**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 26 TO ENACT THE “SOUTH CAROLINA ELECTRONIC NOTARY PUBLIC ACT” AND BY ADDING ARTICLE 5 TO CHAPTER 1, TITLE 26 TO ENACT THE “SOUTH CAROLINA REMOTE ONLINE NOTARIZATION ACT” BOTH SO AS TO PROVIDE FOR THE NOTARIZATION OF DOCUMENTS BY ELECTRONIC MEANS AND FOR REMOTELY LOCATED INDIVIDUALS, SETTINGS FOR CERTAIN REQUIREMENTS IN ACCEPTANCE FOR RECORDING BY A REGISTER OF MESNE CONVEYANCES IN A COUNTY OF ELECTRONIC DOCUMENTS IN TANGIBLE FORM, CHARGING THE OFFICE OF THE SECRETARY OF STATE WITH THE RESPONSIBILITY OF IMPLEMENTING THE ACT AND ADOPTING STANDARDS FOR THE NOTARIZATION OF DOCUMENTS BY ELECTRONIC MEANS AND FOR REMOTELY LOCATED INDIVIDUALS, AND DEFINING NECESSARY TERMS; BY ADDING SECTION 26‑1‑260 SO AS TO PROVIDE FAILURES OF NOTARIES PUBLIC TO PERFORM CERTAIN DUTIES OR MEET CERTAIN REQUIREMENTS DOES NOT INVALIDATE NOTARIAL ACTS, AMONG OTHER THINGS; BY ADDING SECTION 26‑1‑270 SO AS TO CLARIFY THE RELATIONSHIP BETWEEN CHAPTER 1, TITLE 26 AND CERTAIN FEDERAL STATUTES; BY ADDING SECTION 30‑5‑31 SO AS TO AS TO DEFINE NECESSARY TERMS; TO AMEND SECTION 26‑1‑5, RELATING TO DEFINITIONS CONCERNING NOTARIES PUBLIC, SO AS TO DEFINE NECESSARY TERMS; AND BY DESIGNATING CERTAIN PROVISIONS OF CHAPTER 1, TITLE 26 AS “ARTICLE 1, GENERAL PROVISIONS”.

Be it enacted by the General Assembly of the State of South Carolina:

PART I

South Carolina Electronic Notary Public Act

SECTION 1. The General Assembly provides for the following Prefatory Note to Article 3, Chapter 1, Title 26 contained in SECTION 5:

Prefatory Note

Perhaps the most pervasive change to law in recent years has been the development and growing implementation of electronic records in commercial, governmental, and personal transactions. In 1999, NCCUSL approved the Uniform Electronic Transactions Act (UETA), thereby validating electronic records and putting them on a par with traditional records written on tangible media. The federal Electronic Signatures in Global and National Commerce Act (ESign) was adopted in 2000, and it also recognized and put electronic records on a par with traditional records on tangible media. In 2004, NCCUSL approved the Uniform Real Property Electronic Recording Act (URPERA), thereby permitting county recorders and registrars to accept and register electronic real estate records. Each of those acts also recognized the validity of electronic notarial acts (UETA Section 11; ESign Section 101(g); URPERA Section 3(c)).

This article further recognizes electronic notarial acts and puts them on a par with notarial acts performed on tangible media. While continuing the basic treatment of electronic notarial acts provided in UETA, ESign and URPERA, this article implements structural and operational rules for those notarial acts that were absent in the prior laws. For example, it sets forth with specificity the requirements for use of electronic signatures, electronic seals, electronic notarial journals, and systems provided by electronic notary solution providers.

SECTION 2. Chapter 1, Title 26 of the 1976 Code is amended by adding:

“Article 3

South Carolina Electronic Notary Public Act

Section 26‑1‑305. This article may be cited as the ‘South Carolina Electronic Notary Public Act’.

Section 26‑1‑310. As used in this this article and Article 5:

(1) ‘Electronic’ means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) ‘Electronic document’ or ‘electronic record’ means information that is created, generated, sent, communicated, received, or stored by electronic means.

(3) ‘Electronic journal’ means a chronological electronic record maintained by a notary public of notarial acts performed by the notary public.

(4) ‘Electronic notarial act’ or ‘electronic notarization’ means a notarial act authorized under Section 26‑1‑360 and performed by an electronic notary public that involves the notary’s electronic signature on an electronic document.

(5) ‘Electronic notarial certificate’ means the part of, or attachment to, an electronic record that is completed by the electronic notary public, bears the electronic notary’s electronic signature and electronic seal, and states the facts attested to by the electronic notary in an electronic notarization.

(6) ‘Electronic notarization system’ means a set of applications, programs, hardware, software, or technologies that enable an electronic notary to perform electronic notarizations.

(7) ‘Electronic notary public’ or ‘electronic notary’ means a notary public who has registered with the Secretary of State to perform electronic notarial acts under this article.

