**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 4 TO TITLE 26 SO AS TO ENACT THE “SOUTH CAROLINA REMOTE ONLINE NOTARIZATION ACT”, TO PROVIDE A CITATION, TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE FOR THE APPLICABILITY OF THE CHAPTER, TO PROVIDE THE SECRETARY OF STATE BY RULE SHALL DEVELOP AND MAINTAIN STANDARDS FOR CREDENTIAL ANALYSIS AND IDENTITY PROOFING AND TO PROVIDE REQUIREMENTS FOR THE DEVELOPMENT OF THESE STANDARDS, TO PROVIDE NOTARIES PUBLIC COMMISSIONED IN THIS STATE MAY REGISTER AS REMOTE ONLINE NOTARIES PUBLIC UPON SATISFYING CERTAIN REQUIREMENTS, TO ENUMERATE NOTARIAL ACTS THAT MAY BE PERFORMED BY REMOTE ONLINE NOTARIES USING ELECTRONIC TECHNOLOGY, TO PROVIDE REQUIREMENTS FOR CONDUCTING ONLINE NOTARIAL ACTS, TO PROVIDE REMOTE ONLINE NOTARIES PUBLIC MAY CHARGE FEES FOR PERFORMING REMOTE ONLINE NOTARIAL ACTS, TO PROVIDE LIABILITY, SANCTIONS, AND REMEDIES FOR THE IMPROPER PERFORMANCE OF REMOTE ONLINE NOTARIAL ACTS OR FOR PROVIDING FALSE OR MISLEADING INFORMATION IN REGISTERING TO PERFORM REMOTE ONLINE NOTARIAL ACTS ARE THE SAME AS PROVIDED BY LAW FOR THE IMPROPER PERFORMANCE OF NONELECTRONIC NOTARIAL ACTS, TO SPECIFY CERTAIN RECORDING REQUIREMENTS THAT ARE CONSIDERED SATISFIED BY REMOTE NOTARIAL ACTS, AND TO PROVIDE REMOTE ONLINE NOTARY PUBLIC APPLICATIONS WILL NOT BE ACCEPTED FOR PROCESSING UNTIL THE ADMINISTRATIVE RULES ARE IN EFFECT AND VENDORS OF TECHNOLOGY ARE APPROVED BY THE SECRETARY OF STATE, AMONG OTHER THINGS.

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

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

“South Carolina Remote Online Notarization Act

Section 26‑4‑10. (A) This chapter may be cited as the ‘South Carolina Remote Notary Public Act’.

(B) This chapter provides procedures for the remote online notarization of documents.

Section 26‑4‑20. As used in this chapter:

(1) ‘Appear’ or ‘personally appear’ or ‘in the presence of’ means:

(a) being in the same physical location as another person and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) interacting with another individual by means of communication technology that complies with the provisions of this chapter.

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

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

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

(3) ‘Credential analysis’ means a process or service that meets the standards established by the Secretary of State through which a third person evaluates the authenticity of a government‑issued identification credential through review of public and proprietary data sources.

(4) ‘Identity proofing,’ means a process or service operating according to standards established by the Secretary of State through which a third person affirms the identity of an individual:

(a) by means of dynamic knowledge‑based authentication such as a review of personal information from public or proprietary data sources; or

(b) by means of analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis.

(5) ‘Outside the United States’ means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(6) ‘Remote online notarial certificate’ is the form of an acknowledgement, jurat, verification on oath or affirmation, or verification of witness or attestation that is completed by a remote online notary public and:

(a) contains the online notary public’s electronic signature, electronic seal, title, and commission expiration date;

(b) contains other required information concerning the date and place of the remote online notarization;

(c) otherwise conforms to the requirements for an acknowledgment, jurat, verification on oath or affirmation, or verification of witness or attestation under the laws of this State; and

(d) indicates that the person making the acknowledgment, oath or affirmation appeared remotely online.

(7) ‘Remote online notarization’ or ‘remote online notarial act’ means a notarial act performed by means of communication technology that meets the standards adopted under this chapter.

(8) ‘Remote online notary public’ means a notary public who has been authorized by the Secretary of State to perform remote online notarizations under this chapter.

(9) ‘Remote online notarization system’ means a set of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations.

