



HOUSE BILL 776: Remote Electronic Notarization.

2021-2022 General Assembly

Committee:		Date:	July 28, 2022
Introduced by:		Prepared by:	Erika Churchill
Analysis of:	S.L. 2022-54		Staff Attorney

OVERVIEW: *S.L. 2022-54 does the following:*

- *Allows, effective July 1, 2023, authorized North Carolina notaries to remotely perform electronic notarial acts using real time online communication technology. At the time of the remote electronic notarial act, the notary to the transaction would be required to be physically located in North Carolina and the principal anywhere inside the United States or, in certain circumstances, outside the United States.*
- *Reauthorizes, effective July 8, 2022, temporary use of the emergency video authorization to perform remote notarizations until June 30, 2023.*

CURRENT LAW: The North Carolina Secretary of State's 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, and remain qualified, to notarize documents,.

The Electronic Notary Public Act, Article 2 of Chapter 10B of the General Statutes, allows for acknowledgments, jurats, verifications or proofs, and oaths or affirmations to be performed electronically. 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 satisfactory evidence. Upon completion of 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.

In 2020, the General Assembly temporarily authorized video witnessing during a state of emergency, allowing any person who witnesses the signature of a record through video conference technology to be considered an "in-person" witness, and the record to be considered to have been signed by the principal signer "in the presence of" such witness, if the video conference technology allowed for direct, real-time audio and video interaction between each principal signer and the witness. Section 4.1 of S.L. 2020-3, as amended by S.L. 2020-74, S.L. 2020-80, and S.L. 2021-3. The temporary authorizations expired December 31, 2021.

BILL ANALYSIS: S.L. 2022-54 establishes statutory authority under a new Part 4A of Article 2 of Chapter 10B of the General Statutes, for a notary to register with the Secretary of State (Secretary) as a remote electronic notary authorized to perform remote electronic notarizations where the remote

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electronic notary need not be in the physical presence of the principal, but rather must be simultaneously communicating with a remote principal by sight and sound using communication technology.

In addition to the existing definitions in Chapter 10B of the General Statutes, the new Part 4A of Article adds key definitions applicable specifically to remote electronic notarizations, including among others the following:

- Communication technology. – An electronic device, process, or system that allows a remote electronic notary and a remotely located principal to communicate with each other simultaneously by sight and sound using audiovisual technology and that makes reasonable accommodations for remotely located principals with vision, hearing, or speech impairments.
- Credential analysis. – A process or service through which a third-party vendor performs a remote analysis of the characteristics and security features of each identification of the remotely located principal.
- Identity proofing. – A process or service through which a third-party vendor affirms the identity of a remotely located principal through review of personal information from public or proprietary data sources.
- Remotely located principal. – A principal who is not in the physical presence of the remote electronic notary and who is located in any of the following places at the time of the remote electronic notarial act:
 - Inside the United States.
 - Outside the United States and physically on the military installation or vessel named in the military orders assigning the member to active duty for more than 120 days, provided the remotely located principal is a member, spouse of a member, or dependent of a member of the Armed Forces of the United States.
 - Outside the United States at any of the following locations:
 - United States Embassy.
 - United States Consulate.
 - United States Diplomatic Mission.
- Tamper-evident. – Any change, interference, or alteration to a record that is patently plain and obvious.

Notary Location and Types of Remote Electronic Notary Acts

The remote electronic notary must be physically located in North Carolina to perform a remote electronic notarial act.

The notarial acts authorized using communication technology are the same as electronic notaries namely, acknowledgments, jurats, verifications or proofs, and oaths or affirmations. However, the remote electronic notary cannot be used for any of the following types of documents:

- A self-proved will.
- A revocable or irrevocable trust or any document amending the same.
- A death beneficiary form that requires an acknowledgment.
- A codicil to a will.
- Any document related to the relinquishment of parental rights.
- Mail-in absentee ballots.

The above prohibitions on types of documents that can be remotely notarized do not apply if, at the time the remote electronic notarial act is performed, the remotely located principal is all of the following:

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- A member of the Armed Forces of the United States or the spouse or dependent of a member of the Armed Forces of the United States.
- Located out of this State pursuant to military orders assigning the member of the Armed Forces of the United States to active duty outside this State for more than 120 days.
- Physically located on the military installation or vessel named in the military orders.