(8) ‘Electronic seal’ means an electronic image attached to or logically associated with a notarized electronic document containing information that includes the electronic notary’s name, title, jurisdiction, and commission expiration date.

(9) ‘Electronic signature’ means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(10) ‘Notary’s electronic signature’ means an electronic signature in a form approved by the Secretary of State for an electronic notary to sign an electronic record that is the subject of a notarial act.

(11) ‘Sole control’ means being at all times in the direct physical custody of a person or safeguarded by a person with a password or other secure means of authentication.

(12) ‘Tamper‑evident’ means rendering any subsequent change or modification to an electronic record evident.

Section 26‑1‑320. (A) An electronic notary public must comply with all provisions of Article 1, except as modified or supplemented by this article.

(B) In the event of a conflict between a provision of this article and any other law of this State, the provision of this article controls.

(C) This article does not require a notary public to perform electronic notarial acts.

Section 26‑1‑330. An individual is qualified to register with the Secretary of State as an electronic notary public if the individual:

(1) holds a valid commission as a notary public under Article 1;

(2) is in compliance with all provisions of this chapter;

(3) has completed a course of instruction as required under Section 26‑1‑350; and

(4) submits an electronic registration form to the Secretary of State containing no misstatement or omission of fact.

Section 26‑1‑340. (A) Before a notary public performs an electronic notarial act, the notary public must:

(1) be qualified to register as an electronic notary public under Section 26‑1‑330;

(2) register the capability to perform electronic notarial acts with the Secretary of State under this section; and

(3) receive written confirmation from the Secretary of State that the notary public is properly registered as an electronic notary public.

(B) Unless earlier terminated under Section 26‑1‑430, the term of registration as an electronic notary public shall begin on the registration confirmation date set by the Secretary of State and shall continue as long as the notary public’s current commission remains valid under Article 1.

(C) An individual may apply for a commission as a notary public under Article 1 and register as an electronic notary public under this section at the same time. Upon renewal of a commission as a notary public under Article 1, a notary public must register again as an electronic notary public under this section before performing an electronic notarial act.

(D) To register as an electronic notary public, an individual shall submit to the Secretary of State an electronic registration form that includes:

(1) the individual’s full legal name and the name under which the individual’s commission as a notary public was issued, if different;

(2) the physical address of the individual’s residence and the individual’s mailing address, if different;

(3) the county in which the individual’s commission as a notary public is enrolled under Section 26‑1‑50;

(4) the expiration date of the individual’s commission as a notary public;

(5) proof of successful completion of the course of instruction required under Section 26‑1‑350;

(6) a valid email address of the individual;

(7) a description of the technologies to be used in attaching or logically associating an electronic notarial certificate, notary’s electronic signature, and electronic seal to an electronic document in the performance of an electronic notarial act;

(8) exemplars of the notary’s electronic signature and electronic seal;

(9) any necessary instructions, codes, keys, software, or techniques that allow the notary’s electronic signature and electronic seal to be readable, perceivable, and reproducible;

(10) if the device used to create the notary’s electronic signature was issued or registered through a licensed certification authority:

(a) the name of the certification authority;

(b) the source of the license;

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

(d) any revocations, annulments, or other premature terminations of any registered device issued to the individual that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail;

(11) if the individual intends to perform remote online notarial acts under Article 5, a description of the communication technology, credential analysis technology, and identity proofing technology to be used;

(12) a nonrefundable registration fee of fifty dollars, to be collected and retained by the Secretary of State for the administration of this chapter; and

(13) any other information, evidence, or declaration required by the Secretary of State.

(E) If the Secretary of State is satisfied that an individual is qualified to register as an electronic notary public under Section 26‑1‑330 and has properly registered under subsection (D), the Secretary of State shall provide the individual written confirmation of proper registration that includes a registration confirmation date and a unique registration number issued to the individual. The Secretary of State may reject a registration under subsection (D) if the Secretary of State determines that an individual has not complied with any provision of this chapter.

(F) Within ten business days of any change in the information submitted under subsection (D), an electronic notary public shall submit to the Secretary of State a notice and description of the change in the information. The notice shall be signed by the electronic notary with the notary’s electronic signature.

(G) The Secretary of State may exempt from disclosure under the Freedom of Information Act, Chapter 4, Title 30, the physical address, mailing address, and email address submitted under subsection (D), except as otherwise provided by applicable statute, regulation, or court order.

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

Section 26‑1‑350. (A) Before an individual is qualified to register with the Secretary of State as an electronic notary public, the individual must take a course of instruction of at least three hours approved by the Secretary of State and must pass an examination of the course.

(B) The Secretary of State shall establish standards and requirements for the course of instruction required in this section. The content of the course of instruction and examination required under this section must be laws, procedures, technology, ethics pertaining to notarial acts and electronic notarial acts, and other topics considered appropriate by the Secretary of State.

