Title 16, unless there is created a duplication in numbering, reads as follows:

RECORDATION OF ELECTRONIC DOCUMENTS IN TANGIBLE FORM.

A. As used this section:

1. “Document” means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

b. Eligible to be recorded in the office of the county clerk.

2. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

3. “Electronic document” means a document created, generated, sent, communicated, received, or stored by electronic means.

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

B. A paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy under subsection C of this section satisfies any requirement of law that, as a condition for recording, the document:

1. Be an original or be in writing;

2. Be signed or contain an original signature, if the document contains an electronic signature of the person required to sign the document; and

3. Be notarized, acknowledged, verified, witnessed, or made under oath, if the document contains an electronic signature of the person authorized to perform that act, and all other information required to be included.

C. A notary public commissioned under Section 1 of Title 49 of the Oklahoma Statutes may certify that a paper or tangible copy of an electronic document is a true and correct copy of the electronic document if the notary public has:

1. Reasonably confirmed that the electronic document is in a tamper-evident format;

2. Detected no changes or errors in any electronic signature or other information in the electronic document;

3. Personally printed or supervised the printing of the electronic document onto paper or other tangible medium; and

4. Not made any changes or modifications to the electronic document or to the paper or tangible copy thereof other than the certification described in this subsection.

D. A county clerk shall record a paper or tangible copy of a document that is otherwise entitled to be recorded under the laws of this state, provided that the paper or tangible copy has been certified by a notary public to be a true and correct copy of an electronic document under subsection C of this section as evidenced by a certificate. The certificate must be completed in the manner required in subsection A of Section 118 of Title 49 of the Oklahoma Statutes.

E. The following form of certificate is sufficient for the purposes of this section if completed in the manner required subsection D of this section:

State of

County of

I certify that the preceding or attached document (entitled (document title)), (dated (document date)), containing (number) pages is a true and correct copy of an electronic document printed by me or under my supervision, and that, at the time of printing, no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document since its creation or execution.

Dated

(Signature of notary public)

(Notary seal)

Notary Public

(My commission expires: )

F. If a certificate is completed in the manner required by subsection D of this section and is attached to or made a part of a paper or tangible document, the certificate is prima facie evidence that the requirements of subsection C of this section have been satisfied with respect to the document.

G. When any paper or tangible copy of an electronic document shall have been recorded in the office of the county clerk in the proper county, and the document was not certified in accordance with this section, such document shall, from and after the time of the filing thereof for record, be valid as though such document had, in the first instance, been an all respects duly certified in accordance with this section. Such document or the record thereof or a duly-authenticated copy thereof shall be competent evidence without requiring the original to be produced or accounted for to the same extent that written documents, duly executed and acknowledged, or the record thereof, are competent. This subsection shall apply to documents recorded before or after January 1, 2020.

H. This section does not apply to a plat, plan, map, or survey of real property if under another law of this state or a rule, regulation, or ordinance applicable to a county clerk:

1. There are requirements of format or medium for the execution, creation, or recordation of such plat, plan, map, or survey beyond the requirements applicable to a deed to real property; or

2. Such plat, plan, map, or survey must be recorded in a different location than a deed to real property.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201 of Title 49, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE. Sections 201 through 214 of this title shall be known and may be cited as the Remote Online Notary Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 202 of Title 49, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS. As used in the Remote Online Notary Act:

1. “Communication technology” means an electronic device or process that allows a notary public and a remotely located individual to communicate with each other by sight and sound.

2. “Credential analysis” means a process or service that meets the standards under Section 203 of this title through which a third person affirms the validity of an identification credential through review of public or private data sources.

3. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

4. “Electronic record” means information that is created, generated, sent, communicated, received, or stored by electronic means.

5. “Electronic seal” means an electronic image containing information attached to or logically associated with an electronic record that contains the notary public’s name exactly as indicated on the notary’s commission, the words “State of Oklahoma” and “Notary Public”, and the notary public’s commission number and the date of expiration of the notary public’s commission.

6. “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.

7. “Foreign state” means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

8. “Identity proofing” means a process or service that meets the standards under Section 203 of this title through which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

9. “Notarial act” or “Notarization” means an act that a notary public is authorized to perform under subsection A of Section 6 of this title or under any other law of this state.

10. “Outside the United States” means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

11. “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

12. “Personal knowledge” means knowledge through dealings sufficient to provide reasonable certainty that the individual has the identity claimed, and “personally known” and “personally knows” have corresponding meanings.

