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SENATE BILL DRS15222-MC-105

Short Title: Modifications to Notary Public Act. (Public)

Sponsors: Senators Daniel and Craven (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NOTARY PUBLIC ACT.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 10B of the General Statutes reads as rewritten:

5 "Chapter 10B.

6 "Notaries.

7 "Article 1.

8 "Notary Public Act.

9 "Part 1. General Provisions.

10 ...

11 "§ 10B-4. Rules.

12 The Secretary may adopt rules necessary to administer and enforce this Chapter in order to  
13 achieve the purposes of the act.

14 ...

15 "§ 10B-102. Scope of this Article.

16 ...

17 (b) When conducting a remote electronic notarization, the ~~remote~~ electronic notary shall  
18 comply with the requirements of Article 1 of this Chapter.

19 ...

20 "Part 2. Registration.

21 "§ 10B-105. Qualifications.

22 (a) A person qualified for electronic notary registration ~~or remote electronic notary~~  
23 ~~registration~~ shall meet all of the following requirements:

24 ...

25 (b) The Secretary may deny a registration as an electronic notary ~~or remote electronic~~  
26 ~~notary~~ as authorized in G.S. 10B-5(d).

27 ...

28 "§ 10B-107. Course of instruction.

29 (a) Before performing electronic or remote electronic notarial acts, a notary shall take a  
30 course of instruction of least ~~three~~ four hours approved by the Secretary and pass an examination  
31 of this course, which shall be in addition to the educational requirements provided in Article 1 of  
32 this Chapter.

33 (b) The content of the course and the basis for the examination shall be notarial laws,  
34 procedures, technology, and ethics as they pertain to electronic and remote electronic  
35 notarization.

36 ...



1 **"§ 10B-117. Notarial components of electronic document.**

2 In performing an electronic or remote electronic notarial act, all of the following components  
 3 shall be attached to, or logically associated with, the electronic document by the electronic ~~notary~~  
 4 ~~or remote electronic~~ notary, all of which shall be immediately perceptible and reproducible in the  
 5 electronic record to which the notary's electronic signature is attached:

- 6 (1) The notary's name, state, and county of commissioning exactly as stated on  
 7 the commission issued by the Secretary.
- 8 (2) The words "Electronic Notary Public" or "~~Remote Electronic~~ "Electronic  
 9 Notary Public Utilizing Communication Technology."

10 ...

11 **"§ 10B-134.1. Definitions.**

12 In addition to the definitions provided in this Article, the following definitions shall apply in  
 13 this Part:

- 14 (1) Communication technology. – An electronic device, process, or system that  
 15 allows ~~a remote-an~~ an electronic notary and a remotely located principal to  
 16 communicate with each other simultaneously by sight and sound using  
 17 audiovisual technology and that makes reasonable accommodations for  
 18 remotely located principals with vision, hearing, or speech impairments.

19 ...

- 20 (3a) Custodial services. – Services approved by the Secretary and selected by the  
 21 notary to provide long-term storage of the electronic journal and  
 22 communications technology recordings.

- 23 (3b) Custodian. – The person providing the custodial services. The custodian may  
 24 but need not be the same as the depository.

- 25 (3c) Depository. – The person or platform providing the depository services.

- 26 (3d) Depository services. – Storage services provided by the platform of the  
 27 electronic journal entries and communications technology recordings as they  
 28 are entered.

29 ...

- 30 (6) Platform. – The online platform utilizing the communication ~~technology~~  
 31 technology, credential analysis, and identity proofing and including  
 32 communication technology recordings, geolocation, electronic journals, and  
 33 depository services in order to perform the remote electronic notarial act.

- 34 (7) Remote electronic notarial certificate. – The portion of a notarized electronic  
 35 document that is completed by the ~~remote~~ electronic notary and contains all  
 36 of the following:

- 37 a. The ~~remote~~ electronic notary's electronic signature and the ~~remote~~  
 38 electronic notary's electronic seal.
- 39 b. The facts attested to by the ~~remote~~ electronic notary in a particular  
 40 notarization.
- 41 c. A statement in the acknowledgement, jurat, or verification certificate  
 42 identifying where the remotely located principal was physically  
 43 located at the time of the remote electronic notarization.
- 44 d. A statement that the notarization is a remote electronic notarization  
 45 performed using communication technology by ~~a remote-an~~ an electronic  
 46 notary.

47 ...

- 48 (9) ~~Remote electronic notary public or remote electronic notary. – A notary public~~  
 49 ~~who is registered with the Secretary to perform remote electronic~~  
 50 ~~notarizations.~~

1 (10) Remotely located principal. – A principal who is not in the physical presence  
2 of the ~~remote~~ electronic notary and who is located at the time of the remote  
3 electronic notarial act in any of the following places:

4 ...