(C) The Secretary of State may charge such fees as necessary to defray the cost of developing and administering courses and examinations required by this section.

Section 26‑1‑360. The following notarial acts may be performed as electronic notarial acts under this article:

(1) acknowledgments;

(2) oaths and affirmations;

(3) attestations and jurats;

(4) signature witnessing;

(5) verifications of fact; and

(6) any other acts authorized by law.

Section 26‑1‑370. (A) An electronic notary public only shall perform the electronic notarial act for an individual if:

(1) the individual appears in person before the electronic notary at the time of the notarial act;

(2) the electronic notary has determined the identity of the individual from personal knowledge or satisfactory evidence;

(3) the electronic notary has reasonably determined that the individual has signed the document with an electronic signature.

(B) In performing electronic notarial acts, an electronic notary shall comply with all applicable requirements for the performance of notarial acts under Article 1.

Section 26‑1‑380. (A) When performing an electronic notarial act, an electronic notary shall complete an electronic notarial certificate that includes all of the following components attached to or logically associated with the electronic document:

(1) the electronic notary’s name exactly as stated on the commission issued by the Secretary of State;

(2) the notary’s electronic signature;

(3) either the electronic notary’s electronic seal or the words ‘Electronic Notary Public’ and ‘State of South Carolina’;

(4) the expiration date of the electronic notary’s commission; and

(5) all other information required by law as appropriate for the particular electronic notarial act.

(B) The components required by subsection (A) must be immediately perceivable and reproducible in the electronic record to which the notary’s electronic signature is attached or logically associated in a tamper‑evident format.

(C) An electronic seal may be an electronic image that appears in the likeness or representation of a traditional notary seal used on paper documents and must contain the following information:

(1) the electronic notary’s name exactly as stated on the commission issued by the Secretary of State;

(2) the title ‘Electronic Notary Public’;

(3) the words ‘State of South Carolina’;

(4) the unique registration number issued by the Secretary of State to the electronic notary public; and

(5) the expiration date of the electronic notary’s commission.

Section 26‑1‑390. (A) Notwithstanding Section 26‑1‑100, an electronic notary public may charge the maximum fee for performing an electronic notarial act specified in subsection (B), charge less than the maximum fee, or waive the fee.

(B) The maximum fees that may be charged by an electronic notary public for performing an electronic notarial act are:

(1) acknowledgments, ten dollars per signature;

(2) oaths and affirmations, ten dollars per signature;

(3) attestations and jurats, ten dollars per signature;

(4) signature witnessing, ten dollars per signature;

(5) verifications of fact, ten dollars per signature;

(6) any other acts authorized by law, ten dollars per signature.

(C) An electronic notary may charge a travel fee to perform an electronic notarial act if the electronic notary:

(1) agrees upon the travel fee with the person requesting the electronic notarial act in advance of the travel; and

(2) explains to the person requesting the electronic notarial act that the travel fee is both separate from the fee specified in subsection (B) and neither prescribed nor mandated by law.

(D) An electronic notary who charges fees for performing electronic notarial acts shall conspicuously display in all of the electronic notary’s places of business and Internet websites, or present to each individual or requester of fact when outside of such places of business, an English‑language schedule of maximum fees for electronic notarial acts, as specified in subsection (B). A schedule of fees may not appear or be printed in smaller than ten‑point type.

(E) In addition to other fees provided in this section, an electronic notary public may charge fees necessary to cover the actual costs of its use of a solution provider, provided it display these fees with the fees displayed pursuant to subsection (D).

Section 26‑1‑400. (A) In this section, ‘capable of independent verification’ means that any interested person can confirm through the Secretary of State that a notary public who signed an electronic record in an official capacity had authority at that time to perform electronic notarial acts.

(B) An electronic notary public shall:

(1) use a solution provider approved by the Secretary of State under Section 26‑1‑420 to perform electronic notarizations;

(2) not use an electronic seal for any purpose other than complying with a provision of this article or performing an electronic notarial act under this article;

(3) use an electronic notarization system that conforms to the rules adopted under this section to produce the notary’s electronic signature and electronic seal in a manner that is tamper‑evident;

(4) take reasonable steps to ensure that no other person may possess or access an electronic notarization system in order to use the notary’s electronic signature or electronic seal;

(5) take reasonable steps to ensure that any registered device used to create the notary’s electronic signature and electronic seal is current and has not been revoked or terminated by its issuing or registering authority;

(6) cease to use any registered device that has been revoked or terminated and, if a new device is issued or registered to the electronic notary, promptly notify the Secretary of State of the new starting and expiration dates of any new registration term and any other new information at variance with the information submitted to the Secretary of State at the time of initial registration;

(7) keep in the sole control of the electronic notary any means used to access any part of an electronic notarization system whose purpose is to produce the notary’s electronic signature or electronic seal; and

(8) keep the notary’s electronic signature and electronic seal in the electronic notary’s sole control and neither allow them to be used by another person nor surrendered to an employer upon termination of employment, except:

(a) by a law enforcement officer in the course of an official investigation;

(b) by subpoena or court order; or

(c) at the direction of the Secretary of State.

