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**SECRETARY OF STATE**

CHAPTER 113

Statutory Authority: 1976 Code Sections 26-2-5 et seq.

113-400. Registration. (New)

113-410. Application for Registration as an Electronic Notary. (New)

113-420. Course of Instruction. (New)

113-430. Electronic Notary Signature and Electronic Notary Seal. (New)

113-440. Employers of Electronic Notaries. (New)

113-450. Rejection of Electronic Notary Public Application. (New)

113-460. Change of Registration Information. (New)

113-470. Access and Use of Electronic Notary Seal and Electronic Signature. (New)

113-480. Electronic Notary Journal Preservation. (New)

113-490. Application for Electronic Notary Providers. (New)

113-500. Requirements for Systems and Providers. (New)

113-510. Electronic Notarization System Provider Changes. (New)

**Synopsis:**

The Office of the Secretary of State proposes to promulgate regulations to appear as Chapter 113, Article 4 of the South Carolina Code of Regulations. The South Carolina Electronic Public Notary Act (Section 26-2-5, et seq., Act 85 of 2021) was signed into law on May 18, 2021. The Act provides for notarial acts that can be performed electronically, restrictions for the performance of electronic notarizations, and the requirements to complete an electronic notarization. The Act further sets forth the procedures and requirements to become an electronic notary public and to be registered as an electronic notary solution provider. Prior to acceptance of electronic online notary public applications, administrative rules must be in effect and vendors of technology must be approved by the Secretary of State.

Section‑by‑Section Discussion:

113-400. Add new text that describes registration of notaries public to perform electronic notarial acts.

113-410. Add new text that sets forth information and requirements for application for registration as an electronic notary public.

113-420. Add new text that outlines the course of instruction and exam requirement for registration as an electronic notary public.

113-430. Add new text that describes the required elements of an electronic notary signature and electronic notary seal.

113-440. Add new text that describes limitations and requirements for employers of electronic notaries.

113-450. Add new text that describes when the Secretary of State may reject an electronic notary public application.

113-460. Add new text that sets forth requirements for electronic notaries public to notify the Secretary of State of changes to information provided in an application for registration.

113-470. Add new text that explains requirements for access and use of the electronic notary seal and electronic signature.

113-480. Add new text that describes requirements for electronic notary journal maintenance and preservation.

113-490. Add new text that sets forth information and requirements for application for registration as an electronic notary provider.

113-500. Add new text that describes the requirements for electronic notary systems and providers.

113-510. Add new text that sets forth requirements for electronic notarization system providers to notify the Secretary of State of changes to information provided in an application for registration.

 The Notice of Drafting was published in the *State Register* on December 24, 2021.

**Instructions:**

 Print the regulation as shown below. All other items remain unchanged.

**Text:**

ARTICLE 4

ELECTRONIC NOTARIES PUBLIC

113-400. Registration.

 A. A notary public shall register to perform electronic notarial acts with the Secretary of State before performing notarial acts electronically.

 B. The term of registration as an electronic notary shall coincide with the term of the notary's commission pursuant to Section 26-2-20(B). An electronic notary may commence performing electronic notarial duties upon receipt of confirmation of registration as an electronic notary public from the Secretary of State.

113-410. Application for Registration as an Electronic Notary.

 A. A notary public must submit the application for registration electronically with the Secretary of State. This electronic application shall include:

 (1) The notary's full legal name and the name under which the notary public's commission was issued, if different;

 (2) The residential address of the notary public and the county in which the notary public's commission is enrolled pursuant to Section 26-1-50;

 (3) The email address of the notary;

 (4) Proof of the successful completion of the electronic notary course of instruction, including the date of completion and name of the course of instruction on the duties of an electronic notary as approved by the Secretary of State;

 (5) The expiration date of the notary public’s commission;

 (6) The disclosure of all license or commission revocations or other disciplinary actions against the notary public;

 (7) A description of the notary technology that the notary public intends to use to perform notarial acts with respect to electronic notarizations, including the name of the electronic notary system provider. The description must include:

 (a) The technology to be used in attaching an electronic notarial certificate, signature, or seal to an electronic document;

 (b) The technology used to maintain the electronic journal; and

 (c) The technology used to render electronic records tamper-evident;

 (8) If the device used to create the registrant’s electronic signature was issued or registered through a licensed certification authority, then the application must include:

 (a) The name of that authority;

 (b) The source of the license; and

 (c) The starting and expiration dates of the device’s term of registration; and

 (9) A copy of the notary public’s electronic signature, electronic notarial certificate and electronic seal, along with any necessary instructions or techniques supplied by the vendor or notary public that allows the signature and stamp to be read and authenticated.

 B. The Secretary of State may exempt from disclosure under the Freedom of Information Act the residential address and email address of the notary, except as otherwise required by statute, regulation, or court order.

113-420. Course of Instruction.

