

Date of Hearing: January 13, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1093 (Jones-Sawyer) – As Amended January 3, 2022

**SUBJECT:** REMOTE ONLINE NOTARIES PUBLIC

**KEY ISSUE:** SHOULD CALIFORNIA LEGALIZE REMOTE ONLINE NOTARIZATION, AND IF SO, WHAT SAFEGUARDS ARE NECESSARY TO ENSURE THE PROPER FUNCTIONING OF THE RESULTING ONLINE NOTARIAL SYSTEM?

**SYNOPSIS**

*This bill would make the practice of remote online notarization legal in California for the first time. A person registered with the California Secretary of State as an online notary public could notarize an individual's signature without the individual having to personally appear before the notary, as required for notarization under current law. If it were to enact this bill, California would join more than 30 other states that now permit various forms of remote online notarization.*

*This analysis addresses the following issues:*

- 1) *Why is notarization important?*
- 2) *What is the significance of California's fingerprint requirement for certain notarial acts?*
- 3) *What is the impetus for California to legalize remote online notarization?*
- 4) *What types of documents can be remotely notarized under this bill?*
- 5) *How will this bill help ensure preservation of online notarial records?*
- 6) *How does this bill help ensure the evidentiary availability of online notarial records?*
- 7) *What privacy protections does this bill offer for online notarial records?*
- 8) *How does this bill help ensure proper apportionment of liability?*
- 9) *Why does this bill currently place restrictions on the recognition of online notarial acts conducted by out-of-state notaries?*
- 10) *What points remain to be addressed in this bill?*

*This bill is supported by American Property Casualty Insurance Association, California League of Independent Notaries, LavaTurtle Software, Inc., and LeadingAge California. It has no opposition on file. Several entities have submitted "letters of concern" addressing various aspects of the bill; these letters are discussed herein.*

**SUMMARY:** Enacts the Online Notary Public Act (Act), authorizing remote online notarization within California. Specifically, **this bill:**

1) Defines the following terms:

- a) "Online notary public" means a notary public who has registered with the Secretary of State to perform online notarizations.
- b) "Online notarization" and "online notarial act" mean a notarial act performed by an online notary public by means of an online notarization system that meets designated statutory

and regulatory standards. Only electronic records may be the subject of an online notarization.

- c) “Online notarization system” means the computer hardware and software that enable an online notary public to do both of the following:
  - i) Perform an online notarial act by means of audio-video communication.
  - ii) Create an audio-video recording and a corresponding entry for the appropriate electronic journal for the online notarial act.
- d) “Online notarization platform” includes:
  - i) An individual or entity that provides an online notarization system to a principal or an online notary public.
  - ii) An individual or entity other than the Secretary of State that stores one or more records evidencing online notarial acts.
- e) “Electronic journal” means the online notary public’s sequential record of all official acts performed while using a particular online notarization platform. An electronic journal must be capable of providing both physical and electronic copies of any entry.
- f) “Credential” means a record which evidences an individual’s identity and meets designated statutory standards.
- g) “Remote presentation” means transmission to the online notary public, through audio-video communication, of an image of a government-issued identification credential that is of sufficient quality to enable the notary to identify the individual seeking the notary’s services.
- h) “Credential analysis” means a process or service through which a third party affirms a credential’s validity through review of public and proprietary data sources.
- i) “Identity proofing” means a process or service through which a third party affirms an individual’s identity through review of personal information from public and proprietary data sources.
- j) “Online notary’s electronic signature” means an electronic signature that meets designated statutory and regulatory standards, and includes an image of the online notary public’s handwritten signature filed with the Secretary of State.
- k) “Electronic seal” means information within a notarized electronic record that corresponds to information in notary seals used on paper records, as well as designated statutory and regulatory standards.
- l) “Electronic online notarial certificate” means an attachment to an electronic record that is completed by an online notary public, and contains that notary’s electronic seal, electronic signature, and any facts that the notary attests to in the particular notarized transaction.

- 2) Requires the Secretary of State to adopt rules necessary to implement the Act before July 1, 2023.
- 3) Specifies the topics that the Secretary of State must address in its rulemaking, including 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.
- 4) Requires the Secretary of State's rules to ensure that principals with disabilities are accommodated by online notarization platforms and online notaries public consistent with applicable law.
- 5) Specifies that identity proofing must be performed at least at Identity Assurance Level 2, as established in the National Institutes of Standards and Technology Special Publication 800-63A, dated June 2017, or any successor publication. Further specifies that, if this standard cannot be met due to applicable laws, such as California law governing the disclosure of information regarding driver's licenses or other identification cards, then the Secretary of State must adopt the most rigorous standard for identity proofing that also conforms with those laws.
- 6) Requires the Secretary of State to consult with the Judicial Council and the California Department of Justice regarding the format for records of online notarial acts.
- 7) Permits the Secretary of State, in developing rules under the Act, to consider the views of state entities, departments, or agencies, and of members of the public.
- 8) Prohibits an online notarization platform from being authorized for use in California and also prohibits online notaries public from providing online notarization for a principal located in California prior to adoption of rules by the Secretary of State.
- 9) Permits an individual to apply to the Secretary of State for registration as an online notary public. Sets forth standards for the application.
- 10) Requires an online notarization platform registered with the Secretary of State to provide a course of study approved by the Secretary, including an examination, for online notaries public that will use the platform.
- 11) Requires online notaries public to notify the Secretary of State 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.
- 12) Clarifies that if an online notary public ceases to use an online notarization platform, that neither the online notary public nor the online notarization platform is absolved of their statutory and regulatory duties with respect to security, preservation, and production of records.
- 13) Authorizes an online notary public to perform an online notarization for a principal located in California. Further authorizes performance of an online notarization for a principal in another state or outside the United States if the act is not prohibited in the jurisdiction in which the principal is physically located.

