AS PASSED BY THE SENATE

May 8, 2019

**H. 3602**

Introduced by Reps. Rose, Caskey and Weeks

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Read the first time April 2, 2019.

**A** **BILL**

TO AMEND SECTION 44‑66‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY MAKE HEALTH CARE DECISIONS FOR A PATIENT WHO IS UNABLE TO CONSENT, SO AS TO ADD AN ADDITIONAL CATEGORY OF PERSONS.

Amend Title To Conform

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

SECTION 1. A. Section 44‑66‑30(A) of the 1976 Code is amended by adding new items at the end to read:

“(10) a person given authority to make health care decisions for the patient by another statutory provision;

(11) if, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (10) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient’s wishes but who is not a paid caregiver or a provider of health care services to the patient. For the purposes of this item, a person with an established relationship is an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient’s health care views and desires, and who is willing and able to become involved in the patient’s health care decisions and to act in the patient’s best interest. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other health care facility in which the patient is located, for placement in the patient’s records, setting forth the nature and length of the relationship and certifying that he meets such criteria. Along with the notarized acknowledgment form, the hospital or other health care facility shall include in the patient’s medical record documentation of its effort to locate persons with higher priority under this statute as required by Section 44‑66‑30(B).”

B. Section 44‑66‑30(A)(3) of the 1976 Code is amended to read:

“(3) a person given priority to make health care decisions for the patient by another statutory provision when an agency has taken custody of the patient;”

SECTION 2. Section 44‑26‑40 of the 1976 Code is amended to read:

“Section 44‑26‑40. If a client resides in a facility operated by or contracted to by the department, the determination of that client’s competency to consent to or refuse major medical treatment must be made pursuant to Section 44‑66‑20~~(6)~~(8) of the Adult Health Care Consent Act. The department shall abide by the decision of a client found competent to consent.”

SECTION 3. Section 44‑26‑50 of the 1976 Code is amended to read:

“Section 44‑26‑50. If the client is found incompetent to consent to or refuse major medical treatment, the decisions concerning his health care must be made pursuant to Section 44‑66‑30 of the Adult Health Care Consent Act. An authorized designee of the department may make a health care decision pursuant to Section 44‑66‑30~~(8)~~(10) of the Adult Health Care Consent Act. The person making the decision must be informed of the need for major medical treatment, alternative treatments, and the nature and implications of the proposed health care and shall consult the attending physician before making decisions. When feasible, the person making the decision shall observe or consult with the client found to be incompetent.”

SECTION 4. Section 44‑26‑60(C) of the 1976 Code is amended to read:

“(C) Priority under this section must not be given to a person if a health care provider, responsible for the care of a client who is unable to consent, determines that the person is not reasonably available, is not willing to make health care decisions for the client, or is unable to consent as defined in Section 44‑66‑20~~(6)~~(8) of the Adult Health Care Consent Act.”

SECTION 5. Section 1-3-210 of the 1976 Code is amended to read:

“Section 1-3-210. (A)(1) ~~During the recess of the Senate, vacancy which occurs in an~~ If an office filled by an appointment of the Governor with the advice and consent of the Senate becomes vacant during the interim period between regular legislative sessions, then the office may be filled by an interim appointment of the Governor only if the Governor acts to fill the office during the same interim period during which the office became vacant. The Governor must report the interim appointment to the Senate and must forward a formal appointment at its next ensuing regular session. If the Senate votes to reject an interim appointee’s formal appointment during the next ensuing regular session then the office is immediately vacant and may not be filled by another interim appointment.

(2) If the Senate does not advise and consent ~~thereto~~ to the formal appointment prior to ~~sine die adjournment~~ the second Thursday in May following the interim period during which the interim appointment was made ~~of the next ensuing regular session~~, the office shall be vacant and the interim appointment shall not serve in hold over status notwithstanding any other provision of law to the contrary. The Governor may not make a subsequent interim appointment for the same vacancy. ~~A subsequent interim appointment of a different person to a vacancy created by a failure of the Senate to grant confirmation to the original interim appointment shall expire on the second Tuesday in January following the date of such subsequent interim appointment and the office shall be vacant.~~

(B) The Governor’s authority to make an interim appointment pursuant to subsection (A) terminates when the General Assembly convenes the regular legislative session following the interim period between regular legislative sessions during which the office became vacant.”