(C) No person may attach or logically associate a notary’s electronic signature or electronic seal with an electronic document other than the electronic notary public who created the notary’s electronic signature and whose name and registration number appear on the electronic seal.

(D) Within ten days of discovery than a notary’s electronic signature or electronic seal has been stolen, vandalized, lost, breached, misused, damaged, or otherwise rendered incapable of being attached to or logically associated with an electronic record, an electronic notary shall:

(1) in the case of theft or vandalism, inform an appropriate law enforcement agency; and

(2) notify the Secretary of State.

(E) Upon resignation, revocation, termination, or expiration of an electronic notary’s commission, or upon the death or adjudication of incompetency of an electronic notary, the coding, disk, certificate, card, token, program, password, software, or hardware that enables the electronic notary public to attach or logically associate the notary’s electronic signature and electronic seal to an electronic record shall be destroyed. The personal representative or guardian of an electronic notary shall comply with the requirements of this subsection.

(F) A former electronic notary public whose previous commission has expired is not required to destroy items identified under subsection (E) if, within three months of the termination of the commission, the former electronic notary’s commission and registration as an electronic notary are renewed.

Section 26‑1‑410. (A) An electronic notary public shall create and maintain a chronological electronic journal containing entries of each electronic notarial act in a tamper‑evident format. For each electronic notarial act, the electronic notary shall record the following information in the electronic journal:

(1) the date and time of the notarial act;

(2) the type of the notarial act;

(3) the title or a description of the record being notarized, if any;

(4) the printed full name of the individual;

(5) if the identity of the individual is based on personal knowledge, a statement to that effect;

(6) if the identity of the individual is based on satisfactory evidence, a brief description of the evidence of identification and the name of any credible witness;

(7) the address of the location in which the notarial act was performed, if not the electronic notary’s business address;

(8) a description of the electronic notarization system used; and

(9) the fee, if any, charged by the electronic notary.

(B) An electronic notary public shall not record a Social Security Number in the electronic journal.

(C) An electronic notary public shall keep the electronic journal in the electronic notary’s sole control and shall neither allow the electronic journal to be used by another person nor surrender the electronic journal to an employer upon termination of employment, except:

(1) by a law enforcement officer in the course of an official investigation;

(2) by subpoena or court order; or

(3) at the direction of the Secretary of State.

(D) Any person may inspect or request a copy of an entry or entries in the electronic journal if:

(1) the person specifies the month, year, type of record, and name of the individual for whom the notarial act was performed, in a signed request on a tangible or electronic record;

(2) the electronic notary does not surrender possession or control of the electronic journal;

(3) the person is shown or given a copy of only the entry or entries specified; and

(4) a separate new entry is made in the electronic journal, explaining the circumstances of the request and noting any related act of copy certification by the electronic notary.

(E) An electronic notary may charge a reasonable fee to cover the cost of providing a copy of an entry in the electronic journal.

(F) An electronic notary who has a reasonable and explainable belief that the person requesting to inspect or receive a copy of the electronic journal has a criminal or other inappropriate purpose may deny access to any entry.

(G) Upon resignation, revocation, termination, or expiration of an electronic notary’s commission, or upon the death or adjudication of incompetency of an electronic notary, all notarial records required by law to be retained by the electronic notary must be delivered to the Secretary of State or maintained in a depository approved by the Secretary of State and designated by or on behalf of the person required to retain the records. The personal representative or guardian of an electronic notary shall comply with the requirements of this subsection.

(H) A former electronic notary public whose previous commission has expired is not required to surrender the notarial records under subsection (G) if, within three months of the termination of the commission, the former electronic notary’s commission and registration as an electronic notary are renewed.

Section 26‑1‑420. (A) A person or entity may be an electronic notary solution provider if approved by the Secretary of State under this section.

(B) A person or entity may apply for approval as an electronic notary solution provider by submitting an application to the Secretary of State that includes the following information:

(1) hardware and software specifications and requirements of the applicant’s electronic notarization system;

(2) a description of the technologies used in the applicant’s electronic notarization system; and

(3) a demonstration of how the applicant’s electronic notarization system and the technologies of such system are used to perform electronic notarizations.

(C) If the Secretary of State has determined that an applicant under subsection (B) has satisfied and will satisfy the requirements of this article, then the Secretary of State shall approve the applicant as an electronic notary solution provider. An applicant under this section may appeal the Secretary of State’s rejection of the application as provided under Title 1, Chapter 23.

