**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1539**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Reese

Document Path: l:\council\bills\ms\7732ahb12.docx

Introduced in the Senate on May 17, 2012

Currently residing in the Senate Committee on **Judiciary**

Summary: Electronic Notary Public Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/17/2012 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj%20archive\2012\05-17-12.docx))

5/17/2012 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 3](file:///h:\sj%20archive\2012\05-17-12.docx))

**VERSIONS OF THIS BILL**

[5/17/2012](file:///p:\pprever\2011-12\1539_20120517.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 26 SO AS TO ENACT THE “SOUTH CAROLINA ELECTRONIC NOTARY PUBLIC ACT”, TO DEFINE NECESSARY TERMS, TO PROVIDE PROCEDURES FOR ELECTRONIC NOTARIAL ACTS, ESTABLISH FEES THAT MAY BE CHARGED FOR CERTAIN ELECTRONIC NOTARIAL ACTS, TO PROVIDE PENALTIES FOR CERTAIN VIOLATIONS OF THE ELECTRONIC NOTARIAL ACT, TO ALLOW THE SECRETARY OF STATE TO PROMULGATE AND ENFORCE RELATED REGULATIONS, AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 1, TITLE 26 AS ARTICLE 1 AND ENTITLE IT “GENERAL PROVISIONS”.

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

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

“Article 3

South Carolina Electronic Notary Public Act

Section 26‑1‑305. This article may be cited as the ‘South Carolina Electronic Notary Public Act.’

Section 26‑1‑310. For purposes of this article:

(1) ‘Electronic’ means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) ‘Electronic document’ means information that is created, generated, sent, communicated, received, or stored by electronic means.

(3) ‘Electronic journal of notarial acts’ and ‘electronic journal’ mean 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’ mean an official act by an electronic notary public that involves electronic documents.

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

(6) ‘Electronic notary seal’ and ‘electronic seal’ mean information within a notarized electronic document that includes the electronic notary’s name, title, jurisdiction, and commission expiration date.

(7) ‘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.

(8) ‘Notary’s electronic signature’ means those forms of electronic signature which have been approved by the Secretary of State as authorized pursuant to Section 26‑1‑410 as an acceptable means for an electronic notary to affix the notary’s official signature to an electronic record that is being notarized.

Section 26‑1‑320. The provisions of Article 1 apply to all acts authorized pursuant to this article unless the provisions of Article 1 directly conflict with the provisions of this article. In that case, the provisions of this article control when applied to electronic notary publics and electronic notarial acts.

Section 26‑1‑330. (A) A person qualified to register as an electronic notary public with the Secretary of State shall meet all of the following requirements:

(1) hold a valid commission as a notary public with the State of South Carolina;

(2) except as otherwise provided in this article, abide by all the provisions of Article 1;

(3) complete a course of instruction as required pursuant to Section 26‑1‑350; and

(4) submit an electronic registration form containing no misstatement or omission of fact.

Section 26‑1‑340. (A) A notary public shall register the capability to perform electronic notarial acts with the Secretary of State before performing notarial acts electronically.

(B) The term of registration as an electronic notary shall coincide with the term of the notary’s commission pursuant to Article 1.

(C) Upon renewal of his notary commission, a notary public shall register again with the Secretary of State before performing electronic notarial acts.

(D) An electronic form must be used by an electronic notary public in registering with the Secretary of State. This electronic form shall include:

(1) the applicant’s full legal name and the name under which the notary public’s commission was issued, if different;

(2) the residential address of the notary public and the county in which the notary public’s commission is enrolled pursuant to Section 26‑1‑50;

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

(4) proof of successful completion of the course of instruction on electronic notarization as required by this article;

(5) a description of the technology the registrant will use to create an electronic signature in performing official acts;

(6) if the device used to create the registrant’s electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device’s term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail; and

(7) the email address of the registrant. The Secretary of State may exempt from disclosure under the Freedom of Information Act the residential address and email address of the registrant, except as otherwise provided by statute, regulation, or court order.

(E) The electronic registration form for an electronic notary public must be transmitted electronically to the Secretary of State and shall include any decrypting instructions, codes, keys, or software that allow the registration to be read.