(10) ‘Remote presentation’ means transmission to the remote online notary public through communication technology of an image of a government‑issued identification credential that is of sufficient quality to enable the remote online notary public to:

(a) identify the individual seeking the remote online notary public’s services; and

(b) perform credential analysis.

(11) ‘Remotely located individual’ means an individual who is not in the physical presence of the notary.

Section 26‑4‑30. The provisions of Chapters 1 and 3 of Title 26 apply to all acts authorized pursuant to this chapter unless the provisions of Chapters 1 and 3 directly conflict with the provisions of this chapter. In that case, the provisions of this chapter control when applied to remote online notaries public and remote online notarial acts.

Section 26‑4‑40. (A) The Secretary of State by rule shall develop and maintain standards for credential analysis and identity proofing.

(B) In developing standards for remote online notarization, the Secretary of State may review and consider standards established by the National Association of Secretaries of State (NASS), and national standard setting bodies such as the Mortgage Industry Standards and Maintenance Organization (MISMO).

Section 26‑4‑50. (A) A notary public commissioned in this State may become a remote online notary public in accordance with this section. Before a notary public performs a remote online notarization, the notary public must register with the Secretary of State in accordance with rules for registration as a remote online notary public and identify the technology that the notary public intends to use, which must conform to any rules or regulations adopted by the Secretary of State. A notary public must be registered as an electronic notary public prior to submitting a registration to be a remote online notary public. A notary public intending to conduct remote electronic notarizations must file a registration with the Secretary of State on forms prescribed by the Secretary of State prior to performing an electronic notarization. The secretary of state may charge a fee of fifty dollars for the application submitted under this section to administer this chapter.

(B) Before registering to perform remote online notarial acts, a notary public shall complete a course of instruction approved by the Secretary of State and pass an examination based on the course. The content of the course shall include notarial rules, procedures, and ethical obligations pertaining to remote online notarization or in any other law or official guideline as required by the Secretary of State. The course may be taken in conjunction with any course required by the Secretary of State for an electronic notary public.

(C) Unless terminated pursuant to this chapter, the term of registration to perform remote online notarial acts shall begin on the registration starting date set by the Secretary of State and shall continue as long as the notary public’s current commission remains valid.

(D) An individual registering to perform remote online notarial acts shall submit to the Secretary of State an application in a format prescribed by the Secretary of State which includes:

(1) proof of successful completion of the course and examination required under subsection (B);

(2) disclosure of any and all license or commission revocations or other disciplinary actions against the registrant; and

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

(E) Upon the applicant’s fulfillment of the requirements for registration under this chapter, the Secretary of State shall approve the registration and issue to the applicant a unique registration number.

(F) The Secretary of State may reject a registration application if the applicant fails to comply with any section of this chapter.

Section 26‑4‑60. (A) The following notarial acts may be performed by remote online notaries using communication technology:

(1) acknowledgments;

(2) oaths and affirmations;

(3) attestations and jurats;

(4) signature witnessing;

(5) verifications of fact;

(6) certification that a tangible copy of an electronic record is an accurate copy of the electronic record; and

(7) any other acts authorized by law.

Section 26‑4‑70. A commissioned remote online notary public physically located in this State may perform a remote online notarial act using communication technology in accordance with this chapter and any rules or regulations adopted by the Secretary of State for a remotely located individual who is physically located:

(1) In this State:

(2) Outside of this State but within the United States; or

(3) Outside of the United States if:

(a) the remote online notary public has no actual knowledge that the act of making the statement or signing the records is prohibited in the jurisdiction in which the person is located; and

(b) the person placing his or her electronic signature on the electronic record confirms to the remote online notary public that the requested remote online notarial act and the electronic record:

(i) are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity, or other entity in the United States;

(ii) relates to property located in the United States; or

(iii) relates to a transaction substantially connected to the United States.

Section 26‑4‑80. (A) A remote online notary public shall keep a secure electronic journal of each remote online notarial act performed by the remote online notary public. The electronic journal must contain for each remote online notarization:

(1) the date and time of the notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the electronic record or proceeding;

(4) the printed name and address of each principal involved in the transaction proceeding;

(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

(a) a statement that the person is personally known to the remote online notary public;

(b) a notation of the type of identification document provided to the remote online notary public;

(c) a record of the identity verification made under this chapter, if applicable; or

(d) if the principal is identified by one or more credible witnesses:

(i) the printed name and address of each credible witness swearing to or affirming the person’s identity; and

(ii) for each credible witness not personally known to the remote online notary public, a description of the type of identification documents provided to the remote online notary public; and

(6) the fee, if any, charged for the notarization.