5 (12) Third-party vendor. – Any person providing credential analysis, identity  
6 proofing, or custodial services to ~~remote~~ electronic notaries.

7 **"§ 10B-134.3. Types of remote electronic notarial acts; prohibitions.**

8 (a) Upon registration with the Secretary under this Article, a ~~remote~~ an electronic notary  
9 may perform any of the notarial acts listed in G.S. 10B-115 by means of communication  
10 technology in accordance with this Part. ~~A remote~~ An electronic notary may perform any  
11 authorized remote notarial act with respect to electronic documents.

12 (b) ~~A remote~~ An electronic notary shall not perform a remote electronic notarial act if  
13 any of the following applies:

14 ...

15 (c) Notwithstanding subsection (a) of this section, a ~~remote~~ an electronic notary shall not  
16 perform any remote electronic notarial act with regard to any of the following documents:

17 ...

18 **"§ 10B-134.5. Use of communication technology.**

19 (a) The communication technology used by a ~~remote~~ an electronic notary to perform  
20 remote electronic notarial acts for remotely located principals shall comply with all of the  
21 following requirements:

22 (1) Host the meeting between the ~~remote~~ electronic notary and the remotely  
23 located principal in real time.

24 (2) Allow direct interaction between the remotely located principal seeking the  
25 ~~remote~~ electronic notary's services and the ~~remote~~ electronic notary so that  
26 each can communicate simultaneously by sight and sound through  
27 communication technology.

28 ...

29 (4) Have sufficient video quality to allow a clear and unobstructed visual  
30 observation of the face of each participant and any identification provided by  
31 the remotely located principal for a sufficient time to allow the ~~remote~~  
32 electronic notary to verify the remotely located principal's identity under  
33 G.S. 10B-134.11. The ~~remote~~ electronic notary shall determine if the time is  
34 sufficient.

35 ...

36 (b) The ~~remote~~ electronic notary shall take reasonable steps to provide that the  
37 communication technology used in a remote electronic notarization is secure from unauthorized  
38 interception. ~~A remote~~ An electronic notary shall select one or more tamper-evident technologies  
39 to perform remote electronic notarial acts with respect to electronic documents. In addition to  
40 any requirements of this Article or established by the Secretary, the communication technology  
41 shall provide automated backup of the communication technology recording.

42 (c) No person may require a ~~remote~~ an electronic notary to perform any remote electronic  
43 notarial act using communication technology that the ~~remote~~ electronic notary has not selected.

44 **"§ 10B-134.7. Authority to perform remote electronic notarial acts.**

45 (a) ~~A remote~~ An electronic notary may perform a remote electronic notarial act  
46 authorized under this Part only while the ~~remote~~ electronic notary is physically located in this  
47 State.

48 (b) A remote electronic notarization performed by a ~~remote~~ an electronic notary of this  
49 State under this Part is governed by the laws of this State.

50 **"§ 10B-134.9. Requirements and procedures for remote electronic notarial acts.**

1 (a) All of the following shall occur prior to the performance of a remote electronic  
2 notarial act:

3 (1) The ~~remote~~-electronic notary shall inform the participants that North Carolina  
4 law requires that a communication technology recording be made of the  
5 remote electronic notarization.

6 (2) The ~~remote~~-electronic notary shall require the remotely located principal to  
7 demonstrate, to the satisfaction of the ~~remote~~-electronic notary, that the  
8 remotely located principal is not under duress and is not otherwise being  
9 coerced to complete the transaction.

10 (3) The ~~remote~~-electronic notary shall verify the identity of the remotely located  
11 principal as provided in G.S. 10B-134.11.

12 (4) The ~~remote~~-electronic notary shall ask the remotely located principal if the  
13 remotely located principal would like an attorney to participate in the remote  
14 notarization, and allow for such if so requested.

15 ...

16 (b) In addition to the prohibitions contained in G.S. 10B-134.3 and G.S. 10B-20, a ~~remote~~  
17 an electronic notary shall refuse to perform a remote electronic notarial act if any of the following  
18 applies:

19 (1) The ~~remote~~-electronic notary has reasonable grounds to believe the remotely  
20 located principal is acting under duress or is being coerced into completing  
21 the transaction.

22 (2) The ~~remote~~-electronic notary becomes aware that the communication  
23 technology is not secure.

24 (3) The electronic signature of the remotely located principal cannot be attached  
25 to the electronic document for signature.

26 (4) Unless an oath is being administered, the ~~remote~~-electronic notary's electronic  
27 notarial certificate and seal cannot be attached to the electronic document  
28 using an electronic technology that renders any subsequent change or  
29 modification to the document evident.

30 (c) Except as provided in subsection (d) of this section, if the remote electronic notarial  
31 act is an oath or affirmation, the ~~remote~~-electronic notary shall administer the oath or affirmation  
32 to the remotely located principal utilizing a licensed platform.