- 14) Requires audio-visual communications with an online notary public to consist of continuous, synchronous audio and video feeds with adequate clarity such that all participants can be clearly seen and understood at all times. Mandates online notaries public to terminate a session if, in their judgment, this standard is not met.
- 15) Requires online notaries public and online notarization platforms to use industry-standard encryption in all audio-video communication and to take reasonable steps to ensure that it is secure from unauthorized interception.
- 16) Requires online notarization platforms to create an audio-video recording of the online notarial act.
- 17) Requires online notaries public to keep one or more secure electronic journals to record each online notarial act that they perform.
- 18) Establishes standards for what information must be contained in an electronic journal, including, but not limited to:
  - a) The date, time, and type of the act being notarized, with the time being that of the notary's location at the time of the act.
  - b) The physical location of each principal obtaining notary services, as represented to the online notary public at the time of the online notarial act.
  - c) The character of the electronic records being sworn to, affirmed, acknowledged, or proved.
  - d) The electronic signatures of the individuals obtaining online notary services.
  - e) A notation of the type of identification credential provided to the online notary public for credential analysis, a record of the identity proofing, and any other information required by the Secretary of State.
  - f) The audio-video recording of the online notarial act.
  - g) The fee charged for the online notarization.
- 19) Requires a backup of the electronic journal to be made immediately after new information is added.
- 20) Requires an online notary public who resigns, is disqualified, is removed from office, or allows their registration to expire to deliver their electronic journals to the Secretary of State.
- 21) Requires an online notary public to, upon request, provide a copy of an entry in the notary's electronic journal to a member of the public, for which the notary may charge a reasonable fee, as determined by the Secretary of State.
- 22) Establishes requirements for the online notary public's electronic seal.
- 23) Mandates that an online notary public and an online notarization platform notify appropriate law enforcement agencies and the Secretary of State of the loss, compromise, theft,

vandalism, corruption, breach, or use by another person of an electronic journal, electronic signature, electronic seal, or (in the case of an online notarization platform) any records evidencing online notarial acts.

- 24) Defines the standard of “satisfactory evidence” for an online notary public to verify the identity of an individual seeking notary services as all of the following:
  - a) An absence of information, evidence, or other circumstances that would lead a reasonable notary public to believe that the principal is not the individual that the principal claims to be.
  - b) Remote presentation of a credential.
  - c) Credential analysis.
  - d) Identity proofing.
- 25) Specifies that any record of a credential transmitted for purposes of identity verification is not to be retained longer than necessary to verify the identity of the principal and make an entry in the electronic journal.
- 26) Sets forth the form of an online notarial certificate for an acknowledgment and a jurat, as well as the form of certification that a tangible copy of an electronic record is an accurate representation of the electronic record.
- 27) Requires county recorders to accept for recording a tangible copy of an electronic record bearing electronic signatures if it contains the online notary public’s certification that it is an accurate representation of the electronic record. Such a tangible copy satisfies any legal requirement that the document accepted for recording be an original or bear an original signature.
- 28) Provides that a person is guilty of a misdemeanor if they, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware that enables an online notary public to affix an official electronic signature or electronic seal.
- 29) Mandates that a person or entity apply for registration with the Secretary of State to be an online notarization platform. Requires any such entity to first obtain a certificate of qualification from the Secretary to transact business in California.
- 30) Permits the Secretary of State to deny or terminate the registration of an online notarization platform if the Secretary determines that the online notarization platform is not capable of complying with the Act or rules adopted thereunder.
- 31) Requires, as part of the application process, that an officer of the prospective online notarization platform sign a statement under penalty of perjury that the platform will comply with lawful properly-served process.
- 32) Mandates that only an online notarization platform registered with the Secretary of State may provide an online notarization system for an online notary public that performs online notarizations for principals located in California.

- 33) Absolves an online notary public that exercises reasonable care when using an online notarization platform from liability for any damages that result from the platform's failure to comply with the Act or rules thereunder. Disallows contractual waiver of this provision.
- 34) Requires an online notarization platform that ceases to provide an online notarization system 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 to do both of the following:
- a) At least 30 days prior to the event, notify each online notary public that has used the platform of the event and enable the notary to transfer all records (including electronic journals) to another online notarization platform or the Secretary of State at no charge to the online notary public.
  - b) Thereafter, promptly delete all records of online notarizations, including any electronic journals.
- 35) Prohibits an online notarization platform from accessing, using, sharing, selling, disclosing, producing, providing, releasing, transferring, disseminating, or otherwise communicating any of the following, absent a court order or an express written request (as defined) by the principal:
- a) The contents of the online notary public's electronic journal.
  - b) The contents of a document notarized by an online notary public.
  - c) The contents of a record of an online notarial act.
  - d) The personal information of a person whose signature is notarized, or whose oath or affirmation is taken, during an online notarization.
- 36) Permits, notwithstanding 35), an online notarization platform to access, use, share, disclose, produce, provide, release, transfer, disseminate, or otherwise communicate the contents of a document or record of an online notarial act to the extent necessary to facilitate the transaction of which the document or record is a part, or else to comply with notarial law in California.
- 37) Requires the Secretary of State to maintain a secure, indexed repository of records of online notarizations, including electronic journal entries. This repository may not be connected to the public internet.
- 38) Directs the Secretary of State to establish a protocol for an online notarization platform to transfer records of online notarizations to the Secretary of State at least once each calendar quarter.
- 39) Provides that the Secretary of State shall only produce a record of an online notarization in response to a court order, and that such an order can only be issued upon a showing that an accurate copy could not be obtained from the online notarization platform that enabled the record to be made.

- 40) Permits the Secretary of State to consider the failure of an online notarization platform to provide a copy of record in deciding whether to maintain the platform's registration.
- 41) Exempts records of online notarizations stored by the Secretary of State from the Public Records Act.
- 42) Permits the Secretary of State to destroy a record of an online notarization ten years after the date the corresponding electronic journal was deposited with the Secretary, provided that no request for a record contained or referenced in that journal has been made.
- 43) Provides a private right of action against an online notarization platform for a violation of the Act. 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.
- 44) Declares that any waiver of the provisions of the Act to be contrary to public policy, void, and unenforceable.
- 45) Declares the provisions of the Act to be severable, so that if any provision is held invalid, its invalidity shall not affect other provisions that can be given effect without the invalid provision.
- 46) Permits a notary public located outside of California, but within the United States, to make a proof or acknowledgment of an instrument if the principal is located outside the state, it is lawful for the notary to perform the act, and the online notarization platform that is utilized is registered with the Secretary of State.

**EXISTING LAW:**

- 1) Authorizes the Secretary of State to appoint and commission notaries public and authorizes notaries public to act as such in any part of the state. (Government Code Section 8200.)
- 2) Requires every person appointed as a notary public to meet the following requirements:
  - a) Be a legal resident of the state (with specified exceptions);
  - b) Be not less than 18 years of age;
  - c) After July 1, 2005, have completed a six-hour course of study approved by the Secretary of State; and
  - d) Have satisfactorily completed a written examination prescribed by the Secretary of State. (Government Code Section 8201.)
- 3) Requires the Secretary of State to determine if the applicant possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibility of the position and requires the applicant to complete a criminal background check. (Government Code Section 8201.1.)
- 4) When executing a jurat (a notarial act in which the signer is swearing to the content of the document), requires a notary to administer an oath or affirmation and requires the affiant to sign the document in the presence of the notary. (Government Code Section 8202.)

