**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 2 TO TITLE 26 SO AS TO ENACT THE “SOUTH CAROLINA ELECTRONIC NOTARY PUBLIC ACT”, TO PROVIDE A CITATION, TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE FOR THE APPLICABILITY OF THE CHAPTER, TO PROVIDE NOTARIES PUBLIC COMMISSIONED IN THIS STATE MAY REGISTER AS ELECTRONIC NOTARIES PUBLIC UPON SATISFYING CERTAIN REQUIREMENTS, TO ENUMERATE NOTARIAL ACTS THAT MAY BE PERFORMED ELECTRONICALLY, TO PROVIDE PROCEDURES AND RELATED REQUIREMENTS FOR PERFORMING NOTARIAL ACTS ELECTRONICALLY, TO PROVIDE A SCHEDULE OF FEES THAT ELECTRONIC NOTARIES PUBLIC MAY CHARGE FOR PERFORMING CERTAIN ELECTRONIC NOTARIAL ACTS AND TO ALLOW CERTAIN OTHER RELATED FEES, TO PROVIDE 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 ARE THE SAME AS PROVIDED BY LAW FOR THE IMPROPER PERFORMANCE OF NONELECTRONIC NOTARIAL ACTS, TO PROHIBIT CERTAIN CONDUCT AND PROVIDE THE CONDUCT CONSTITUTES A MISDEMEANOR SUBJECT TO CERTAIN PENALTIES, TO PROVIDE REQUIREMENTS FOR CERTIFYING ELECTRONIC NOTARIAL ACTS, AND TO PROVIDE ELECTRONIC NOTARY PUBLIC APPLICATIONS MAY 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 59 of the 1976 Code is amended by adding:

“CHAPTER 2

South Carolina Electronic Notary Public Act

Section 26‑2‑305. (A) This chapter may be cited as the ‘South Carolina Electronic Notary Public Act’.

(B) This chapter provides procedures and requirements for electronic notarization.

Section 26‑2‑310. For purposes of this article:

(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 of notarial acts’ and ‘electronic journal’ means a chronological electronic record of notarizations that is maintained by the notary public who performed the same notarizations.

(4) ‘Electronic notarial act’ and ‘electronic notarization’ means an official act by an electronic notary public that involves electronic documents.

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

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

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

(8) ‘Electronic notary seal’ and ‘electronic seal’ means information within a notarized electronic document that includes the electronic notary’s name, jurisdiction, registration number and commission expiration date, and generally corresponds to data in notary seals used on paper documents.

(9) ‘Electronic signature’ means an electronic 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 document.

(10) ‘Public key certificate’ means an electronic credential which is used to identify an individual who signed an electronic record with the certificate.

(11) ‘Record’ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(13) ‘Tamper‑evident’ means that any change to a record shall provide evidence of the change.

(14) ‘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; and

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

Section 26‑2‑320. The provisions of Chapters 1 and 3 of this title 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 electronic notaries public and electronic notarial acts.

Section 26‑2‑330. (A) A notary public commissioned in this State may become an electronic notary public in accordance with this section. Before a notary public performs an electronic notarization, the notary public must register with the Secretary of State in accordance with rules for registration as an electronic notary public and identify the technology that the electronic notary public intends to use, which must conform to any rules or regulations adopted by the Secretary of State. A registration fee of fifty dollars must be submitted to the Secretary of State with the registration form to be used by the Secretary to administer the provisions of this chapter.

(B) Unless terminated pursuant to Section 26‑2‑490, the term of registration to perform electronic 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.

(C) An individual registering to perform electronic 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 pursuant to Section 26‑2‑340;

(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.

(D) 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.

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

Section 26‑2‑340. (A) Before performing electronic notary acts, a notary public shall take a course of instruction of sufficient length to ensure that the notary public understands his duties and responsibilities as determined and approved by the Secretary of State, and shall pass an examination of this course.

(B) The content of the course and the basis of the examination must be notarial laws, procedures, technology, and ethics as they pertain to notarizations and electronic notarizations.