13. “Principal” means a remotely located individual whose signature is notarized in a remote online notarization, whether in an individual or representative capacity, or who makes an oath, affirmation, or acknowledgment in a remote online notarization, other than in the capacity of a witness.

14. “Remote online notarization” or “remote online notarial act” means a notarial act performed by means of communication technology under the Remote Online Notary Act.

15. “Remote presentation” means transmission to a notary public through communication technology of an image of a remotely located individual’s identification credential that is of sufficient quality to enable the notary public to reasonably identify the remotely located individual and to perform credential analysis.

16. “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a remote online notarization.

17. “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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 203 of Title 49, unless there is created a duplication in numbering, reads as follows:

RULEMAKING; ADMINISTRATION OF STANDARDS.

A. The Secretary of State shall promulgate rules to implement and ensure the effective administration of the Remote Online Notary Act. The rules shall provide standards for:

1. Ensuring integrity in the creation, transmittal, storage, and authentication of electronic signatures, electronic seals, and electronic records;

2. The means of performing remote online notarial acts;

3. Communication technology, credential analysis, and identity proofing;

4. The retention of journals and audio and visual recordings under Section 206 of this title;

5. Sufficient forms of notarial certificates for remote online notarizations; and

6. Other matters as deemed necessary by the Secretary of State to implement and administer the Remote Online Notary Act.

B. In promulgating, amending, supplementing, and repealing rules under this section, the Secretary of State may consider standards adopted by national standard-setting bodies such as the National Association of Secretaries of State and the Mortgage Industry Standards and Maintenance Organization, the standards and practices of other jurisdictions that have laws substantially similar to the Remote Online Notary Act, and the views of government officials and other interested persons.

C. The rules promulgated under this section may be amended, supplemented, and repealed.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 204 of Title 49, unless there is created a duplication in numbering, reads as follows:

REGISTRATION REQUIRED.

A. A notary public appointed and commissioned under Section 1 of this title may perform remote online notarizations under this title if authorized by the Secretary of State. Before a notary public performs the notary public’s initial remote online notarization, the notary public must register with the Secretary of State under subsection C of this section and receive written authorization from the Secretary of State under subsection D of this section. An individual may apply for a commission under Section 1 of this title and apply for registration under this section at the same time.

B. A notary public applying to register to perform remote online notarizations shall pay [Twenty-five Dollars ($25.00)] to the Secretary of State with the application. These funds shall be deposited in the Revolving Fund created for the Secretary of State under Section 276.1 of Title 62 of the Oklahoma Statutes.

C. A notary public registering to perform remote online notarizations under this section shall submit a completed application using the forms or format required by the Secretary of State that must include:

1. The full legal name of the applicant and the applicant’s official name as it appears on the applicant’s notarial commission under Section 1 of this title;

2. A description of the technology the applicant intends to use in performing remote online notarizations;

3. A statement that the applicant will comply with the standards under Section 203 of this title; and

4. Any other information the Secretary of State may by rule require.

D. If the technology identified by the applicant conforms to the standards under Section 203 of this title and the applicant has satisfied the requirements of this section, the Secretary of State shall approve the use of the technology and issue to the applicant written authorization to perform remote online notarizations during the term of the applicant’s notarial commission under Section 1 of this title.

E. The Secretary of State may deny a notary public’s application for registration under this section:

1. For a reason for which the Secretary of State deny, refuse to renew, or revoke a commission under subsection A of Section 12 of this title;

2. For a violation of the rules under Section 203 of this title;

3. If the technology identified by the notary public does not conform to the standards under Section 203 of this title; or

4. If any information on the application is missing, inaccurate, or incomplete.

F. The term of a notary public’s authorization to perform remote online notarizations begins on the authorization date set by the Secretary of State and continues as long as the notary public’s commission remains valid. The renewal of a notary public’s commission Section 1 of this title shall constitute the renewal of the notary public’s authorization to perform remote online notarizations under this section.

G. A notary public’s authorization to perform remote online notarizations terminates if:

1. The notary public’s name changes during the term of the notary public’s commission; and

2. The notary public elects to use the notary public’s new name under a new commission pursuant to paragraph 2 of subsection B of Section 11 of this title.

H. Nothing in this section shall be construed as prohibiting a notary public from receiving, installing, or utilizing a hardware or software update to the technology that the notary public identified under this section if the hardware or software update does not result in a technology that is materially different from the technology that the notary public identified under this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 205 of Title 49, unless there is created a duplication in numbering, reads as follows:

AUTHORITY TO PERFORM REMOTE ONLINE NOTARIAL ACTS.