- 5) Establishes the term of office for a notary public of four years. (Government Code Section 8204.)
- 6) Establishes the duties of a notary public, which include taking the acknowledgment or proof of advance health care directives, powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of that proof or acknowledgment, endorsed on or attached to the instrument. (Government Code Section 8205.)
- 7) Requires a notary public to keep one active sequential journal at a time, of all official acts performed as a notary public, with specified information that must be included relating to the identity of the person signing, the fee charged, the document notarized and other information. (Government Code Section 8206.)
- 8) Requires a notary public to provide and keep an official seal, with specified requirements. (Government Code Section 8207.)
- 9) Requires every person appointed a notary public to execute an official bond in the sum of \$15,000 in the form of a bond executed by an admitted surety insurer. (Government Code Section 8212.)
- 10) Authorizes the proof or acknowledgement of an instrument to be made outside of the state, but within the United States, before a notary public, a justice, judge, court clerk, or any other officer authorized to take proof of acknowledgment. (Civil Code Section 1182.)
- 11) Provides that any certificate or acknowledgement taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgement is made. (Civil Code Section 1189 (b).)
- 12) Defines “satisfactory evidence” as the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not who that person claims to be, and certain other criteria. These criteria include the requirement that if the document to be notarized is a deed, quitclaim deed, deed of trust, or other document affecting real property or a power of attorney document, the notary public shall obtain the signing party to place a thumbprint in the notary’s journal. (Civil Code Section 1185 (b).)
- 13) Requires a notary public not to acknowledge an instrument unless the notary has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument. (Civil Code Section 1185 (a).)
- 14) Provides that a seal is presumed to be genuine and its use authorized if it purports to be the seal of a notary public within any state of the United States. (Evidence Code Section 1452.)
- 15) Provides that in civil and criminal actions, a signature is presumed to be genuine and authorized if it purports to be the signature, affixed in the signer’s official capacity, of a notary public within any state of the United States. (Evidence Code Section 1453.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** This measure would authorize a person registered with the California Secretary of State as an online notary public to perform remote online notarizations. In other words, a California online notary could notarize an individual's signature without the individual having to personally appear before the notary, as required for notarization under current law. The bill's author writes:

AB 1093 will increase consumer access to vital notarial services, improve physical safety while making transactions, and ensure California leads the way in adapting a safe and secure RON system. The COVID-19 pandemic further heightened the need for RON systems given notaries public designation as essential workers, therefore placing them and their client at greater risk of contracting the covid virus. California should welcome the adoption of a safe RON system that will preserve the integrity of the notary process and expand access for California consumers

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.

AB 1093 would allow a notary public to apply through the Secretary of State to be a remote online notary public. The bill would also allow the Secretary of State to adopt rules necessary to implement the [Online Notary Public] Act and clarifies remote online notary publics must qualify as a notary public under Article 1, commencing with Section 8200, of the Government Code.

The bill in print is the product of a months-long stakeholder process led by the author's office and Committee staff. Among the entities participating were representatives of the California Secretary of State; the California Attorney General's Office; two online notarization companies; several trade associations affected by notarization; an organization representing California notaries; an organization representing national notaries; and several nonprofit privacy and legal groups. Two major issues remain in dispute: (1) the degree to which California should grant legal recognition to online notarial acts performed by out-of-state notaries, and (2) the appropriate scope of the private right of action established by this bill. Several minor issues also remain to be worked out between stakeholders. Accordingly, rather than taking a support or oppose position at this time, three trade associations—California Association of Realtors, California Escrow Association, and California Land Title Association—have submitted a joint letter of concern (referred to herein as the “three-party letter of concern”). These three associations have joined the California Credit Union League, California Mortgage Bankers Association, DocuSign, National Notary Association, and Notarize in submitting another joint letter of concern (referred to herein as the “eight-party letter of concern”). The concerns raised in these letters, as well as in others submitted to the Committee, are discussed herein.

Despite significant differences among stakeholders, there appears to be general agreement that the bill in print provides a framework for remote online notarization to be made legal in California. The Committee is therefore hopeful that this version of the bill can pass out of the Assembly by the January 31, 2022 constitutional deadline and remaining issues worked out in the Senate over the remainder of this legislative session. Committee staff will remain engaged during this process.

***Why is notarization important?*** It is undoubtedly somewhat inconvenient to use an in-person notary. In-person notarization may require traveling to a physical location outside of one's home or office, usually during work hours, and requires one to have in their possession the proper documentation or identification. In our fast-paced, networked world, there is no doubt that in-person notarization would reduce the ease and efficiency of transactions.

However, the purpose of the notary system is not efficiency. Its purpose is to ensure the identity of persons whose signatures used to document certain vital life-altering transactions and events, such as real estate sales and purchases, the granting of powers of attorney, and the creation of advance health care directives, and the validity of their signatures, especially if their validity is ever challenged. These events and transactions occur relatively rarely in most people's lives. And lawsuits challenging the legality of these transactions and events regularly turn on proof that a signature was, or was not, validly notarized. To make significant changes in California's notary laws has significant implications for California's civil justice system, and therefore must be undertaken with caution and the utmost care.

California courts have repeatedly recognized the "important function notaries serve in our society[.]" (*McComber v. Wells* (1999) 72 Cal. App. 4th 512, 518.) Notarized documents have a unique status in California courts in that a notary public's seal and signature are both presumed to be authentic. (California Evidence Code Sections 1452, 1453.)