Section 26‑2‑350. (A) The following notarial acts may be performed electronically:

(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 26‑2‑360. (A) An electronic notary public shall perform an electronic notarization only if the principal:

(1) appears in person before the electronic notary public at the time of notarization; and

(2) is personally known to the notary or identified by the notary through satisfactory evidence as defined in Chapter 1 of this title.

(B) In performing electronic notarial acts, an electronic notary public shall adhere to all applicable rules governing notarial acts provided in Chapter 1 of this title.

Section 26‑2‑370. (A) When performing an electronic notarial act, an electronic notarial certificate that includes all of the following components must be attached to, or logically associated with, the electronic document by the electronic notary public:

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

(2) the notary public’s electronic seal,

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

(4) the notary public’s electronic signature; and

(5) completed wording appropriate to the particular electronic notarial act, as prescribed by law.

(B) All components in subsection (A)(2) through (5) must be immediately perceptible and reproducible in the electronic record to which the notary public’s electronic signature is attached such that removal or alteration of such component is tamper‑evident and will render evidence of alteration of the document containing the notary certificate, which may invalidate the electronic notarial act. If an electronic seal is not used, the words ‘Electronic Notary Public’ and the words ‘State of South Carolina’ must still be attached.

(C) A notary public’s electronic signature or electronic seal is considered to be reliable if the following requirements are met:

(1) it is unique to the notary public;

(2) it is capable of independent verification;

(3) it is retained under the notary public’s sole control;

(4) it is attached to or logically associated with the electronic document; and

(5) it is linked to the data in such a manner that any subsequent alterations to the underlying document or electronic notarial certificate are tamper‑evident and may invalidate the electronic notarial act.

(D) The electronic seal of a notary public shall contain:

(1) the name of the notary public exactly as it is spelled on the notary public’s commission;

(2) the title ‘Notary Public’;

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

(4) the registration number indicating the notary public may perform electronic notarial acts; and

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

(E) The electronic seal of a notary public may be a digital image that appears in the likeness or representation of a traditional physical notary public seal. The electronic seal of a notary public may not be used for any purpose other than performing electronic notarizations under this chapter.

(F) Only the notary public whose name and registration number appear on an electronic seal shall generate that seal.

Section 26‑2‑380. (A) 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 electronic notarial acts 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) verification of fact, ten dollars per signature; and

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

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

(1) the notary public and the person requesting the electronic notarial act agree upon the travel fee in advance of the travel; and

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

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

Section 26‑2‑390. (A) The notary public’s electronic signature in combination with the electronic notary seal must be used only for the purpose of performing electronic notarial acts.

(B) A notary public shall use an electronic notarization system that complies with this chapter and has been registered with the Secretary of State to produce the notary’s electronic signature and electronic seal in a manner that is capable of independent verification.

(C) A notary public shall take reasonable steps to ensure that no other individual may possess or access an electronic notarization system in order to produce the notary public’s electronic signature or electronic seal.

(D) A notary public shall keep in his sole control all or any part of an electronic notarization system whose exclusive purpose is to produce the notary public’s electronic signature and electronic seal.

(E) For the purposes of this section, ‘capable of independent verification’ means that any interested person may 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.

(F) The Secretary of State shall adopt rules or regulations necessary to establish standards, procedures, practices, forms, and records relating to a notary public’s electronic signature and electronic seal. The notary public’s electronic seal and electronic signature must conform to all standards adopted by the Secretary of State.

Section 26‑2‑400. (A) An electronic notary public shall create and maintain a record, journal, or entry of each electronic notarial act. For every notarial act, the notary public shall record the following information in the journal:

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

(2) the type of notarial act;

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

(4) the printed full name of each principal;

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

(6) if identification of the principal is based on satisfactory evidence of identity pursuant to Section 26‑1‑5(17), a description of the evidence relied upon and the name of any credible witness or witnesses;

(7) the address where the notarization was performed, if not the notary public’s business address;

(8) if the notarial act is performed electronically, a description of the electronic notarization system used; and

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

(B) A notary public may not record a Social Security number in the journal.

(C) A notary public may not allow the journal to be used by any other notary public, nor surrender the journal to an employer upon termination of employment.