SECTION 6. Article 5, Chapter 3 of Title 1 of the 1976 Code is amended by adding:

“Section 1-3-211. (A) If a vacancy exists in the head of an agency that requires appointment by the Governor with the advice and consent of the Senate, the Governor may designate an employee of the agency as the acting head of the agency if the person designated was employed by the agency for at least twelve consecutive months prior to the date upon which the vacancy occurred. A person designated as an acting agency head pursuant to this subsection may serve as the acting agency head no longer than the second Thursday in May following date upon which the vacancy occurred.

(B)(1) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may not be designated by the Governor as the acting head of the agency to which the person was nominated.

(2) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who also had been previously designated as the acting head of the agency who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may no longer exercise any authority or duties of that agency.”

SECTION 7. A. Title 26 of the 1976 Code is amended by adding:

“Chapter 4

South Carolina Remote Online Notarization Act

Section 26‑4‑10. (A) This chapter may be cited as the ‘South Carolina Remote Notary Public Act’.

(B) This chapter provides procedures for the remote online notarization of documents.

Section 26‑4‑20. As used in this chapter:

(1) ‘Appear’ or ‘personally appear’ or ‘in the presence of’ means:

(a) being in the same physical location as another person and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) interacting with another individual by means of communication technology that complies with the provisions of this chapter.

(2) ‘Communication technology’ means an electronic device or process that:

(a) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(b) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual with a vision, hearing, or speech impairment.

(3) ‘Credential analysis’ means a process or service that meets the standards established by the Secretary of State through which a third person evaluates the authenticity of a government‑issued identification credential through review of public and proprietary data sources.

(4) ‘Identity proofing’ means a process or service operating according to standards established by the Secretary of State through which a third person affirms the identity of an individual:

(a) by means of dynamic knowledge‑based authentication such as a review of personal information from public or proprietary data sources; or

(b) by means of analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis.

(5) ‘Outside the United States’ means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(6) ‘Remote online notarial certificate’ is the form of an acknowledgement, jurat, verification on oath or affirmation, or verification of witness or attestation that is completed by a remote online notary public and:

(a) contains the online notary public’s electronic signature, electronic seal, title, and commission expiration date;

(b) contains other required information concerning the date and place of the remote online notarization;

(c) otherwise conforms to the requirements for an acknowledgment, jurat, verification on oath or affirmation, or verification of witness or attestation under the laws of this State; and

(d) indicates that the person making the acknowledgment, oath or affirmation appeared remotely online.

(7) ‘Remote online notarization’ or ‘remote online notarial act’ means a notarial act performed by means of communication technology that meets the standards adopted under this chapter.

(8) ‘Remote online notary public’ means a notary public who has been authorized by the Secretary of State to perform remote online notarizations under this chapter.

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

(10) ‘Remote presentation’ means transmission to the remote online notary public through communication technology of an image of a government‑issued identification credential that is of sufficient quality to enable the remote online notary public to:

(a) identify the individual seeking the remote online notary public’s services; and

(b) perform credential analysis.

(11) ‘Remotely located individual’ means an individual who is not in the physical presence of the notary.

Section 26‑4‑30. The provisions of Chapters 1 and 3 of Title 26 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 remote online notaries public and remote online notarial acts.

Section 26‑4‑40. (A) The Secretary of State by rule shall develop and maintain standards for credential analysis and identity proofing.

(B) In developing standards for remote online notarization, the Secretary of State may review and consider standards established by the National Association of Secretaries of State (NASS), and national standard setting bodies such as the Mortgage Industry Standards and Maintenance Organization (MISMO).

Section 26‑4‑50. (A) A notary public commissioned in this State may become a remote online notary public in accordance with this section. Before a notary public performs a remote online notarization, the notary public must register with the Secretary of State in accordance with rules for registration as a remote online notary public and identify the technology that the notary public intends to use, which must conform to any rules or regulations adopted by the Secretary of State. A notary public must be registered as an electronic notary public prior to submitting a registration to be a remote online notary public. A notary public intending to conduct remote electronic notarizations must file a registration with the Secretary of State on forms prescribed by the Secretary of State prior to performing an electronic notarization. The Secretary of State may charge a fee of fifty dollars for the application submitted under this section to administer this chapter.