The following is a random sample of the many California cases in which notarized documents proved significant and the how validity of notarized signatures affected the outcome of legal disputes:

- During a divorce proceeding, a wife sought to demonstrate that she had not signed documents authorizing certain real estate sales, from which her husband had profited. She did so by requesting copies of pages from a notary journal, which in turn revealed that there were no fingerprints in the journal for pertinent sale documents on which fingerprints were required to be obtained. (*In re Stone* (2010) No. G042002, 2010 WL 1679989, 2010 Cal. App. Unpub. LEXIS 3037.)
- An individual tried to show that a grant deed transferring title to his home, which he supposedly signed when he was in prison, was fraudulent. But the pertinent notary journal entry showed that the notary had met him in prison to notarize his signature. The trial court found that the grant deed was valid and enforceable, relying in part on expert testimony regarding his signature and fingerprint found in the notary journal. (*Cardenas v. Fremont Reorganizing Corp.* (2012) No. B221963, 2012 Cal. App. Unpub. LEXIS 9307.)
- A man died; a woman claimed his estate on the basis that they were married. However, the private marriage service business which had conducted their wedding years earlier had neglected to register their marriage license. But a page in a notary journal which notarized their signatures on a marriage license, was deemed "sufficient to conclude that the parties believed a valid marriage took place." (*Estate of Jie Chen* (2006) No. B182317, 2006 WL 1545714, 2006 Cal. App. Unpub. LEXIS 4900 at \*9.)
- A husband forged his wife's signature on a trust deed securing a loan and then found a notary who would notarize these signatures, despite his wife's absence. The couple later

separated, and the home was foreclosed on when the wife was unable to pay the loan that the husband had fraudulently obtained. The wife discovered her forged signature on the notarized trust deed when it was produced at deposition. (*McComber, supra*, 72 Cal. App. 4th at 514, 522.)

These are all cases involving ordinary people dealing with rather commonplace life events-- marriage, divorce, death, and (sadly) incarceration—which had a significant effect on their personal and financial circumstances (*i.e.*, whether they were married and therefore entitled to community property, or whether they were responsible for the repayment of loans). There is nothing especially remarkable about the parties or their circumstances. Yet in every case, various features of in-person notarization ensured that essential facts about the challenged transactions were captured: whether or not signatures were forged, whether or not fingerprints were taken, and/or where signatures took place.

None of this should be construed as arguing that California’s present notarial system is perfect. As shown by the cases described above, notaries sometimes behave negligently or are even complicit in fraud. And it may be that remote online notarization will reduce some negligence and fraud—for example, elder abuse may be easier to prove if the recording of a notarization shows that a signer was not lucid—if it is done properly.

Eventually, it may be that technology makes notarization obsolete. Several stakeholders and legislative staff have remarked to Committee staff that a contemporary smartphone (equipped with facial and fingerprint recognition, location data, and in combination with devices like smart watches, physiological data about heart rate and breathing patterns) is capable of identifying its owner. If it becomes possible to prevent forgery or falsification of the record of such an identification, notarization may no longer be necessary. But until that happens, notarization will remain an evidentiary bulwark of our legal system—neither a mere formality, nor an inconvenience to be commodified away.

***What is the significance of California’s fingerprint requirement for certain notarial acts?***

California is the only state in the nation that requires its notaries to take the fingerprints of all persons signing real estate documents and powers of attorney. Under Government Code Section 8206 (a)(2)(G), “If the document to be notarized is a deed, quitclaim deed, deed of trust, or other document affecting real property, or a power of attorney document, the notary public shall require the party signing the document to place his or her right thumbprint in the journal.” This requirement originated in the early 1990s with a wave of falsified loan documents. A pilot program in Los Angeles County, beginning in 1993, required notaries public to obtain the thumbprints of parties signing real estate deeds. (*See* SB 1842 (Watson, Chap. 815, Stats. 1992).) The program proved so successful at deterring fraud that these requirements were made statewide beginning in 1996. (*See* AB 1828 (Bustamante, Chap. 569, Stats. 1995).) Fingerprint requirements for powers of attorney were added in 2007. (*See* AB 886 (Runner, Chap. 399, Stats. 2007).)

At this point in time, it is not possible to falsify a thumbprint, as even identical twins’ fingerprints differ from one another. By contrast, an identical twin could potentially defeat a remote online notarization system if they were able to pilfer their twin’s driver’s license and knew enough information to answer online authentication questions (e.g., “Which of these banks did you get a loan from?”, “In which of these years did you borrow money for a car loan?”, etc.).

Despite this flaw, the twin problem could be considered an outlier that should not impede this otherwise worthy legislation from proceeding.

Certain business stakeholders have downplayed concerns about the fingerprint requirement, deeming it antiquated. But less than ten years ago, Governor Brown signed into law AB 2326 (Wagner, Chap. 202, Stats. 2012), ensuring that signatures on essentially any document affecting real property must be accompanied by a fingerprint. The Senate Judiciary Committee analysis of the bill quotes its author as stating: “[T]he notary journal can be used as a source of evidence for law enforcement authorities; obtaining a thumbprint in the notary journal for all real estate documents may assist in the identification and prosecution of fraudsters.”

The fingerprint requirement does, in fact, assist law enforcement in solving crimes. The National Notary Association, one of the groups that has provided input on this bill, features a story on its website about two murders, one in San Francisco and one in Los Angeles, that were solved because of the fingerprints that perpetrators had to provide in order to transfer the victims’ property into their names. (See Clarke, *Murder, Fraud And Forgery Foiled*, The National Notary Bulletin (Oct. 8, 2013) available at <https://www.nationalnotary.org/notary-bulletin/blog/2013/10/murder-fraud-forgery-foiled>.) Interestingly, one of the crimes involved an actor hired to impersonate the victim; the likeness was sufficient to fool the notary and it was only the fingerprint that identified the impersonator. If an actor could fool a licensed notary face-to-face, it is obvious that an actor could do so over a video link.

In 2021, the Sacramento Police Department and Sacramento County District Attorney’s Office solved a real estate fraud case in Sacramento’s affluent Land Park neighborhood using fingerprints in a notary’s journal. When an elderly homeowner died intestate, fraudsters impersonated her and sold her house. As required under California law, the signatures on several of the real estate transfer documents had to be notarized. One of the perpetrators had to provide her fingerprint along with her signature. Investigators looking into this transaction were able to identify and prosecute this individual using the relevant entries in the notary journal, and the victim’s heirs were able to recover the value of the home from title insurance.

In-person notarization may have been inconvenient for the victims of these crimes; yet it, together with California’s fingerprint requirement, has ensured them and their heirs a modicum of justice that would not have been available in virtually any other state. (Illinois has a relatively narrow fingerprinting requirement for documents conveyance of residential real estate in Cook County, where Chicago is located. See 5 Illinois Compiled Statutes 313/3-102.) California’s fingerprint requirement certainly deters a certain amount of fraud. It may be that being recorded signing a document will have the same effect. And, where fraud is suspected in a transaction that is remotely notarized, it may be that a recording of the notarization provides sufficient evidence to solve the underlying crime—but for that to happen it is absolutely essential that these recordings be preserved and available, including for law enforcement purposes.