(F) Within ten business days after the change of registration information required of an electronic notary public, the notary shall electronically transmit to the Secretary of State a notice of the change of information signed with the notary’s official electronic signature.

Section 26‑1‑350. (A) Before performing electronic notary acts, a notary shall take a course of instruction of at least three hours 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 electronic notarization.

Section 26‑1‑360. The fee for the registration or renewal of a registration of an electronic notary public is fifty dollars, collected by the Secretary of State as other fees.

Section 26‑1‑370. (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; and

(6) any other acts authorized by law.

Section 26‑1‑380. (A) An electronic notary public shall perform an electronic notarization only if the principal:

(1) is in the presence of the notary at the time of notarization;

(2) is personally known to the notary or identified by the notary through satisfactory evidence; and

(3) reasonably establishes the electronic signature as his own.

(B) In performing electronic notarial acts, an electronic notary shall adhere to all applicable rules governing notarial acts provided in Article 1.

Section 26‑1‑390. When performing an electronic notarial act, all of the following components must be attached to, or logically associated with, the electronic document by the electronic notary, all of which must be immediately perceptible and reproducible in the electronic record to which the notary’s electronic signature is attached the:

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

(2) words ‘Electronic Notary Public’;

(3) words ‘State of South Carolina’;

(4) expiration date of the notary’s commission;

(5) notary’s electronic signature; and

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

Section 26‑1‑400. (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 for performing electronic notarial acts are:

(1) acknowledgments, $10.00 per signature;

(2) oaths and affirmations, $10.00 per signature;

(3) attestations and jurats, $10.00 per signature;

(4) signature witnessing, $10.00 per signature;

(5) verification of fact, $10.00 per signature; and

(6) any other acts authorized by law, $10.00 per signature.

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

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

(2) 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 for performing electronic notarial acts shall conspicuously display in all of the notary’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 10‑point type.

Section 26‑1‑410. (A) The notary’s electronic signature in combination with the electronic notary seal must be used only for the purpose of performing electronic notarial acts.

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

Section 26‑1‑420. (A) A notary shall safeguard the notary’s electronic signature, the notary’s electronic seal, and all other notarial records. Notarial records must be maintained by the notary, and the notary may not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary of State.

(B) When not in use, the notary shall keep the notary’s electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary and may not allow them to be used by another notary or any other person.

(C) A notary, within ten days of discovering that the notary’s electronic seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image, shall:

(1) inform the appropriate law enforcement agency in the case of theft or vandalism; and

(2) notify the Secretary of State in writing and signed in the official name in which he was commissioned.

(D) The Secretary of State may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.

(E) An electronic notary shall create and maintain a record, journal, or entry of each electronic notarial act.

(F) All notarial records required by statute or rule 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) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule must be delivered to the Secretary of State. A former electronic notary public whose previous commission has expired need not surrender his notarial records if, within three months of the expiration of his commission, his commission as a notary public and registration as an electronic notary public are renewed.

Section 26‑1‑430. (A) The liability, sanctions, and remedies for the improper performance of electronic notarial acts by an electronic notary public are the same as provided by law for the improper performance of nonelectronic notarial acts.

(B)(1) The Secretary of State shall terminate an electronic notary public’s registration for one 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’s performance of official misconduct.

(2) Before terminating an electronic notary’s registration, the Secretary of State will inform the notary of the basis for the termination, and that 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 registration precludes or terminates an investigation by the Secretary of State into the electronic notary’s conduct. The investigation may be pursued to a conclusion, when it must be made a matter of public record whether or not the finding would have been grounds for termination of the commission or registration of the electronic notary.

Section 26‑1‑440. (A) It is unlawful for a person:

(1) who is not an electronic notary to knowingly act or otherwise impersonate an electronic notary;

(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 to commit official misconduct.

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

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

Section 26‑1‑450. The Secretary of State may promulgate and enforce any regulations, policies, and procedures necessary for the administration of this article.”

SECTION 2. The existing sections of Chapter 1, Title 26 are designated as Article 1, Chapter 1, Title 26 and entitled “General Provisions”.

SECTION 3. This act takes effect upon approval by the Governor.

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