



HOUSE BILL 776: Remote Online Notarization Act.

2021-2022 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 4, 2021
Introduced by:	Reps. D. Hall, Davis, Hardister, Reives	Prepared by:	Erika Churchill
Analysis of:	PCS to First Edition H776-CSST-8		Staff Attorney

OVERVIEW: *Effective January 1, 2022, the Proposed Committee Substitute for House Bill 776 (PCS) would allow authorized North Carolina notaries to perform notarial acts using real time online audiovisual technology to establish satisfactory evidence of the identity of a principal who is not physically in the presence of the notary. The notary would be required to be physically located in North Carolina at the time of the notarial act, but the principal could be located outside North Carolina or outside of the United States at the time of the notarial act.*

CURRENT LAW: The North Carolina Department of the Secretary of State Notary Public Section regulates, educates, tests, qualifies, and commissions notaries public. Generally, notaries public are governed by Chapter 10B of the General Statutes which sets forth requirements for an individual to be qualified to notarize documents.

The Electronic Notary Public Act, which allows for acknowledgments, jurats, verifications or proofs, and oaths or affirmations to be performed electronically, is found in Article 2 of Chapter 10B of the General Statutes. Under that Article, a notary cannot perform an electronic notarization if the signer of the electronic document is not in the presence of the electronic notary at the time of the notarization and is not personally known to the notary or identified by the evidence. Upon completion of performing an electronic notarial act, all of the following components must be attached to or associated with the electronic document by the electronic notary: notary's name, state, and county of commission; the words "Electronic Notary Public"; the words "State of North Carolina"; the expiration date of the commission; the notary's electronic signature; and the completed wording of the notarial certificate performed.

BILL ANALYSIS: The PCS would establish statutory authority for a notary to perform remote online notarizations, where the remote notary online notary does not need to be in the presence of the principal, but rather must be simultaneously communicating by sight and sound using audiovisual technology. The new Article 4 of Chapter 10B would be as follows:

G.S. 10B-206 contains the definitions used in the Article including the following:

- Communication technology – An electronic device, process, or system that allows a remote online notary((RON) and a remotely located principal (RLP) to communicate with each other simultaneously by sight and sound using audiovisual technology.

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- Communication technology recording – the simultaneous, synchronous audio and visual recording of the notarial act.
- Credential analysis – The remote analysis of characteristics and security features sufficient of identification documents that are sufficient to establish satisfactory evidence of the RLP's identity.
- Identity proofing – A process or service through which a third party or service affirms the identity of a principal through the review of personal information from public or proprietary data sources.
- Outside the United States – A location outside the geographical boundaries of the United States, Puerto Rico, the United State Virgin Islands, and any territory, insular possession or other location subject to the jurisdiction of the United States.
- Personal appearance – The use of communication technology by the RLP to appear before a remote online notary.
- Remotely located principal – A principal who is not in the physical presence of the remote online notary.

G.S. 10B-220 lists the types of notarial acts that may be performed using communication technology to include acknowledgements, jurats, verifications or proofs, and oaths or affirmations.

G.S. 10B-221 prohibits a RON from performing a remote online notarial act unless the RON has personal knowledge of the RLP or the RLP has provided satisfactory evidence of his or her identity.

G.S. 10B-222 describes the requirements for the communication technology used by the RON. It must be capable of hosting the online meeting between the RON and the RLP, allow for direct interaction between the RON and the RLP, include sufficient quality audio and visual for the RON and the RLP to observe each other, not include any prerecorded audio or video, and be capable of being recorded for future storage. The RON is required to take reasonable steps to protect against unauthorized interception and the communication technology must provide for automated backup of any recording.

G.S. 10B-223 grants RONs the authority to conduct a remote online notarizations under certain circumstances. The RON must be physically located in North Carolina at the time of the act. The RLP may be located outside North Carolina but within the United States with not further restriction on the type of transaction. If the RLP is located outside the United States then the RON must not have actual knowledge that the remote online notarial act is prohibited in the jurisdiction where the RLP is located and the RLP must confirm to the RON that one of the following applies to the electronic document:

- It is part of or pertaining to a matter that is currently before a court, governmental entity, or other entity in the United States.
- It is related to real property located in North Carolina.
- It is related to property other than real property located in the United States.
- It is related to a transaction connected to the United States that does not involve the transfer of real property.
- It is related to a property right, title, or interest granted by an entity of the United States government or a United States court.

G.S.10B-224 outlines certain requirements for conducting a remote online notarization. The RON must inform all parties that North Carolina law requires that the notarial act must be recorded using the communication technology. The RLP must demonstrate to the RON's satisfaction that the principal is not under duress or being coerced. The RON must verify the RLP's identity, and the RLP must state what

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documents are being signed. The RON is prohibited from conducting the remote online notarization if it is not secure, or if the principal cannot affix an electronic signature on the electronic documents.

G.S. 10B-225 outlines the ways the RON may establish the RLP's identity if the RON does not have personal knowledge of that fact. The identity may either be established using a verification or oath by a credible witness who personally appears before the notary, or by satisfactory evidence. Satisfactory evidence may be established either by the RLP presenting certain specified documents or by two forms of multifactor identification.

G.S. 10B-230 requires the RON to maintain an electronic journal that contains all of the following of each remote online electronic notarization: the time of day when the RON observed the document being signed, the date the remote notarization was complete, the first and last name of each principal, the document(s) being notarized or type of proceeding being performed, the type of satisfactory evidence presented, the type of communication technology used, whether any person other than the principal was present, and whether the RON charged a fee. The section also requires the RON or the designee or agent of the RON to maintain the electronic journal for 10 years after the last notarial act.

G.S. 10B-231 contains the security measure the RON must implement including keeping the electronic journal safe from, taking reasonable steps to prevent the audio visual communications from being intercepted, and retaining the electronic journal and a back up for 10 years. The RON may surrender the electronic journal to the RON's employer upon termination of employment. The RON is required to notify the Secretary of State's office within 10 days of learning of a security breach.

G.S. 10B-232 authorizes the Secretary of State to adopt rules and standards for implementing the Article.

G.S. 10B-240 establishes a process by which an attorney may certify that a paper or tangible copy of an electronic document is a true and accurate copy that is sufficient for recording, filing, or submission to a governmental authority and requires that the State or local official must accept the document for recording, filing, or submission. This section does not apply to any plat, map, or survey of real property if under another law of this State there are additional requirements for the format or medium or the plat, map, or survey must be recorded in a different location than the deed.

G.S. 10B-246 clarifies that nothing in the Article shall be construed to alter or supersede any law related to the unauthorized practice of law.

The PCS also makes conforming changes.

EFFECTIVE DATE: January 1, 2022.

BACKGROUND: Section 4.1 of S.L. 2020-3, as amended by S.L. 2020-74, S.L. 2020-80, and S.L. 2021-3, authorized, until December 31, 2021, a notary to perform acknowledgments and administer oaths and affirmations through the use of video conference technology if the notary and principle are physically present in North Carolina at the time of notarization and provided certain requirements are met.