As a final note, the option of capturing a signatory’s electronic fingerprint as a substitute for an ink fingerprint has been rejected because of the risk of identity theft in the event of a security breach, and because there is no way to ensure that the fingerprint transmitted to the notary is actually the fingerprint of the signatory, rather than a forgery or fake.

***What is the impetus for California to legalize remote online notarization?*** The principal reason for California to legalize remote online notarization is in anticipation of preemption by federal legislation. In recent years, industry representatives have repeatedly lobbied Congress to legalize

remote online notarization on a nationwide basis. (See, e.g., American Land Title Association, *FAQ: Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020*, available at <https://www.alta.org/file.cfm?name=SECURE-Notarization-Act-2020-FAQs> [“Q: Who supports the...Act? A: The American Land Title Association (ALTA), the Mortgage Bankers Association (MBA) and the National Association of Realtors (NAR).”]) The latest effort, the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021 (“SECURE Act”), was introduced as a standalone measure in both the Senate and the House. The SECURE Act was eventually passed by the U.S. House of Representatives as part of its version of the National Defense Authorization Act (“NDAA”), a must-pass bill, under the rationale that it was necessary to facilitate notarizations for U.S. military personnel stationed abroad. (See H.R. 4350, 117th Congress, Section 6501, available at <https://www.congress.gov/bill/117th-congress/house-bill/4350/text>.) It is unclear why providing this important service for servicemembers would require trampling on domestic notarial law, which has always been the province of state regulation. Ultimately, however, the final version of the NDAA signed by President Biden did not include the SECURE Act.

The SECURE Act would have immediately legalized remote online notarization in all states, including California, forcing the state to recognize the legality of documents notarized by out-of-state notaries (undercutting the fingerprint requirement, discussed above) and allowing California notaries to perform notarizations for residents of other states (an act they have not been commissioned or trained to perform and for which no standards have been promulgated by the California Secretary of State). The federal legislation fails to address important issues of data privacy, evidentiary accessibility, user privacy, and liability, all of which are discussed below.

Given that remote online notarization’s proponents will likely reintroduce similar federal legislation in the near future, it is important that California legalize online notarization in 2022. If federal legislation passes, Californians would benefit from having a sensible implementation of remote online notarization in place, rather than being forced to immediately adopt, and adapt to, the inadequate framework set out in the SECURE Act.

***What types of documents can be remotely notarized under this bill?*** This measure authorizes remote online notarization of electronic signatures on electronic documents. It does not authorize remote online notarization of handwritten “wet” signatures on paper documents. The latter task presents numerous challenges, including safeguarding the privacy of the document that is being notarized, and is better considered as the subject of future legislation.

***How will this bill help ensure preservation of online notarial records?*** California currently requires notaries to preserve records of their notarial acts in a sequential journal, maintained as a series of paper notebooks. (Government Code Section 8206.) A member of the public can request copies of entries in a notary’s journal. (*Ibid.*) When a person is no longer authorized as a notary public, whether because they resign, allow their registration to expire, or have their registration terminated by the Secretary of State, they must turn over their journal to the county recorder where the notary has filed their oath of office. (Government Code Section 8209.) Thereafter, one can request these records from the county recorder. (*Ibid.*) The crucial point is that loss, theft, or destruction of a notebook means only the records contained in that notebook are lost.

Many online notaries in other states maintain records of remote notarizations, including recordings of their interactions with the signer, online—that is, in databases maintained by

private companies. What happens if one of these companies goes out of business? Or if its records were hacked and corrupted? Most of the revenue for an online notarial act comes from the fee the consumer pays for the initial notarization. After that, preservation of the record of the transaction is a cost. What happens if a company, in order to reduce costs, decides to abandon its online notarization line of business, or more nefariously, simply deletes the records, claiming it was an accident? A single lost notary journal imperils the records of, at most, a few hundred transactions. How many records would be unavailable under one of these scenarios? Hundreds of thousands? Millions?

Any online notarization proposal should ensure that the public, law enforcement, and litigants can obtain records of disputed notarizations, even if these records are no longer available from the online notarization platform that facilitated the notarial act.

To address this issue, the bill does the following:

- Requires the Secretary of State to maintain a secure, indexed repository of records of online notarizations, including electronic journal entries.
- Directs the Secretary of State to establish a protocol for an online notarization platform to transfer records of online notarizations to the Secretary at least once each calendar quarter.
- Requires an online notarization platform that is ceasing to provide services to enable online notaries public that have used the platform to transfer their journals to another online notarization platform or to the Secretary of State.

*It is crucial to recognize that this bill is meant to provide the Secretary of State with flexibility in deciding how to best implement a data storage and retrieval system.* The state has face numerous challenges in setting up and running large information technology systems, such as FI\$Cal and the California Court Case Management System. Fortunately, the bill does not require the state to undertake another difficult information technology project. It would be entirely acceptable, under the bill, for the Secretary of State to require online notarization platforms to submit records on physical hardware or electronic media that will not degrade or malfunction, with records stored therein in a designated file format, indexed in a standard manner, all according to rules promulgated by the Secretary under this bill. Notaries public could be required to do the same when surrendering their journals at the end of their commissions; a task that would, essentially, be equivalent to turning in their paper journals. Under such a scenario, the Secretary of State would be faced with a warehouse storage-and-retrieval task, rather than a complex information technology project, in meeting its obligations under this bill.

Several stakeholders suggested to the Committee that records be sent to individual county recorders, to parallel the requirements for traditional journals. This seems unwise. The whole premise of online notarization is that in-person notarization is antiquated. It would be equally antiquated to require 58 different counties to each set up individual systems for managing these records, providing access to litigants and law enforcement, etc., rather than solve the problem once. It should also be evident that such a requirement would either present the counties with an unfunded mandate, or greatly increase this bill's costs if the state were to fund it. A central repository makes the most sense in order to ensure that records are preserved and accessible at the lowest cost to the public.

***How does this bill help ensure the evidentiary availability of online notarial records?***

Obtaining evidence of in-person notarization in California is straightforward. Any member of the public can make a written request to a notary public for a copy of a transaction in the notary's journal. The notary must respond within 15 business days of receipt of the request with either a photocopy of the corresponding line items in the notary's journal, or an acknowledgment that no such line item exists. (Government Code Section 8206.) It is also relatively easy to enforce a subpoena compelling production of a California notary's journal at trial or deposition.

