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*

ABSTRACT OF PROPOSED LEGISLATION

**SECTION 1. 16 O.S. §87** (Recordation of Electronic Documents in Tangible Form)

 A. Definitions.

 B. What is considered a true and correct copy in electronic format.

 C. Certification of true and correct copy in electronic format by notary.

D. Requirement to record electronic document by county clerk.

E. Form of certification.

F. Certificate is prima facie evidence of compliance.

G. Applies to documents recorded before or after January 1, 2020.

H. Plat, plan, map, or survey of real property excluded.

**SECTION 2. - 49 O.S. §201**

 **SHORT TITLE. Remote Online Notary Act.**

**SECTION 3. - 49 O.S. §202**

 **DEFINITIONS.**

**SECTION 4. - 49 O.S. §203**

 **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. This section also provides the standards for ensuring integrity, means of performing remote online notarial acts, technology, credential analysis, identity proofing, journals and recordings, forms, etc.

B. The Secretary of State may seek guidance from industry resources.

**SECTION 5. – 49 O.S. §204**

 **REGISTRATION REQUIRED**

 A. Registration with Secretary of State required and may be one application for both traditional and electronic notary.

B. $25 Application Fee

C. Application must include name, description of technology to be used, compliance with standards, and other requirements of the Secretary of State

D. Secretary of State to issue “written authorization”.

E. Conditions for denial of application.

F. The term of a notary public’s authorization to perform remote online notarizations coincides with notary’s commission.

G. Conditions for termination of authorization to perform remote online notarizations.

H. Ability to upgrade technology if update does not result in a technology that is materially different from the technology that the notary public identified.

**SECTION 6. - 490.S. §205**

 **AUTHORITY TO PERFORM REMOTE ONLINE NOTARIAL ACTS.**

A notary public physically located in this state and authorized to perform remote online notarizations 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 certain conditions met.

**SECTION 7. - 49 O.S. §206**

**ELECTRONIC RECORD OF REMOTE ONLINE NOTARIAL ACTS.**

A. A notary public shall maintain a **journal** in a permanent, tamper-evident electronic format containing required information, including credential authorization and fee charge.

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. Record retention rules: 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 49 O.S. §207**

**USE OF ELECTRONIC SIGNATURE AND SEAL.**

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, requires reasonable steps to protect the electronic seal from unauthorized use and requires notification to law enforcement and secretary of state if journal or seal is stolen, lost or used by another person.

**SECTION 9. - 49 O.S. §208**

**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 complies with standards under §203 of this title or is in a form otherwise sufficient and contains a statement substantially as follows: **“This remote online notarization involved the use of communication technology.”**

**SECTION 10. – 49 O.S. §209**

**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 $25.

**SECTION 11. – 49 O.S. §210**

**TERMINATION OF NOTARY PUBLIC’S COMMISSION.**

**SECTION 12. – 49 O.S. §211**

 **LEGAL RECOGNITION OF REMOTE ONLINE NOTARIAL ACTS.**

**SECTION 13. – 49 O.S. §212**

**VALIDITY OF REMOTE ONLINE NOTARIAL ACTS.**

The failure of a notary public to meet a requirement specified in the law does not invalidate a remote online notarial act performed by the notary public, it does not prevent an aggrieved person from seeking to invalidate the electronic record or transaction 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. – 49 O.S. §213**

 **APPLICABLE LAW; CONFLICT OF LAWS.**

The validity of a remote online notarization is determined by applying the laws of Oklahoma, regardless of the physical location of the principal at the time of the remote online notarization.

**SECTION 15. – 49 O.S. §214**

 **RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

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