(B) Before registering to perform remote online notarial acts, a notary public shall complete a course of instruction approved by the Secretary of State and pass an examination based on the course. The content of the course shall include notarial rules, procedures, and ethical obligations pertaining to remote online notarization or in any other law or official guideline as required by the Secretary of State. The course may be taken in conjunction with any course required by the Secretary of State for an electronic notary public.

(C) Unless terminated pursuant to this chapter, the term of registration to perform remote online 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.

(D) An individual registering to perform remote online 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 under subsection (B);

(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.

(E) 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.

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

Section 26‑4‑60. (A) The following notarial acts may be performed by remote online notaries using communication technology:

(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 26‑4‑70. A commissioned remote online notary public physically located in this State may perform a remote online notarial act using communication technology in accordance with this chapter and any rules or regulations adopted by the Secretary of State for a remotely located individual who is physically located:

(1) in this State;

(2) outside of this State but within the United States; or

(3) outside of the United States if:

(a) the remote online notary public has no actual knowledge that the act of making the statement or signing the records is prohibited in the jurisdiction in which the person is located; and

(b) the person placing his or her electronic signature on the electronic record confirms to the remote online notary public that the requested remote online notarial act and the electronic record:

(i) are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity, or other entity in the United States;

(ii) relates to property located in the United States; or

(iii) relates to a transaction substantially connected to the United States.

Section 26‑4‑80. (A) A remote online notary public shall keep a secure electronic journal of each remote online notarial act performed by the remote online notary public. The electronic journal must contain for each remote online notarization:

(1) the date and time of the notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the electronic record or proceeding;

(4) the printed name and address of each principal involved in the transaction proceeding;

(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

(a) a statement that the person is personally known to the remote online notary public;

(b) a notation of the type of identification document provided to the remote online notary public;

(c) a record of the identity verification made under this chapter, if applicable; or

(d) if the principal is identified by one or more credible witnesses:

(i) the printed name and address of each credible witness swearing to or affirming the person’s identity; and

(ii) for each credible witness not personally known to the remote online notary public, a description of the type of identification documents provided to the remote online notary public; and

(6) the fee, if any, charged for the notarization.

(B) The remote online notary public shall create an audio and video copy of the performance of the notarial act.

(C) The remote online notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of remote online notarizations;

(2) maintain a backup for the electronic journal required by subsection (A) and the recording required by subsection (B); and

(3) protect the backup records from unauthorized use.

(D) The electronic journal required by subsection (A) and the recording required by subsection (B) shall be maintained for at least ten years after the date of the transaction or proceeding.

(E) The remote online notary public may designate as custodian of the recording and the electronic journal:

(1) the employer of the remote online notary public if evidenced by a record signed by the remote online notary public and the employer; or

(2) a repository meeting the standards established by the Secretary of State.

(F) The Secretary of State shall establish:

(1) standards for the retention of a video and audio copy of the performance of the notarial act;

(2) procedures for preservation of the audio and video copy and the electronic journal if the remote online notary public dies or is adjudicated incompetent or if the remote online notary public’s commission or authority to perform notarial acts is otherwise terminated; and

(3) standards for third party repositories for the retention of the audio and video copy of the performance of the notarial act.

Section 26‑4‑90. (A) A remote online notary public shall keep the remote online notary public’s electronic journal, public key certificate, and electronic seal secure. The remote online notary public may not allow another person to use the remote online notary public’s electronic journal, public key certificate, or electronic seal.

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

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

Section 26‑4‑100. (A) A remote online notary public may perform a remote online notarization authorized under this chapter that meets the requirements of this chapter and rules adopted under this chapter regardless of whether the principal is physically located in this State at the time of the remote online notarization.

(B) In performing a remote online notarization, a remote online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using communication technology that meets the requirements of this chapter and rules adopted under this chapter. Identity may be verified by:

(1) the remote online notary public’s personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(a) remote presentation by the person creating the electronic signature of a government‑issued identification credential, including a passport or driver’s license, that contains the signature and a photograph of the person;

(b) credential analysis; and

(c) identity proofing; or

(3) oath or affirmation of a credible witness who personally knows the individual if the electronic notary public has personal knowledge of the credible witness or has reasonably verified the identity of the credible witness under item (2).