(B) The remote online notary public shall create an audio and video copy of the performance of the notarial act.

(C) The remote online notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of remote online notarizations;

(2) maintain a backup for the electronic journal required by subsection (A) and the recording required by subsection (B); and

(3) protect the backup records from unauthorized use.

(D) The electronic journal required by subsection (A) and the recording required by subsection (B) shall be maintained for at least ten years after the date of the transaction or proceeding.

(E) The remote online notary public may designate as custodian of the recording and the electronic journal:

(1) the employer of the remote online notary public if evidenced by a record signed by the remote online notary public and the employer; or

(2) a repository meeting the standards established by the Secretary of State.

(F) The Secretary of State shall establish:

(1) standards for the retention of a video and audio copy of the performance of the notarial act;

(2) procedures for preservation of the audio and video copy and the electronic journal if the remote online notary public dies or is adjudicated incompetent or if the remote online notary public’s commission or authority to perform notarial acts is otherwise terminated; and

(3) standards for third party repositories for the retention of the audio and video copy of the performance of the notarial act.

Section 26‑4‑90. (A) A remote online notary public shall keep the remote online notary public’s electronic journal, public key certificate, and electronic seal secure. The remote online notary public may not allow another person to use the remote online notary public’s electronic journal, public key certificate, or electronic seal.

(B) A remote online notary public shall attach the remote online notary public’s electronic signature and seal to the remote online notarial certificate of an electronic record in a manner that renders any subsequent change or modification to the electronic record to be evident.

(C) A remote online notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State of the theft or vandalism of the remote online notary public’s electronic journal, electronic signature, or electronic seal. A remote online notary public shall immediately notify the Secretary of State of the loss or use by another person of the remote online notary public’s electronic journal, electronic signature, or electronic seal.

Section 26‑4‑100. (A) A remote online notary public may perform a remote online notarization authorized under this chapter that meets the requirements of this chapter and rules adopted under this chapter regardless of whether the principal is physically located in this State at the time of the remote online notarization.

(B) In performing a remote online notarization, a remote online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using communication technology that meets the requirements of this chapter and rules adopted under this chapter. Identity may be verified by:

(1) the remote online notary public’s personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(a) remote presentation by the person creating the electronic signature of a government‑issued identification credential, including a passport or driver’s license, that contains the signature and a photograph of the person;

(b) credential analysis; and

(c) identity proofing.

(C) The remote online notary public shall take reasonable steps to ensure that the communication technology used in a remote online notarization is secure from unauthorized interception.

(D) The remote online notarial certificate for a remote online notarization must state that the person making the acknowledgment or making the oath appeared remotely online.

(E) A remote online notarial act meeting the requirements of this chapter satisfies the requirement of any law of this State relating to a notarial act that requires a principal to appear or personally appear before a notary or that the notarial act be performed in the presence of a notary.

Section 26‑4‑110. (A) A remote online notarization system shall comply with this chapter and any regulations adopted by the Secretary of State pursuant to Section 26‑4‑180.

(B) A remote online notarization system shall require access to the system by the remote online notary public by a password or other secure means of authentication.

(C) A remote online notarization system shall enable a notary public to affix the notary’s electronic signature in a manner that attributes such signature to the notary.

(D) A remote online notarization system shall render every electronic notarial act tamper‑evident.

(E) Except as provided in subsection (F), when the commission of a notary public who is registered to perform remote online notarizations expires or is resigned or revoked, or when such notary public dies or is adjudicated as incompetent, the notary public or the notary public’s personal representative or guardian within three months shall dispose of all or any part of a remote online notarization system that had been in the notary public’s sole control whose exclusive purpose was to perform electronic notarial acts.

(F) A former notary public whose previous commission expired need not comply with subsection (E) if this individual, within three months after commission expiration, is recommissioned as a notary and reregistered to perform electronic notarial acts.