(D) An electronic notary solution provider shall:

(1) comply with this article and any regulations adopted by the Secretary of State under Section 26‑1‑470;

(2) require access to the solution provider’s electronic notarization system by a password or other secure means of authentication;

(3) enable an electronic notary public to affix the notary’s electronic signature in a manner that attributes such signature to the electronic notary, and otherwise facilitate the electronic notary’s performance of electronic notarial acts and compliance with the recordkeeping and other requirements of this article;

(4) render electronic records tamper‑evident through its electronic notarization system;

(5) provide access to a free and readily available viewer or reader that enables a person relying upon an electronic notarization to view the electronic signature, notary’s electronic signature, and electronic seal without incurring a cost;

(6) require an applicant to use the solution provider’s electronic notarization system to present evidence of the applicant’s commission as a notary public under Article 1 and registration as an electronic notary under this section prior to providing the applicant access to the system;

(7) verify the authenticity and accuracy of the evidence presented under item (6) with information published by the Secretary of State;

(8) provide prorated fees to align the usage and cost of the electronic notarization system with the remaining term of an applicant’s commission as a notary public under Article 1, if the solution provider charges fees to the electronic notary based upon a specified term or period of usage by the electronic notary. The provisions of this item apply only to solution providers who charge fees based on a specific term;

(9) suspend use of and access to the electronic notarization system of any person whose commission as a notary public has expired or been revoked or terminated;

(10) submit to the Secretary of State an exemplar of the notary’s electronic signature and electronic seal of each applicant to use the solution provider’s electronic notarization system; and

(11) submit to the Secretary of State any change, modification, or update to the information provided in the application submitted under subsection (B), if the change, modification, or update pertains to functions that affect compliance with the provisions of this chapter.

Section 26‑1‑430. (A) Except as provided by subsection (B), the liability, sanctions, and remedies for the improper performance of electronic notarial acts, or for providing false or misleading information in registering to perform electronic notarial acts by an electronic notary public are the same as provided by law for the improper performance of notarial acts under Article 1.

(B) The Secretary of State shall terminate an electronic notary public’s registration for one of the following reasons:

(1) submission of an electronic registration form containing material misstatement or omission of fact;

(2) failure to maintain the capability to perform electronic notarial acts; or

(3) the electronic notary’s performance of official misconduct.

(C) Before terminating an electronic notary’s registration under subsection (B), the Secretary of State shall inform the electronic notary of the basis for the termination and that the termination will take place on a particular date unless a proper appeal is filed with the Administrative Law Court before that date.

(D) Neither resignation nor expiration of a notary commission or of an electronic notary registration precludes or terminates an investigation by the Secretary of State into the electronic notary’s conduct. The investigation may be pursued to a conclusion, when it must be made a matter of public record whether or not the finding would have been grounds for termination of the commission or registration of the electronic notary.

Section 26‑1‑440. (A) It is unlawful for a person:

(1) who is not an electronic notary to knowingly act or otherwise impersonate an electronic notary;

(2) to purposely obtain, conceal, damage, or destroy the coding, disk, certificate, card, token, program, password, software, or hardware that is intended exclusively to enable an electronic notary public to produce a notary’s electronic signature, electronic seal, or single element combining the required features of a notary’s electronic signature and electronic seal; or

(3) to knowingly solicit, coerce, or in any way influence an electronic notary to commit official misconduct.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years.

(C) The sanctions of this article do not preclude other sanctions and remedies provided by law.

Section 26‑1‑450. The provisions contained in Article 1 with regard to notarial certificates are applicable to electronic notarial acts under this article.

Section 26‑1‑460. (A) Electronic evidence of the authenticity of a notary’s electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to or logically associated with a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States.

(B) An electronic certificate of authority evidencing the authenticity of the notary’s electronic signature and electronic seal of an electronic notary of this State shall contain substantially the following words:

‘Certificate of Authority for an Electronic Notarial Act

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name, title, jurisdiction of commissioning official), certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of electronic notary), the person named as an electronic notary public in the attached or associated document, was registered as an electronic notary public for the State of South Carolina and authorized to act as such at the time of the document’s electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_.’

(Electronic signature (and seal) of commissioning official)

(C) The Secretary of State may charge a fee of ten dollars for issuing an electronic certificate of authority under this section.

Section 26‑1‑470. (A) The Secretary of State shall promulgate and enforce any regulations, policies, and procedures necessary for the administration of this article.

(B) Regulations adopted under this section shall include standards relating to a notary’s electronic signature and electronic seal, including procedures:

(1) to render a notary’s electronic signature and electronic seal capable of independent verification; and

(2) to ensure the integrity, security, and authenticity of electronic notarial acts.”

PART II

South Carolina Remote Online Notarization Act

SECTION 3. The General Assembly provides for the following Prefatory Note to Article 5, Chapter 1, Title 26 contained in SECTION 4.