(C) The remote online notary public shall take reasonable steps to ensure that the communication technology used in a remote online notarization is secure from unauthorized interception.

(D) The remote online notarial certificate for a remote online notarization must state that the person making the acknowledgment or making the oath appeared remotely online.

(E) A remote online notarial act meeting the requirements of this chapter satisfies the requirement of any law of this State relating to a notarial act that requires a principal to appear or personally appear before a notary or that the notarial act be performed in the presence of a notary.

(F) A credible witness under subsection (B) may be a remotely located individual if the credible witness, principal, and electronic notary public communicate by means of communication technology.

(G) An electronic notary public’s verification of an individual’s identity under Section 26-4-100(B) constitutes satisfactory evidence of the identity of the individual and satisfies any requirement of law of this State that the notary verify the identity of the individual.

(H) For the purposes of this chapter:

(1) any requirement that an instrument be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of communication technology, as defined in Section 26-4-20(2); and

(2) the act of witnessing an electronic signature is satisfied if a witness is present either in the physical presence of the principal or present through audio-visual communication technology at the time the principal affixes his electronic signature and sees and hears the principal make a statement acknowledging that the principal has signed the electronic record.

Section 26‑4‑110. (A) A remote online notarization system shall comply with this chapter and any regulations adopted by the Secretary of State pursuant to Section 26‑4‑180.

(B) A remote online notarization system shall require access to the system by the remote online notary public by a password or other secure means of authentication.

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

(D) A remote online 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 perform remote online notarizations expires or is resigned or revoked, or when such notary public 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 a remote online notarization system that had been in the notary public’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 and reregistered to perform electronic notarial acts.

Section 26‑4‑120. (A) Any person or entity wishing to apply to the Secretary of State for designation as a remote online notarization system permissible for use by remote online notaries public in this State must complete and submit a registration form to the Secretary of State for review. The Secretary of State shall determine if the applicant meets the requirements of this chapter and any regulations promulgated by the authority of this chapter.

(B) A remote online notarization system must comply with all regulations adopted by the Secretary of State.

Section 26‑4‑130. A remote online notary public or the remote online notary public’s employer may charge a fee of not more than twenty-five dollars for performance of remote online notarization.

Section 26‑4‑140. (A) Except as provided by subsection (B), a remote online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the remote online notary public’s official electronic signature or seal. The remote notary public shall certify compliance with this subsection to the Secretary of State.

(B) A former remote online notary public whose commission is terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by subsection (A) if the former remote online notary public is recommissioned as a remote online notary public with the same electronic signature and seal within three months after the remote online notary public’s former commission is terminated.

Section 26‑4‑150. (A) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling a remote online notary public to affix an official electronic signature or seal commits a criminal offense.

(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 26‑4‑160. In the event of a conflict between the provisions of this chapter and any other law in this State, the provisions of this chapter shall control.

Section 26‑4‑170. (A) If a law requires as a condition for recording that a document be an original, be on paper or another tangible medium, be in writing, or be signed, the requirement is satisfied by a paper copy of an electronic document bearing an electronic signature that a notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature pursuant to subsection (C).

(B) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied by a paper copy of an electronic document bearing an electronic signature of the person authorized to perform that act, and all other information required to be included, that a notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature of the person pursuant to subsection (C). A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(C) A recorder shall record a paper copy of a document that was originally in electronic form and that is otherwise entitled to be recorded under the laws of this State, provided that the paper copy has been certified to be a true and correct copy of the electronic original by a notary public duly commissioned under the laws of this State as evidenced by a certificate attached to or made a part of the document. The certificate must:

(1) be signed and dated by the notary public, and be signed in the same manner as on file with the Secretary of State;

(2) identify the jurisdiction in which the certification is performed;

(3) contain the title of the notary public;

(4) indicate the date of expiration, if any, of the notary public’s commission; and

(5) include an official stamp of the notary public affixed to or embossed on the certificate.