Remote Electronic Notarial Certificate

The portion of a notarized electronic document that is completed by the remote electronic notary is the remote electronic notarial certificate, which must contain all of the following:

- The remote electronic notary's electronic signature and the remote electronic notary's electronic seal.
- The facts attested to by the remote electronic notary in a particular notarization.
- A statement in the acknowledgement, jurat, or verification certificate identifying where the remotely located principal was physically located at the time of the remote electronic notarization.
- A statement that the notarization is a remote electronic notarization performed using communication technology by a remote electronic notary.

Principal Identification, Communication Technology, And Electronic Journal

The verification that the remotely located principal was physically on U.S. soil is to be verified through geolocation of the IP address shown by the communication technology being used. A remote electronic notary is prohibited from performing a remote electronic notarial act unless the remote electronic notary has personal knowledge of the remotely locate principal, or has proved identity via **all** of the following methods:

1. Credential analysis, by a third party vendor approved by the Secretary, of a current document issued by a federal, state, or federal or state recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.
2. Identity proofing by a third party vendor approved by the Secretary.
3. Comparison, by the remote electronic notary, of the current document issued by a federal, state, or federal or state recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual presented by the remotely located principal during credential analysis and the image of the remotely located principal via the communication technology.

The communication technology used by the remote electronic notary must be capable of hosting the remote electronic meeting between the remote electronic notary and the remotely located principal, allow for direct interaction between the remote electronic notary and the remotely located principal, include sufficient audio and video quality for the remote electronic notary and the remotely located principal to observe and hear each other, not include any prerecorded audio or video, be capable of being recorded for future storage, and reflect the physical location of the IP address being used by the remotely located principal. The remote electronic notary is required to take reasonable steps to protect against unauthorized interception and the communication technology must provide for automated backup of any recording.

The remote electronic notary is required to maintain an electronic journal that contains all information required by the Secretary. The remote electronic notary or the duly appointed steward of the remote electronic notary is required to maintain the electronic journal for 10 years after the last remote electronic notarial act.

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The remote electronic notary must implement security measures, including keeping the electronic journal securely stored, taking reasonable steps to prevent the audio visual communications from being intercepted, and retaining the electronic journal and a backup for 10 years. The remote electronic notary may surrender the electronic journal to the remote electronic notary's employer upon termination of employment. The remote electronic notary is required to notify appropriate law enforcement, the Secretary's office, and the county register of deeds office with whom the remote electronic notary took the oath of office within 10 calendar days of discovering a security breach.

Third-party vendors providing communication technology, credential analysis, identity proofing, or custodial services to the remote electronic notary must be licensed by the Secretary for the provision of services to a remote electronic notary in this State. The Secretary has the authority to adopt rules under Chapter 150B of the General Statutes to implement the provision of remote electronic notarial services.

Other Miscellaneous Provisions

S.L. 2022-54 also does all of the following:

- Sets forth how electronic documents remotely notarized, whether through e-signatures or through remote electronic notarization, may be converted to paper form for recordation.
- Increases the maximum fees a notary may charge, in the discretion of each notary, effective July 8, 2022, as follows:
 - For acknowledgments, jurats, verifications or proofs, from \$5.00 to \$10.00.
 - For oaths or affirmations without a signature, from \$5.00 to \$10.00. No fee may be charged for an oath or affirmation administered to a credible witness to vouch for the identity of a principal or subscribing witness.
 - For an electronic notarization, \$15.00.
 - For remote notarization, \$25.00.
 - For any notarial act, actual mileage at the federal mileage rate if the travel reimbursement is agreed to by the principal in writing prior to the travel.
- Authorizes the Secretary to refer evidence pertaining to violations of Chapter 10B of the General Statutes to the proper district attorney and to provide, upon request, an attorney to prosecute or assist in the criminal prosecution on behalf of the State.
- Effective July 8, 2022, temporarily reauthorizes emergency video notarization, which expired on December 31, 2021. The temporary authorization ends on June 30, 2023, and the above described remote electronic notarization becomes effective July 1, 2023.
- Makes conforming changes.

EFFECTIVE DATE: Remote electronic notarization authority becomes effective July 1, 2023, and the Secretary must begin rulemaking prior to that date to implement the act, but no temporary or permanent rule shall become effective prior to that date. Other provisions become effective as noted above.