Prefatory Note

Traditionally, as defined in Section 26‑1‑5, an individual has been required to make a personal appearance in the physical presence of a notary public in order for a notary public to perform a notarial act on behalf of that individual. The objectives of that appearance have been to enable the notary public to verify the identity of the individual and enable the notary public to assess the competency of the individual and whether the individual’s acts are knowingly and voluntarily made.

In recent years, technology and commercially available identification services have made it possible to accomplish those objectives by means of synchronous communication technology that includes sight and sound, allowing the performance of notarial acts for persons who are not in the physical presence of the notary public. This article authorizes notaries public to perform notarial acts for remotely located individuals. The requirements set out in this article enable the notary public to verify the identity of the remote individual. Through synchronous audio and visual communication, the notary also will be able to assess the competency of the individual and whether the individual’s acts are knowingly and voluntarily made.

SECTION 4. Chapter 1, Title 26 of the 1976 Code is amended by adding:

“Article 5

South Carolina Remote Online Notarization Act

Section 26‑1‑505. This article may be cited as the ‘South Carolina Remote Online Notarization Act’.

Section 26‑1‑510. (A) A term defined in Section 26‑1‑310 has the same meaning when used in this article.

(B) In this article:

(1) ‘Communication technology’ means an electronic device or process that:

(a) allows an electronic notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(b) when necessary under and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) ‘Credential analysis’ means a process or service by which a third person confirms the validity of an identification credential by a review of public or private data sources.

(3) ‘Foreign state’ means a jurisdiction other than the United States, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory, insular possession, or other location subject to the jurisdiction of the United States, or a federally recognized Indian tribe.

(4) ‘Identity proofing’ means a process or service by which a third person provides an electronic notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(5) ‘Outside the United States’ means a location outside the geographical boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(6) ‘Remote online notarization’ or ‘remote online notarial act’ means an electronic notarial act performed using communication technology under this article.

(7) ‘Remote presentation’ means transmission to an electronic notary public by com munication technology of an image of an identification credential that is of sufficient quality to enable the electronic notary public to identify the individual and to perform credential analysis.

(8) ‘Remotely located individual’ means an individual who is not in the physical presence of the electronic notary public who performs an electronic notarial act.

Section 26‑1‑520. An electronic notary public physically located in this State who has notified the Secretary of State of an intent to perform remote online notarizations in the registration form required under Section 26‑1‑340 may perform a remote online notarial act with respect to a remotely located individual who is located:

(1) in this State;

(2) outside this State but within the United States;

(3) outside the United States if:

(a) the record:

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

(ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

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

Section 26‑1‑530. (A) An electronic notary public who performs a remote online notarization, or a person acting on behalf of the electronic notary public, must create an audio‑visual recording of the performance of the remote online notarial act.

(B) An electronic notary, a guardian, conservator, or agent of an electronic notary, or a personal representative of a deceased electronic notary shall retain the audio‑visual recording created under subsection (A) or cause the recording to be retained by a depository designated by or on behalf of the person required to retain the recording. The recording must be retained for a period of at least five years after the recording is made.

Section 26‑1‑540. (A) Before performing a remote online notarial act, an electronic notary public shall:

(1) reasonably confirm that the electronic record before the electronic notary public is the same electronic record in which the remotely located individual made a statement or on which the individual 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, an electronic notary public shall reasonably verify the identity of the remotely located individual by:

(1) the electronic notary public’s personal knowledge of the individual; or

(2) each of the following:

(a) remote presentation by the individual of a current government‑issued identification credential that contains the signature and photograph of the individual;

(b) credential analysis of the identification credential; and

(c) identity proofing of the individual; or

(3) oath or affirmation of a credible witness who personally knows the individual if the electronic notary public has personal knowledge of the credible witness or has reasonably verified the identity of the credible witness under item (2).

(C) A credible witness under subsection (B) may be a remotely located individual if the credible witness, principal, and electronic notary public communicate by means of communication technology.

(D) An electronic notary public may require a remotely located individual to provide additional information necessary to assure the electronic notary public of the identity of the individual. An electronic notary public may refuse to perform a remote online notarial act if the electronic notary public is not satisfied as to the identity of the remotely located individual.

(E) The electronic notarial certificate for a remote online notarial act performed under this article must indicate that the notarial act was performed using communication technology. An electronic notarial certificate is sufficient to satisfy the requirement of this subsection if it:

(1) complies with regulations adopted under Section 26‑1‑580; or

(2) is in a form otherwise sufficient under the laws of this State and contains a statement substantially as follows: ‘This remote online notarization involved the use of communication technology.’