It is necessary that records of online notarizations also be easily accessible to members of the public, law enforcement, and litigants. The latter is especially important, given this Committee's jurisdiction. Crucial recordings and other evidence of notarial acts may be under the control of entities incorporated and headquartered outside of California. Enforcing out-of-state subpoenas is notoriously time-consuming and potentially expensive, despite California's 2008 adoption of the Uniform Interstate Depositions and Discovery Act. (*See* Code of Civil Procedure Sections 2029.100-2029.900.) Litigants must generally determine the appropriate jurisdiction in which to seek the records and then seek issuance of a subpoena from an appropriate court in that jurisdiction. If the recipient of the subpoena ignores or disobeys the subpoena, litigation may be necessary in that out-of-state jurisdiction. All of this is expensive and time-consuming, and impairs the resolution of cases on their merits.

In order to address the problem of evidentiary accessibility, this bill does the following:

- Requires the Secretary of State to consult with the Judicial Council and the California Department of Justice regarding the format for records of online notarial acts. This enables the courts and the state's chief law enforcement officer to provide input on what format works best for their respective needs. Given the frequency with which file formats are updated and abandoned, it is critical that a universal standard is agreed upon.
- Requires online notarization platforms, as part of their registration process with the Secretary of State, to sign a statement under penalty of perjury that they will comply with lawful properly-served process.
- Requires online notaries public to provide copies of entries in their electronic journals upon request.
- Ensures that the Secretary of State is a repository of last resort for online notarial records if records are unavailable from the online notary or the online notarization platform.

***What privacy protections does this bill offer for online notarial records?*** There are generally no significant privacy concerns accompanying an in-person notarial act. The most that one can glean from an entry in a notarial journal, other than the fact that the identified individual signed a specified document on a specified date, is perhaps a driver's license or passport number. Notaries public do not keep copies of the documents they notarize, so that one need not fear that a rogue notary might violate one's privacy by, for example, selling a copy of one's will to one's heirs.

The situation is much different online, where the documents one is notarizing may be in the possession of online notarization platforms. Information regarding one's most personal financial, familial, and medical affairs must be kept absolutely private, unavailable for commercial purposes such as data-mining or sale.

While some have contended that the California Consumer Privacy Act offers sufficient privacy protections, the Committee may not agree. At this point in time, most consumers realize that supposedly-free email, social networking, and news websites actually come with the price of offering one's data for commercial use. That is not the case for notarizations. Most consumers will likely bring the same expectation of privacy to online notarization that they do to in-person notarization. It is undesirable to place on the consumer the burden of asserting their privacy rights—as the CCPA requires—when they engage in a notarial act. In fact, any convenience gained from an online notarization would arguably be offset by the burdensome process of asserting CCPA rights in order to ensure one's privacy.

Consequently, this bill prohibits, absent a court order, an online notarization platform from accessing, using, sharing, selling, disclosing, producing, providing, releasing, transferring, disseminating, or otherwise communicating the personal information of a person whose signature is being notarized, as well as the contents of the document being notarized, the record of the notarial act, and the contents of the online notary public's electronic journal. An exception is made in order to facilitate the transaction of which the notarization is a part. For example, if the notarization is part of a sale of real estate, records of the notarization can be transferred as necessary to complete the transaction—but no more.

***How does this bill help ensure proper apportionment of liability?*** Notaries public may be held liable in various ways for violating the laws governing in-person notarization. They may be sued for official misconduct or neglect (Government Code Section 8214); have their commissions revoked or suspended (Sections 8214.1, 8214.8); and be subject to a wide range of civil penalties (Sections 8201.2, 8207.4, 8214.15, 8214.21, 8214.23) and criminal sanctions (Sections 8214.2, 8221, 8225, 8227.1, 8227.3, 8228.1, 8209).

Under the bill, all of these forms of liability will continue to apply to online notaries public. However, there is an additional actor in an online notarization: the online notarization platform that facilitates the transaction. Platforms should be held liable for failing to adhere to their legal obligations under this measure. The amount of liability must be sufficient to deter negligence or underinvestment, e.g., in maintaining the security of records, as well as intentional misconduct, such as, in order to save money, failing to preserve and transmit records of online notarizations to the Secretary of State. The penalties outlined above for notaries public are insufficient and/or inapplicable to the businesses that offer online notarization services. Actual damages for privacy violations may be difficult to prove. Suspension or revocation of privileges will have no effect on a corporation that exits the online notarization market; similarly, criminal sanctions can do little against a dissolved corporation. Civil penalties generally require a public official, such as the Secretary of State, the Attorney General, or a district attorney, to allocate scarce resources to enforcement.

Accordingly, as written, the bill provides a private right of action against an online notarization platform for violations of the Act. 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.

The eight-party letter of concern raises the following objections to this provision. All quotations are from the letter:

- Overbroad standing to sue. “The [private right of action] opens the opportunity for any person to file suit against an online notarization platform for any violation of AB 1093.

There is no measure of how substantial the violation must be to entitle a litigant to sue, which is likely to encourage litigation for mere technical or procedural violations that have no real negative impact. Additionally, the bill includes no requirement for any damage or injury to the person filing suit, nor even a requirement that the person have used or been somehow connected with the platform in question. These omissions do not support recompense to parties damaged by wrongful conduct.”

- Potential duplicative liability. “[T]here remains a distinct possibility that the person could maintain a successful action under both this bill and other state or federal privacy laws for the same conduct, resulting in duplicative exposure and liability for online notarization platforms.”
- Difficulties in addressing third-party liability. “[The private right of action] does not account for the culpability of parties other than the online notarization platform which may cause or contribute to a violation of AB 1093. This leaves the platform provider to bear the full burden, cost and expense of the PRA litigation, even if the platform implemented all available commercially reasonable and industry standard processes and procedures.”

It is likely that these issues can be resolved through further discussion. While there does not appear to be a need to confer a general right to sue on any member of the public, any eventual solution must ensure that both injured parties and public entities be conferred standing. The duplicative damages issue is worthy of discussion. It is unclear why the third point is not addressed through existing California doctrines regarding third-party liability, and procedural devices such as impleader, but if clarification on this point is necessary, the provision can be amended to provide it.

That said, stakeholders are cautioned to continue working with the Committee and not to seek deletion or amendment of the private right of action without the Committee’s approval.