 A. Before each registration to perform electronic notarial acts, a notary public shall complete a course of instruction approved by the Secretary of State, and pass an examination of this course.

 B. The Secretary of State, or his designee, will administer the training course and testing for applicants for electronic notary public registration.

 C. The content of the course shall include notarial rules, procedures, and ethical obligations pertaining to electronic notarization as provided in the South Carolina Electronic Notary Public Act or in any other law or official guideline of this State.

113-430. Electronic Notary Signature and Electronic Notary Seal.

 A. An electronic notary signature must meet all of the following requirements.

 (1) The electronic notary signature shall be independently verifiable and unique to the electronic notary;

 (2) The electronic notary signature shall be retained under the electronic notary's sole control;

 (3) When the electronic notary performs an electronic notarization, the electronic signature used by the electronic notary must be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization;

 (4) The electronic notary signature shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination; and

 (5) An image of the electronic notary's handwritten signature shall appear on any visual or printed representation of an electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic signature.

 B. An electronic notary seal must meet all of the following requirements:

 (1) The electronic notary seal shall be independently verifiable and unique to the electronic notary;

 (2) The electronic notary seal shall be retained under the electronic notary's sole control;

 (3) When the electronic notary performs an electronic notarization, the electronic seal used by the electronic notary shall be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization;

 (4) The electronic notary seal shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination;

 (5) An image of the electronic notary's electronic seal shall appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic seal;

 (6) The perimeter of the electronic notary seal may contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper; and

 (7) The electronic notary seal must have, within its border, the electronic notary public's name exactly as commissioned, the title "Notary Public", the words "State of South Carolina", the electronic notary public’s registration number indicating that the electronic notary public may perform electronic notarial acts, and the expiration date of the electronic notary public’s commission.

113-440. Employers of Electronic Notaries.

 A. Neither the employer of an electronic notary public nor any of the employer's employees or agents shall use or permit the use of an electronic notary seal or signature by anyone other than the electronic notary public to whom it is registered.

 B. Upon the cessation of employment of an electronic notary public, the employer of the notary must do the following, if applicable:

 (1) Relinquish any and all control of the electronic notary public’s electronic notary seal conveyed by the employer’s provision of an electronic notarization system as part of the electronic notary’s employment;

 (2) Transfer possession of the electronic notary seal to the electronic notary public; and

 (3) Eliminate the ability of any other person to use the former employee's electronic notary seal if the electronic notarization system used by the employer does not permit transfer of possession of the electronic notary seal.

113-450. Rejection of Electronic Notary Public Application.

The Secretary of State may reject an application for registration as an electronic notary public for failure to comply with any of the requirements of the South Carolina Electronic Notary Public Act. In addition, the Secretary of State may reject an application for registration as an electronic notary public for the following reasons:

 A. If the application is incomplete or contains any misstatement or omission of fact;

 B. If there is a pending inquiry by the Secretary of State’s Office or law enforcement into the applicant’s alleged failure to comply with any of the statutes, regulations or policies governing notaries public and electronic notaries public;

 C. If there has been a finding against or an admission of liability by the applicant in any legal proceeding or disciplinary action based on the applicant’s conduct as a notary public or an electronic notary public; or

 D. The applicant has been convicted of a criminal offense involving fraud, theft, forgery, or breach of trust.

113-460. Change of Registration Information.

 A. An electronic notary public shall notify the Office of the Secretary of State of any changes in the information submitted in the notary public’s application for registration within thirty (30) days following the change in information.

 B. Notifications to the Office of the Secretary of State as required by this section must be made in a form or manner prescribed by the Secretary of State and must be accompanied by a fee of ten dollars.

 C. Failure to timely notify the Secretary of State as required under this section may subject the electronic notary public to having his or her registration terminated.

 D. Nothing herein shall be construed to prohibit an electronic notary public from receiving, installing, or using hardware and/or software updates to the technologies that the electronic notary public identified in the electronic notary public’s application if the hardware or software update does not result in technologies that are materially different from the technologies that the electronic notary public identified previously.

113-470. Access and Use of Electronic Notary Seal and Electronic Signature.

 A. The electronic notary public’s electronic signature and seal shall remain within the exclusive control of the electronic notary public. Access to electronic notary signatures and electronic notary seals must be protected by the use of a biometric verification, password authentication, token authentication, or other form of authentication approved by the Secretary of State according to the South Carolina Electronic Notary Public Act.

 B. An electronic notary public shall not disclose any access information used to affix the electronic notary public’s electronic signature or electronic seal to electronic records except:

 (1) When requested by the Secretary of State’s Office or a law enforcement officer;

 (2) When required by court order or subpoena; or

 (3) Pursuant to an agreement to facilitate electronic notarizations with a vendor or other technology provider identified in an application submitted under the South Carolina Electronic Notary Public Act.

 C. An electronic notary public must replace an electronic seal or signature under any of the following circumstances:

 (1) The electronic notary public’s registration has expired.

