

Date of Hearing: January 20, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Chris Holden, Chair  
AB 1093 (Jones-Sawyer) – As Amended January 3, 2022

Policy Committee: Judiciary

Vote: 9 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

**SUMMARY:**

This bill authorizes, beginning July 1, 2023, the use of remote on-line notarizations (RON) and creates a process for the Secretary of State (SOS) to license and regulate on-line notaries and on-line notary platforms. Specifically this bill:

- 1) Requires the SOS to adopt rules necessary to implement RON before July 1, 2023. Rules must cover the following: electronic journals and electronic seals, credential analysis, identity proofing, remote presentation, retention and storage of records, security and encryption and the fees that may be charged by an online notary public and an online notary platform.
- 2) Requires an online notarization platform registered with the SOS to provide a course of study approved by the SOS, including an examination, for online notaries public that will use the platform.
- 3) Requires an online notary public to notify the SOS within 15 calendar days of when they first enter into a contract with, or are authorized by their employer to use, an online notarization platform.
- 4) Provides that a person is guilty of a misdemeanor if they, without authorization, knowingly obtain, conceal, damage or destroy the certificate, disk, coding, card, program, software or hardware that enables an online notary public to affix an official electronic signature or electronic seal.
- 5) Creates a private right of action against an online notarization platform for a violation of this bill. Remedies include the greater of the actual damages sustained or statutory damages of \$250 per violation, injunctive or declaratory relief and attorney's fees and costs.

**FISCAL EFFECT:**

- 1) Costs (General Fund (GF)) in the tens of millions of dollars to the SOS to develop, implement and operate a RON program. SOS estimates one-time costs of approximately \$24.5 million dollars and annual costs of approximately \$11 million dollars to implement, maintain and operate a RON program. Costs include additional staff, staff overtime, information technology infrastructure and significant data storage costs to store records of

online notarizations. SOS also stated that while fees may offset annual operations costs, significant one-time GF money will be necessary to draft regulations and implement the RON process.

- 2) Costs (Trial Court Trust Fund) possibly in the low hundreds of thousands of dollars to the trial courts in workload to hear and adjudicate civil and criminal violations of the RON program. This bill creates a new misdemeanor for tampering with an online notary's electronic signature or seal and a new private right of action against RON platforms. A defendant charged with a misdemeanor is entitled to no-cost legal representation and a jury trial. If five new crimes are filed annually statewide and proceed to trial resulting in the use of two days of court time, at an estimated cost of approximately \$8,000 for an eight-hour court day, the approximate cost to the trial courts would be \$80,000. If five new lawsuits are filed for violations of the RON process, resulting in 50 hours of court staff workload, at a cost of \$1,000 per hour, the total cost to the trial courts would be \$250,000 annually. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the to perform existing duties.
- 3) Unknown, but possibly significant costs in excess of \$150,000 annually to the Department of Justice and Judicial Council to collaborate with the SOS to draft and implement regulations related to retention and storage of online notarial records as required by this bill.

#### COMMENTS:

- 1) **Purpose.** According to the author:

Remote online notarization can help eliminate obstacles of accessing notary services in rural communities and provide consumers with flexibility by reducing travel time. Adoption of reliable and secure remote options for notarization is not just important now when businesses and individuals need help moving forward due to the challenges posed by the pandemic, but will also remain a critical access point for Californians in the future.

- 2) **RON.** Existing law requires numerous types of documents to be signed in the presence of a notary public in order to ensure that the identity of the person signing the document can be verified. For example, real estate transactions, powers of attorney and probate documents all require notarization. Notaries are required to register with, and are regulated by the SOS. AB 1093 authorizes a notary public to apply for registration with the SOS to be a remote online notary public and authorizes RON platforms to operate in California. Thirty other states currently allow for remote notarization and the need for remote notarization has been intensified by the pandemic. Additionally, Congress is considering a RON program that may be insufficient to protect consumers, meaning California may need to act quickly to adopt its own RON program if it wants to avoid federal preemption. Finally, AB 1093 only authorizes online notarization of electronic signatures on electronic documents.

However, law enforcement and prosecutors rely on notarizations in order to detect and prosecute fraud, particularly real estate fraud. California is the only state to require the principal to a notarial act to affix a thumb print. Therefore, it is critical that an online notarization provide the same level of assurance that the person affixing an electronic signature is the person they claim to be. This bill also requires SOS to draft and implement regulations and processes to authorize use of RON no later than July 1, 2023. Assuming this bill becomes operative on January 1, 2023, that leaves only six months for SOS to draft and implement regulations. Regulations in support of new programs usually take a year or more, given the requirements for public comment. The author may wish to consider pushing the operative date out to 2025.

- 3) **Prior Legislation.** AB 2368 (Calderon), of the 2017-2018 Legislative Session, would have authorized RON in California. AB 2368 was referred to but never heard in the Senate Judiciary Committee.

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