33 (d) In judicial actions or proceedings, any notary public registered with the Secretary,  
34 whether or not registered as a ~~remote~~-an electronic notary, may administer an oath or affirmation  
35 to a witness that does not require remote electronic notarization of a record or a notarial certificate  
36 and seal when done in person, provided all of the following apply:

37 ...

38 (e) Any non-material failure of the ~~remote~~-electronic notary to comply with the  
39 requirements of the remote electronic notarization does not invalidate the notarial act or the  
40 electronic record that was remotely notarized. An aggrieved person is not prevented from using  
41 failures in the remote electronic notarization process, along with other grounds, to challenge the  
42 validity or enforceability of the remote electronic notarization based on fraud, forgery,  
43 impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability, or  
44 another basis not related to the remote electronic notarial act or constructive notice provided by  
45 recording of the electronic record.

46 (f) Information gained from a remotely located principal in the course of performing a  
47 remote electronic notarization shall be treated as confidential by the ~~remote~~-electronic notary.

48 **"§ 10B-134.11. Verification of identity; identity proofing; credential analysis.**

49 (a) Prior to the remote electronic notarial act, the ~~remote~~-electronic notary shall verify  
50 each remotely located principal's identity through one of the following methods:

1 (1) The remotely located principal creating the electronic signature is personally  
2 known to the ~~remote~~-electronic notary.

3 (2) All of the following:

4 ...

5 c. Comparison, by the ~~remote~~-electronic notary, of the current document  
6 issued by a federal, state, or federal or state-recognized tribal  
7 government agency bearing the photographic image of the individual's  
8 face and either the signature or a physical description of the individual  
9 presented by the remotely located principal during credential analysis  
10 and the image of the remotely located principal via the communication  
11 technology.

12 (b) Notwithstanding subsection (a) of this section, a ~~remote~~-an electronic notary may  
13 require the remotely located principal to provide additional information or identification  
14 credentials necessary to confirm the identity of the remotely located principal.

15 **"§ 10B-134.13. Electronic notarization and remote electronic notarization.**

16 When conducting a remote electronic notarization, the ~~remote~~-electronic notary shall comply  
17 with the requirements of this Chapter. Each remote electronic notarization shall include a  
18 communication technology recording. There shall be no requirement that the communication  
19 technology recording further include any transactions other than the remote electronic notarial  
20 act unless the Secretary specifies a requirement to also record interactions of those particular  
21 transactions.

22 **"§ 10B-134.15. Electronic journal of remote electronic notarial acts.**

23 (a) ~~A remote~~-An electronic notary who performs a remote electronic notarization shall  
24 enter information about the remote electronic notarization in an electronic journal. The electronic  
25 journal shall be the exclusive property of the ~~remote~~-electronic notary. The ~~remote~~-electronic  
26 notary shall not allow another person to make entries in the electronic journal.

27 (b) The Secretary shall adopt rules specifying the content and secure storage of the  
28 electronic journal. The rules adopted by the Secretary shall comply with all of the following:

29 ...

30 (5) Specify to whom the electronic journal shall be delivered upon resignation,  
31 revocation, or expiration of a notary commission or death or adjudication of  
32 incompetency of a ~~remote~~-an electronic notary.

33 (c) ~~A remote~~-An electronic notary may surrender the electronic journal to the ~~remote~~  
34 electronic notary's employer upon termination of employment, but the ~~remote~~-electronic notary  
35 shall also keep and maintain an accurate backup copy of the journal for 10 years after the last  
36 remote electronic notarization entered into the electronic journal.

37 ...

38 **"§ 10B-134.17. Security measures by notary; surrender of journal; etc.**

39 (a) ~~A remote~~-An electronic notary shall comply with all of the following security  
40 requirements:

41 (1) All records of journal entries and communication technology recordings shall  
42 be securely stored in a repository under the control of the ~~remote~~-electronic  
43 notary or with a steward duly appointed under the terms of this Part. If a  
44 steward is appointed, the steward shall be a third-party vendor approved by  
45 the Secretary.

46 (2) Take reasonable steps to ensure that the communication technology  
47 recordings are secure from unauthorized interception during transmission  
48 between participants involved in a ~~remote~~-an electronic notarial act. The  
49 communication technology used by the ~~remote~~-electronic notary shall employ  
50 data protection safeguards consistent with generally accepted information  
51 security standards.

