



SENATE BILL 552: Modifications to Notary Public Act.

2023-2024 General Assembly

Committee:		Date:	December 1, 2023
Introduced by:		Prepared by:	Erika Churchill
Analysis of:	S.L. 2023-57		Staff Attorney

OVERVIEW: *S.L. 2023-57 does the following:*

- *Extends the authority for emergency video notarizations and emergency video witnessing to June 30, 2024.*
- *Delays the effective date for authority for remote electronic notarizations until July 1, 2024.*
- *Authorizes a registered electronic notary public to also perform remote electronic notarial acts.*
- *Makes additional conforming changes to the Electronic Notary Public Act, Article 2 of Chapter 10B of the General Statutes.*

This act has various effective dates. Please see the full summary for more details.

CURRENT LAW: The North Carolina Secretary of State's Notary Public Section regulates, educates, tests, qualifies, and commissions notaries public under the authority of Chapter 10B of the General Statutes. A notarial act is the taking of an acknowledgement, verification or proof, or the administration of an oath or affirmation and must be done in the presence of the notary. North Carolina recognizes various methods of notarization.

Traditional Notarization

Article 1 of Chapter 10B of the General Statutes sets forth the requirements for a traditional notary public to qualify for and obtain a commission as a notary public in this State authorized to perform notarial acts. The notary can take an acknowledgement, verification or proof, or administer an oath or affirmation. These notarial acts must be done in this State and in the physical presence of the notary. The parties to the notarial act must be personally known to the notary or be identified by the notary through satisfactory evidence.

Electronic Notarization

The Electronic Notary Public Act, Article 2 of Chapter 10B of the General Statutes, allows acknowledgments, jurats, verifications or proofs, and oaths or affirmations to be performed electronically by a notary qualified by and registered with the Secretary of State as an electronic notary public. The electronic notarial act is accomplished through the use of electronic documents where information is created, generated, sent, communicated, received, or stored by electronic means. The electronic notarial act must be performed in this State and all parties must be in the physical presence of the electronic notary.

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Temporary Emergency Video Notarization

In 2020, the General Assembly temporarily authorized emergency video notarization in G.S. 10B-25, where the requirement for parties to personally appear before a notary was deemed satisfied by the use of video conference technology meeting certain enumerated criteria. This authorization originally expired August 1, 2020, but has been extended various times by the General Assembly. This authorization was most recently extended to June 30, 2023, by Section 3.(b) of S.L. 2022-54.

Temporary Video Witnessing

Also in 2020, the General Assembly temporarily authorized video witnessing in G.S. 10B-200, allowing, during a state of emergency, 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. This temporary authority originally expired December 31, 2021, but was reinstated and extended to June 30, 2023, by Section 3.(c) S.L. 2022-54.

Remote Electronic Notarization

In 2022, the General Assembly amended Article 2 of Chapter 10B to add a new Part 4A to authorize remote electronic notarizations by notaries qualified and registered with the Secretary of State as a remote electronic notary. Unlike electronic notarization, a remote electronic notarization allows a remote electronic notary to perform a notarial act outside the physical presence of the principal. The remote electronic notary must be located in North Carolina but the remotely located principal can be anywhere inside the United States, and in certain circumstances, can be located outside of the United States. The remote notarial act must be performed using communication technology approved by the Secretary of State that records the remote notarial act and allows the remote electronic notary and remotely located principal to simultaneously communicate with each other by sight and sound.

Prior to the notarial act, the remote electronic notary must verify (i) the principal's location through geolocation, and (ii) the principal's identity through personal knowledge or credential analysis, identity proofing, and document comparison. Except in limited circumstances involving military members and their dependents stationed outside of the United States, certain documents cannot be remotely notarized namely, self-proving wills, will codicils, trust documents, death beneficiary forms, parental rights relinquishments, and mail-in absentee ballots. Remotely notarized powers of attorney cannot be used by an attorney-in-fact to transfer title to the principal's real property except those for military members and their dependents stationed outside of the United States.

A remote electronic notary is authorized to charge fees for remote electronic notarizations and must keep and maintain an electronic journal, and backup, for 10 years after the last remote notarial act. The journal is the exclusive property of that notary but can be surrendered to notary's employer upon termination of employment. The journal, and all communication technology recordings of the remote notarial act, must be securely stored and reasonable steps must be taken to ensure those recordings are secure from unauthorized interception. Upon discovery of a data breach, the remote electronic notary must notify law enforcement, the register of deeds, and the Secretary of State within 10 calendar days of the discovery.

The authority to register as a remote electronic notary and conduct remote electronic notarizations becomes effective July 1, 2023. The Secretary of State must adopt rules to implement the remote electronic notarization process but those rules cannot become effective prior to July 1, 2023.

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BILL ANALYSIS: S.L. 2023-57 makes various changes to the notary public laws under Chapter 10B of the General Statutes as follows:

Part I became effective June 23, 2023, modifies the effective dates for certain notarial authorizations by:

- Extending the authority for emergency video notarizations and emergency video witnessing until June 30, 2024.
- Delaying the effective date of authority for remote electronic notarizations from July 1, 2023, until July 1, 2024.

Part II became effective July 1, 2023, except as otherwise noted, modifies laws applicable to all notarial acts to:

- Provide specific authorization for the Secretary of State to engage in rulemaking.
- Provide that a notary's journal entries and electronic communications are not public records.
- Effective June 23, 2023, clarify the fees notaries may charge and provide that notaries may charge \$15 per person for an electronic oath or affirmation without a signature.
- Require a vendor or manufacturer of notary seals to verify purchasers of those seals have a notary commission from the Secretary of State and subject each violation of that provision to a \$1,000 fine.
- Authorize the Secretary of State to investigate violations of Chapter 10B outside of North Carolina and provide that records of criminal investigation are not public records.
- Allow electronic submission of applications for notary commissions.

Part III becomes effective July 1, 2024, modifies the Electronic Notary Public Act to:

- Authorize a registered electronic notary public to perform remote electronic notarial acts upon notification to the Secretary of State of the platforms to be used.
- Increase the required course of instruction for electronic notaries from three hours to four hours.
- Prohibit remote verifications or proofs.
- Require an electronic notary, prior to performing a remote notarial act, to make a judgment determination that a remotely located principal is not incompetent, lacking in understanding, acting involuntarily, or under duress or undue influence.
- Allow a notary to rely on an electronic declaration and confirmation under penalty of perjury as to the location, military status, or family status of a member of the military, their spouse, or their dependents.
- Allow an electronic notary to perform remote electronic notarial acts for death beneficiary forms requiring an acknowledgment.
- Add additional definitions to the Electronic Notary Public Act and make other conforming changes.

EFFECTIVE DATE: Except as otherwise noted, the act became effective June 23, 2023.