(D) The following form of certificate is sufficient for the purposes of this section, if completed with the information required by subsection (C):

‘State of \_\_\_\_\_\_\_\_\_\_\_\_

County of\_\_\_\_\_\_\_\_\_\_

I certify that the foregoing and annexed document entitled \_\_\_\_\_ [document title], if applicable, dated \_\_\_\_\_ [document date], if applicable, and containing \_\_\_ pages is a true and correct copy of an electronic document bearing one or more electronic signatures this \_\_\_\_\_\_ date.

Signature of Notary Public

Stamp

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My notary registration number is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_’

(E) A notary public duly commissioned under the laws of this State has the authority to make the certification provided in this section.

(F) A notary public making the certification provided in this section shall:

(1) confirm that the electronic record contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic record evident;

(2) personally print or supervise the printing of the electronic record onto paper; and

(3) not make any changes or modifications to the electronic record other than the certification described in subsection (C).

(G) If a certificate is completed with the information required by subsection (C) and is attached to or made a part of a paper document, the certificate may be conclusive evidence that the requirements of subsection (F) have been satisfied with respect to the document.

(H) A document purporting to convey or encumber real property or any interest therein that, by inadvertence or excusable neglect, has been recorded by a recorder for the jurisdiction in which the real property is located, and that has not been certified in accordance with the provisions of this section, shall impart the same notice to third persons and be effective, from the time of recording, as if the document had been certified in accordance with the provisions of this section.

(I) This section does not apply to a plat, map, or survey of real property if under another law of this State or under a rule, regulation, or ordinance applicable to a recorder:

(1) there are requirements of format or medium for the execution, creation, or recording of such plat, map, or survey beyond the requirements applicable to a deed to real property; or

(2) such plat, map, or survey must be recorded in a different location than a deed to real property.

Section 26‑4‑180. The Secretary of State is authorized to promulgate and enforce any regulations, policies, and procedures necessary for the administration of this chapter, including rules to facilitate remote online notarizations.

Section 26‑4‑190. Remote online notary public applications will not be accepted for processing until the administrative rules are in effect and vendors of technology are approved by the Secretary of State.”

B. Title 26 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 the purposes of this article:

(1) ‘Electronic’ means relating to technology and 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 electronic notary public who performed the 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 electronic notary public, bears that electronic notary’s electronic signature and electronic seal, and states the facts attested to by the electronic notary in an electronic notarization.

(6) ‘Electronic notarization system’ means a set of applications, programs, hardware, software, or technologies designed to enable an electronic 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 with the capability to perform electronic notarial acts in conformance with this chapter.

(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 that 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 electronic notary public or safeguarded by the electronic 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; or

(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 must identify the technology that he 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 of State to administer the provisions of this chapter.

(B) Unless terminated pursuant to Section 26‑2‑450, 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 that 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 individual; and

(3) any other information, evidence, or declaration required by the Secretary of State.

(D) Upon the individual’s fulfillment of the requirements for registration under this chapter, the Secretary of State shall approve the registration and issue to the individual a unique registration number.

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

Section 26‑2‑340. (A) Before performing electronic notary acts, an electronic notary public shall take a course of instruction of sufficient length to ensure that the electronic 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 electronic notary or identified by the electronic 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 must be attached to, or logically associated with, the electronic document by the electronic notary public and must include:

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

(2) the electronic notary public’s electronic seal;

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

(4) the electronic 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 electronic notary public’s electronic signature is attached, such that removal or alteration of a component is tamper evident and will render evidence of alteration of the document containing the electronic notarial certificate, which may invalidate the electronic notarial act. If an electronic seal is not used, then the words ‘Electronic Notary Public’ and the words ‘State of South Carolina’ must still be attached.

(C) An electronic notary public’s electronic signature or electronic seal is considered to be reliable if it is:

(1) unique to the electronic notary public;

(2) capable of independent verification;

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

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

(5) 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 an electronic notary public shall contain the:

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

(2) title ‘Notary Public’;

(3) words ‘State of South Carolina’;

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

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

(E) The electronic seal of an electronic 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 an electronic notary public may not be used for any purpose other than performing electronic notarizations under this chapter.