1 (b) Within 10 calendar days of discovering any permanent loss of data, unauthorized use,  
2 loss of use, or compromise of security of the electronic journal or the communication technology  
3 recordings of remote electronic notarial acts, the ~~remote~~-electronic notary shall do both of the  
4 following:

- 5 (1) Inform the appropriate law enforcement agency in the case of theft, tampering,  
6 or vandalism.
- 7 (2) Notify the register of deeds in the county of the ~~remote~~-electronic notary's  
8 commissioning under G.S. 10B-10 and the Secretary in writing and signed in  
9 the official name in which the ~~remote~~-electronic notary was commissioned.  
10 The notice shall indicate whether there was any permanent loss of data,  
11 unauthorized use, loss of use, or compromise of security of the electronic  
12 journal or the communication technology recordings of remote electronic  
13 notarial acts.

14 (c) The failure of a ~~remote~~-an electronic notary to produce within 30 calendar days of the  
15 Secretary's request any record required by a rule adopted under this Part shall result in the  
16 suspension of the ~~remote~~-electronic notary's power to act as a notary under the provisions of this  
17 Chapter until the Secretary reinstates the notary's commission.

18 **"§ 10B-134.19. Platform licensure by Secretary.**

19 (a) ~~A remote~~-An electronic notary shall use only a communication technology through a  
20 platform licensed by the Secretary.

21 ...

22 **"§ 10B-134.21. Rules.**

23 (a) The Secretary shall adopt rules necessary to establish standards, procedures, practices,  
24 forms, and records relating to remote electronic notarial acts to implement this Part, including at  
25 least all of the following:

- 26 (1) Any additional educational requirements for ~~remote~~-electronic  
27 ~~notaries~~-notaries regarding remote electronic notarizations.
- 28 ...
- 29 (4) The requirements of secure storage of all communication technology  
30 recordings, the electronic journal, and any other documentation under the  
31 control of the ~~remote~~-electronic notary regarding the ~~remote~~-electronic notarial  
32 act.

33 ...

34 **"§ 10B-134.23. Standards for services provided to ~~remote~~-electronic notaries; enforcement.**

35 (a) All licensees and third-party vendors shall meet all standards established by the  
36 Secretary under this Part for the provision of services to ~~remote~~-electronic notaries in this ~~State~~-  
37 State for remote electronic notarization services. If the Secretary has not adopted rules  
38 establishing standards for a service, a licensee or third-party vendor may not furnish that service  
39 to a ~~remote~~-an electronic notary public until the Secretary has determined that the provided  
40 service meets security standards generally accepted within the industry for that service.

41 (b) The Secretary may adopt rules establishing, supplementing, or amending third-party  
42 vendor guidelines for standards and processes for identity proofing and credential analysis  
43 services so that third-party vendors interacting with ~~remote~~-electronic notaries satisfy the security  
44 qualifications of establishing the identity of the remotely located principal.

45 (c) The Secretary, in the Secretary's discretion, may do any one or more of the following  
46 if a licensee or third-party vendor violates this Part or the rules adopted by the Secretary under  
47 this Part:

- 48 (1) Require a licensee or third-party vendor to provide a ~~remote~~-an electronic  
49 notary with proof that ~~an~~-a remote electronic notarization issue was caused in  
50 whole or in part by the licensee or third-party vendor's technology.

51 ...

- 1           (3)    Restrict use of a licensee or third-party vendor's technology by ~~remote~~
- 2                    electronic notaries until it has come into compliance.
- 3           (4)    Assess a civil penalty of not more than one thousand dollars (\$1,000) per
- 4                    violation against any licensee or third-party vendor that violates a provision
- 5                    of this Part. In determining the amount of a penalty, the Secretary shall give
- 6                    due consideration to aggravating and mitigating factors presented to the
- 7                    Secretary by the licensee or third-party vendor and ~~remote~~-electronic notaries.
- 8           (5)    Any other appropriate remedy.
- 9        (d)    A licensee or third-party vendor whose technology is restricted, suspended, or
- 10        revoked shall work with ~~remote~~-electronic notaries using the services of that licensee or
- 11        third-party vendor to ensure access and, if necessary, ease transition to a different licensee or
- 12        third-party vendor and may not deny its ~~remote~~-electronic notary customers access.
- 13        ...
- 14        (f)    ~~A remote~~-An electronic notary who exercised reasonable care in selecting and using
- 15        a licensee or third-party vendor in connection with a remote electronic notarial act shall not be
- 16        liable for any damages resulting from the licensee's or third-party vendor's failure to comply with
- 17        the requirements of this Part. Any provision in a contract between the ~~remote~~-electronic notary
- 18        and a licensee or third-party vendor that attempts to waive the immunity conferred by this
- 19        subsection shall be null, void, and of no effect.
- 20        "**§ 10B-134.25. Real estate transactions.**
- 21        ...
- 22        (b)    ~~A remote~~-An electronic notary who is not a licensed North Carolina attorney is
- 23        prohibited from rendering services or advice that constitutes the practice of law in this State."
- 24                **SECTION 2.** This act becomes effective July 1, 2023, and applies to notarial acts
- 25        performed on or after that date.