 (2) The electronic seal or signature is for any reason no longer valid or capable of authentication.

 (3) The electronic notary public has changed any of the following information, or the following information has changed for any reason:

 (a) The electronic notary public’s name;

 (b) The electronic notary public’s jurisdiction;

 (c) The electronic notary public’s registration number; or

 (d) The expiration date of notary public commission.

113-480. Electronic Notary Journal Preservation.

 A. An electronic notary journal shall be created and stored in a computer or other electronic storage device or process that protects the electronic journal against unauthorized access by password, biometric verification, token, or other form of authentication.

 B. An electronic notary journal is the exclusive property of the notary public and no employer or vendor of e-notary services may retain control of a notary public’s electronic record for any reason.

 C. An electronic notary journal shall be retained for at least ten (10) years after the last notarial act chronicled in the journal.

 D. An electronic notary journal shall be tamper-evident.

 E. A notary public shall not allow a record entry to be deleted or altered in content or sequence by the electronic notary public or any other person after a record of the electronic notarization is entered and stored.

 F. An electronic notary journal must be capable of providing tangible or electronic copies of any entry made in the journal.

 G. Upon the death or adjudication of incompetency of a current or former notary public who is registered to perform notarial acts with respect to electronic records, the electronic notary’s personal representative or guardian or any other person knowingly in possession of a journal shall:

 (1) comply with the retention requirements of this section;

 (2) transmit the journal to a third person contracted to act as a repository to provide the storage required by this section; or

 (3) transmit the journal in an industry-standard readable data storage device to the electronic notary public’s notary technology provider.

113-490. Application for Electronic Notary Providers.

Electronic notarization system providers applying to the Secretary of State for designation as a registered electronic notarization system provider must complete and submit electronically an application to the Secretary of State for review and approval before authorizing any electronic notary seals, digital certificates or electronic signatures for use by electronic notaries public in this State. The application must include the following information:

 A. The legal name of the technology provider;

 B. The mailing address of the technology provider;

 C. The physical address of the technology provider;

 D. A designated contact person for the technology provider;

 E. The phone number, physical address, and email address of the contact person for the technology provider;

 F. The name of the technology provided;

 G. A description of the technology used, including hardware and software specifications and requirements for the provider’s electronic notarization system; and

 H. A plan for the retention and disposition of records created, generated, or retained in conjunction with the use of the technology, including any electronic journal or records created or retained during an electronic notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology.

113-500. Requirements for Systems and Providers.

Each electronic notarization system provider must:

 A. Provide a free and readily available viewer/reader to enable all parties relying on the electronically notarized record or document to view the electronic notary public’s electronic signature and the electronic notary seal without incurring any cost;

 B. Comply with the laws, policies, and rules that govern South Carolina notaries public;

 C. Provide an electronic notarization system that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in South Carolina;

 D. Verify that a notary public is registered to act as a South Carolina electronic notary public prior to authorizing an electronic notary seal and electronic signature for that notary public;

 E. Notify the Secretary of State of the name of each notary public who enrolls in the provider’s electronic notarization system within five days after enrollment by means prescribed by the Secretary of State;

 F. Provide prorated fees to align the usage and cost of the electronic notarization system with the commission term limit of the electronic notary public purchasing the electronic notary seal and electronic signature;

 G. Suspend the use of any electronic notarization system for any notary public whose commission has been revoked, suspended, or canceled by the Secretary of State, within 10 calendar days of receipt of notification from the Secretary of State;

 H. Submit an exemplary of the electronic notary public’s electronic signature and the electronic notary seal to the Secretary for each electronic notary public who subscribes to the provider’s electronic notarization system;

 I. Require access to the system by a password or other secure means of authentication;

 J. Enable a notary public to affix the notary’s electronic signature in a manner that attributes such signature to the notary as evidenced by a digital certificate and render every electronic notarial act tamper-evident; and

 K. Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information shall be sent to the contact person designated by the provider upon registration, or as updated pursuant to Regulation 113-510.

113-510. Electronic Notarization System Provider Changes.

 A. An electronic notarization system provider shall notify the Secretary of State’s Office within 30 days of any changes, modifications or updates to information previously submitted to the Secretary of State. Notifications to the Office of the Secretary of State as required by this section must be made in a form or manner prescribed by the Secretary of State.

 B. An electronic notarization system provider must be registered with the Secretary of State at the time it makes available to South Carolina electronic notaries any updates or subsequent versions of the provider's electronic notarization system.

**Fiscal Impact Statement:**

 At this time, the agency believes any additional costs will be able to be absorbed by the agency.

**Statement of Rationale:**

 Prior to acceptance of electronic online notary public applications, administrative rules must be in effect and vendors of technology must be approved by the Secretary of State. Therefore, promulgation of regulations is required to complete implementation of the South Carolina Electronic Notary Act.