(F) Only the electronic notary public whose name and registration number appear on an electronic seal shall generate that electronic 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) for acknowledgments, ten dollars per signature;

(2) for oaths and affirmations, ten dollars per signature;

(3) for attestations and jurats, ten dollars per signature;

(4) for signature witnessing, ten dollars per signature;

(5) for verifications of fact, ten dollars per signature; and

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

(2) the electronic notary public explains to the person requesting the electronic 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 electronic 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 electronic notary public’s electronic signature, in combination with his electronic seal, must be used only for the purpose of performing electronic notarial acts.

(B) An electronic 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 electronic notary’s electronic signature and electronic seal in a manner that is capable of independent verification.

(C) An electronic 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 electronic notary public’s electronic signature or electronic seal.

(D) An electronic notary public shall keep in his sole control all or any part of an electronic notarization system for which the exclusive purpose is to produce the electronic 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 an electronic notary public who signed an electronic record in an official capacity had the authority at that time to perform electronic notarial acts.

(F) The Secretary of State shall promulgate regulations necessary to establish standards, procedures, practices, forms, and records relating to an electronic notary public’s electronic signature and electronic seal. The electronic 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 an electronic journal of each electronic notarial act. For every electronic notarial act, the electronic notary public shall record the following information in the electronic journal:

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

(2) the type of electronic 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 electronic 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 electronic notary.

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

(C) An electronic notary public may not allow the electronic journal to be used by any other notary public and may not surrender the electronic journal to an employer upon termination of employment.

(D) Any party to the notarized transaction or party with a legitimate interest in the transaction may inspect or request a copy of an entry or entries in the electronic notary public’s electronic journal, provided that:

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

(2) the electronic notary public does not surrender possession or control of the electronic journal;

(3) the party is shown or given a copy of only the entry or entries specified; and

(4) a separate new entry is made in the electronic journal, explaining the circumstances of the request and noting any related act of copy certification by the electronic notary public.

(E) An electronic 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. An electronic notary who has a reasonable and explainable belief that a person requesting information from the electronic notary’s electronic journal has a criminal or other inappropriate purpose may deny access to any entry or entries.

(F) All electronic 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 commercially reasonable standards for preservation of electronic journals in the event of a resignation, revocation, or expiration of an electronic notary commission, or upon the death of the electronic 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 his electronic journal, public key certificate, and electronic seal secure. The electronic notary public may not allow another person to use his electronic journal, public key certificate, or electronic seal.

(B) An electronic notary public shall attach his 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 the 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 shall immediately 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 electronic notary, the electronic notary or his personal representative shall erase, delete, or destroy the coding, disk, certificate, card software, file, or program that enables electronic affixation of the electronic 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 his previous commission.

Section 26‑2‑420. (A) An electronic notarization system shall comply with this chapter and any regulations promulgated 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 an electronic notary public to affix the electronic notary public’s electronic signature in a manner that attributes such signature to the electronic 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 electronic notary dies or is adjudicated as incompetent, the electronic notary public or his personal representative or guardian shall, within three months, dispose of all or any part of an electronic notarization system that had been in the electronic notary’s sole control for which the exclusive purpose was to perform electronic notarial acts.

(F) A former electronic 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 promulgated 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 electronic 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, then the notary public shall cease performing electronic notarizations until:

(1) a new device is duly issued or registered to the electronic 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 a material misstatement or omission of fact;

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

(c) official misconduct by the electronic notary public.

(2) Before terminating an electronic notary public’s registration, the Secretary of State will inform the electronic 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 an 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 electronic notary public’s commission or registration.

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

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

(2) 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, electronic seal, or single element combining the required features of an electronic signature and electronic seal; or

(3) solicit, coerce, or in any way influence an electronic 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, 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 substantially contain 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 electronic seal) of the 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.”

C. Nothing in this SECTION contravenes South Carolina law that requires a licensed South Carolina attorney to supervise a closing.

D. This SECTION does not apply to wills and trusts in South Carolina.

E. This SECTION takes effect upon approval by the Governor. Remote online notary public applications and electronic online notary public applications will not be accepted for processing until the administrative rules are in effect and vendors of technology are approved by the Secretary of State.

SECTION 8. This act takes effect upon approval by the Governor.

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