(D) Any person may inspect or request a copy of an entry or entries in the notary public’s journal, provided that:

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

(2) the notary public does not surrender possession or control of the 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 journal, explaining the circumstances of the request and noting any related act of copy certification by the notary public.

(E) A notary public may charge a reasonable fee to recover any cost of providing a copy of an entry in the electronic journal of notarial acts. A notary who has a reasonable and explainable belief that a person requesting information from the notary’s journal has a criminal or other inappropriate purpose may deny access to any entry or entries.

(F) All notarial records required by statute or regulation may be examined and copied without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Secretary of State.

(G) The Secretary of State will establish standards for preservation of electronic notarial records in the event of a resignation, revocation, or expiration of an electronic notary commission, or upon death of the notary. The provisions of this subsection do not apply to a former electronic notary whose commission has expired if within three months the electronic notary commission is renewed.

Section 26‑2‑410. (A) An electronic notary public shall keep the electronic notary public’s electronic journals, public key certificate, and electronic seal secure. The electronic notary public may not allow another person to use the electronic notary public’s electronic journals, public key certificate, or electronic seal.

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

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

(D) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, the notary or notary’s personal representative shall erase, delete, or destroy the coding, disk, certificate, card software, file or program that enables electronic affixation of the notary’s official electronic signature. The provisions of this subsection do not apply to a former electronic notary who renews his commission within three months of the expiration of the previous commission.

Section 26‑2‑420. (A) An electronic notarization system shall comply with this chapter and any regulations adopted by the Secretary of State pursuant to Section 26‑2‑500.

(B) An electronic notarization system shall require access to the system by a password or other secure means of authentication.

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

(D) An electronic 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 notarize electronically expires or is resigned or revoked, or when such notary 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 an electronic notarization system that had been in the notary’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 public and reregistered to perform electronic notarial acts.

Section 26‑2‑430. (A) Any person or entity wishing to provide an electronic notarization system to electronic notaries public in this State must complete and submit a registration form to the Secretary of State for review.

(B) An electronic notarization system shall comply with all regulations adopted by the Secretary of State.

(C) An electronic notary solution provider must be registered with the Secretary of State pursuant to this chapter before making available to South Carolina electronic notaries public any updates or subsequent versions of the provider’s electronic notarization system.

Section 26‑2‑440. (A) An electronic notary public shall take reasonable steps to ensure that any registered device used to create the notary public’s electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

(B) If the registration of the device used to create electronic signatures either expires or is changed during the electronic notary public’s term of office, the notary public shall cease performing electronic notarizations until:

(1) A new device is duly issued or registered to the notary public; and

(2) An electronically signed notice is sent to the Secretary of State that includes the starting and expiration dates of any new registration term and any other new information at variance with information in the most recently executed electronic registration form.

Section 26‑2‑450. (A) 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 non‑electronic notarial acts.

(B)(1) The Secretary of State may terminate an electronic notary public’s registration for one or more of the following reasons:

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

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

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

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

(3) Neither resignation nor expiration of a notary commission or of an electronic notary public registration precludes or terminates an investigation by the Secretary of State into the electronic notary public’s conduct. The investigation may be pursued to a conclusion when it must be made a matter of public record whether the finding would have been grounds for termination of the commission or registration of the electronic notary public.

Section 26‑2‑460. (A) It is unlawful for a person:

(1) to knowingly act as or otherwise impersonate an electronic notary public, if that person is not an electronic notary public;

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

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

(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 26‑2‑470. The provisions contained in Chapter 1 of this title, with regard to notarial certificates, are applicable for the purposes of this chapter.

Section 26‑2‑480. Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary public of this State, if required, must be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and must 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.

Section 26‑2‑490. (A) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary public 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 indeed 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)’.

(B) The Secretary of State may charge ten dollars for issuing an electronic certificate of authority.

Section 26‑2‑500. The Secretary of State is authorized to promulgate and enforce any regulations and create and enforce any policies and procedures necessary for the administration of this chapter, including rules to facilitate remote online notarizations.

Section 26‑2‑510. Following enactment of this chapter, electronic notary public applications may 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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