A notary public physically located in this state and authorized to perform remote online notarizations under Section 204 of this title may perform a notarial act by means of communication technology for a remotely located individual who is physically located:

1. In this state;

2. Outside this state but not outside the United States; or

3. Outside the United States if:

a. The electronic record:

i. Is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or

ii. Involves property located in the territorial jurisdiction of the United States or a transaction substantially connected to the United States; and

b. The notary public has no actual knowledge that the act of making the statement or signing the electronic record is prohibited by the foreign state in which the remotely located individual is located.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 206 of Title 49, unless there is created a duplication in numbering, reads as follows:

ELECTRONIC RECORD OF REMOTE ONLINE NOTARIAL ACTS.

A. A notary public shall maintain a journal in a permanent, tamper-evident electronic format complying with standards promulgated by the Secretary of State in which the notary public chronicles all remote online notarial acts that the notary public performs. An entry in a journal must be made contemporaneously with the performance of the remote online notarial act and contain the following information:

1. The date and time of the remote online notarial act;

2. A description of the document, if any, and type of notarial act;

3. The full name and address of each principal for whom the notarial act is performed;

4. If the identity of the principal is based on personal knowledge, a statement to that effect;

5. If identity of the principal is based on credential analysis and identity proofing, a brief description of the results of the identity verification process and the identification credential remotely presented, including the date of issuance and expiration of the identification credential;

6. If identity of the principal is based on oath or affirmation of a credible witness, the information identified in paragraph 4 or 5 of this subsection, as applicable, that provided a basis for the notary public’s identification of the credible witness, a statement of the basis by which the credible witness claims personal knowledge of the principal, the location of the credible witness, and the full name and address of the credible witness; and

7. The fee, if any, charged by the notary public.

B. A notary public, or a person acting on behalf of the notary public, shall create an audio and visual recording of the performance of each remote online notarial act.

C. A notary public shall take reasonable steps to:

1. Ensure the integrity, security, and authenticity of remote online notarial acts;

2. Maintain a backup of the journal and the audio and visual recording; and

3. Protect the backup from unauthorized use.

D. A notary public, a guardian, conservator, or agent of the notary public, or a personal representative of a deceased notary public shall retain the journal and the audio and visual recording or cause the journal and the recording to be retained by a depository designated by or on behalf of the person required to retain the journal and the recording. The recording must be retained for at least ten years from the date of the remote online notarial act. The journal must be retained for at least ten years after the performance of the last remote online notarial act chronicled in the journal.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 207 of Title 49, unless there is created a duplication in numbering, reads as follows:

USE OF ELECTRONIC SIGNATURE AND SEAL.

A. In performing a remote online notarial act, a notary public shall attach or logically associate the notary public’s electronic signature and electronic seal to the certificate of notarial act in a tamper-evident format. The electronic seal must be capable of being copied together with the electronic record to which it is attached or with which it is logically associated. The certificate must be attached to or logically associated with the electronic record that is the subject of the remote online notarial act. If the Secretary of State has approved standards under Section 203 of this title for attaching or logically associating the electronic signature, electronic seal, or certificate, the process must conform to the standards.

B. A notary public’s use of an electronic signature and electronic seal under this section satisfies the requirement of Section 5 of this title that a notary public authenticate an official act with an official signature and seal of office.

C. A notary public shall take reasonable steps to protect the notary public’s electronic seal from unauthorized use. A notary public may not allow another person to use the notary public’s electronic seal.

D. A notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State upon actual knowledge of the theft or vandalism of the notary public’s journal or electronic seal. A notary public shall immediately notify the Secretary of State upon actual knowledge of the loss or use by another person of the notary public’s journal or electronic seal.

E. Unless required as part of the application under subsection C of Section 204 of this title, a notary public is not required to submit an image of the notary public’s electronic seal to the Secretary of State. A notary public’s electronic seal is not subject to the requirement that an impression be filed with and approved by the Secretary of State under Section 2 of this title.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 208 of Title 49, unless there is created a duplication in numbering, reads as follows:

REMOTE ONLINE NOTARIZATION PROCEDURES.

A. Before performing a remote online notarial act, a notary public shall:

1. Reasonably identify the electronic record before the notary public as the same electronic record in which the principal made a statement or on which the principal executed or adopted an electronic signature; and

2. Take reasonable steps to ensure that the communication technology used in the remote online notarial act is secure from unauthorized interception.