Section 26‑1‑550. Notwithstanding Section 26‑1‑100 and Section 26‑1‑390(B), the maximum fees that may be charged by an electronic notary for performing remote online notarial acts are:

(1) acknowledgments, twenty‑five dollars per signature;

(2) oaths and affirmations, twenty‑five dollars per signature;

(3) attestations and jurats, twenty‑five dollars per signature;

(4) signature witnessing, twenty‑five dollars per signature;

(5) verification of fact, twenty‑five dollars per signature; and

(6) any other acts authorized by law, twenty‑five dollars per signature.

Section 26‑1‑560. (A) A remote online notarial act performed under this article satisfies any requirement of law of this State that, at the time of the performance of the notarial act, an individual:

(1) appear before or appear in person before a notary;

(2) be in the physical presence of a notary;

(3) be in a single place with a notary; or

(4) be personally observed by a notary.

(B) An electronic notary public’s verification of an individual’s identity under Section 26‑1‑540(B) constitutes satisfactory evidence of the identity of the individual and satisfies any requirement of law of this State that the notary obtain satisfactory evidence of the identity of the individual.

Section 26‑1‑570. (A) The validity of a remote online notarial act performed under this article is determined by applying the laws of this State, regardless of the physical location of the remotely located individual, the principal, or any witness at the time of the notarial act.

(B) An electronic notary public authorized to perform remote online notarial acts must comply with all provisions of Article 1 and Article 3, except as modified or supplemented by this article.

(C) In the event of a conflict between a provision of this article and any other law of this State, the provision of this article controls.

(D) This article does not require an electronic notary public to perform remote online notarial acts.

Section 26‑1‑580. (A) The Secretary of State shall promulgate and enforce any regulations, policies, and procedures necessary for the administration of this article.

(B) Regulations adopted under this section shall:

(1) prescribe the means of performing remote online notarial acts;

(2) establish standards for communication technology, credential analysis, and identity proofing; and

(3) establish standards for the retention of audio‑visual recordings created under Section 26‑1‑570.”

PART III

Miscellaneous provisions

SECTION 5. Chapter 1, Title 26 of the 1976 Code is amended by adding:

“Section 26‑1‑260. Except as provided in Section 26‑1‑90(C)(3) and (4), the failure of a notary public to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notary public. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this State other than this chapter or based on law of the United States. This section does not validate a purported notarial act performed by an individual who does not have authority to perform notarial acts.”

SECTION 6. Chapter 1, Title 26 of the 1976 Code is amended by adding:

“Section 26‑1‑270. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).”

SECTION 7. Chapter 5, Title 30 of the 1976 Code is amended by adding:

“Section 30‑5‑31. (A) As used this section:

(1) ‘Document’ means information that is:

(a) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) eligible to be recorded in the land records maintained by the register.

(2) ‘Electronic’ means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) ‘Electronic document’ means a document created, generated, sent, communicated, received, or stored by electronic means.

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

(5) ‘Register’ means the official, including the register of deeds, register of mense conveyances, or clerk of court, charged with the recording and indexing duties in this chapter.

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

(1) be an original or be in writing;

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

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

(C) A notary public commissioned under Chapter 1, Title 26, may certify that a paper or tangible copy of an electronic document is a true and correct copy of the electronic document if the notary public has:

(1) reasonably confirmed that the electronic document is in a tamper‑evident format;

(2) detected no changes or errors in any electronic signature or other information in the electronic document;

(3) personally printed or supervised the printing of the electronic document onto paper or other tangible medium; and

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

(D) A register shall record a paper or tangible copy of a document that is otherwise entitled to be recorded under the laws of this state, provided that the paper or tangible copy has been certified by a notary public to be a true and correct copy of an electronic document under subsection (C) as evidenced by a notarial certificate. The certificate must be signed by the notary public and include an official notarial seal affixed to or embossed on the paper or tangible certificate.

(E) A correctly completed notarial certificate in substantially the following form, that is included in or attached to a document, is sufficient for completion of a certification under subsection (C) if completed in the manner required by subsection (D):

‘State of South Carolina

County of \_\_\_\_\_\_\_\_\_\_

On this (date) day of (month), in the year (year), I certify that the preceding or attached document is a true, exact, and unaltered copy of (description of document by title and date, as applicable) containing (number of) pages printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document since its creation or execution.

(Signature of notary public)

Notary public

(Serial number, if any)’

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

(G) A document purporting to convey or encumber an interest in real property that has been recorded by a register for the county in which the real property is located, although the document may not have been certified in accordance with this section, shall impart the same notice to third persons and be effective, from the time of recording, as if the document had been certified in accordance with this section.

(H) This section does not apply to plats of real property that may be recorded with a register under this chapter.”

SECTION 8. Section 26‑1‑5 of the 1976 Code is amended to read:

“Section 26‑1‑5. For purposes of this chapter:

(1) ‘Acknowledgment’ means a notarial act in which a notary certifies that, at a single time and place, all of the following occurred:

(a) an individual appeared in person before the notary and presented a record;

(b) the individual was personally known to the notary or identified by the notary through satisfactory evidence; and

(c) the individual signed the record while in the physical presence of the notary and while being personally observed signing the record by the notary.