***Why does this bill currently place restrictions on the recognition of online notarial acts conducted by out-of-state notaries?*** Perhaps the most controversial aspect of this bill are the restrictions it places on recognition of remote online notarizations performed by notaries licensed under the laws of other states.

Under this bill, California would only recognize a proof or acknowledgment made through online notarization if, at the time of the notarial act, the signer was located outside of California, the notary could lawfully perform the act, and every online notarization platform involved was registered with the California Secretary of State.

In other words, a person located in California could have their documents remotely notarized, but only by an individual who holds a California online notary public commission.

Stakeholders contend that this provision is different from current California law governing recognition of out-of-state notarizations. Under existing Civil Code Section 1182, out-of-state notarizations are recognized if they are performed “without this state, but within the United States, and within the jurisdiction” of the notary public performing the notarial act. (A parallel provision in Civil Code Section 1183 provides for recognition of notarizations performed in other countries, subject to various conditions.) In other words, California recognizes the validity of an in-person notarization performed in another state by a notary licensed within that state.

Take the example of a California resident is in New Jersey for job-related reasons at the time the refinancing of their home mortgage closes. The individual can sign the relevant documents in New Jersey, and have their signature notarized by a New Jersey-licensed notary. The resulting deed of trust can then be recorded in the county in California where the home is located. This is an entirely lawful transaction, despite the fact that New Jersey does not impose a fingerprint requirement on real estate-related notarizations.

It should be evident that, currently, these sorts of out-of-state notarizations are relatively rare. Most California residents spend most of their time in California, and so usually sign significant documents that require notarization while present in this state. Ultimately, out-of-state notarizations have not proven a sufficiently-large source of fraud to warrant scrutiny or regulation. One notable exception, of course, are the fraudulent notarizations that supported many foreclosures in the wake of the 2008 financial crisis. (*See, generally*, Dayen, *Chain of Title* (2016) [detailing fraudulent notarizations of signatures on foreclosure documents performed in Florida, Ohio, Pennsylvania, and Texas.])

Giving unrestricted recognition to out-of-state notarizations raises several concerns for this Committee. If this bill is enacted, California will be surrendering its fingerprint requirement for real estate transactions and for powers of attorney notarized online. The state will instead be relying on the (as-yet-unknown) evidentiary and deterrent value of recordings of notarial acts, as well as other safeguards in this bill, such as the requirement that online notaries terminate a session if they do not “consist of continuous, synchronous audio and video feeds with adequate clarity such that all participants can be clearly seen and understood at all times.” (Proposed Government Code Section 8231.5 (d)(2).) Under the alternative proposal by these stakeholders, the state could do nothing if an online notary company were to set up a cubicle farm in some lightly-regulated, low-cost jurisdiction and start churning out online notarizations that did not meet California’s standards; the state would simply have to accept these for filing. Further, all of the provisions in this bill meant to ensure preservation of records and evidentiary accessibility would be meaningless if the companies facilitating these notarial acts were not required to transfer records to the Secretary of State and were not required to respond to process served within California. The public gains no benefit from a race to the bottom in notarial standards. Finally, given the ubiquity of location services on websites and smartphone apps, it is unclear why a principal located in California cannot be matched with a California notary for purposes of an online notarization.

The three-party letter of concern states that interstate recognition “is arguably protected by the ‘Full Faith and Credit Clause’” of the U.S. Constitution, though they fail to cite any cases in support of their argument. In the Committee’s view, the argument may be unconvincing. “The Full Faith and Credit Clause does not compel ‘a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.’” (*Baker v. GMC* (1998) 522 U.S. 222 (quoting *Pacific Employers Ins. Co. v. Industrial Accident Comm’n* (1939) 306 U.S. 493, 501).) Yet that is, in effect, what California would be doing if residents had their documents notarized by out-of-state notaries. Further, the Office of the Attorney General, which would be responsible for defending this provision if its constitutionality were challenged, has reviewed the amendments to this bill, and have not raised any constitutional concerns. Finally, the bill includes a severability clause, so if the opponents of this provision are correct in their doubts about its unconstitutionality, they could litigate the full faith and credit issue without endangering the remainder of the bill.

Both the three-party and eight-party letters of concern also argue for interstate recognition on grounds of consumer confusion. The three-party letter of concern states:

Consumers unwittingly using remote notarization services at-odds with the framework proposed by AB 1093 stand to be unnecessarily harmed if the bill were to pass in its current form. Apart from implications for real estate transactions, other examples include people with trusts that are relying on their signatures being valid, along with powers of attorney such as a durable power of attorney or a health care power of attorney that might be rendered invalid if out-of-state RON is declared improper in California. There are also important documents notarized in connection with adoptions and other child welfare matters, as well as title documents to mobile homes and vehicles, certain banking documents, and some types of license applications. AB 1093 could create a substantial amount of chaos if the validity of a number of those notarizations were suddenly called into question.

The eight-party letter of concern adds:

It is easy to imagine a situation where a California consumer believes they have followed the proper legal procedure for notarization of a critical transaction to the consumer, only to learn afterwards they mistakenly obtained the services of the wrong notary or consented to the wrong method of notarization.

NotaryCam, which has taken a “support if amended” position, adds:

This [restriction] would require the principal and a notary commissioned in another state to know if their platform was registered and is an undue burden on all parties involved.

There are two persuasive responses to these arguments. First, it should be entirely possible for the notarization website or app to determine whether the signer were located in California. As noted above, location-based services are ubiquitous. The website or app could also ask the signer where they are currently located, and add a large, highly-visible warning that the notarization will not be valid in California if the signer is in California and only a non-California notary is available. Further, the notary performing the notarization could also ask all of these questions and refuse to perform the transaction if the notary were located in another state and the signer were in California.

Second, as noted above, this bill regulates electronic signatures on electronic documents. In most situations, the person preparing the document to be signed—whether a lender preparing mortgage financing documents, a title company preparing real estate closing documents, or an attorney preparing an estate plan—is a sophisticated party who will be arranging the notarial services for the signing party or parties and can ensure that the in-state notary requirement is met. Unlimited interstate recognition might allow Californians to obtain notarization of handwritten “wet” signatures on paper documents. But as discussed above, that is not the stated intent of this bill, and legalizing such notarizations (particularly given the abandonment of the fingerprint requirement) would facilitate fraud, while removing privacy protections.