B. In performing a remote online notarial act, a notary shall reasonably verify the identity of the principal by:

1. The notary public’s personal knowledge of the principal;

2. Each of the following:

a. Remote presentation by the principal of a current government-issued identification credential containing the photograph and signature of the principal;

b. Credential analysis of the identification credential; and

c. Identity proofing of the principal; or

3. Oath or affirmation of a credible witness who personally knows the principal if:

a. The credible witness is personally known to the notary public; or

b. The notary public has reasonably verified the identity of the credible witness under paragraph 2 of this subsection.

C. A notary public may:

1. Require a principal or credible witness to provide additional information necessary to assure the notary public of the identity of the principal or credible witness; and

2. Refuse to perform a remote online notarial act if the remote online notary public is not satisfied as to the identity of a principal.

D. A credible witness under subsection B of this section who is:

1. Physically present with a principal at the time of a remote online notarial act may be a remotely located individual if the credible witness and notary public communicate by means of communication technology; or

2. Physically present with a notary public at the time of a remote online notarial act may be outside the physical presence of a principal if the credible witness and principal communicate by means of communication technology.

E. The certificate of notarial act for a remote online notarization must indicate that the notarial act was a remote online notarial act performed by means of communication technology. A certificate is sufficient to satisfy the requirement of this subsection if it:

1. Complies with standards under Section 203 of this title; or

2. Is in a form otherwise sufficient under the laws of this state and contains a statement substantially as follows: “This remote online notarization involved the use of communication technology.”

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 209 of Title 49, unless there is created a duplication in numbering, reads as follows:

FEES. A notary public, or a person acting for or on behalf of a notary public, may charge and collect a fee not to exceed Twenty-five Dollars ($25.00) for a remote online notarial act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210 of Title 49, unless there is created a duplication in numbering, reads as follows:

TERMINATION OF NOTARY PUBLIC’S COMMISSION.

A. Except as provided by subsection B of this section, a notary public authorized to perform remote online notarial acts whose commission is terminated or revoked shall destroy the coding, disk, certificate, card, software, or password that enables the notary public to attach or logically associate the notary public’s electronic signature and electronic seal to an electronic record. A notary public subject to the provisions of this subsection shall certify compliance with this subsection to the Secretary of State. On the death or adjudication of incompetency of a notary public, the notary public’s personal representative or guardian shall comply with the provisions of this subsection.

B. A former notary public whose commission terminated for a reason other than revocation is not required to destroy the items described by subsection A of this section if the former notary public receives a new commission as a notary public within three months of the termination of the notary public’s former commission.

C. A notary public’s electronic signature and electronic seal must be destroyed under subsection A of this section if:

1. The notary public’s name changes during the term of the notary public’s commission; and

2. The notary public elects to use the notary public’s new name under a new commission pursuant to paragraph 2 of subsection B of Section 11 of this title.

D. The termination of a notary public’s commission does not affect the retention requirements of subsection D of Section 206 of this title.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 211 of Title 49, unless there is created a duplication in numbering, reads as follows:

LEGAL RECOGNITION OF REMOTE ONLINE NOTARIAL ACTS.

A. A remote online notarization under the Remote Online Notary Act satisfies any requirement of law of this state that a principal appear before, appear personally before, or be in the physical presence of a notary public at the time of the performance of the notarial act.

B. A notary public’s verification of a principal’s identity under subsection B of Section 208 of this title constitutes satisfactory evidence of identity of the principal and satisfies any requirement of law of this state that the notary public obtain satisfactory evidence of identity of the principal.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 212 of Title 49, unless there is created a duplication in numbering, reads as follows:

VALIDITY OF REMOTE ONLINE NOTARIAL ACTS. The failure of a notary public to perform a duty or meet a requirement specified in the Remote Online Notary Act does not invalidate a remote online notarial act performed by the notary public. The validity of a remote online notarial act under the Remote Online Notary Act does not prevent an aggrieved person from seeking to invalidate the electronic record or transaction that is the subject of the remote online notarial act or from seeking other remedies based on law of this state other than this chapter or based on law of the United States. This section does not validate a purported remote online notarial act performed by an individual who does not have the authority to perform remote online notarial acts.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 213 of Title 49, unless there is created a duplication in numbering, reads as follows:

APPLICABLE LAW; CONFLICT OF LAWS.

A. The validity of a remote online notarization performed under the Remote Online Notary Act is determined by applying the laws of this state, regardless of the physical location of the principal at the time of the remote online notarization.

B. In the event of a conflict between a provision of the Remote Online Notary Act and another provision of this title or any other law of this state, the provision the Remote Online Notary Act controls.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 214 of Title 49, unless there is created a duplication in numbering, reads as follows:

RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. The Remote Online Notary Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 16. This act shall become effective January 1, 2020.