(2) ‘Affirmation’ means a notarial act which is legally equivalent to an oath and in which a notary certifies that, at a single time and place, all of the following occurred:

(a) an individual appeared in person before the notary;

(b) the individual was personally known to the notary or identified by the notary through satisfactory evidence; and

(c) the individual made a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using a form of the word ‘swear’.

(3) ‘Attest’ or ‘attestation’ means the completion of a certificate by a notary who has performed a notarial act.

(4) ‘Commission’ means the empowerment to perform notarial acts and the written evidence of authority to perform those acts.

(5) ‘Credible witness’ means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.

(6) ‘Jurat’ means a notary’s certificate evidencing the administration of an oath or affirmation.

(7) ‘Moral turpitude’ means conduct contrary to expected standards of honesty, morality, or integrity.

(8) ‘Notarial act’, ‘notary act’, and ‘notarization’ mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

(9) ‘Notarial certificate’ and ‘certificate’ mean the portion of a notarized record that is completed by the notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.

(10) ‘Notary public’ and ‘notary’ mean a person commissioned to perform notarial acts pursuant to this chapter. A notary is a public officer of the State of South Carolina and shall act in full and strict compliance with this chapter.

(11) ‘Oath’ means a notarial act that is legally equivalent to an affirmation and in which a notary certifies that at a single time and place all of the following occurred:

(a) an individual appeared in person before the notary;

(b) the individual was personally known to the notary or identified by the notary through satisfactory evidence; and

(c) the individual made a vow of truthfulness on penalty of perjury while invoking a deity or using a form of the word ‘swear’.

(12) ‘Official misconduct’ means a notary’s performance of a prohibited act or failure to perform a mandated act set forth in this chapter or other law in connection with notarization.

(13) ‘Person’ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(~~13~~14) ‘Personal appearance’ and ‘appear in person before a notary’ means an individual and a notary are in the physical presence of one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

(~~14~~15) ‘Personal knowledge’ or ‘personally known’ means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate any reasonable doubt that the individual has the identity claimed.

(~~15~~16) ‘Principal’ means:

(a) in the case of an acknowledgment, the individual whose identity and due execution of a record is being certified by the notary;

(b) in the case of a verification or proof, the individual other than a subscribing witness whose identity and due execution of the record are being proven or signature is being identified as genuine; and

(c) in the case of an oath or affirmation, the individual who makes a vow of truthfulness on penalty of perjury.

(~~16~~17) ‘Record’ means information that is inscribed on a tangible medium and called a traditional or paper record. Record also may mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium.

(~~17~~18) ‘Satisfactory evidence’ means identification of an individual based on either:

(a) a current identification document issued by a federal or state government agency bearing a photographic image of the individual’s face, signature, and a physical description, except that a current passport without a physical description is acceptable; or

(b) upon the oath or affirmation of a credible witness personally known to the notary public or of two witnesses who present an identification document as described in subitem (a).

(~~18~~19) ‘Seal’ or ‘stamp’ means a device for affixing on a paper record an image containing a notary’s name, the words ‘notary public’, and the words ‘State of South Carolina’. The device may be in the form of an ink stamp or an embosser.

(~~19~~20) ‘Secretary’ means the South Carolina Secretary of State or the Secretary’s designee.

(21) ‘Sign’ means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or to attach or logically associated with the record an electronic sound, symbol, or process.

(~~20~~22) ‘Subscribing witness’ means a person who signs a record for the purpose of being a witness to the principal’s execution of the record or to the principal’s acknowledgment of his execution of the record.

(~~21~~23) ‘Verification’ or ‘proof’ means a notarial act in which a notary certifies that:

(a) an individual appeared in person before the notary;

(b) the individual was personally known to the notary or identified by the notary through satisfactory evidence;

(c) the individual was not a party to or beneficiary of the transaction; and

(d) the individual took an oath or gave an affirmation and testified that he is a subscribing witness and as such:

(i) witnessed the principal who signed the record, or

(ii) received the acknowledgement of the principal’s signature from the principal who signed the record.

(24) ‘Verification of fact’ means a notarial act in which a notary reviews public or vital records, or other legally accessible data, to ascertain or confirm any of the following facts:

(a) date of birth, death, marriage, or divorce;

(b) name of parent, marital partner, offspring, or sibling; or

(c) any other matter authorized for verification by a notary by other law or rule of this State.”

SECTION 9. Sections 26‑1‑5 through 26‑1‑270 of the 1976 Code are designated as Article 1, Chapter 1, Title 26 entitled “General Provisions”.

SECTION 10. This act takes effect one year after approval by the Governor.

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