Section 26‑4‑120. (A) Any person or entity wishing to apply to the Secretary of State for designation as a remote online notarization system permissible for use by remote online notaries public in this State must complete and submit a registration form to the Secretary of State for review. The Secretary of State shall determine if the applicant meets the requirements of this chapter and any regulations promulgated by the authority of this chapter.

(B) A remote online notarization system must comply with all regulations adopted by the Secretary of State.

Section 26‑4‑130. A remote online notary public or the remote online notary public’s employer may charge a fee for performance of remote online notarization.

Section 26‑4‑140. (A) Except as provided by subsection (B), a remote online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the remote online notary public’s official electronic signature or seal. The remote notary public shall certify compliance with this subsection to the Secretary of State.

(B) A former remote online notary public whose commission is terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by subsection (A) if the former remote online notary public is recommissioned as a remote online notary public with the same electronic signature and seal within three months after the remote online notary public’s former commission is terminated.

Section 26‑4‑150. (A) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling a remote online notary public to affix an official electronic signature or seal commits a criminal offense.

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

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

Section 26‑4‑160. In the event of a conflict between the provisions of this chapter and any other law in this State, the provisions of this chapter shall control.

Section 26‑4‑170. (A) If a law requires as a condition for recording that a document be an original, be on paper or another tangible medium, be in writing, or be signed, the requirement is satisfied by a paper copy of an electronic document bearing an electronic signature that a notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature pursuant to subsection (C).

(B) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied by a paper copy of an electronic document bearing an electronic signature of the person authorized to perform that act, and all other information required to be included, that a notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature of the person pursuant to subsection (C). A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(C) A recorder shall record a paper copy of a document that was originally in electronic form and that is otherwise entitled to be recorded under the laws of this State, provided that the paper copy has been certified to be a true and correct copy of the electronic original by a notary public duly commissioned under the laws of this State as evidenced by a certificate attached to or made a part of the document. The certificate must:

(1) be signed and dated by the notary public, and be signed in the same manner as on file with the Secretary of State;

(2) identify the jurisdiction in which the certification is performed;

(3) contain the title of the notary public;

(4) indicate the date of expiration, if any, of the notary public’s commission; and

(5) include an official stamp of the notary public affixed to or embossed on the certificate.

(D) The following form of certificate is sufficient for the purposes of this section, if completed with the information required by subsection (C):

‘State of \_\_\_\_\_\_\_\_\_\_\_\_

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

I certify that the foregoing and annexed document entitled \_\_\_\_\_ [document title], if applicable, dated \_\_\_\_\_ [document date], if applicable, and containing \_\_\_ pages is a true and correct copy of an electronic document bearing one or more electronic signatures this \_\_\_\_\_\_ date.

Signature of Notary Public

Stamp

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My notary registration number is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_’

(E) A notary public duly commissioned under the laws of this State has the authority to make the certification provided in this section.

(F) A notary public making the certification provided in this section shall:

(1) confirm that the electronic record contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic record evident;

(2) personally print or supervise the printing of the electronic record onto paper; and

(3) not make any changes or modifications to the electronic record other than the certification described in subsection (C).

(G) If a certificate is completed with the information required by subsection (C) and is attached to or made a part of a paper document, the certificate may be conclusive evidence that the requirements of subsection (F) have been satisfied with respect to the document.

(H) A document purporting to convey or encumber real property or any interest therein that, by inadvertence or excusable neglect, has been recorded by a recorder for the jurisdiction in which the real property is located, and that has not been certified in accordance with the provisions of 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 the provisions of this section.

(I) This section does not apply to a plat, map or survey of real property if under another law of this State or under a rule, regulation, or ordinance applicable to a recorder:

(1) there are requirements of format or medium for the execution, creation or recording of such plat, map or survey beyond the requirements applicable to a deed to real property; or

(2) such plat, map or survey must be recorded in a different location than a deed to real property.

Section 26‑4‑180. The Secretary of State is authorized to promulgate and enforce any regulations, policies, and procedures necessary for the administration of this chapter, including rules to facilitate remote online notarizations.

Section 26‑4‑190. Remote online notary public applications will not be accepted for processing until the administrative rules are in effect and vendors of technology are approved by the Secretary of State.”

SECTION 2. This act takes effect upon approval by the Governor.

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