The three-party letter of concern also argues that, “[S]ince there is no indicia or indicator making clear a RON notarization process has occurred, it is impossible for people reviewing the notarized documents, whether RON or paper generated, to tell the difference. In short, there is no digital or paper trail to differentiate between the two types of notarization for a reader or person reviewing the document.” This argument was a bit surprising. This bill sets forth required text in

an acknowledgment, or jurat, stating that the signer “appeared before [the notary] by means of audio-video communication,” so that a reviewing party would know that it was remotely notarized. The Committee welcomes input from stakeholders demonstrating that other states have not drawn this distinction in their notarial boilerplate.

Finally, in its letter of concern, the American Society of Notaries speculates that, “While AB 1093 ... sets limiting conditions on recognition of an online notarization performed by a Notary Public of another state, its enactment could spur other states to reciprocate by barring recognition not only of online notarizations performed by a California Notary, but also of traditional, paper-based notarizations performed in California.” The Committee notes this argument, but given its speculative nature, does not find it dispositive on the question.

As with the discussion of liability, above, Committee staff pledges to participate in discussions around this topic, but cautions that any amendment or deletion of the restrictions in the bill must be approved by the Committee. It may be that a compromise can be found, such as recognizing out-of-state notarial acts so long as the facilitating online notary platform is registered with the Secretary of State and satisfies this bill’s other requirements—particularly those involving preservation and production of records, privacy, and liability. Acknowledging the validity of documents notarized online before enactment of this bill may also be a necessity. Input from the California Secretary of State and from the Office of the Attorney General on this topic would also be helpful and welcome.

***What points remain to be addressed in this bill?*** This bill is meant to be comprehensive; the version in print could be enacted and implemented as written. That said, stakeholder feedback suggests that the following topics would benefit from further discussion:

- The definition of “online notarization platform” in proposed Government Code Section 8231.1 could be amended to accommodate online notarization platforms’ use of third-party storage services. A business that simply provides storage services with no knowledge of the content it is storing should not be required to register with the Secretary of State. Simultaneously, online notarization platforms should be not be able to disclaim their responsibilities for data preservation and production, privacy, and security simply by utilizing a third-party service.
- Proposed Government Code Section 8231.1 requires identity proofing to be performed “at least at Identity Assurance Level 2, as established in the National Institutes of Standards and Technology Special Publication 800-63A, dated June 2017, or any successor publication.” This wording is meant to ensure that the Secretary of State can prescribe stronger standards as technology improves, without having to amend a statute. The proposed section further provides that “if this standard cannot be met due to applicable laws, such as California law governing the disclosure of information regarding driver’s licenses or other identification cards, then the Secretary of State must adopt the most rigorous standard for identity proofing that also conforms with those laws.” It ought to be made clear that the standard the Secretary of State adopts should be at least as strong as Identity Assurance Level 2.
- Proposed Government Code Section 8231.3 (a) calls for the Secretary of State to adopt implementing regulations by July 1, 2023. This date is intended as a placeholder. Input is required from the Secretary regarding appropriate dates; ideally, regulations could come

in phases, with those that are easier to write being promulgated more quickly in order to facilitate the bill's implementation.

- Proposed Government Code Section 8231.10 requires online notaries public to obtain a \$15,000 bond in addition to the \$15,000 bond they must already obtain under Section 8212 to be licensed as traditional notaries public. The American Society of Notaries objects that “since Notaries registering to perform online notarizations will have additional technology-associated costs, they would value not having to incur the additional expense of a second surety bond for performing online notarial acts. ASN believes a Notary's existing surety bond should cover traditional notarial acts performed for a physically present principal or online notarial acts performed for a principal who is remotely located.” The Committee is open to input on this point.
- There is some degree of inconsistency between proposed Government Code Section 8231.16 (b), which requires online notarization platforms to transfer records of online notarizations to the Secretary of State quarterly, and proposed Section 8231.14 (h), which requires online notarization platforms which are exiting the business to provide online notaries public 30 days to transfer their electronic journals before deleting records. As currently drafted, some records may be lost without being transferred to the Secretary of State.
- Proposed Government Code Section 8231.4 (b)(4) addresses education requirements for online notaries. The American Society of Notaries writes: “[W]e believe Notaries Public will be better served if the mandatory education and examination required in AB 1093...are delivered and administered by Notary Public education providers who now provide educational courses to satisfy the mandatory education requirement for a Notary Public commission, and not online notarization platform providers.” This issue would benefit from input from the Secretary of State. That said, NotaryCam makes an excellent point in their letter: “[I]f a notary uses multiple platforms, they would need to go through similar training multiple times,” which is obviously undesirable.
- Proposed Government Code Section 8231.6 (f)(2) mirrors existing notarial law in requiring a notary “who resigns, is disqualified, is removed from office, or allows their registration as an online notary public to expire without obtaining reappointment” to deliver their electronic journals to the Secretary of State within 30 days. The organization Oakland Privacy communicated to Committee staff that it believes this time period is too short in cases of disqualification or removal, given the ease and speed with which electronic records can be transmitted.
- One stakeholder suggested to Committee staff that individuals complete one four-year term as traditional notaries public before being permitted to become online notaries, in order to ensure that they are competent in the office's traditional duties and requirements before commencing online notarizations.
- One stakeholder suggested to Committee staff that, in situations where a third party is arranging for notarial services, such as a mortgage closing, that signers be provided the option of utilizing a traditional in-person notary in lieu of an online notary.

**ARGUMENTS IN SUPPORT:** LeadingAge California, a nonprofit organization focused on senior living and care, recognizes this bill's balanced approach:

Requiring in-person notarization presents a health risk to older adults who require notarial services for the revision of estate planning documents and certification of other personal documents. The pandemic has reduced access to notaries for this vulnerable population, but AB 1093 presents a solution. LeadingAge California applauds this bill's fraud protection provisions as most notary fraud targets California's older adults. COVID-19 induced isolation has made older adults more susceptible to exploitation and fraud schemes, amplifying the need for such protections. The newly amended version of this bill also addresses previously held concerns regarding privacy data by enforcing strict controls for the use of personal data collected.

***Related Prior Legislation.*** AB 2368 (Calderon, 2018) would have legalized remote online notarization in California. The bill was held by the Senate Judiciary Committee.

AB 199 (Calderon, 2019) was substantially similar to AB 2368. The bill was held by this Committee.

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

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

American Property Casualty Insurance Association  
California League of Independent Notaries  
LavaTurtle Software, Inc.  
LeadingAge California

##### **Support if Amended**

NotaryCam

##### **Opposition**

None on file

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